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HOLLY McDEDE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

JOHN DOE, an Individual,

Plaintiff,

v.

MILL VALLEY SCHOOL DISTRICT,

Defendant.

HOLLY McDEDE,

Real Party in Interest.

Case No. CV0003896

REAL PARTY IN INTEREST HOLLY McDEDE'S NOTICE OF MOTION AND MOTION TO PARTIALLY UNSEAL ORDER OF JUDGMENT AND VACATE ORDER GRANTING DOE ANONYMITY

Date: 08/20/2025, ~~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 _____, 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: (1) partially unsealing the Court's order of judgment dated March 17, 2025; (2) making the partially unsealed version of the Court's order of judgment publicly available in a manner consistent with the Court's typical practices for public access to court records; (3) vacating the Court's order granting Doe anonymity dated September 18, 2024; and (4) unsealing any sealed records or redacted material in the court records insofar as it contains Doe's true name or, in the alternative, directing Doe to file a statement identifying his full and true name.

This motion is based on Rules 2.550 and 2.551 of the California Rules of Court and applicable California case law because any interest Doe may have had in sealing his identity and this material is now or will soon become moot and cannot outweigh the compelling public interest in its disclosure. 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.

Dated: May 21, 2025

FIRST AMENDMENT COALITION

By: _____

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ANN CAPPETTA
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HOLLY McDEDE

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I. INTRODUCTION

Information that a court has already held is public domain cannot remain under seal. "Once the cat is out of the bag, the ball game is over." *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 144 n.11 (2d Cir. 2004) (citation omitted). This case is about the people's constitutional right to disclosure of records relating to alleged misconduct of a former public school employee. Plaintiff/Petitioner John Doe commenced this case against Defendant/Respondent Mill Valley School District (the "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.

But Doe lost. This Court decided that Doe's qualified right to privacy fails to overcome the people's compelling right to know about misconduct allegations against him and see for themselves the public records related to those allegations, including learning Doe's identity. 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 ("Disclosable Records"). The District is now obligated to promptly disclose these records and Doe's identity to Real Party in Interest Holly McDede and to any other member of the public who might request the records. This information is already or will soon become part of the public domain as a result of this Court's order and the District's disclosure. The Court's order of judgment therefore effectively disposed of any right Doe had to proceed anonymously or maintain material from Disclosable Records under seal. However, material derived from the Disclosable Records remains redacted in the Court's order and Doe maintains his anonymous status. Because this "cat is out of the bag," any attempt to relitigate that balance to maintain under seal Doe's identity and material from the Disclosable Records must necessarily fail; "the ball game is over."

Even if Doe could somehow relitigate the balance of his privacy interest in his name and material from the Disclosable Records against the people's right to know, which he cannot, the public's interest in disclosure would once again heavily outweigh Doe's qualified privacy right. The public's compelling interest in Doe's name and the redacted material from Disclosable

Records in the Court's order extends beyond assessing the District's response to employee misconduct, which the Court has already held was sufficient to overcome Doe's right to privacy, but also to preserving the transparency of our courts. Additionally, McDede faces ongoing prejudice because the redactions impair her ability to assess the factual bases for the Court's order of judgment. For these reasons, McDede respectfully moves the Court for an order partially unsealing the Court's order of judgment — insofar as it redacts material derived from Disclosable Records — and vacating the Court's order granting Doe anonymity.

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.

On September 10, 2024, before serving McDede, Doe filed an ex parte application to proceed under a pseudonym and an ex parte application to file the records at issue under seal. Those applications came before the Court for hearing on September 11, 2024, and the Court continued the hearing to September 18, 2024, "having considered that Real Party In Interest Holly McDede ha[d] not been personally served in this matter." Order Regarding Ex Parte Appls., Sept. 16, 2024, at 2. Doe effected personal service on McDede on September 17, 2024, the day before the continued hearing on the ex parte applications. Proof of Service at 2. Having not yet retained counsel, McDede did not appear at the hearing. Order Regarding Ex Parte Appls., Sept. 19, 2024, at 2:8. Nonetheless, on September 19, 2024, the Court granted Doe's Ex Parte Applications to

Proceed under Fictitious Name, File Documents under Seal, and Grant a Temporary Restraining Order. *Id.* at 2:12–2:28. The Court issued no express findings in this order that Doe's interests in privacy justified his proceeding anonymously, filing documents under seal, or sealing information regarding Doe's position, school site, and date of employment. *See generally id.* Nor did the Court articulate the factual basis supporting its rulings that sealing and pseudonymity were justified. *Id.*

"On February 26, 2025, the parties appeared on [Doe's] motion for judgment on his petition for writ of mandate. After hearing oral argument, the court took the matter under submission." Order Mot. J. at 1. On March 17, 2025, the Court issued its order of judgment, 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" previously filed under seal. *Id.* at 1–2. In addition to the redactions, the Court did not publicly post even the redacted order but instead sent it directly to counsel. *Id.* at 1. No express findings appear in the redacted version of the final order that this sealing was narrowly tailored to achieve an overriding interest that overcomes the right of public access.

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, 21. The Court held that public's right to know outweighs Doe's privacy interest in keeping his name and allegations against him secret. *Id.* at 24:8–9 ("Disclosure of the [Disclosable] Records does not offend Petitioner's constitutional right to privacy."). Doe has not applied or moved for a stay of the entry of this order nor appealed it to seek a writ of supersedeas. 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). Still, "all quotations from and descriptions of" those Disclosable Records remain redacted in the court's order, Doe continues to litigate this case anonymously, and the Disclosable Records themselves remain under seal. *See* Order Mot. J at 1.

III. LEGAL STANDARD

A. Sealing Portions of the Court's Order of Judgment.

Rules 2.550 and 2.551 of the California Rules of Court "apply to records sealed or proposed to be sealed by court order." Cal. R. Ct. 2.550(a)(1). These rules "provide a standard and procedures for courts to use when a request is made to seal a record" that are "based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*," *id.* at advisory committee comment, a unanimous and sweeping decision that fully embraced the First Amendment right of access to judicial records and proceedings, in which the California Supreme Court held that judicial records may be sealed only "in the rarest of circumstances." *NBC Subsidiary (KNBC-TV), Inc. v. Superior Ct.*, 20 Cal. 4th 1178, 1226 (1999)) (beginning its First Amendment analysis with the "celebrated dictum" that "[w]hat transpires in the court room is public property").

Accordingly, unless "confidentiality is required by law, court records are presumed to be open." *Id.* at 2.550(c). To overcome that presumption and order that a record be sealed, the court must make the following express factual findings:

> (1) There exists an overriding interest that overcomes the right of public access to the record;
> (2) The overriding interest supports sealing the record;
> (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
> (4) The proposed sealing is narrowly tailored; and
> (5) No less restrictive means exist to achieve the overriding interest.

Id. at 2.550(d). "An order sealing the record must … specifically state the facts that support the findings." *Id.* at 2.550(e)(1)(A) (cleaned up).

Any party or member of the public may move to unseal a record. *Id.* at 2.551(h)(2). "In determining whether to unseal a record, the court must consider the matters addressed in rule 2.550(c)-(e)." *Id.* at 2.551(h)(4). The burden rests with "the party seeking to seal documents, or maintain them under seal," to "come forward with a specific enumeration of the facts sought to be withheld and specific reasons for withholding them" because he "is presumptively in the best

position to know what disclosures will harm him and how." *H.B. Fuller Co. v. Doe*, 151 Cal. App. 4th 879, 894 (2007).

B. Anonymity.

Bearing "in mind the critical importance of the public's right to access judicial proceedings," a "party's request for anonymity should be granted only if the court finds that an overriding interest will likely be prejudiced without use of a pseudonym, and that it is not feasible to protect the interest with less impact on the constitutional right of access." *Dep't of Fair Emp.& Hous. v. Superior Ct.* (*DFEH*), 82 Cal. App. 5th 105, 105, 111 (2022). "A party seeking anonymity has the burden" of proof on these matters. *Id.* at 112. This party must also prove that his "need for anonymity outweighs prejudice to the opposing party and the public's interest in knowing the party's identity." *Id.* at 110 (quoting *Doe v. Lincoln Unified Sch. Dist.*, 188 Cal. App. 4th 758, 766–67 (2010)).

This "overriding interest test" is effectively identical to the sealing standard articulated in Rule 2.550 because both issues are grounded in the same "important constitutional right": "the right of public access to court proceedings." *Id.* at 110–11 ("Among the guarantees of the First Amendment to the United States Constitution is that court proceedings are open and public."). In this respect, California law coincides with federal law, under which the strong presumption is that "[p]laintiffs' use of fictitious names runs afoul of the public's common law right of access to judicial proceedings." *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000). Therefore, California courts find federal precedents instructive. *E.g.*, *DFEH*, 82 Cal. App. 5th at 110–11 (citing federal precedent).

The Ninth Circuit has recognized that "that the balance between a party's need for anonymity and the interests weighing in favor of open judicial proceedings may change as the litigation progresses." *Advanced Textile Corp.*, 214 F.3d at 1069. The Court "must also determine the precise prejudice at *each stage* of the proceedings to the opposing party, and whether proceedings may be structured so as to mitigate that prejudice." *Id.* at 1068 (emphasis added).

IV. ARGUMENT

A. The Court Has Already Held that Doe's Right to Privacy Must Yield to the Public's Right to Know Doe's Identity and Records of Misconduct Allegations Against Him.

Because the Court held that Doe's right to privacy fails to overcome the public's right to know with respect to Doe's true identity and the Disclosable Records related to his misconduct allegations, that information must become public both in the District's disclosure and in the court records. *See* Order Mot. J. at 24:8–9. The appropriate remedy if a party objects to the court's disposition of an issue in an order of judgment is not a post-judgment motion to relitigate the issue but an appeal.

Doe cannot rely on "the presumably rare case" of *In re M.T.*, 106 Cal. App. 5th 322, 346 (2024), where the court held that a transgender woman's privacy interests justified retroactive sealing of the court record in the unique context of her earlier name-and-gender-change proceeding, to support the ongoing seal on his identity and material from Disclosable Records. In that case, the petitioner-appellant raised her privacy interest in secrecy *for the first time* in her application to retroactively seal the records — she had not previously litigated and lost a claim that her privacy interest outweighed the public's right to know the information at issue, as Doe has here with respect to Disclosable Records. *See id.* at 329–30. This Court made a final determination in its order of judgment that the public's right to know Doe's identity and material from the Disclosable Records overcomes Doe's privacy right. *See* Order Mot. J. at 24:8–9. While Doe has the right to timely appeal the Court's order, he cannot relitigate that issue on a post-judgment motion to maintain anonymous status and sealing of material from Disclosable Records.

Further, the petitioner-appellant only justified the extraordinary remedy of retroactive sealing in *In Re M.T.* because "she presented evidence of harassment specifically directed against her" that had already actually occurred and "evince[d] more than a mere possibility the public availability of appellant's records" themselves were precisely what "revealed her transgender identity to her persecutors." 106 Cal. App. 5th at 343. Doe has provided no similar credible evidence that he has or will face harassment when his identity or the Disclosable Records become public, and he has not alleged membership in a protected class whose very identity carries an

"excruciatingly private and intimate nature" like the transgender petitioner-appellant did in *In re M.T. See id.* at 338 (cleaned up). Absent such exceptional circumstances and evidence of actual harassment like those at issue in *In Re M.T.*, Doe presents no viable basis for reconsideration of the Court's decision that his privacy interest must yield to the public's right to know his identity and material from the Disclosable Records.

B. Any Interest in Sealing Doe's Name and Material from Disclosable Records is Now or Will Soon Become Moot.

Even if he could relitigate the issue, which he cannot, Doe can prove no overriding interest in sealing material from the Disclosable Records or his identity, because that material must promptly become public, mooting any alleged interest in sealing. "It should go without saying that there is no justification for sealing records that contain only facts already known or available to the public." *H.B. Fuller Co. v. Doe*, 151 Cal. App. 4th 879, 898 (2007); *Sipple v. Chronicle Publ'g Co.*, 154 Cal. App. 3d 1040, 1047 (1984) ("There can be no privacy with respect to a matter which is already public or which has previously become part of the 'public domain.'") (cleaned up). Where a "plaintiff has provided no basis for a conclusion that keeping the records in question under seal will prevent the public from learning anything it does not already know, or cannot find out," an order sealing the records cannot enter. *Id.* Accordingly, at a minimum, redacted material in the Court's order of judgment derived from the Disclosable Records must be unsealed, because those records must promptly become public, mooting any interest in sealing.

In light of the Court's holding that "[d]isclosure of the [Disclosable] Records does not offend Petitioner's constitutional right to privacy," Order Mot. J. at 24:8–9, the District is now obligated by the CPRA to promptly produce copies of those records to McDede, including Doe's name. *Id.* at 9:14–18; Gov't Code § 7922.530(a). Once the District produces the Disclosable Records to McDede, as it must, they will become "part of the 'public domain,'" *Sipple*, 154 Cal. App. 3d at 1047, with "no justification for sealing," *H.B. Fuller Co.*, 151 Cal. App. 4th at 898. Additionally, any other member of the public could submit a request for these records at any time, and the District would be obligated to disclose them, undoubtedly making them "already known or

available to the public," for which the Court lacks discretion to seal. *See H.B. Fuller Co.*, 151 Cal. App. 4th at 898.

Even Doe implicitly conceded in his ex parte application to proceed under a fictitious name that his anonymous status may change if the Court ultimately ruled that records at issue were subject to disclosure, which it has now done. Ex Parte Appl. Proceed under Fictitious Name at 6:9–11 (arguing that no prejudice to the District, which knows Doe's identity, would result from Doe proceeding "under a fictitious name, *at least until* the Court determines whether the Personnel Records are subject to disclosure under the CPRA") (emphasis added)). Thus, any interest Doe has in sealing material from the Disclosable Records and his name is now or will soon become moot when the District discloses the records. "[W]hatever the state of public knowledge when" the District originally lodged the records with the Court, "it is impossible[] … to say that the matters disclosed have not now become public knowledge," given that the District must now promptly produce the records to McDede. *See H.B. Fuller Co.*, 151 Cal. App. 4th at 899; Order Mot. J. at 24:8–9.

C. Doe Cannot Prove a Substantial Probability that Any Privacy Interest Overcomes the Compelling Right of Public Access to the Order and Doe's Name.

1. Access to the Sealed Material from Disclosable Records and Doe's Identity Is Critical for the Public Interest in Holding the District Accountable.

As the Court properly ruled in its order of judgment, the right of public access to this information is so compelling that it forecloses a holding that Doe's privacy could outweigh it. The issue is not whether Doe has a right of privacy in the abstract, but whether he has an *overriding interest* that *overcomes* the right of public access in this case. *See* Cal. R. Ct. 2.550(d). Doe must also prove a "substantial probability" that interest "will be prejudiced if the record is not sealed," *id.* at 2.550(d)(3), which "is a higher standard than 'reasonable likelihood.'" *Marino v. Rayant*, 110 Cal. App. 5th 846, 857, 864 (2025) (quoting *Alvarez v. Superior Ct.*, 154 Cal. App. 4th 642, 653 n.4 (2007)).

It is well established that the public has a compelling interest in disclosure of records that "shed light on the public agency's performance of its duty" to respond to such complaints, *Versaci*

v. Superior Ct., 127 Cal. App. 4th 805, 820 (2005) (citation omitted), and show "whether the law is being properly applied or carried out in an evenhanded manner." *CBS, Inc. v. Block*, 42 Cal. 3d 646, 656 (1986). The right to transparency is "intended to safeguard the accountability of government to the public." *Reg. Div. of Freedom Newspapers v. County of Orange*, 158 Cal. App. 3d 893, 901 (1984) (citation omitted).

In particular, "secrecy in public education is not in the public interest." *Copley Press v. Superior Ct.*, 63 Cal. App. 4th 367, 376 (1998). In the context of public-employee misconduct, "where the charges are found true, or discipline is imposed, the strong public policy against disclosure vanishes; this is true even where the sanction is a private reproval. In such cases a member of the public is entitled to information about the complaint, the discipline, and the 'information upon which it was based.'" *Am. Fed'n of State Etc. Emps. v. Regents of Univ. of Cal.* (*AFSCME*), 80 Cal. App. 3d 913, 918 (1978). The Court applied this principle in holding that the District may 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 (applying *AFSCME* and holding the District may produce Disclosable Records to McDede).

Likewise, any privacy interest that could weigh against disclosure of material from those Disclosable Records in the Court's order has "vanishe[d]," given the Court's holding that the District found various allegations true and/or imposed discipline on Doe. *See AFSCME*, 80 Cal. App. 3d at 918. The material from Disclosable Records that is redacted in the Court's Order would likely "shed light on the [District's] performance of its dut[ies] to" maintain adequate oversight of its employees, protect students, and carry out misconduct investigations and resulting discipline "in an evenhanded manner." *See Versaci*, 127 Cal. App. 4th at 820 (2005) (citations omitted); *CBS, Inc. v. Block*, 42 Cal. 3d 646, 656 (1986). Without any privacy interest in sealing this material and the considerable public interest in assessing the District's actions, Doe cannot justify ongoing sealing of material from the Disclosable Records.

Doe also cannot justify maintaining anonymity in this litigation under the overriding interest test. "Outside of cases where anonymity is expressly permitted by statute, litigating by

pseudonym should occur 'only in the *rarest* of circumstances.'" *DFEH*, 82 Cal. App. 5th at 111–12 (2022) (emphasis added) (quoting *NBC Subsidiary*, 20 Cal. 4th at 1226).

To evaluate a school district's performance of its duty to address staff misconduct, information about the identity of the school, the identity of the employee, and the precise nature of his position is critical to further the public's ability to monitor the agency's action beyond anonymized records. Because investigations of employee misconduct often begin at the individual school site, the public must identify Doe's school site to assess whether the District has allowed a culture of misconduct or improper discipline to exist at the particular school and whether an individual administrator at the school site may be responsible for such a culture, for failing to oversee his or her employees, or for imposing any inappropriate or inequitable investigation and discipline schemes on them. Information on Doe's position helps the public assess whether Doe held relationships or a particular status that impacted how the District's investigation and imposition of discipline unfolded. For example, if Doe were a janitor for the District, the public could inquire into whether the District took investigation and discipline as seriously for him, in that position, as it does for classroom teachers and administrators, and vice versa. The public could also assess if staffing shortages for a particular position may have encouraged the District to retain employees who engage in misconduct.

Finally, Doe's name and professional history are absolutely critical to the public interest. The public's right to know includes assessing whether the allegations against Doe in this District were part of any larger pattern of allegations against this individual at any other current or former public employers or related to any criminal history. The people must be able to inquire if and how the District and Commission on Teacher Credentialing considered any such history in hiring, disciplining, and credentialing Doe, or if they disregarded it. Knowing Doe's identity also deepens the public understanding of any inequities in the District's investigation and discipline processes because it can provide more specific information about his relationships, resources, employment history, and more that may have impacted how the District treated him.

2. The Public Interest in Unsealing and Learning Doe's Identity Is Even Further Compelled by Maintaining Transparency in Our Courts.

The public's interest in accessing the redacted material from Disclosable Records in the Court's order is even more compelling than the public interest in the records themselves, because these redactions implicate not only the public's interest assessing the District's actions, but also the court's. "[I]t is a first principle that the people have the right to know what is done in their courts." *Copley Press*, 63 Cal. App. 4th at 373 (quoting *In re Shortridge*, 99 Cal. 526, 530 (1893)); *see DFEH*, 82 Cal. App. 5th at 110 ("Public access to court proceedings is essential to a functioning democracy.").

Courts therefore recognize "the fundamental importance of issuing *public decisions* after public arguments based on public records" because "[a]ny step that withdraws an element of the judicial process from public view makes the ensuing decision look more like fiat, which requires compelling justification." *United States v. Stoterau*, 524 F.3d 988, 1012 (9th Cir. 2008) (emphasis added) (alteration in original) (first quoting *Doe v. United States* (*In re Admin Subpoena*), 253 F.3d 256, 262 (6th Cir. 2001); and then quoting *Union Oil Co. v. Leavell*, 220 F.3d 562, 568 (7th Cir. 2000)); *see Est. of Hearst v. Lubinski* (*In re Est. of Hearst*), 67 Cal. App. 3d 777, 784 (1977) ("If public court business is conducted in private, it becomes impossible to expose corruption, incompetence, inefficiency, prejudice, and favoritism.")

No overriding interest can justify cloaking in secrecy material from the Disclosable Records in the court's order. In the very same order, the Court held that Doe's privacy interest could not justify secrecy of the Disclosable Records — the primary sources of the redacted material that McDede now seeks to unseal. Confidence in the judiciary "cannot long be maintained where important judicial decisions are made behind closed doors and then announced in conclusive terms to the public, with the record supporting the court's decision sealed from public view." *Co. Doe v. Pub. Citizen*, 749 F.3d 246, 263 (4th Cir. 2014) (citation omitted).

The people have a fundamental right to know "what [was] done in their courts," including, in this case, to know the bases for the court's rulings on the Disclosable Records, unredacted. *See Copley Press*, 63 Cal. App. 4th at 373 (citation omitted).

Like the order redactions, Doe's continued anonymity cannot be squared with the people's compelling "right to know what is done in their courts," *see id.*, because the right to know the true names of litigants also derives from "the critical importance of the public's right to access judicial proceedings." *DFEH*, 82 Cal. App. 5th at 111–12.

In this respect, California law coincides with federal law *DFEH*, 82 Cal. App. 5th at 110 (citing federal precedent), under which the strong presumption is that "[p]laintiffs' use of fictitious names runs afoul of the public's common law right of access to judicial proceedings." *Advanced Textile*, 214 F.3d at 1067. "It is the exceptional case in which a plaintiff may proceed under a fictitious name," *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992), and the "normal presumption in litigation is that parties must use their real names." *Doe v. Kamehameha Schs./Bernice Pauahi Bishop Est.*, 596 F.3d 1036, 1042 (9th Cir. 2010).

Litigating under parties' real names "allows the citizenry to monitor the functioning of our courts, thereby [e]nsuring quality, honesty and respect for our legal system." *Does 1-3 v. Mills*, 39 F.4th 20, 25 (1st Cir. 2022) (citation omitted). For instance, the true identity of litigants is essential for the public to assess the parties' credibility, to evaluate whether they are frequent or vexatious litigants, to determine whether they have been involved in previous civil or criminal cases that might have arisen from the same or similar facts, and to identify potential sources of bias in the adjudicative process. *See, e.g.*, Eugene Volokh, *The Law of Pseudonymous Litigation*, 73 Hastings L.J. 1353, 1370–71 (2022).

Any risk of future economic or employment harms that Doe may raise cannot alone justify the ongoing use of a pseudonym. Ex Parte Appl. Proceed under Fictitious Name at 6:9–11 (arguing that no prejudice to the District, which knows Doe's identity, would result from Doe proceeding "under a fictitious name, at least until the Court determines whether the Personnel Records are subject to disclosure under the CPRA"). "[A]nonymity 'has not been permitted when only the plaintiff's economic or professional concerns are involved.'" *United States ex rel. Little v. Triumph Gear Sys., Inc.*, 870 F.3d 1242, 1249 n.10 (10th Cir. 2017). "That a plaintiff may suffer embarrassment or economic harm is not enough" to warrant a pseudonym. *Doe v. Megless*, 654 F.3d 404, 408 (3d Cir. 2011). "[W]e have refused to allow plaintiffs to proceed anonymously

merely to avoid embarrassment," including when plaintiff's "asserted interest lies in protecting his reputation." *Doe v. Trs. of Ind. Univ.*, 101 F.4th 485, 491 (7th Cir. 2024) (citation omitted).

Doe cannot rely on *Doe v. Lincoln Unified School District*, 188 Cal. App. 4th 758, 767 (2010), for the proposition that public school employees accused of unfitness have an overriding privacy interest in anonymity, because the issue in that case was whether the teacher had *standing* to sue under a fictitious name. *Id.* at 765; *see also Doe v. Dollar Tree Stores, Inc.*, No. 30-2023-01359171-CU-OE-NJC, 2024 Cal. Super. LEXIS 11283, *3 (Mar. 28, 2024) (distinguishing *Lincoln Unified Sch. Dist.*, 188 Cal. App. 4th 758 on the same basis). No argument was made in that case as to whether the facts supported an order allowing anonymity. *Lincoln Unified Sch. Dist.*, 188 Cal. App. 4th 765–67.

Even if proceeding under a pseudonym was justified at the beginning of the case "where the injury sought to be avoided by the complaint (e.g., invasion of plaintiff's privacy) would be incurred by disclosure of plaintiff's real name," as Doe argued, Ex Parte Appl. Proceed under Fictitious Name at 9:20–22, he cannot justify continuing pseudonymously after losing his case in large part when the Court held that the District may produce the Disclosable Records with Doe's identity unredacted. Doe cites the "stigma of having been the subject of [] frivolous allegations" as "the reason behind the filing of this lawsuit," Ex Parte Appl. Proceed under Fictitious Name 10:5–7, but Doe may not summon the power of the courts to "'clear his name' and wield a potential [judgment] against [defendant] but hide under a shield of anonymity if unsuccessful." *Doe v. Doe*, 85 F.4th 206, 215 (4th Cir. 2023); *cf. Doe v. Megless*, 654 F.3d 404, 410 (3d Cir. 2011) (upholding denial of a motion to proceed anonymously and reasoning in part that "litigating publicly will afford Doe the opportunity to clear his name in the community"); *Doe v. Valencia Coll.*, No. 6:15-cv-1800-Orl-40DAB, 2015 U.S. Dist. LEXIS 198136, at *7 (M.D. Fla. Nov. 2, 2015) ("Plaintiff cannot possibly 'clear his name' if he is unwilling to disclose it."). For these reasons, Doe cannot prove an overriding interest overcomes the people's interest in assessing his use of their courts, especially now that he has lost in large part.

D. McDede is Prejudiced in the Ongoing Litigation by the Court Order's Redactions and Doe's Continued Anonymity.

McDede faces immediate prejudice from the continued sealing of material from Disclosable Records and Doe's anonymous status. Even if Doe could prove an overriding interest in this continued secrecy, which he cannot, the Court must also "balance the need for anonymity" and sealing "against … the risk of unfairness to the opposing party." *Advanced Textile*, 214 F.3d at 1068 (first citing *M.M. v. Zavaras*, 139 F.3d 798, 803 (10th Cir. 1998); then citing *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993); then citing *Doe v. Frank*, 951 F.2d 320, 323–24 (11th Cir. 1992); and then citing *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981)).

As an initial matter, Doe did not even address potential prejudice to McDede in his ex parte application to proceed anonymously; he only argued there was no prejudice to the District, which has always known Doe's identity. Ex Parte Appl. Proceed under Fictitious Name at 10:12–19.

Now, because material from the Disclosable Records is redacted in the Court's order of judgment, McDede cannot discern which of the allegations against Doe will be disclosed and which the District must withhold, resulting in prejudice. For example, McDede cannot assess the bases for the court's findings sufficiently to make a fully informed decision about whether to appeal the Court's order of judgment and/or potentially engage in settlement negotiations. Because the District is obliged by the CPRA to promptly produce the Disclosable Records to McDede with Doe's identity unredacted, she may imminently learn Doe's identity and the contents of the Disclosable Records. However, even if that court-authorized disclosure occurs, McDede may be barred from relying on facts learned therein in further briefing on this motion to prove the public's compelling interest in disclosure, given that a "record filed publicly in the court must not disclose material contained in a record that is sealed, … , or subject to a pending motion or an application to seal." Cal. R. Ct. 2.551(c). Accordingly, ongoing sealing of material from Disclosable Records and Doe's anonymity creates unjustifiable prejudice to McDede and this stage, weighing strongly in favor of their unsealing.

V. CONCLUSION

For the foregoing reasons, the Court is respectfully requested to: (1) partially unseal its order of judgment insofar as it redacts material from the Disclosable Records; (2) make the partially unsealed version of its order of judgment publicly available in a manner consistent with the Court's typical practices for public access to court records; (3) vacate its order granting Doe anonymity dated September 18, 2024; and (4) unseal any sealed record or redacted material in the court records insofar as it contains Doe's true name or, in the alternative, direct Doe to file a statement identifying his full and true name.

Dated: May 21, 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 May 21, 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 PARTIALLY UNSEAL ORDER OF JUDGMENT AND VACATE ORDER GRANTING DOE ANONYMITY** on the interested parties in this action as follows:

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 21, 2025, at East Palo Alto, California.

Robin P. Regnier