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JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: A. Andres, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

JOHN DOE et. al.

Petitioner,

vs.

MILL VALLEY SCHOOL DISTRICT
Respondent.

HOLLY MCDEDE,
Real Party in Interest.

Case No.: CV0003896

ORDER RE: MOTION FOR JUDGMENT ON PETITION FOR WRIT OF MANDATE (REDACTED)

On February 26, 2025, the parties appeared on Petitioner John Doe's ("Petitioner") motion for judgment on his petition for writ of mandate. After hearing oral argument, the court took the matter under submission. Having considered the arguments raised during oral argument, and upon consideration of all pleadings and argument, the court now grants the motion for judgment in part. (Code Civ. Proc., § 1085.)

BACKGROUND

This case concerns the release of personnel records (the "Records") describing alleged misconduct by Petitioner, who is a former employee of Respondent Mill Valley School District ("District"). (Doe Dec., ¶ 2.) The Records the District wishes to disclose have been filed under seal as Exhibit A to the Notices of Lodgment filed on September 10 ("NOL 1") and September 23 ("NOL 2"), 2024. Because this order quotes from that material, it will not be publicly posted, but instead will be sent directly to counsel. A version of the order redacting all quotations from and descriptions of

the Records will be prepared for the party requesting the Records ("Requester"). What follows is an overview of the Records at issue in this case.

[redacted]

Subsequent Events

At a meeting between Petitioner and District leadership, the superintendent told Petitioner that she was "worried about [his] continuance at the District for [his] own well-being, as the staff really rallied against [him]." (Doe Dec., ¶ 20.) Petitioner had also learned that the day he was placed on administrative leave, the superintendent had informed staff and parents that he would not be returning to work. (*Id.* at ¶ 17.) From this, Petitioner concluded he had no future with the District. (*Id.* at ¶¶ 17, 20.) He chose to resign based on this and because he was tired of what he perceived as constant unmerited complaints against him. (*Id.* at ¶ 20.)

On or around June 7, 2024, Requester, a reporter for KQED (Boyd Dec., ¶ 2), submitted a request ("the Request") under the California Public Records Act ("CPRA") to the District. (*Id.* at ¶ 3; McDede Dec., ¶ 2.) In its original form, the Request was broad, seeking "all public records related to any and all claims of misconduct against teachers or other school employees" and "records related to any and all reports to the California Commission on Teacher Credentialing[,]" with both categories seeking records dating from 2014 to the date the Request was fulfilled. (McDede Dec., ¶ 2 & Ex. 1.) Requester and the District then worked together to "narrow" the Request to seek only "public records related to claims of sexual harassment, sexual assault, or boundary crossing or grooming behavior

made regarding teachers or other school employees" and "public records related to claims of sexual harassment, sexual assault, or grooming made to the California Commission on Teacher Credentialing from 2014 to the date the Request is fulfilled." (Boyd Dec., ¶ 3; McDede Dec., ¶ 4 & Ex. 2; Muñoz Dec., ¶ 7.)

The District notified Petitioner that it would disclose the Records. (Boyd Dec., ¶ 4.) Petitioner responded by bringing this action. His verified petition asserts causes of action for violations of the California State Constitution and CPRA. Petitioner seeks a writ of mandate "commanding the District to comply with the California Constitution and the CPRA and protect the confidentiality of [the] Records." (Verified Petition, pp. 6-7.)

On November 7, 2024, the Court issued a preliminary injunction prohibiting the District from disclosing any of Petitioner's personnel records to any third party without Petitioner's express written consent until final adjudication of this case. The Court now considers Petitioner's Motion for Judgment on the Petition for Writ of Mandate.

LEGAL STANDARD

CPRA requires government agencies to make certain records available to the public upon request. (Gov. Code, § 7922.525.) It includes a statutory procedure whereby a party requesting disclosure can challenge an agency's refusal to disclose a public record. (See Gov. Code, § 7923.000 *et seq.*) There is no comparable procedure a third party can use to prevent the agency from disclosing public records. (*Iloh v. Regents of University of California* (2023) 87 Cal.App.5th 513, 524.) Third parties contending that they will be adversely affected by a disclosure under CPRA must do so in an independent action for declaratory relief or a writ of mandamus, known as a "reverse-CPRA action." (*Ibid.*) Where the third party chooses to proceed through a petition for a writ of mandamus, that action takes the form of a petition for a writ of traditional mandamus under Code of Civil Procedure, section 1085. (*Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1266.)

A traditional writ of mandamus lies in cases where "there is not a plain, speedy, and adequate remedy, in the ordinary course of law" to "compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to

the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person[.]" (Code Civ. Proc., §§ 1085, 1086; see also *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442.) "[T]here must be a clear, present, ministerial duty upon the part of the respondent and a correlative clear, present, and beneficial right in the petitioner to the performance of that duty." (*Sullivan v. State Bd. of Control* (1085) 176 Cal.App.3d 1059, 1063.) A ministerial duty is a duty to carry out an act " ' "that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists." ' " (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1082 [quoting *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916].) Where a case does not involve a ministerial duty, traditional mandamus will lie only to compel the respondent to exercise its discretion (if it is required by law to do so) and to exercise it under a proper interpretation of the applicable law. (See *Common Cause, supra*, 49 Cal.3d 432, 442.)

DISCUSSION

Preliminary Matters

At the outset, the Court addresses the following language from its ruling on Petitioner's motion for a preliminary injunction: "The records at issue here have been redacted, and it is the Court's understanding that the District intends to release them to Requester in this form. In assessing whether these records are subject to disclosure, the Court considers them in their present state of redaction. *The Court also views the records as a whole, meaning that Petitioner can show a likelihood of success on the merits by showing that disclosure of* any part *of the material at issue is prohibited, even if the disclosure of other parts would be allowed."* (Nov. 7, 2024 Order, p. 7 [italics added].)

No party to this case has challenged the italicized language. Regardless, the Court's research has led it to reconsider. CPRA provides that "[a]ny reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law." (Gov. Code, § 7922.525, subd. (b).) This "requires public agencies to use the

equivalent of a surgical scalpel to separate those portions of a record subject to disclosure" from those portions that are not. (*Los Angeles County Bd. of Supervisors v. Superior Court* ("*ACLU of Southern California*") (2016) 2 Cal.5th 282, 292; see also *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 653 ["The fact that parts of a requested document fall within the terms of an exemption does not justify withholding the entire document."].) Accordingly, any reasonably segregable portions of the Records for which disclosure is not prohibited must be disclosed.

Here, the material disclosed in the Records is most readily segregable into the categories the Court has sorted them into above: [redacted]. (Throughout this ruling, the Court refers to this last category as the "miscellaneous Records.") Absent any proposal from the District on how it should comply with its obligations under *ACLU of Southern California*, *supra*, 2 Cal.5th 282, the Court will analyze the Records by reference to those categories.

Second, regarding redactions: It has been brought to the Court's attention that Petitioner's name and other personal identifying information is redacted from the Records as they appear before the Court solely to comply with a prior ruling of this Court. The District wishes to release the Records in a form that redacts only the names of third parties and leaves Petitioner's identifying information visible. (Boyd Dec., ¶ 4.) The Court considers the Records with that in mind.

Applicable Law

To prevail in a reverse-CPRA action, the plaintiff must show that the agency *has no discretion* to make the disclosure – that is, the disclosure is prohibited by law. (*Amgen, Inc. v. Health Care Services* (2020) 47 Cal.App.5th 716, 732; accord *Iloh*, *supra*, 87 Cal.App.5th 513, 718; see also *Marken*, *supra*, 202 Cal.App.4th 1250, 1266.) Except as expressly provided by statute, CPRA "does not require disclosure of personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." (Gov. Code, § 7927.700 (hereafter the "personnel files exemption").) CPRA likewise does not require disclosure of records for which an agency demonstrates "that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by the disclosure of the record." (Gov. Code, §

7922.000 (hereafter the "catch-all exemption").) These exemptions "are permissive, not mandatory: They allow nondisclosure but do not prohibit disclosure." (*Marken*, *supra*, 202 Cal.App.4th 1250, 1262; see also Gov. Code, § 7921.500.) The District has declined to invoke any of CPRA's exemptions, a decision that is entrusted to the District's discretion. (*Ibid.*) Petitioner's case thus requires him to prevail on his argument that disclosure of these records is prohibited because it would violate the California Constitution.

Generally, to establish that conduct constitutes an invasion of the state constitutional right to privacy, a plaintiff must show: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy under the circumstances; and (3) that the conduct at issue constitutes a serious invasion of that privacy interest. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 552; see also *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 39-40.) Once this "threshold" showing has been made, the court must "'balanc[e] the justification for the conduct in question against the intrusion on privacy resulting from the conduct[.]'" (*Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 999 [quoting *Loder v. City of Glendale* (1997) 14 Cal.4th 846, 893]; accord *County of Los Angeles v. Los Angeles County Employee Relations Com.* (2013) 56 Cal.4th 905, 926.) At the balancing stage, "[a]n otherwise actionable invasion of privacy may be legally justified if it substantively furthers one or more legitimate competing interests. Conversely, the invasion may be unjustified if the claimant can point to 'feasible and effective alternatives' with 'a lesser impact on privacy interests.'" (*County of Los Angeles*, *supra*, 56 Cal.4th 905, 926 [quoting *Hill*, *supra*, 7 Cal.4th 1, 40].) The Court will refer to this test as the *Hill* test.

At this point, the Court needs to address the role of *Hill* in reverse-CPRA cases. At the hearing on this motion, counsel for Petitioner argued that the Court's tentative ruling was erroneous because it applied the *Hill* test to determine whether the District's disclosing the Records would constitute an invasion of Petitioner's state constitutional right to privacy. Petitioner does not contest that his fundamental contention in this case is that the disclosure would violate that right. (See Memorandum, pp. 8-9.) Regardless, he argues that the *only* applicable test here is the one set forth in *Marken*, *supra*, 202 Cal.App.4th 1250, for determining the applicability of CPRA's personnel files

exemption.[1] The District and Requester agree that *Marken* applies here, although they view the *Hill* versus *Marken* debate as a distinction without a difference.[2]

In *Marken*, a teacher argued that a school district's planned CPRA disclosure of materials pertaining to his allegedly sexually harassing students violated his state constitutional right to privacy. (202 Cal.App.4th 1250, 1271.) As a result, he argued, the documents were exempt from mandatory disclosure under CPRA's personnel files exemption and the defendant district was prohibited by law from disclosing them. (*Ibid.*) Pre-*Marken* case law had established that to show that the personnel files exemption applies, one must establish (1) that the records at issue constitute a personnel file; (2) that their disclosure would compromise substantial privacy interests; and (3) that the potential harm to privacy interests from their disclosure outweighs the public interest in their disclosure. (*Associated Chino Teachers v. Chino Valley Unified School Dist.* (2018) 30 Cal.App.5th 530, 539.) The *Marken* test determines whether the last factor is satisfied in cases concerning the applicability of the personnel files exemption to records disclosing allegations that a public employee has committed workplace misconduct. In those cases, the public interest in disclosure outweighs the harm to privacy interests (i.e., the third factor is *not* satisfied, the personnel files exemption does *not* apply, and the agency has no discretion to withhold the records) where (1) the agency found the complaint against the employee to be true, *or* (2) the agency disciplined the employee (including in the form of a "private reproval") for the misconduct, *or* (2) the allegation was *both* "substantial" and "well-founded." (*Marken*, *supra*, 202 Cal.App.4th 1250, 1275.)

Without any explanation or citation to authority, the *Marken* court took the position that if the proposed disclosure "does not fall within the [personnel files] exemption, it necessarily does not

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[1] See Feb. 26, 2025 Hearing Tr. 18:22-26 ("*Marken* is controlling. . . . *Hill* and *Williams* are not. They have nothing to do with the reverse-CPRA action. Yes, they are a framework for analyzing [the] constitutional right to privacy, but they are not what applies in this matter."). This is in tension with Petitioner's brief in support of this motion, which expressly invokes *Hill* and walks through the three threshold *Hill* factors one by one. (Memorandum, pp. 9-10.) At the hearing on this motion, Petitioner's counsel continued to inconsistently describe her view of *Hill*'s proper role. For example, she suggested that it is wholly irrelevant and inapplicable (Feb. 26, 2025 Hearing Tr. 18:22-26), but also that *Marken* is a "refined version" of *Hill* and that *Hill* merely should not be the "sole" test used (*id.* at 4:22-24).

[2] This is incorrect. If the Court applies *Marken*, it will be compelled to find that Petitioner's constitutional right to privacy is not violated by disclosure of material pertaining to any incident of alleged misconduct the District either found true or disciplined Petitioner for. (*Marken*, *supra*, 202 Cal.App.4th 1250, 1275.) Those factors do not have any similar determinative effect under *Hill*.

violate Marken's constitutional right to privacy[.]" (*Marken*, *supra*, 202 Cal.App.4th 1250, 1271, fn. 18.) Accordingly, instead of addressing whether the disclosure satisfied the requirements of a state constitutional privacy violation – i.e., applying *Hill* – the *Marken* court simply considered whether the records at issue fell within the personnel files exemption, determined that they did not, and held that as a result, the CPRA required disclosure. (*Id.* at 1276.) To the extent the court ever held that the disclosure would not violate Marken's constitutional rights, it did so only implicitly, by holding that the state constitutional right to privacy is not offended where the personnel files exemption does not apply and then holding that the personnel files exemption did not apply to the facts of the case. The Court is puzzled by *Marken*'s handling of these issues for several reasons.

First, the Supreme Court has clearly and repeatedly stated that in California, the *Hill* test is the law to be applied to determine whether certain conduct violates the state constitutional right to privacy. (See, e.g., *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 330; *Loder v. City of Glendale* (1997) 14 Cal.4th 846, 890; *County of Los Angeles v. County Employee Relations Com.* (2013) 56 Cal.4th 905, 926; *Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 998; *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* ("*International Federation*") (2007) 42 Cal.4th 319, 338.) *Hill* was not a CPRA case, but there is no clear reason why *Hill* would be inapplicable in a reverse-CPRA matter where the plaintiff's theory is that the disclosure infringes upon his constitutional right to privacy. *International Federation* was functionally a reverse-CPRA case by the time it reached the Supreme Court, although it predated the first use of that term by several years. (See 42 Cal.4th 319, 328 [describing procedural posture].) There, the Supreme Court applied *Hill* to assess whether the disclosure would violate affected parties' state constitutional right to privacy. (42 Cal.4th 319, 338-340.) *Marken* acknowledged *Hill* (202 Cal.App.4th 1250, 1271), but simply neglected to apply it. To the extent *Marken* justified that decision at all, it was only by implying that there is no need to apply the test designed to ferret out state constitutional privacy right violations when one can simply use the test for determining whether the personnel files exemption applies as a proxy.

Second, and relatedly, this use of the personnel files exemption as a proxy obliterates the distinction between a reverse-CPRA action and a regular CPRA action. The latter is a proceeding

brought by a party who has requested records under CPRA to enforce his or her right to disclosure after the defendant agency has refused, allegedly wrongfully, to disclose the requested records. (Gov. Code, § 7923.000; *County of Santa Clara v. Superior Court* (2009) 171 Cal.App.4th 119, 127 ("*Santa Clara I*").) The "sole purpose" of a CPRA action is to determine whether the agency is obligated under CPRA to disclose the requested records "in light of the relevant exemptions." (*Santa Clara I, supra*, 171 Cal.App.4th 119, 128; *Wilder v. Superior Court* (1998) 66 Cal.App.4th 77, 84.) The agency must demonstrate the applicability of whatever exemption it invoked to justify its refusal to disclose, thereby establishing its discretion to refuse. (See Gov. Code, § 7922.000; *County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1321.) By contrast, "a party bringing a reverse-CPRA action must show disclosure is ' "otherwise prohibited by law," ' that is, that the government agency *lacks* discretion to disclose." (*Amgen, supra*, 47 Cal.App.5th 716, 732 [quoting *Marken, supra*, 202 Cal.App.4th 1250, 1270] [emphasis in original]; accord *Iloh, supra*, 87 Cal.App.5th 513, 524.) Showing merely that one of CPRA's permissive exemptions applies to the disclosure does not do this, because those exemptions do not prohibit disclosure. (*Amgen, supra*, 47 Cal.App.5th 716, 732.) So far as CPRA is concerned, if a permissive exemption applies, the agency remains free to make the disclosure if it wishes. (*Ibid.*)

By requiring a reverse-CPRA plaintiff to show that the agency's contemplated disclosure is *prohibited by law* and also making clear that the applicability of a permissive exemption does not mean the disclosure is prohibited, cases like *Amgen* and *Iloh* establish that simply showing the applicability of a permissive CPRA exemption is legally insufficient to win a reverse-CPRA case. The Court's tentative ruling applied *Hill*, not *Marken*, because of this case law dictating that concluding that the disclosure falls within a permissive CPRA exemption cannot resolve a reverse-CPRA action like this one. The Court cannot square that principle, which even *Marken* itself recognized (202 Cal.App.4th 1250, 1270), with *Marken*'s conclusion that one can determine the outcome of a reverse-CPRA action solely by deciding whether a permissive exemption from CPRA applies. In *International Federation*, a pre-*Marken* case, the Supreme Court applied *Hill* to determine whether a CPRA disclosure threatened a violation of public employees' state constitutional privacy rights even though it had already concluded that the personnel files exemption did not apply. (*Id.* at

pp. 319, 329, 338-340.) The *Hill* analysis referenced some of the Court's reasoning from its discussion of the personnel files exemption, but it did not simply conclude that the inapplicability of the personnel files exemption meant there was necessarily no constitutional privacy violation. (*Id.* at pp. 338-340.) *International Federation's* separate treatment of these issues would have been redundant if the Supreme Court believed that the personnel files exemption could be used as a proxy for a constitutional privacy analysis.

The Court is not persuaded of the soundness of *Marken*'s conclusion that the inapplicability of the personnel files exemption necessarily means there is no violation of the constitutional right to privacy. The Supreme Court has twice stated that a public entity's disclosure of personnel files need not amount to a violation of the subject's constitutional privacy right before CPRA's personnel files exemption applies: "[W]e do not intend to suggest that an intrusion upon a privacy interest must rise to the level of an invasion of the constitutional right of privacy in order to be recognized under [the personnel files exemption]." (*Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 300, fn. 11; see also *International Federation*, *supra*, 42 Cal.4th 319, 330, fn. 3.) This means there may be some degree of overlap between the privacy interest protected under the personnel files exemption and the privacy right protected by the state Constitution (see *Marken*, *supra*, 202 Cal.App.4th 1250, 1271, fn. 18 [suggesting some unspecified "difference in those two standards"]), but the two are not fully coextensive, such that the fact that one interest has not been infringed on a given set of facts necessarily means the other has not been, either. *International Federation*'s separate treatment of the personnel files exemption question and the constitutional question suggests that the Supreme Court does not view those issues as covering the same ground. At the hearing on this motion, the Court asked Petitioner's counsel whether she knew of any authority explaining *why Hill* would not apply in a reverse-CPRA case where the plaintiff's theory is that the disclosure violates his constitutional privacy rights. Counsel conceded that she did not, explaining that the cases simply assess whether a CPRA exemption applies and then implicitly consider the constitutional issue a fait accompli without further explanation. Counsel's description of the case law is correct. (See *Marken*, *supra*, 202 Cal.App.4th 1250, 1276; *Iloh*, *supra*, 87 Cal.App.5th 513, 528; *Associated Chino Teachers*, *supra*, 30 Cal.App.5th 530, 543 [all reverse-CPRA cases where the court

recognized that the plaintiff needed to show that the disclosure was illegal and could not do this merely by showing the applicability of a CPRA exemption, then held that whether plaintiff won or lost the case depended on the applicability of a CPRA exemption, without any application of the *Hill* test or any separate consideration of the plaintiff's constitutional rights].) The sole instance this Court found of an appellate court suggesting that something does not add up here is *Amgen*, *supra*, 47 Cal.App.5th 716, 733, where the Second District noted in dicta that the permissive nature of CPRA exemptions suggests that they may be improper bases for reverse-CPRA actions.

Counsel also suggested that the *Marken* test is a "more refined version" of the *Hill* test and is used in lieu of *Hill* in reverse-CPRA cases. (See Feb. 26, 2025 Hearing Tr. 20:11-18; 4:13-25; 7:27-8:3.) There is no authority supporting the idea that the *Marken* test is some reverse-CPRA-specific test for the existence of a constitutional privacy right violation, as opposed to a test determining the applicability of the personnel files exemption. In articulating its test, the *Marken* court relied exclusively on *regular* CPRA cases where the issue presented was whether the personnel files exemption applied. The courts that decided those cases had no occasion to consider whether the disclosures violated anyone's state constitutional right to privacy and limited themselves to the applicability of the exemption. *Marken* itself described the test it was laying out as "the proper balancing test for the . . . personnel files exemption[.]" (202 Cal.App.4th 1250, 1274.) By asking the court to apply *Marken* to decide whether a constitutional privacy violation has occurred, Petitioner is asking the Court to use the applicability of the personnel files exemption as a proxy for constitutional injury. The law is very clear that a reverse-CPRA plaintiff needs to prove something more than the mere applicability of a permissive CPRA exemption, so it does not make sense that a reverse-CPRA case can begin and end with that issue.

All of that said, *Marken* and *Iloh* were appealed, and the Supreme Court denied review in both. (*Marken*, *supra*, 202 Cal.App.4th 1250, review denied May 9, 2012, S200500; *Iloh*, *supra*, 87 Cal.App.5th 513, review denied Apr. 12, 2023, S278748.) In light of that, the Court will follow the appellate courts' lead and decide Petitioner's constitutional claim by determining whether the District

would be entitled to invoke the personnel files exemption.[3] Should this case be appealed, the Court respectfully requests that the appellate court clarify the law in this area.

Application

The personnel files exemption has been held applicable to workplace records containing information about the employee and for which access is limited to the employee's supervisors. (*Associated Chino Teachers*, *supra*, 30 Cal.App.5th 530, 539.) This generally covers "records 'relating to the employee's performance or to any grievance concerning the employee.'" (*Ibid.* [quoting Lab. Code, § 1198.5, subd. (a)].) Neither the District nor Requester disputes that the Records, in their entirety, are "personnel, medical, or similar files" within the meaning of the exemption. (Gov. Code, § 7927.700.) It is well-established that the release of workplace records describing allegations of public employee misconduct compromises substantial privacy interests. (See *Marken*, *supra*, 202 Cal.App.4th 1250, 1271 ["no doubt" that public schoolteacher had "a significant privacy interest" in records of the school district's investigation of allegations of misconduct]; accord *Associated Chino Teachers*, *supra*, 30 Cal.App.5th 530, 541.) To be clear, the scope of a school district employee's privacy interest in his personnel files is not limited to those portions of the personnel files describing or otherwise relating to the misconduct. (See *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 757 [in action to force school district to release records of investigation into alleged misconduct by public school administrator, the administrator had a "significant privacy interest" in "his personnel file" writ large, not just the misconduct-related documents sought]; accord *Teamsters Local 856 v. Priceless, LLC* (2003) 112 Cal.App.4th 1500, 1512 [abrogated in unrelated part by *International Federation*, *supra*, 42 Cal.4th 319, 336] [public employees have a legally protected interest in their personnel files, generally speaking].)

Having concluded that the first two requirements for applicability of the personnel files exemption are satisfied as to all parts of the Records, the Court needs to address the scope of the Request. The Request was for "public records related to claims of sexual harassment, sexual assault,

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[3] Petitioner also invokes CPRA's catch-all exception, Government Code, section 7922.000. The test used to determine whether this exception applies is "essentially the same" as the one used to determine applicability of the personnel files exemption. (*BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 755; but see *Los Angeles Unified School Dist. v. Superior Court* (2014) 228 Cal.App.4th 222, 239-240 [articulating different test for the catch-all exemption].)

or boundary crossing or grooming behavior made regarding teachers or other school employees" as well as "claims of sexual harassment, sexual assault or grooming made to the California Commission on Teacher Credentialing from 2014 to the date this request is fulfilled." (McDede Dec., ¶ 4.) The inclusion of "boundary crossing . . . behavior" alongside "sexual harassment," "sexual assault," and "grooming" indicates that the boundaries at issue are *sexual* boundaries. That the request initially sought records pertaining broadly to "misconduct" and was subsequently narrowed to misconduct of a sexual nature reinforces this interpretation. (*Id.* at ¶ 2.)

Several of the incidents described in the Records fall outside the scope of the Request. These include the following:

[redacted] it is not sexual in nature and bears no relation to sexual harassment, sexual assault, or grooming.

[redacted] Obviously, complaints that a District employee [redacted] have nothing to do with "sexual harassment," "sexual assault," sexual "boundary crossing behavior," or "grooming."

[redacted] Allegations that a District employee [redacted] have nothing to do with "sexual harassment," "sexual assault," sexual "boundary crossing behavior," or "grooming."

[redacted] A portion of the miscellaneous Records characterizes Petitioner's conduct this way without describing what he did to merit that description. Because there is no description of the conduct at issue, there is no reason to believe that these accusations had anything to do with "sexual harassment," "sexual assault," sexual "boundary crossing behavior," or "grooming."

The Court does not believe it is compelled to apply *Marken* to the disclosure of these materials.[4] There is a critical consideration present here that was not present in *Marken*: Nobody has

[4] The Court recognizes the oddness of applying law designed to determine the applicability of a CPRA exemption (*Associated Chino Teachers*, *Marken*) to a disclosure outside the boundaries of a CPRA request. Surely, the material must

asked for these materials. By all indications, the District intends to disclose these portions of the Records to a journalist apropos of nothing, simply because it wants to. That no member of the public has asked for these materials supports the idea that there is no public interest in them sufficient to overcome Petitioner's established privacy interest. On the other side of the scale, disclosing these materials could harm Petitioner by making it more difficult to find employment in the future. The Court concludes that as to these materials, the potential harm to Petitioner's privacy interests from disclosure outweighs the public interest in disclosure. (*Associated Chino Teachers*, *supra*, 30 Cal.App.5th 530, 539.) Because all elements of the personnel files exemption are satisfied, and *Marken*, *Iloh*, and *Associated Chino Teachers* suggest that the Court should find a state constitutional privacy violation where a government agency discloses materials that qualify for the personnel files exemption, the District is not permitted to disclose this material.

The Court now addresses the third step of the personnel files exemption inquiry as to the remaining materials. Again, *Marken* dictates that when assessing whether the personnel files exemption applies to agency records disclosing allegations of workplace misconduct against a public employee, *Associated Chino Teachers'* third factor is *not* satisfied and the personnel files exemption does *not* apply where (1) the agency found the complaint against the employee to be true, *or* (2) the agency disciplined the employee (including in the form of a "private reproval") for the misconduct, *or* (3) the allegation was *both* "substantial" and "well-founded."[5] (*Marken*, *supra*, 202 Cal.App.4th 1250, 1275.) "Substantial" has been defined to mean conduct that is not "baseless or trivial." (*Bakersfield*, *supra*, 118 Cal.App.4th 1041, 1046.) The term clearly embraces "sexual-type conduct,

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be requested for exemptions to be relevant. The Court stresses that it considers the personnel files exemption here only because it has decided to follow *Marken*.

[5] The Court questions whether this formulation is supported by the authorities *Marken* relied on in issuing it. *Marken* relied on *American Federation of State etc. Employees v. Regents of University of California* (1978) 80 Cal.App.3d 913 and *Bakersfield City School Dist. v. Superior Court* (2004) 118 Cal.App.4th 1041. (202 Cal.App.4th 1250, 1274-1275.) Interpreting the personnel files exemption, *American Federation* said the exemption does not apply "where the charges are found true, or discipline is imposed[.]" (80 Cal.App.3d 913, 918.) It also stated that *in all cases*, "a proper reconciliation of [CPRA] and the constitutional right to privacy mandates that . . . the recorded complaint be of a substantial nature before public access is permitted." *American Federation* did not suggest how to handle a situation where an insubstantial allegation was found true or was the basis for discipline. *Bakersfield* made clear that neither the imposition of discipline or a finding of truth is a "prerequisite to release of complaints to the public." (*Id.* at pp. 1044, 1046.) It did not say that either discipline or a finding of truth is *sufficient* to foreclose applicability of the personnel files exemption.

threats of violence, and violence" (*Associated Chino Teachers*, *supra*, 30 Cal.App.5th 530, 543), but that does not mean that it is limited to such conduct.

[redacted]

Petitioner's behavior in this incident, as described in the Records, was completely normal and innocuous, and that it nevertheless made a coworker uncomfortable does not render it "substantial." That said, under *Marken*, neither substantiality nor well-foundedness is required. "[D]isclosure is mandated if there has been a true finding by the agency." (*Marken*, *supra*, 202 Cal.App.4th 1250, 1275.) The District [redacted] therefore found it to be true. (NOL 1, p. 45.) Where that is the case, the personnel files exemption does not apply. (*American Federation*, *supra*, 80 Cal.App.3d 913, 918; *Marken*, *supra*, 202 Cal.App.4th 1250, 1275.) Under *Marken*, the District may disclose this material.

[redacted]

The District verified that [redacted] (NOL 1, p. 59.) Because the District found the allegation true, the personnel files exemption does not apply and the District can disclose this. (*Marken*, *supra*, 202 Cal.App.4th 1250, 1275.)

[redacted]

Unlike other incidents, the Records do not [redacted] This is not a finding of truth. There is very little case law explaining what *Marken*'s use of the word "discipline" means. *Marken* held that it included "a private reproval" in the form of a "written reprimand" (202 Cal.App.4th 1250, 1275) that found that the petitioner had violated District policy and negatively affected a student; "included a number of specific directives relating to [his] future conduct with students[;]" and "warned [him that] a failure to comply with these directives or future incidents of sexual harassment or misconduct would result in further disciplinary action." (*Id.* at p. 1256.) The respondent school

district's policy characterized such letters of reprimand as "disciplinary" in nature and required that they be placed in the employee's personnel file. (*Id.* at p. 1275, fn. 22.) [redacted] shares certain features in common with *Marken*'s "written reprimand." It [redacted] differs from *Marken*'s "written reprimand" in that [redacted]

Marken drew its consideration of "discipline," and its conclusion that "private reprovals" qualify, from *American Federation*, which in turn drew on *Chronicle Pub. Co. v. Superior Court In and For City and County of San Francisco* (1960) 54 Cal.2d 548. (*Ibid.*; *American Federation*, *supra*, 80 Cal.App.3d 913, 918.) *Chronicle Publishing* concerned a private reproval of an attorney by the State Bar. (54 Cal.2d 548, 574.) The opinion held that information pertaining to such a private reproval could not be kept confidential. (*Id.* at pp. 574-575.) It reasoned that the existence of a private reproval is a proxy for well-foundedness or substantiality: "It means either that some charge brought against the member has been determined to be well founded, or that some conduct warranting reproval has been disclosed." (*Id.* at p. 574.)

On balance, there is not enough daylight between *Marken*'s "written reprimand" and [redacted] to meaningfully distinguish the two. [redacted] (*Chronicle Publishing*, *supra*, 54 Cal.2d 548, 574.)

Petitioner argues that [redacted] were merely "warnings," not "reprimands," and the former do not constitute "discipline" within the meaning of *Marken*. None of the three cases Petitioner cites for this have anything to do with *Marken*

or CPRA. None of them supports the idea that there is a legally significant difference between a "warning" and a "reprimand" for any purpose relevant to this case.

The Court finds that Petitioner was "disciplined" for these incidents, so the personnel files exemption does not apply and the District may disclose them.

[redacted] (*Ibid.*) Because the District found this incident to have occurred and disciplined Petitioner for it, the personnel files exemption does not apply.

[redacted]

There is no evidence that Petitioner was ever disciplined for [redacted] in any form, nor did the District ever state that it found Student's complaint to be true. In fact, there is no evidence that the District ever even *investigated* this incident, including by speaking to Student, Parent, or any of the other students who were present at the time of the report. The District never interviewed Petitioner about these allegations. (Doe Dec., ¶ 18.)

For the personnel files exemption to apply here, the allegations must be both substantial and well-founded. (*Marken*, *supra*, 202 Cal.App.4th 1250, 1275.) Allegations that an educator [redacted] are substantial. (See *Associated Chino Teachers*, *supra*, 30 Cal.App.5th 530, 543.) But these allegations are not well-founded.

The only evidence that this incident happened [redacted] Local police did investigate, and there is no indication that Petitioner was ever charged. (Doe Dec., ¶ 18.) To Petitioner's knowledge, he is no longer under police investigation. (*Id.* at ¶ 19.) From context clues in the CTC communications, in combination with other parts of the Records, the

Court deduces [redacted]

Petitioner admits that many of the other allegations against him are factually true, although he vehemently disputes the way they are characterized and offers context for them. He unequivocally denies that this incident occurred. (Doe Dec., ¶ 18.) Petitioner has worked in education for over two decades and was never accused of wrongdoing other than in relation to the events described in the Records. (*Id.* at ¶ 3.) The District and Requester urge the Court to view the other allegations against Petitioner as evidence supporting the veracity of this allegation, but none of the other allegations are anywhere near as serious as this one. [redacted] That stands in sharp contrast with this incident, where the conduct alleged is [redacted]. The Court disagrees with the District's argument that Petitioner's resignation supports the truth of any of the allegations against him.

It is practically self-evident that disclosing an unfounded allegation that an educator [redacted] could have disastrous consequences, personally and professionally, for the educator. Under *Marken*, the potential harm to Petitioner's privacy interest from disclosing this information outweighs the public interest in disclosure. The personnel files exemption applies and the District is prohibited from disclosing this material.

[redacted]

Marken presupposes that the records at issue disclose details about the misconduct the employee allegedly committed. (See *Marken*, *supra*, 202 Cal.App.4th 1250, 1275.) The *Marken* test is not readily applicable to these materials because [redacted]

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[6] Petitioner attests that he complimented the female student on what appeared to be a high-effort hair style. (Doe Dec., ¶ 10.) She held her braid out to him, showing him the details of her braid, and he touched it for an instant. (*Ibid.*) Other people were present at the time. (*Ibid.*) As to the male student, Petitioner attests that he "checked in" with the student in the hallway while he was walking to class. The hallway was noisy at the time, and to hear the student speak, Petitioner "leaned in and put [his] hand slightly on [the student's] shoulder." (*Id.* at ¶ 11.)

[redacted]

The public has an interest in knowing how school districts handle allegations of staff misconduct. (See *BRV*, *supra*, 143 Cal.App.4th 742, 757 [recognizing that this public interest may merit disclosure of otherwise private information]; *Marken*, *supra*, 202 Cal.App.4th 1250, 1275 [same].) Logically, this must include an interest in ensuring that school districts cooperate with government investigations into alleged misconduct. Moreover, the CTC communications do not greatly impinge on Petitioner's privacy because they are not very sensitive. In fact, they are exonerating. They reveal [redacted] The Court concludes that the public interest outweighs Petitioner's privacy interest here, the personnel files exemption does not apply, and the District may disclose these materials. [redacted]

This portion of the Records discusses rumors that Petitioner [redacted] (NOL 2, p. 37; see also *id.* at p. 45.) While these are obviously substantial allegations (*Associated Chino Teachers*, *supra*, 30 Cal.App.5th 530, 543), they are not well-founded. The sole allegation against Petitioner that comes anywhere remotely close to meriting any of those labels is [redacted]. The Court has already concluded that there was no finding of truth for that allegation, nor was there discipline imposed, and there is no well-founded basis for believing that that incident occurred. The personnel files exemption thus applies to the allegations of [redacted]

The Records contain an instance of someone accusing Petitioner of [redacted]. (NOL 2, p. 15.) This is a substantial allegation. (*Associated Chino Teachers*, *supra*, 30 Cal.App.5th 530, 543.) It is not well-founded. The only thing Petitioner was accused of doing that can be characterized [redacted] Descriptions of sexual acts uttered while teaching a sex education course could also be described as [redacted] on the same reasoning, but no one would argue that these amount to misconduct given the context. It follows that when a person is accused of misconduct consisting of [redacted]

he is not being accused of merely talking about sex, but of making sexual comments that are inappropriate given their context. In light of the undisputed evidence of the context in which Petitioner said [redacted], the Court cannot conclude that the accusation that Petitioner [redacted] is well-founded. The personnel files exemption applies and the District cannot disclose material describing allegations that Petitioner [redacted]

Summary

Disclosure of the Records does not offend Petitioner's constitutional right to privacy and is permissible to the extent the Records relate to the following: [redacted]

Disclosure of the Records would violate Petitioner's constitutional right to privacy and so is prohibited by law to the extent the Records relate to the following: [redacted] The Court finds that the District has a clear, present, ministerial duty to maintain the confidentiality of that material, and Petitioner has a clear, present, and beneficial right to the District's performance of that duty. The Court likewise finds that Petitioner has no "plain, speedy, and adequate remedy, in the ordinary course of law." (Code Civ. Proc., § 1086; see also *Marken*, *supra*, 202 Cal.App.4th 1250, 1267.)

Accordingly, a writ of mandamus shall issue prohibiting the District from disclosing the Records to the extent the disclosure includes the material described in the last paragraph. Prior to any disclosure, any pages of the Records consisting solely of that material must be removed. Any and all

[7] Petitioner attests that before the Zoom meeting started, the consultant who was leading the meeting "began to share some cute, funny stories of questions that students had asked her in the past regarding sex education." (Doe Dec., ¶ 12.) "These were sweet, innocent questions from students" that "gave [everyone] a laugh." (*Ibid.*) The consultant even read some index cards students had filled out with questions. (*Ibid.*) Other participants shared similar stories. (*Ibid.*) Petitioner then shared a story where a student had "asked whether a woman can get pregnant from 'sex in the booty hole' or something to that effect." (*Ibid.*) Petitioner left the meeting at the end with no sense that anything was wrong. (*Ibid.*)

references to that material contained within pages also containing disclosable material must be redacted prior to disclosure.

Dated: March 17, 2025

Sheila Shah Lichtblau
Judge of the Superior Court