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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

JOHN DOE, an individual, Plaintiff/Petitioner, vs. MILL VALLEY SCHOOL DISTRICT, Defendant/Respondent.	Case No.: CV0003896 Assigned for all purposes to: Hon. Sheila S. Lichtblau, Dept. H **PLAINTIFF/PETITIONER JOHN DOE'S REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON PETITION FOR WRIT OF MANDATE**
Holly McDede, Real Party in Interest.	Hearing: Date: February 26, 2025 Time: 1:30 p.m. Place: Dept. H Action filed: September 6, 2024 Trial date: Not set

Plaintiff/Petitioner John Doe ("John Doe"), having been served with Oppositions to his Motion for Judgment on Petition for Writ of Mandate ("Motion"), filed by Defendant/Respondent Mill Valley School District ("District") and Real Party in Interest Holly McDede ("Requester"), submits this Reply in support of the Motion and asserts as follows:

I. JOHN DOE'S PERSONNEL RECORDS ARE EXEMPT UNDER THE CPRA AND THUS A WRIT MUST ISSUE ENJOINING THEIR DISCLOSURE

Contrary to the District's and the Requester's assertions in their Oppositions to the Motion, controlling case law and the California State Constitution provide the requisite legal framework for the protection of John Doe's constitutional privacy rights, which would be violated by the disclosure of the Personnel Records[1] at issue in this case.

The personnel exemption codified in Section 7927.700 of the CPRA is indeed "permissive, not mandatory," and "allow[s] nondisclosure but do[es] not prohibit disclosure." *Marken v. Santa Monica-Malibu Unified Sch. Dist.*, 202 Cal. App. 4th 1250, 1262 (2012). However, a party may bring a reverse-CPRA action by showing that disclosure is "otherwise prohibited by law" based on privacy rights protected by the California Constitution. *Id*. at 1270-71. This is precisely the nature of the case at bar and John Doe's constitutional privacy rights must be weighed against the public's interest in disclosure of the Personnel Records.

Courts apply a three-step analysis in determining the applicability of the personnel exemption. *See Associated Chino Tchrs. v. Chino Valley Unified Sch. Dist.*, 30 Cal. App. 5th 530, 539 (2018). "As a threshold matter, the court must determine whether the records sought constitute a personnel file, ... or other similar file." *Ibid*. "If so, the court must determine whether disclosure of the information would compromise substantial privacy interests." *Ibid*. "Lastly, the court must determine whether the potential harm to privacy interests from disclosure outweighs the public interest in disclosure." *Ibid*.

There can be no reasonable dispute that John Doe's Personnel Records constitute a "personnel" or "other similar file" within the context of CPRA's personnel exemption, or that the Personnel Records are the kind of documents that courts have routinely found to implicate substantial privacy interests. The Oppositions challenge John Doe's position with regard to the third prong of the operative analysis, which weighs the harm to John Doe's constitutionally protected

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[1] For ease of reference, all capitalized terms used herein, unless defined, shall have the same meaning as the definitions assigned to them in the Motion.

privacy rights against the public's interest in disclosure of the Personnel Records. A public employee's privacy yields to the public's right to know ***only when*** the allegations against the employee are ***both*** (a) "substantial" in nature and (b) "well founded." *Bakersfield City Sch. Dist. v. Superior Ct.*, 118 Cal. App. 4th 1041, 1046 (2004).

A. The Allegations Against John Doe Are Not "Substantial"

Based on *Bakersfield*, the Requester argues that an allegation is "substantial" as long as it is not just "baseless or trivial." Requester's Opp'n 15:17-18. Such an overly expansive interpretation of the term "substantial" is improperly grounded in dicta and is not supported by relevant subsequent case law. After *Bakersfield* was decided, and in determining whether certain allegations were "substantial", the court in *Associated Chino Tchrs.* expressly focused on an inquiry into whether the allegations involved any "sexual-type conduct, threats of violence, and violence." *Associated Chino Tchrs*., 30 Cal. App. 5th at 543. The courts in *Marken* and *BRV, Inc. v. Superior Court*, 143 Cal. App. 4th 742, 759 (2006) – both decided after *Bakersfield* – also found complaints against a public employee to be "substantial" because they involved allegations of sexual harassment. *Marken*, 202 Cal. App. 4th at 1276; *BRV*, 143 Cal. App. 4th at 747. Even the court in *Bakersfield*, on which the Requester's argument heavily relies, conceded the validity of the lower court's finding that a complaint was "substantial" in nature because the alleged incident involved "sexual type conduct, threats of violence and violence." *Bakersfield*, 118 Cal. App. 4th at 1043–44. Therefore, since *Bakersfield* was decided, courts have narrowed the scope of the term "substantial" to include only allegations of sexual-type conduct, threats of violence, and violence, and this Court should adhere to the same limitation.

For her erroneous position, the Requester also relies on *Iloh v. Regents of Univ. of California*, 87 Cal. App. 5th 513 (2023), where the court ordered disclosure of records related to alleged plagiarism. The CPRA request in *Iloh* did not explicitly seek personnel records; rather, it sought "certain postpublication communications between the professor, the university, and the journals regarding the retracted articles." *Id.* at 519. In *Iloh*, the court analyzed the personnel exemption in haste, presumably due to inadequate briefing at the trial and/or appellate court level, first stating that it was not clear whether the records at issue even qualified as "personnel records" given that "the

[CPRA] request asks for 'correspondence,' not personnel records." *Id.* at 528. The *Iloh* court did not engage in any analysis of the terms "substantial" or "well founded," and indeed did not even mention that portion of the personnel exemption test. *Id*. at 527-28. Instead, the *Iloh* court took a shortcut and concluded that the public interest in disclosure outweighed any privacy concerns for the same reasons the court had already ruled that the "catchall" CPRA exemption did not apply to the subject records. *Ibid*. It would have been impossible for the *Iloh* court to analyze whether the personnel exemption applied given that the court acknowledged it had not reviewed the contested records. *Id.* at 520, fn. 2. The facts and legal analysis in *Iloh* are simply not on point for the situation currently before the Court.

To support her unreasonable interpretation of the term "substantial," the Requester also relies on *Doe v. Regents of Univ. of California*, 102 Cal. App. 5th 766, 776 (2024) (*"Regents*") – a reverse-CPRA case involving allegations of improper governmental activities, conflicts of interest, retaliation against a faculty member, and harassing conduct. *Id*. at 769-70. The Requester's reliance on the *Regents* case is misguided because the Court of Appeal did not engage in any discussion of the "substantial" prong of the operative analysis due to the fact that the plaintiffs simply conceded the issue, and thus the *Regents* case offers no guidance with regard to the definition of the term "substantial" within any CPRA context. *Id*. at 776 ("Plaintiffs make no effort to show that the misconduct alleged was not of a substantial nature.").

The Requester also cites to *Am. Fed'n of State etc. Emps. v. Regents of Univ. of California*, 80 Cal. App. 3d 913 (Ct. App. 1978) ("*AFSCME*") and *Woodland Joint Unified Sch. Dist. v. Comm'n on Pro. Competence*, 2 Cal. App. 4th 1429 (1992) ("*Woodland*"), both of which similarly fail to support an expansive definition of the term "substantial." *AFSCME* was decided prior to *Associated Chino Tchrs.*, *Marken* and *BRV*, which – as analyzed in more detail above – narrowed the scope of the term "substantial" to include only allegations of sexual-type conduct, threats of violence and violence. Meanwhile, *Woodland* is completely inapposite to the case at bar because it discussed certain provisions of the California Education Code (*i.e.*, Cal. Educ. Code § 44932) and implicated absolutely no CPRA issues, let alone offer any interpretation of the term "substantial" for purposes of the CPRA's "personnel" exemption.

In short, it is patently clear that within the context of the personnel exemption under the CPRA, courts have established a bright-line rule: the term "substantial" is limited solely to allegations of sexual-type conduct, threats of violence and violence. Based on the unequivocal guidance of the controlling case law set forth above, the Requester's overly expansive interpretation of the term "substantial" to exclude only "baseless or trivial" allegations must be rejected.

As detailed in the Motion, with the possible exception of the alleged Thigh/Shoulder Touching incident (discussed further below), John Doe's Personnel Records do not contain any allegations rising to the level of sexual harassment, sexual abuse, sexual assault, or any other sexual misconduct, and therefore the complaints at issue in this case are anything but "substantial" for purposes of disclosure under the CPRA.

The Requester and the District also argue in their Oppositions that the Personnel Records contain "substantial" allegations because the District purportedly found the allegations to be of "boundary crossing or grooming behavior," and thus, "viewed holistically," John Doe's alleged conduct "demonstrates a pattern of behavior" and "reveals its sexual nature and intent." Requester's Opp'n 17:20-23, 17:27-18:5; District's Opp'n 9:18-22.

First, contrary to the Requester's insistence that John Doe's alleged conduct was found by the District to constitute "boundary crossing or grooming behavior," the District itself – as opposed to its legal counsel making arguments to this Court – never issued such a finding when memorializing the District's investigation in real time, and there is no evidence before this Court of such a conclusion made by any District officials. Despite having three opportunities through its oppositions to the Temporary Restraining Order, Preliminary Injunction, and the current Motion, the District submitted absolutely zero evidence, in the form of a declaration signed under penalty of perjury by a District official or otherwise, purporting to make such a finding. "Statements and arguments by counsel are not evidence," and thus the characterization of "boundary crossing or grooming behavior" by the District's counsel in legal briefing must be disregarded in its entirety. *Gdowski v. Gdowski,* 175 Cal. App. 4th 128, 139 (2009). This manufactured "finding" was first brought up – without any evidentiary support – in the District's Opposition to John Doe's *Ex Parte* Application for Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction

(District Opp'n to Ex Parte Appl. 7:13-14), and was then inexplicably incorporated in the District's and the Requester's Oppositions to John Doe's Motion for Preliminary Injunction ("PI Motion") without as much as a scintilla of proof or reliance on the Personnel Records lodged under seal with the Court. District Opp'n to PI Motion 10:16-20; Requester Opp'n to PI Motion 5:2-4. History repeats here, with the District again providing no evidentiary support for any conclusion that the alleged behavior was found to be "boundary crossing or grooming," let alone sexual-type conduct.

Second, the Requester's argument that, "viewed holistically," John Doe's alleged conduct "reveals its sexual nature and intent" could not be any more conclusory. The Requester's Opposition neither engages in an incident-by-incident analysis of the nature of John Doe's alleged conduct, nor provides any citations to relevant legal authorities supporting the Requester's creatively concocted "holistic" theory that John Doe's alleged pattern of alleged behavior reveals sexual nature and intent. As detailed in the Motion, John Doe may have occasionally demonstrated lack of best judgment due to his admitted "flair for the dramatics" in his interactions with students and staff; however, to conclude that the complaints against John Doe contain allegations of sexual conduct would be an extreme and legally unsupported position, and therefore the Court should find that the allegations are not "substantial" for purposes of disclosure under the CPRA.

B. <u>The Allegations Against John Doe Are Not "Well Founded"</u>

The Requester and the District argue that the allegations contained in the Personnel Records are well founded because of: (i) the number of complaints by various individuals allegedly reveals a pattern of misconduct; (ii) John Doe's resignation – impliedly labeled in the most conclusory fashion as having taken place "in response to" the accusations, despite the evidence to the contrary (Motion (Doe Decl., ¶ 20)); (iii) the District's non-existent determination that John Doe's alleged misconduct constituted a "grooming-type behavior"; (iv) the District's completely unsupported assertion that dismissal proceedings were instituted against John Doe despite providing zero evidence; and (v) John Doe's admission that some of the incidents did take place, although without any sexual intent or context. Requester's Opp'n 14:18-25; District's Opp'n 10:6-19.

As explained in more detail above, the District never found John Doe to have engaged in any boundary crossing or grooming behavior. There is also no evidence before this Court suggesting

that dismissal proceedings were ever commenced against John Doe. And although John Doe has admitted to some of the facts alleged in the complaints against him, to the extent the complaints allege any sexual misconduct, they lack credibility and John Doe has vehemently denied such allegations, specifically the alleged Thigh/Shoulder Touching, Manspreading, and Doorway Standing incidents. Motion (Doe Decl. ¶¶ 5-6, 8, 18). The Thigh/Shoulder Touching incident comes closest to an allegation of any sexual-type misconduct and is therefore the only complaint subject to a credibility or "well founded" analysis, the remaining allegations having failed to meet the "substantial" prong. As detailed in the Motion, all allegations asserted in said complaint were based on statements allegedly made by three students to a parent when prompted by the parent to do so, including "stories" they had heard from their schoolmates. NOL (PDF p. 19); Am. NOL2 (PDF p. 39). If there were any "reasonable cause" (or "probable cause," as the Requester frames the standard of proof in her Opposition (Requester's Opp'n 14:15-17)) to believe that any sexually inappropriate conduct had taken place, criminal charges would have been filed against John Doe. Instead, the police interviewed John Doe regarding this matter and no charges were ever filed. Motion (Doe Decl. ¶ 19). Due to the complete hearsay nature of its allegations, the Thigh/Shoulder Touching complaint contains no indicia of reliability and is therefore not "well-founded."

Accordingly, because John Doe's Personnel Records: (i) are of a "personnel" nature; (ii) implicate John Doe's substantial privacy interests; and (iii) are neither "substantial" nor "well-founded," the subject documents are exempt from disclosure under the CPRA, and thus their release to the Requester and the public at large would violate John Doe's constitutionally protected privacy rights. To prevent such an illegality, a writ of mandate should issue enjoining the Personnel Records' disclosure as requested in the Motion.

II. THE PURPORTED PUBLIC INTEREST IN RELEASING THE PERSONNEL RECORDS DOES NOT OUTWEIGH THE INTRUSION ON JOHN DOE'S CONSTITUTIONAL RIGHT TO PRIVACY

As mentioned above, a public employee's privacy yields to the public's right to know ***only when*** the allegations against the employee are ***both*** "substantial" in nature and "well founded." *Bakersfield*, 118 Cal. App. 4th at 1046. Therefore, the public's interest in disclosure is harmed only

upon withholding of documents evidencing allegations of misconduct which are both "substantial" and "well founded." Conversely, when documents failing to rise to the level of "substantial" and/or "well founded" are disclosed, such as the Personnel Records in this case, only the most petty and prurient interests of the public would benefit, at the irreversible expense and prejudice of the public employee.

Here, the public dissemination of John Doe's Personnel Records is all but guaranteed in light of the admitted fact that the Requester is a freelance media reporter with a history of authoring publications on alleged misconduct by school district employees; indeed, the Requester's Opposition includes a hyperlink to one of her news articles circulated based on information from a CPRA request. Requester's Opp'n 5:4, 16:6-11. Once disclosed, the confidential Personnel Records will likely be made available to the general public, thereby causing grave and irreparable harm to John Doe in the form of embarrassment, harassment, humiliation, and harm to reputation, as well as economic and non-economic injury. Motion (Doe Decl. ¶ 23).

To be clear, the District seeks to produce the Personnel Records with no redactions to protect John Doe's identity. The only reason John Doe's name, school site where he worked, position at the school, and dates are omitted from the public court filings and, to a certain extent, redacted from the lodged Personnel Records, is to comport with the Court's orders relating to John Doe's status as a John Doe and to the Court's September 19, 2024 ruling providing that such information should be redacted and not disclosed pending the ultimate outcome of this litigation. If the District and Requester were to prevail, that information would become public, to the detriment of John Doe.

Under these specific circumstances – where the allegations in the Personnel Records are neither "substantial" nor "well founded" – the harm to John Doe's constitutional right to privacy outweighs any purported harm to the public in non-disclosure. The Constitutional right to privacy must prevail and the District must be enjoined from violating the Constitution.

III. CONCLUSION

For all of the foregoing reasons, as well as those set forth in the Motion, good cause exists to conclude that John Doe's Personnel Records are exempt from disclosure under the CPRA and thus the Court should issue a writ of mandate enjoining the District, its members, officers, agents,

representatives, employees and contractors, and anyone acting on the District's behalf or under the District's direction or supervision, from disclosing any of John Doe's Personnel Records to the Requester or to any other third party without John Doe's express written consent.

Dated: February 11, 2025 PRICE, POSTEL & PARMA LLP

By: _____
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I am employed in the County of Santa Barbara, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 200 East Carrillo Street, Fourth Floor, Santa Barbara, California 93101.

On February 11, 2025, I served the foregoing document described as **PLAINTIFF/PETITIONER'S REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON PETITION** on all interested parties in this action by the original and/or true copy thereof enclosed in sealed envelopes, addressed as follows:

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☐ BY MAIL: I placed the original and/or true copy in a sealed envelope addressed as indicated herein. I am readily familiar with the firm's practice of collection and processing documents for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

☒ BY E-MAIL: I caused to be e-mailed a true copy to the e-mail addresses listed herein.

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

☐ ***(FEDERAL)*** I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on February 11, 2025, at Santa Barbara, California.

Aeria Bolden

Signature
Aeria Bolden