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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
10

11 J. DOE, M. ROE,

12 Plaintiffs,

13 v.

14 COUNTY OF SAN BENITO,

15 Defendant.
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Case No. 5:25-cv-10237

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO QUASH
ADMINISTRATIVE SUBPOENA AND
GRANT TEMPORARY RESTRAINING
ORDER**

Date, Time, and Place TBD

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MEMORANDUM OF POINTS AND AUTHORITIES

I. ISSUE PRESENTED

Should the Court quash the administrative subpoena, require the County to withdraw it, and prohibit the County from pursuing or enforcing it or taking any other action that seeks to identify the authors and publishers of a satirical political cartoon that represents classic political speech at the heart of the First Amendment?

II. INTRODUCTION

Above all else, the First Amendment guarantees the right to engage in robust political speech through satire or otherwise. The First Amendment also protects the right to engage in anonymous political speech, a hallowed tradition exemplified by the Federalist Papers and numerous other works throughout the centuries. San Benito County is trampling on those rights and must be stopped.

Plaintiffs, the anonymous authors and publishers of Benito Beet Beat, a satirical news outlet on Facebook, posted a political cartoon commenting on security staff cuts in San Benito County's behavioral health services. As political satire, the cartoon is protected speech at the heart of the First Amendment. In retaliation for such publication, and asserting an unfounded allegation that the cartoon somehow constituted a true threat of harm or incitement to cause harm, the San Benito County Board of Supervisors ("Board") unanimously voted to issue an administrative subpoena ("Subpoena") to Meta Platforms, Inc. ("Meta"), which runs Facebook, seeking to identify the anonymous publishers of Benito Beet Beat, in clear violation of their First Amendment rights.

The Subpoena directs Meta to produce records identifying the anonymous publishers by December 2, 2025. Plaintiffs plausibly fear that if they were identified as publishers of the cartoon they would suffer retaliation arising from the posting of unflinching satire and critique of powerful figures in a rural county with a population of less than 65,000. Time is of the essence in preventing an imminent violation of Plaintiffs' First Amendment rights. Because the subpoena is not directed to Plaintiffs, they have no means to contest it other than seeking immediate equitable relief to prevent the irreparable harm arising from an imminent invasion of their First Amendment

1 right to anonymous political speech. *See Hell's Angels Motorcycle Corp. v. County of Monterey*,
 2 89 F. Supp. 2d 1144, 1151 (N.D. Cal. 2000) (“In cases in which an administrative subpoena is
 3 directed to a party other than the holder” of the constitutional right at issue, “the rights-holder will
 4 often not be afforded an opportunity to object on constitutional grounds” unless accorded the
 5 “right to a pre-enforcement adversary proceeding in federal court affording the opportunity for
 6 constitutional challenge”); *cf. White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000) (holding
 7 investigation into protected speech inherently chills First Amendment rights).

8 **III. BACKGROUND**

9 Plaintiffs are the anonymous authors and publishers of Benito Beet Beat, a news outlet
 10 posted at <https://www.facebook.com/BenitoBeetBeat/>.¹ Loy Decl. Ex. 1–2. It is clearly identified
 11 as “Satire/Parody” and described as “[s]erving up a fresh, satirical slice of local politics and
 12 news—directly from the root of San Benito County. We peel back the layers of boardroom
 13 blunders and county capers, spicing it up with a dash of irony.” Loy Decl. Ex. 1 ¶ 4.

14 Beginning in June 2025, Benito Beet Beat has regularly published satirical commentary on
 15 politics in San Benito County accompanied by colorful and graphic political cartoons about
 16 current events in the County. Loy Decl. Ex. 1 ¶ 5. As noted in one post, “We cover the local
 17 political soap opera one eyebrow-raising email, last-minute agenda item, and public comment
 18 showdown at a time. Think of us as your front-row seat to the county’s favorite pastime:
 19 pretending everything’s fine while the house is (allegedly) on fire.” Loy Decl. Ex. 1 ¶ 6. Benito
 20 Beet Beat is named in honor of San Benito County’s history of growing beets and uses satire,
 21 including graphic art and cartoons, to inform and educate the public about current events in San
 22 Benito County, especially local government and politics. Benito Beet Beat regularly receives
 23 comments and engagement from readers about its coverage. Loy Decl. Ex. 1 ¶ 7.

24 Plaintiffs publish Benito Beet Beat anonymously because they wish to keep its content
 25 separate from their personal and professional lives and are concerned about retaliation or
 26

27 ¹ The pseudonymous declarations of Plaintiffs J. Doe and M. Roe are attached to undersigned
 28 counsel’s declaration as Exhibits 1 and 2, respectively. A motion for Plaintiffs to proceed under
 pseudonyms will be filed separately.

1 ostracism if their identities become known, especially since it publishes content that can be seen as
2 provocative or offensive to powerful figures in a rural county of less than 65,000 people. Loy
3 Decl. Ex. 1 ¶ 8; Loy Decl. Ex. 2 ¶ 4

4 On or about November 3, 2025, Benito Beet Beat published a political cartoon satirizing
5 potential cuts to security at the County’s behavioral health clinic (“Cartoon”). The Cartoon
6 depicted an imaginary situation in which a staff member said “We’re in danger! Call security
7 now!” because a person in mental distress seeking help at the clinic said, “Voices are telling me I
8 need to hurt a supervisor or his kids!” while another staff member thought, “We cut security
9 because Velazquez told us to do it,” referring to San Benito County Supervisor Ignacio Velazquez.
10 Loy Decl. Ex. 1 ¶ 9.

11 The Cartoon was published as satirical commentary on recent events in which the San
12 Benito County Board of Supervisors, at the urging of Supervisor Velazquez, declined to renew a
13 company’s contract to provide security at the County’s behavioral health clinic, which expired on
14 or about October 31, 2025, yet the Board failed to ensure that a new contract for security was in
15 place, creating the risk that no security would be available at the clinic the following week. Loy
16 Decl. Ex. 1 ¶ 10.

17 The Cartoon is self-evidently political satire fully protected by the First Amendment.
18 It imagines a situation in which a potential reduction to security jeopardized staff who were
19 attempting to help a person in distress. No reasonable person would interpret the Cartoon as a true
20 threat to harm anyone or incitement to cause harm. As true of political cartoons for centuries, it
21 expresses a pointed political message through perhaps hyperbolic imagery, but the context and
22 circumstances of the Cartoon make it self-evident that it is satire, not a threat or incitement.

23 Nonetheless, on November 18, 2025, the Board unanimously approved the issuance of the
24 Subpoena “to obtain information and documentation identifying the individuals responsible for the
25 Benito BEET Beat Facebook Page.” The Board’s vote was premised on the assertion made in
26 County Counsel’s report to the Board (“Report”) that the cartoon’s “depiction is clearly a threat
27 and appears to call upon others to inflict physical harm.” Loy Decl. Ex. 3. Perhaps ironically for
28

1 persons who contend the Cartoon is a threat or incitement to cause harm, three of the County's
 2 supervisors reposted the Cartoon on Facebook. Loy Decl. Ex. 2 ¶ 6.

3 The Report contends "a criminal investigation was immediately initiated and is ongoing"
 4 and asserts that County Counsel is also investigating "to identify the persons responsible for these
 5 criminal threats for the purpose of seeking a civil restraining order." Loy Decl. Ex. 3. The Board
 6 adopted County Counsel's recommendation to "[a]uthorize reimbursement to the Sheriff's
 7 Department for the costs of personal service" and "[a]uthorize County Counsel to take all
 8 necessary actions to effectuate and enforce the subpoena." Loy Decl. Ex. 3. The Subpoena directs
 9 Meta to produce records identifying the publishers of Benito Beet Beat to the Board by December
 10 2, 2025. Loy Decl. Ex. 4. The Subpoena is administrative, and the San Benito County Sheriff is
 11 charged with serving it on Meta. Cal. Gov. Code §§ 25170, 25172.

12 Once it is served with the Subpoena, Meta will comply with it and disclose records to the
 13 County identifying Plaintiffs as the authors and publishers of Benito Beet Beat unless Plaintiffs
 14 take legal action to quash the Subpoena and require the County to withdraw it. Given the
 15 imminence of the Subpoena's deadline for compliance, it is imperative to take legal action now to
 16 avoid the irreparable harm to Plaintiffs that would result from disclosure of their identities.
 17 Because the Subpoena is not directed at Plaintiffs, they have no other means to protect their First
 18 Amendment rights than to bring this action seeking to quash the Subpoena and compel the County
 19 to withdraw it. Loy Decl. ¶¶ 7–8. The County has been notified of this motion. Loy Decl. ¶ 9.

20 **IV. LEGAL STANDARD**

21 To obtain a temporary restraining order, Plaintiffs must make the same showing needed to
 22 obtain a preliminary injunction. *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017).
 23 To obtain a preliminary injunction, Plaintiffs must make a clear showing that they are likely to
 24 succeed on the merits, they are likely to suffer irreparable harm, the balance of equities tips in
 25 their favor, and an injunction is in the public interest. *Garcia v. County of Alameda*, 150 F.4th
 26 1224, 1229–30 (9th Cir. 2025). When the government opposes an injunction, the third and fourth
 27 factors merge. *Id.* at 1234.

1 **V. ARGUMENT**

2 On the undisputed facts, Plaintiffs are clearly likely to prevail on the merits of their First
3 Amendment claim to protect their right to anonymous speech. They are therefore entitled to a
4 temporary restraining order quashing the Subpoena, requiring the County to withdraw it, and
5 prohibiting the County from seeking to identify them as authors and publishers of Benito Beet
6 Beat through pursuit or enforcement of the Subpoena or otherwise. The Subpoena must be
7 withdrawn and quashed to prevent imminent violation of Plaintiffs' First Amendment rights.
8 The County cannot remotely meet the high bar for justifying an administrative subpoena that
9 infringes on protected speech or seeks to identify anonymous speakers.

10 Any legislative or administrative "investigation which intrudes into the area of
11 constitutionally protected rights of speech" requires that the government "convincingly show a
12 substantial relation between the information sought and a subject of overriding and compelling
13 state interest," which it cannot do when it seeks to violate First Amendment rights to anonymous
14 speech or otherwise. *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 546 (1963).

15 To justify infringing the right to anonymous speech, a party issuing a subpoena must
16 "persuade the court that there is a real evidentiary basis for believing that the defendant has
17 engaged in wrongful conduct" unprotected by the First Amendment "that has caused real harm to
18 the interests of the plaintiff." *Highfields Capital Mgmt. L.P. v. Doe*, 385 F. Supp. 2d 969, 975
19 (N.D. Cal. 2004). "It is not enough for a plaintiff simply to plead and pray. Allegation and
20 speculation are insufficient." *Id.* The party seeking disclosure must at minimum demonstrate "a
21 prima facie case on the merits of its underlying claim." *In re DMCA § 512(h) Subpoena to Twitter,*
22 *Inc.*, 608 F. Supp. 3d 868, 876 (N.D. Cal. 2022).

23 The County cannot meet either standard, because the Subpoena is based on the meritless
24 assertion that the Cartoon represents a true threat or incitement unprotected by the First
25 Amendment. For the reasons explained below and in light of binding precedent, the Cartoon is
26 neither a true threat nor incitement as a matter of law, and it remains fully protected by the First
27 Amendment as classic political speech. Accordingly, Plaintiffs are clearly likely to prevail on the
28 merits of their First Amendment claim to protect their right to anonymous speech.

A. The First Amendment Protects Anonymous Political Speech and Satire.

As the Supreme Court has said, “an author’s decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment,” especially in light of the “respected tradition of anonymity in the advocacy of political causes.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 342–43 (1995). The right to anonymity “is a shield from the tyranny of the majority” that stems from “an honorable tradition of advocacy and of dissent.” *Id.* at 357. In particular, “the ability to speak anonymously on the Internet promotes the robust exchange of ideas and allows individuals to express themselves freely without ‘fear of economic or official retaliation ... [or] concern about social ostracism.’” *In re Anonymous Online Speakers*, 661 F.3d 1168, 1173 (9th Cir. 2011) (quoting *McIntyre*, 514 U.S. at 341–42).

Political speech is at the heart of the First Amendment. *Morse v. Frederick*, 551 U.S. 393, 403 (2007). Speech on matters of public concern “cannot be restricted simply because it is upsetting or arouses contempt,” and “the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Snyder v. Phelps*, 562 U.S. 443, 458 (2011); *see also N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (recognizing the “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials”).

The First Amendment protects “outrageous and outlandish statements” often contained in satire and parody. *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1194 (9th Cir. 1989). Speech “is not actionable simply because it is base and malignant” in the eyes of some, and it “may not be suppressed simply because it is offensive” to one or many. *Id.* at 1199 (cleaned up).

B. The Cartoon Is Not Remotely a True Threat.

Nothing about the Cartoon justifies infringing the First Amendment right to anonymous speech. On its face, and in light of the hallowed tradition of political cartoons, it is self-evidently political satire that is fully protected by the First Amendment, and it is not remotely a true threat. For centuries, “the political cartoon has occupied a central position in the presentation of critical

comment on events and personages of the times,” and “the political cartoonist makes extensive use of symbolism, caricature, exaggeration, extravagance, fancy, and make-believe.” *Yorty v. Chandler*, 13 Cal. App. 3d 467, 471–72 (1970). “The art of the cartoonist is often not reasoned or evenhanded, but slashing and one-sided.” *Hustler Magazine v. Falwell*, 485 U.S. 46, 54 (1988). Political cartoons may exceed “the bounds of good taste and conventional manners,” yet they “have played a prominent role in public and political debate” and remain protected by the First Amendment. *Id.*

The obviously satirical nature of the Cartoon, which depicts the impact of an imagined mental health crisis after cuts to security staff, demonstrates that it cannot be characterized as a true threat unprotected by the First Amendment. An unprotected threat must be one that “a reasonable listener would understand, in light of the context and surrounding circumstances, to constitute a true threat, namely, a serious expression of an intent to commit an act of unlawful violence, rather than an expression of jest or frustration.” *People v. Lowery*, 52 Cal. 4th 419, 427 (2011) (cleaned up); *see also, e.g., People v. Smolkin*, 49 Cal. App. 5th 183, 188 (2020).

True threats cannot be found in “jests, hyperbole, or other statements that when taken in context do not convey a real possibility that violence will follow.” *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (cleaned up). A true threat exists only when “a reasonable person would consider the communication to be a serious expression of an intent to inflict bodily injury on an individual,” not “hyperbole, satire, or humor” that would not be “threatening to a reasonable person.” *United States v. Elonis*, 841 F.3d 589, 597 (3d Cir. 2016). An official’s mere assertion of a subjective fear for safety, untethered to any objectively reasonable basis, is not sufficient to make a statement a true threat. *Publius v. Boyer-Vine*, 237 F. Supp. 3d 997, 1019 (E.D. Cal. 2017).

No reasonable person would understand the Cartoon to express a true threat to any member of the Board or anyone else. As has been true of political cartoons for centuries, it expresses a political message through perhaps hyperbolic imagery, but the context and circumstances of the cartoon make it self-evident that it is satire, not a threat. *Cf. Bauer v. Sampson*, 261 F.3d 775, 783–84 (9th Cir. 2001) (holding that although plaintiff’s “writings have some violent content,” they “are hyperbole of the sort found in non-mainstream political invective and in context” are “not

1 true threats,” especially where they “were made in an underground campus newspaper in the
2 broader context of especially contentious campus politics.”).

3 The Supreme Court has confirmed that “political hyperbole” is not a true threat. *Watts v.*
4 *United States*, 394 U.S. 705, 708 (1969). In *Watts*, a speaker at an antiwar rally said, “They always
5 holler at us to get an education. And now I have already received my draft classification as 1-A
6 and I have got to report for my physical this Monday coming. I am not going. If they ever make
7 me carry a rifle the first man I want to get in my sights is L.B.J.” *Id.* at 706.

8 The Court held the statement could not be considered a true threat. The Court noted our
9 “profound national commitment to the principle that debate on public issues should be
10 uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes
11 unpleasantly sharp attacks on government and public officials,” and it acknowledged political
12 disputes are “often vituperative, abusive, and inexact.” *Id.* at 708. Taken in context, the statement
13 was not a true threat but rather “a kind of very crude offensive method of stating a political
14 opposition to the President.” *Id.*

15 If the statement in *Watts* was not a true threat despite the speaker’s personal, verbal attack
16 on the president, then the Cartoon certainly is not a true threat, given that it merely depicts an
17 imaginary situation in which cuts to security impair the ability of staff to respond to a mental
18 health crisis. At most, the Cartoon imagines a hypothetical scenario in which an imaginary third
19 party in mental distress says that voices in his head are telling him to hurt a supervisor. On the
20 face of the Cartoon, the third party is seeking medical help from the County to prevent him from
21 hurting anyone. The Cartoon satirizes the risk to the County’s behavioral health staff because of
22 potential cuts to security. By doing so, it advocates for increased security to *prevent* harm.
23 The Cartoon’s message confirms that no reasonable person could read it as a true threat.

24 As a result, it cannot be said that the author or publisher of the Cartoon “consciously
25 disregarded a substantial risk that [their] communications would be viewed as threatening
26 violence,” *Counterman*, 600 U.S. at 69, nor does it reflect specific intent to convey a threat.
27 Accordingly, the Cartoon cannot be considered a threat subject to prosecution under Penal Code
28 sections 76 or 422 or a credible threat of violence authorizing a restraining order under Code of

1 Civil Procedure section 527.6.² As a result, there is no lawful basis for the Subpoena, which must
2 be immediately withdrawn and quashed.

3 **C. The Cartoon Is Not Unprotected Incitement to Cause Harm.**

4 It cannot plausibly be said that the Cartoon calls for others to harm any member of the
5 Board or anyone else. It is self-evidently a satirical comment on the County’s failure to ensure
6 sufficient security to *protect* people against potential harm. But even assuming the Cartoon could
7 somehow be read to advocate violence, it remains fully protected by the First Amendment.

8 “The mere tendency of speech to encourage unlawful acts is not a sufficient reason for
9 banning it.” *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 253 (2002). A “person’s speech ... is
10 not removed from the ambit of First Amendment protection simply because it advocates an
11 unlawful act.” *White*, 227 F.3d at 1227. The First Amendment does not permit government “to
12 forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is
13 directed to inciting or producing imminent lawless action and is likely to incite or produce such
14 action.” *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). To qualify for this exception, the alleged
15 incitement must be “intended to produce,” and in fact “likely to produce” imminent crime. *Hess v.*
16 *Indiana*, 414 U.S. 105, 109 (1973). Any alleged “tendency to lead to violence” or the “advocacy
17 of illegal action at some indefinite future time ... is not sufficient to permit the State to punish [a
18 person’s] speech.” *Id.* at 108–09. Where a person’s “statement was not directed to any person or
19 group of persons, it cannot be said that he was advocating, in the normal sense, any action.” *Id.*

20 The Cartoon is classic political satire expressing an opinion. It was not specifically
21 directed to any person or persons. It cannot remotely be considered speech uttered with the
22 specific intent to produce imminent violence or in fact likely to produce imminent violence.
23 Published works such as the Cartoon cannot be unprotected incitement. *See Herceg v. Hustler*
24 *Magazine, Inc.*, 814 F.2d 1017, 1021 (5th Cir. 1987) (holding “liability cannot be imposed on
25 Hustler on the basis that the article was an incitement to attempt a potentially fatal act without
26 impermissibly infringing upon freedom of speech”); *Torries v. Hebert*, 111 F. Supp. 2d 806, 820

27
28 ² Any petition for such an order based on the Cartoon would be subject to an immediate anti-SLAPP motion. *Thomas v. Quintero*, 126 Cal. App. 4th 635 (2005).

(W.D. La. 2000) (holding “gangster rap” does “not in and of itself incite imminent lawless action under *Brandenburg*”); *McCollum v. CBS, Inc.*, 202 Cal. App. 3d 989, 1002 & n.10 (1988) (“No rational person would or could ... mistake musical lyrics and poetry for literal commands or directives to immediate action. To do so would indulge a fiction which neither common sense nor the First Amendment will permit,” especially when the speaker is “physically and temporally remote from the listener.”); *Olivia N. v. National Broadcasting Co.*, 126 Cal. App. 3d 488, 494 (1981) (holding producers of movie were not liable for rape of child because movie contained no “‘incitement’ within the meaning of *Brandenburg*”). If the more graphic and extreme speech at issue in those cases was not incitement, the Cartoon certainly cannot be.

The County cannot show that the Cartoon did anything more than cause offense, which is squarely protected by the First Amendment. A principal “function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger,” and if “there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 408–09, 414 (1989).

D. The County Is Violating the Stored Communications Act.

The Subpoena unlawfully invokes the Stored Communications Act (“SCA”) in the attempt to identify Plaintiffs. The SCA allows a “governmental entity” to obtain subscriber information such as “name” and “address” from a “provider of electronic communication service or remote computing service” through “an administrative subpoena authorized by a Federal or State statute.” 18 U.S.C. § 2703(c)(2)(F). In using the Subpoena to attempt to identify Plaintiffs, the County is knowingly and intentionally violating the SCA because the Subpoena is not authorized by statute.

The Subpoena is ostensibly based on a California statute that allows the Board to issue an administrative subpoena only “upon any subject or matter within the jurisdiction” of the Board, and under which any documents or records sought by the subpoena must be “relating to the affairs or interests of the county.” Cal. Gov. Code § 25170. The Subpoena is not authorized by that statute because the alleged threats to individuals with which the Board is purportedly concerned

1 are not matters within the jurisdiction of the Board or relating to the affairs or interests of San
2 Benito County, as opposed to the personal interests of those individuals.

3 To the extent the Board is concerned with the investigation or prosecution of an alleged
4 crime, that is not a matter within the Board's jurisdiction. The Board has no power to investigate
5 or prosecute crimes and may not interfere with "the independent and constitutionally and
6 statutorily designated investigative and prosecutorial functions of the sheriff and district attorney
7 of a county," nor may it obstruct "the investigative function of the sheriff of the county" or "the
8 investigative and prosecutorial function of the district attorney of a county." Cal. Gov. Code
9 § 25303; *see also Essick v. County of Sonoma*, 81 Cal. App. 5th 941, 952 (2022) (holding board of
10 supervisors "lacks power to direct how" sheriff "performs official duties"). The prosecution of
11 alleged crimes is exclusively the province of the District Attorney or Attorney General, not the
12 business of the Board. Cal. Const., Art. V, § 13; Cal. Gov. Code § 26500; *Dix v. Superior Court*,
13 53 Cal. 3d 442, 451 (1991); *People v. Shults*, 87 Cal. App. 3d 101, 106 (1978).

14 To the extent the Board is concerned with a possible civil restraining order, that is likewise
15 a matter outside the Board's jurisdiction. A civil anti-harassment restraining order may be sought
16 only by the allegedly harassed or threatened individual in their own name, because only that
17 individual is the real party in interest authorized to bring such an action. Code Civ. Proc. §§ 367,
18 527.6; *Personnel Comm'n v. Barstow Unified School Dist.*, 43 Cal. App. 4th 871, 877 (1996)
19 (noting "real party in interest" is "the person possessing the right sued upon by reason of the
20 substantive law"). The Board or County cannot seek such an order on behalf of an individual.
21 Therefore, the Board does not have jurisdiction over civil anti-harassment claims or power to issue
22 an administrative subpoena for purposes of bringing such a claim.

23 The Subpoena thus violates the SCA because it is not "authorized by a Federal or State
24 statute." 18 U.S.C. § 2703(c)(2)(F); *see also City and County of San Francisco v. HomeAway.com,*
25 *Inc.*, 21 Cal. App. 5th 1116, 1131 (2018) (noting that under SCA, an "administrative subpoena
26 must be 'authorized' by a state or federal statute"). Because Plaintiffs are aggrieved by the
27 County's knowing and intentional violation of the SCA, they may seek "such preliminary and
28 other equitable or declaratory relief as may be appropriate," 18 U.S.C. § 2707(b)(1), including a

1 temporary restraining order requiring the County to withdraw the Subpoena and prohibiting the
2 County from seeking to pursue or enforce it.

3 **E. Plaintiffs Are Suffering or Threatened with Irreparable Harm, and the**
4 **Balance of Equities and Public Interest Favor an Order Protecting Their First**
Amendment Rights.

5 The loss or chill of First Amendment rights “unquestionably constitutes irreparable
6 injury,” and because Plaintiffs have raised “serious First Amendment questions,” the “balance of
7 hardships tips sharply” in their favor. *Garcia*, 150 F.4th at 1234. It is “always in the public interest
8 to prevent the violation of a party’s constitutional rights.” *Id.* at 1235. The threat of irreparable
9 harm and the balance of equities are especially stark in this case because any identification of
10 Plaintiffs to the County is irreversible. “Anonymity, once lost, cannot be regained.” *Rancho*
11 *Publ’ns v. Superior Court*, 68 Cal. App. 4th 1538, 1541 (1999); *cf. Does I thru XXIII v. Adv.*
12 *Textile Corp.*, 214 F.3d 1058, 1072 (9th Cir. 2000) (observing that “question whether plaintiffs
13 may use pseudonyms will be moot” if they are forced to reveal names in litigating anonymity).

14 **F. No Bond Should be Required.**

15 The Court has discretion “as to the amount of security required, *if any*,” under Federal Rule
16 of Civil Procedure 65(c), and it “may dispense with the filing of a bond when it concludes there is
17 no realistic likelihood of harm to the defendant from enjoining his or her conduct.” *Johnson v.*
18 *Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (citation and quotation marks omitted). It is proper
19 to waive the bond requirement in free speech cases, because “to require a bond would have a
20 negative impact on plaintiff’s constitutional rights, as well as the constitutional rights of other
21 members of the public.” *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D.
22 Cal. 1996) (citation omitted).

23 The County would incur no compensable costs or damages even if the injunction were
24 later dissolved. Parties may not recover attorney fees arising from issuance of an injunction. *Bass*
25 *v. First Pac. Networks, Inc.*, 219 F.3d 1052, 1055–56 (9th Cir. 2000). Therefore, no bond should
26 be required. *Gorbach v. Reno*, 219 F.3d 1087, 1092 (9th Cir. 2000) (upholding denial of bond in
27 absence of any costs or damages suffered by the government arising from a wrongful injunction);
28 *Galassini v. Town of Fountain Hills*, No. CV-11-02097-PHX, 2011 U.S. Dist. LEXIS 128294, at

1 *19 (D. Ariz. Nov. 3, 2011) (waiving bond in First Amendment case because it is “difficult to
2 envision how Defendants would incur compensable costs or damages”); *Bible Club v. Placentia-*
3 *Yorba Linda Sch. Dist.*, 573 F. Supp. 2d 1291, 1302 n.6 (C.D. Cal. 2008) (“Given that this case
4 involves the probable violation of the Bible Club’s First Amendment rights, and that the damages
5 to the District of issuing this injunction seem minimal, if they exist at all, the Bible Club need not
6 post a bond.”). Accordingly, the Court should require no bond in this case.

7 **VI. CONCLUSION**

8 For the foregoing reasons, Plaintiffs respectfully request that the Court grant a temporary
9 restraining order requiring the County to withdraw the Subpoena and prohibiting the County from
10 seeking to identify Plaintiffs, including but not limited to quashing the Subpoena and preventing
11 the County from taking any action to pursue or enforce the Subpoena in any way.

12 Dated: November 26, 2025

13 FIRST AMENDMENT COALITION

14 By

15 /s/ David Loy

16 DAVID LOY

17 Attorney for Plaintiffs
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