DAVID LOY, Cal. Bar No. 229235
ANN CAPPETTA, Cal. Bar No. 354079
FIRST AMENDMENT COALITION
534 4th Street, Suite B
San Rafael, CA 94901-3334
Telephone: 415.460.5060
Email: dloy@firstamendmentcoalition.org
acappetta@firstamendmentcoalition.org

Attorneys for Real Party in Interest
HOLLY McDEDE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

JOHN DOE, an Individual,

Plaintiff/Petitioner,

v.

MILL VALLEY SCHOOL DISTRICT,

Defendant/Respondent.

HOLLY McDEDE,

Real Party in Interest.

Case No. CV0003896

**REAL PARTY IN INTEREST HOLLY McDEDE'S NOTICE OF MOTION AND MOTION TO STRIKE COSTS OF PLAINTIFF/PETITIONER JOHN DOE**

Date: 07/23, 2025
Time: 1:30 p.m.
Dept.: H
Judge: The Hon. Sheila S. Lichtblau

**TO THE HONORABLE COURT, AND ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that on 07/23, 2025, at 1:30 p.m., or as soon thereafter as the matter may be heard in Department H of the above-titled Court, located at 3501 Civic Center Drive, San Rafael, CA 94903, Real Party in Interest Holly McDede will and hereby does move the Court for an order striking Plaintiff/Petitioner John Doe's Memorandum of Costs dated April 11, 2025, and directing that all parties bear their own costs, or in the alternative, directing that any recoverable costs be paid by Defendant/Respondent Mill Valley School District.

This motion is based on Rule 3.1700(b) of the California Rules of Court and Code of Civil Procedure section 1032. Under Rule 3.1700(b)(2), because McDede challenges the entirety of Doe's costs memorandum, she is not required to list each cost item to which she objects.

This motion is supported by this notice of motion and motion, the attached memorandum of points and authorities, the pleadings on file in this matter, and any arguments raised at the hearing on this motion. This motion to strike challenges Doe's memorandum of costs on its face as a matter of law because Doe is not a "prevailing party" entitled to recover costs as of right.

Dated: April 28, 2025

FIRST AMENDMENT COALITION

By: _____

DAVID LOY
ANN CAPPETTA
Attorneys for Real Party in Interest
HOLLY McDEDE

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

This case is about the people's constitutional right to disclosure of records relating to alleged misconduct of a former public-school employee. The public has a compelling interest in misconduct records for such employees, who hold special positions of trust in the community and are charged with the care of its children. Real Party in Interest Holly McDede appeared in this case to protect the people's right to know. Plaintiff/Petitioner John Doe commenced this case against Defendant/Respondent Mill Valley School District ("District") to challenge its decision to disclose public records and to seek a ruling that his own personal interests in privacy, professional reputation, and anonymity outweighed the people's right to know.

Doe did not succeed in keeping his misconduct and identity secret. The Court allowed the District to disclose records related to at least five of nine incidents of Doe's alleged misconduct with Doe's true name unredacted. The District is now obligated to promptly disclose these records and Doe's identity. On these undisputed facts, Doe is not entitled to costs as a matter of right.

Code of Civil Procedure section 1032 awards costs as of right only to a "prevailing party" who is the party with a net monetary recovery or a defendant who obtains a dismissal or avoids all liability. Doe is neither. He did not obtain any monetary recovery, and he is not a defendant. Therefore, he is not entitled to costs as of right.

Under section 1032, when a party obtains nonmonetary relief, a court has discretion to allow, deny, or apportion costs. Here, the Court denied Doe's petition in large part, allowing the District to disclose certain records requested by McDede and directing it to withhold others. The arguments made by McDede and the District vindicated the people's constitutional right to know about public records of significant concern. Having acted in the public interest and achieved significant success in defending the people's right to public disclosure, McDede should not be forced to bear any costs of Doe's petition. Therefore, McDede asks the court to exercise its discretion to order each party to bear its own costs, or, in the alternative, order the District to pay any recoverable costs, since only the District is legally responsible for the decision to disclose records that prompted Doe to file this action.

## II. STATEMENT OF FACTS

Doe is a former employee of the District. Doe Decl. Supp. Mot. J. ¶ 2. In June 2024, McDede, working as a freelance reporter, made a request to the District under the California Public Records Act ("CPRA") for records "related to claims of sexual harassment, sexual assault, 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." McDede Decl. Opp'n Mot. J. ¶¶ 2–4. Before Doe filed this action, the District had decided it would disclose various records to McDede.

After receiving notice of intended disclosure from the District, Doe filed this reverse-CPRA action on September 6, 2024, seeking to enjoin disclosure of records related to at least nine misconduct allegations against him. *See generally* Compl. & Pet.; Mot. J. at 3:12–6:2 (describing nine allegations of misconduct against Doe); Doe Decl. Supp. Mot. J. ¶¶ 5–19. Doe admitted that the goal of his lawsuit was to prevent the disclosure of *any* of his personnel records, including those related to any of these allegations, and to remain anonymous. *E.g.*, Compl. & Pet. at 6–7 (seeking "temporary restraining order, preliminary injunction and permanent injunction" against disclosure of "John Doe's Personnel Records to the Requester or to any other third party."); Ex Parte Appl. Proceed Under Fictitious Name at 2:27–3:8 (admitting that preventing "disclosure of John Doe's true identity" in connection with "allegations of misconduct during his employment with the District … *is precisely the reason behind the filing of this lawsuit*") (emphasis added). On November 7, 2024, the Court preliminarily enjoined the District from disclosing records related to any of the allegations of misconduct against Doe. Order Prelim. Inj. at 11–12.

In opposing Doe's claims, McDede did not contest the historical facts or subject Doe or the District to any discovery. Instead, she argued for straightforward application of existing law to the facts in evidence — as introduced by Doe and the District — and deferred to the Court's factual determinations upon *in camera* review of the records. *See, e.g.*, McDede Opp'n Mot. J. at 12:12–13 ("The Court is respectfully requested to review the records *in camera* to determine if the District found the other charges to be true."); *id.* at 13:19–21 ("The Court is respectfully requested to deny the writ of mandate Doe seeks as to records relating to any incidents for which the District

imposed discipline on him, as determined by the Court's in camera review."); *id.* at 14:26–27 ("The Court is respectfully requested to review the records *in camera* to verify reasonable cause to believe the disputed incidents occurred."); *id.* at 15:23–16:5 (discussing facts that Doe admitted or failed to materially dispute in his declaration).

On February 26, 2025, the parties appeared on Doe's motion for judgment on his petition for writ of mandate. Order Mot. J. at 1. After hearing oral argument, the court took the matter under submission. *Id.* On March 17, 2025, the Court issued its final order, denying Doe's motion for judgment in large part and granting it in part. *Id*. at 24–25. The version of the order that the court sent McDede "redact[ed] all quotations from and descriptions of the Records," including content from the records that the Court ordered the District may disclose. *Id.* at 1–2. However, the unredacted portions of the order reflect that the Court allowed the District to disclose records related to at least five of nine alleged incidents of misconduct against Doe. *Id.* at 19 ("The District [redacted] therefore found it to be true. … Under Marken, the District may disclose this material."); *id.* ("The District verified that [redacted]. Because the District found the allegation true, the personnel files exemption does not apply and the District can disclose this."); *id.* at 21 ("The Court finds that Petitioner was 'disciplined' for these incidents, so the personnel files exemption does not apply and the District may disclose them."); *id.* ("Because the District found this incident to have occurred and disciplined Petitioner for it, the personnel files exemption does not apply.").

On April 11, 2025, Doe filed a memorandum of costs, seeking reimbursement of $1,725.10 in expended costs. Mem. Costs at 1. McDede now files this motion to strike Doe's memorandum of costs because Doe is not the prevailing party entitled to recover costs as of right.

## III. PROCEDURE FOR SEEKING AND CHALLENGING COSTS

An alleged "prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first." Cal. R. Ct. 3.1700(a)(1). "The memorandum of costs must be verified by a statement of the party, attorney, or

agent that to the best of his or her knowledge the items of cost are correct and were necessarily incurred in the case." *Id.*

"Any notice of motion to strike or to tax costs must be served and filed 15 days after service of the cost memorandum." *Id.* at 3.1700(b)(1). "Unless objection is made to the entire cost memorandum, the motion to strike or tax costs must refer to each item objected to by the same number and appear in the same order as the corresponding cost item claimed on the memorandum of costs and must state why the item is objectionable." *Id.* at 3.1700(b)(2).

Here, McDede objects to the entirety of Doe's costs memorandum on the legal basis that he is not a "prevailing party" entitled to recover costs as of right under Code of Civil Procedure Section 1032, rather than raising a factual dispute over the propriety of any specific cost. Therefore, McDede has properly put the costs in issue as a legal matter and need not enumerate each objected cost or present evidence that they are improper as a factual matter.

## IV. ARGUMENT

### A. Doe Is Not a Prevailing Party Entitled to Costs as of Right, and the Court Should Deny His Costs Because McDede and the District Obtained Significant Success in Defending the People's Right to Know.

"Code of Civil Procedure section 1032, which provides for recovery of costs by the prevailing party, defines 'prevailing party' as the party with a net monetary recovery, and a defendant who obtains a dismissal or avoids all liability." *Foothill Props. v. Lyon/Copley Corona Assocs.*, 46 Cal. App. 4th 1542, 1553 (1996); *see also* Code Civ. Proc. § 1032(a)(4). Here, Doe is not a prevailing party entitled to costs as of right because he obtained no monetary recovery and is not a defendant.

"If any party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed, may apportion costs between the parties on the same or adverse sides." Code Civ. Proc. § 1032(a)(4). "This portion of the statute does not require the trial court to award costs to the prevailing party 'as a matter of right.'" *Tex. Com. Bank v. Garamendi*, 28 Cal. App. 4th 1234, 1249 (1994) (quoting Code Civ. Proc. § 1032(b)). "In other words, Code of Civil Procedure section 1032, subdivision (a)(4)'s second

prong calls for the trial court to exercise its discretion both in determining the prevailing party and in allowing, denying, or apportioning costs." *Lafayette Bollinger Dev. LLC v. Town of Moraga*, 93 Cal. App. 5th 752, 786 (2023) (cleaned up). "Thus, the statute permits … ordering each side to pay its own costs," even if a party that obtained nonmonetary relief is "without question the prevailing part[y]." *Tex. Com. Bank*, 28 Cal. App. 4th at 1249.

"In these situations, 'the trial court in its discretion determines the prevailing party, comparing the relief sought with that obtained, along with the parties' litigation objectives as disclosed by their pleadings, briefs, and other such sources.' Thus, the trial court determines whether the party succeeded at a practical level by realizing its litigation objectives and the action yielded the primary relief sought in the case." *Friends of Spring St. v. Nevada City*, 33 Cal. App. 5th 1092, 1104 (2019).

Under this standard, Doe should not be deemed a prevailing party. As stated in his pleadings, Doe's litigation objectives were to keep all misconduct allegations against him secret and remain anonymous. Doe did not achieve those objectives. Rather, the Court denied his petition in large part and allowed the District to disclose records related to at least five allegations of misconduct that the District found true or for which it disciplined Doe. Order Mot. J. at 19, 21.

As a result, to comply with McDede's CPRA request, the District must now promptly disclose those records with Doe's true identity unredacted. *Id.* at 9:14–18 ("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. The Court considers the Records with that in mind.") (citation omitted); Gov't Code § 7922.530(a) (requiring an agency "make the records promptly available" after receiving a request for disclosable records). Because Doe did not achieve the outcomes that he sought in filing this action, the Court should exercise its discretion to find that Doe is not a prevailing party.

Even if the Court decides that Doe achieved some of his litigation objectives, it should still deny Doe any cost award and direct the parties to bear their own costs in its discretion. McDede and Doe both invoked rights of constitutional importance, and the Court's order vindicated the people's right to know in large part while upholding Doe's right to privacy to some extent. Cal.

Cost. art. 1, § 3(b)(1) ("The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."); *id.* § 3(b)(7) ("[E]ach local agency is hereby required to comply with the California Public Records Act."); *id.* § 1 ("All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending … privacy.").

Indeed, McDede could be deemed a prevailing party because she protected the public's right to disclosure of records related to misconduct allegations that the District found true or for which it disciplined Doe. Likewise, the District is arguably a prevailing party because it successfully defended, in large part, its decision to disclose public records. In any event, because the Court denied judgment for Doe in large part while granting it in part, it is appropriate for the parties to bear their own costs. Even if Doe were "without question the prevailing part[y]" obtaining nonmonetary relief, which he is not, the Court retains discretion to order each party to bear its own costs, as the Court of Appeal affirmed in *Tex. Com. Bank.* 28 Cal. App. 4th at 1249.

**B. In the Alternative, Any Recoverable Costs Must Be Awarded Against the District, Not Against McDede, Because Only the District Is Responsible for Its Decision to Disclose Records That Prompted Doe to File This Action.**

Even if the Court exercises its discretion to award Doe any costs, the District must pay those costs, not McDede. "The theory upon which [costs] are allowed to a plaintiff is that the default of the defendant made it necessary to sue him; and to a defendant, that the plaintiff sued him without cause. Thus the party to blame pays costs to the party without fault." *DeSaulles v. Cmty. Hosp. of Monterey Peninsula*, 62 Cal. 4th 1140, 1147 (2016) (alteration in original) (internal quotations removed) (quoting *Purdy v. Johnson*, 100 Cal. App. 416, 418 (1929)).

McDede appreciates the District's defense of its decision to disclose public records and does not believe the District acted inappropriately. However, for purposes of the law governing cost awards, if any costs are to be awarded at all, the District is "the party to blame" for any threatened intrusion on Doe's right to privacy that prompted Doe to file suit because only the District is responsible for the decision to disclose records that Doe challenged, and McDede is "without fault" for making that decision. *See id.*

While McDede requested public records, the District — not the requester — is responsible for determining which records are responsive to a request, asserting any exemptions, balancing any rights to privacy implicated by the requested records, and deciding which records it intends to disclose. *See, e.g.*, Gov't Code § 7922.535(a) (after CPRA request is received, agency is responsible for making "determination" whether "request seeks disclosable public records"); Gov't Code § 7922.000 ("An agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this division, or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."). By definition, "a reverse-CPRA action will only be filed when the public agency has decided to provide access to the requested records." *Marken v. Santa Monica-Malibu Unified Sch. Dist.*, 202 Cal. App. 4th 1250, 1268 (2012). Therefore, in filing this action, Doe sought "judicial review of an agency decision," not any decision or action taken by McDede. *Id.* at 1265.

If an employee such as Doe contends that an agency would violate the state constitutional right to privacy by disclosing certain records, the employee may seek judgment against the agency to prevent disclosure, but nothing binds a member of the public from requesting records that may or may not implicate an individual's privacy. Likewise, any order or judgment preventing disclosure runs only to the agency, not the requester. *See id.* at 1266 ("Mandamus will lie to compel a *public official* to perform an official act required by law.") (emphasis added). Because this action was brought against the District to challenge a decision that only the District could make, any recoverable costs should be awarded against the District only.

Strong policy reasons support that correct legal conclusion. To award costs against McDede because the Court held that the District misapplied the law in deciding to disclose certain records would chill members of the public from contesting any reverse-CPRA action for fear that a ruling against the agency would leave the requester saddled with thousands of dollars in costs for merely exercising their right to appear in court and defend the people's right to know. Public policy strongly disfavors subjecting persons who seek public records to such risks. *See* Gov't Code § 7923.115(b) (authorizing cost award against requester who initiates CPRA case only

where her case is "clearly frivolous," reflecting Legislature's intent not to penalize CPRA requesters with routine cost awards if they do not prevail). An agency cannot avoid the rule protecting requesters against routine cost awards by initiating a "preemptive declaratory relief action to determine its obligation to disclose records," because such a result "would eliminate important incentives and protections for individuals requesting public records" and "would be at war with the very purpose of the CPRA and would effectively discourage requests for disclosure by a member of the public." *Filarsky v. Superior Ct.*, 28 Cal. 4th 419, 429, 434 (2002). For similar reasons, plaintiffs in reverse-CPRA cases should not be allowed to recover costs from requesters who defend the people's right to know. If persons who seek public records cannot be subjected to the risk of routine cost awards in other contexts, they should not face such a risk merely for appearing in a reverse-CPRA action, especially in a case like this one where the requester significantly succeeded in defending the people's right to know.

## V. CONCLUSION

For the foregoing reasons, the Court is respectfully requested to strike Doe's memorandum of costs in its entirety and order the parties to bear their own costs, or, in the alternative, to award any recoverable costs against the District only.

Dated: April 28, 2025

FIRST AMENDMENT COALITION

By: _____

DAVID LOY
ANN CAPPETTA
Attorneys for Real Party in Interest
HOLLY McDEDE

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF MARIN

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 April 28, 2025, I served true copies of the following document(s) described as **REAL PARTY IN INTEREST HOLLY McDEDE'S NOTICE OF MOTION AND MOTION TO STRIKE COSTS OF PLAINTIFF/PETITIONER JOHN DOE** on the interested parties in this action as follows:

Shannon DeNatale Boyd
Jeff F. Tchakarov
Price, Postel & Parma LLP
200 East Carrillo Street, Fourth Floor
Santa Barbara, CA 93101
Email: sdb@ppplaw.com; jft@ppplaw.com; rmunoz@lozanosmith.com; jlochab@lozanosmith.com

Roman J. Muñoz
Jaspreet Lochab-Dogra
LOZANO SMITH
One Capitol Mall, Suite 640
Sacramento, CA 95814
Email: rmunoz@lozanosmith.com; jlochab@lozanosmith.com

**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 April 28, 2025, at East Palo Alto, California.

Robin P. Regnier