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8 *Attorneys for Petitioner SHANDA HEERRERA*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SANTA BARBARA – NORTH COUNTY**

11 SHANDA HERRERA, an individual,

Case No.

12 Petitioner,

13 vs.

14 SANTA MARIA JOINT UNION HIGH
15 SCHOOL DISTRICT,

16 Respondent.

17 Santa Maria Times, KEYT, and KSBY

18 Real Parties In Interest.

**PETITIONER'S EX PARTE
APPLICATION FOR A PROTECTIVE
ORDER OR, IN THE ALTERNATIVE,
FOR AN ORDER SHORTENING TIME
TO HEAR PETITIONER'S
APPLICATION FOR PROTECTIVE
ORDER AND PRELIMINARY
PROTECTIVE ORDER PRECLUDING
RESPONDENT FROM RELEASING
RECORDS; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF EX
PARTE APPLICATION FOR
PROTECTIVE ORDER; DECLARATION
OF KRISTI D. ROTHSCHILD, EXHIBITS
1-3]
[CAL. CODE CIV. PROC. 526(A)2); CAL.
GOVERNMENT CODE § § 7922.000,
7927.700]
[Filed Concurrently With Application To
File Under Seal;]**

Date:
Time:
Dept.:

19 **TO THE COURT AND RESPONDENT AND THEIR ATTORNEY OF RECORD:**

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22
23 Petitioner SHANDA HERRERA (“Petitioner” or “HERRERA”) hereby moves the court for
24 a protective order to prevent her employer, Respondent SANTA MARIA UNION HIGH SCHOOL
25 DISTRICT (“Respondent” or “SMJUHSD”) from producing documents contained within
26 HERRERA’s personnel file that are the subject of a public records request by multiple entities
27 under Cal. Govt. Code § 7922.500, et seq. (the California Public Records Act “CPRA”). This
28 petition seeks to prevent the disclosure of her personnel file records, as they are exempt from

1 public disclosure and would jeopardize HERRERA's right to privacy.

2 This motion seeks to shield from discovery documents that are specific to HERRERA and
3 contained only within her personnel file. The CPRA requires records in possession of SMJUSD to
4 be available for inspection and copying by members of the public and has notified Petitioner that
5 three (3) documents from her personnel file have been requested. Petitioner HERRERA
6 ("Petitioner") hereby requests a Temporary Restraining Order ("TRO") and a preliminary
7 injunction prohibiting Respondent Santa Maria Joint Union High School District from releasing
8 Petitioner's personnel records in response to public records requests.

9 The Petitioner was given notice that SMJUSD plans to release certain records pursuant to a
10 CPRA Public Records Request if they did not receive a protective order stating otherwise. The fact
11 that Petitioner has been informed Respondent that her records would be released means that the
12 policies and procedures of the CPRA were not adhered to by the Respondent. This is so because
13 personnel files, and the contents therein, are exempt from disclosure under the CPRA. Cal. Govt.
14 Code § 7922.700. Petitioner therefore seeks relief in the form of an order enjoining Respondent
15 SMJUSD from releasing the personnel file documents requests in the CPRA request pending the
16 outcome of a hearing related to whether there is, in fact, information that is subject to disclosure for
17 which the exemption to release of her personnel file documents would not apply.

18 Absent immediate relief, Petitioner will suffer irreparable harm; the requesting agencies are
19 news agencies and the risk of invasion of privacy, or false/unverified information being widely
20 disseminated to the public tips the balance of the equities tips in Petitioner's favor; and the public
21 interest supports granting the requested relief. This application for the temporary restraining order
22 and preliminary injunctive relief is made upon the grounds that such relief is necessary to prevent
23 immediate and irreparable injury. In support of this application, Petitioner submits a Memorandum
24 in Support of Petitioner's Request for Preliminary Injunction, the Declaration of Petitioner,
25 SHANDA HERRERA, and exhibits attached thereto.

26 Dated: July 8, 2024

ROTHSCHILD & ALWILL, APC

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28

By:  Electronic Signature in accordance with CRC Rule 2.257
Kristi D. Rothschild

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION
FOR PROTECTIVE ORDER PRECLUDING DISCLOSURE OF PERSONNEL FILE
RECORDS**

I. INTRODUCTION

Petitioner HERRERA is and has been employed by Respondent SMJUSD for more than a decade, where she presently serves as Principal of Pioneer Valley High School. There is no pending litigation between them other than this petition.

On June 18, 2024, Petitioner was advised that SMJUSD had received public record requests from the Santa Maria Times, KEYT, and KSBY on June 14, June 17, and June 18, 2024, requesting:

1. A copy of the 45-day notice that Herrera received from the district;
2. A copy of the 45-day notice related to [Principal] Herrera's possible termination; and
3. A copy of the 45-day notice of potential termination given to Herrera.

The letter informed the Petitioner that the Respondent intended to release these documents and stated that Petitioner had "impacted the confidentiality of such records by providing staff and community members with selected and misinformation about the contents of the 45-day notice." (See Declaration of Kristi D. Rothschild ("Rothschild Decl."), Ex. 1, filed concurrently herewith). The letter informed Petitioner that unless she produces an appropriate court-issued protective order precluding such production that the Petitioner would produce these documents from her personnel file on June 24, some six days (with two being a weekend) after notifying her of their decision.

Petitioner retained counsel, who communicated with Respondents on June 21, 2024, asking that they reconsider disclosure as the records were presumptively exempt and did not meet the threshold for overriding this presumption, as well as provide copies of the CPRA requests. Alternatively, Petitioner's counsel asked for an extension of time to obtain a protective order. The extension was granted, but no reconsideration of the basis for disclosing the records appeared to have been made. Rothschild Decl., Exh. 2.

1 This has caused Petitioner great dismay and as there is a real concern that any documents
2 that are inappropriately produced at this juncture will not only have a negative effect on the privacy
3 rights, current employment, and reputation of the Petitioner, but also that the illegitimate
4 production could taint the current public discourse surrounding Petitioner’s employment with
5 SMJUSD. There has been significant media interest in the employment of Petitioner Herrera, with
6 multiple public hearings and news stories concerning her employment status.¹

7 **II. A TEMPORARY RESTRAINING ORDER (TRO) MAY ISSUE WHERE IRREPARABLE**
8 **INJURY WILL RESULT TO THE APPLICANT UNLESS THE OFFENDING CONDUCT**
9 **IS IMMEDIATELY RESTRAINED**

10 The CPRA provides the exclusive remedy for resolving whether a public entity has, or will,
11 erroneously disclose a particular particular record, and nowhere in the CPRA is any language that
12 “explicitly or implicitly restricts, permits or precludes any type of legal action “concerning” public
13 records other than whether a particular record or class of records must be disclosed. The CPRA's
14 judicial remedy is limited to a requestor's action to determine whether a particular record or class of
15 records must be disclosed.” *Cnty. of Santa Clara v. Superior Ct.* (2009) 171 Cal. App. 4th 119,
16 130.

17 Although the CPRA provides a specific statutory procedure for the resolution of disputes
18 between the party seeking disclosure and the public agency, no comparable procedure exists for an
19 interested third party to obtain a judicial ruling precluding a public agency from improperly
20 disclosing confidential documents. If the public agency elects to disclose records in response to a
21 CPRA request, absent an independent action for declaratory relief or traditional mandamus, no
22 judicial forum will exist in which a party adversely affected by the disclosure can challenge the
23 lawfulness of the agency's action. *Marken v. Santa Monica-Malibu Unified Sch. Dist.*(2012), 202
24 Cal. App. 4th 1250. Thus, this reverse-CPRA lawsuit seeking to prevent a public agency from
25

26 ¹ Pioneer Valley principal Shanda Herrera will remain principal, district confirms |
27 Education | santamariatimes.com; Pioneer Valley principal Shanda Herrera faces possible
28 termination after warning notice | Local News | santamariatimes.com.

1 releasing information on the ground the requested disclosure is prohibited by law is necessarily,
2 and the only vehicle to protect Petitioner's rights. (see *Olszewski v. Scripps Health* (2003) 30
3 Cal.4th 798, 808.) A protective order stopping the disclosure of Petitioner's personnel file
4 documents via this reverse-CPPRA action is the *only way* in which Petitioner can seek to enforce the
5 privacy protections she is allowed to under law.

6 "In deciding whether to issue a preliminary injunction, a court must weigh two
7 'interrelated' factors: (1) the likelihood that the moving party will ultimately prevail on the merits
8 and (2) the relative interim harm to the parties from issuance or non-issuance of the injunction."
9 *Butt v. State of California*, 4 Cal. 4th 668, 678 (1992). The court's "determination must be guided
10 by a 'mix' of the potential-merit and interim-harm factors; the greater the Petitioner's showing on
11 one, the less must be shown on the other to support an injunction." *Id.* An injunction may be
12 granted when it appears by the complaint or declarations that the commission or continuance of
13 some act during the litigation would produce irreparable injury to a party to the action. Code Civ.
14 Proc. §§ 526(a)(2); 2015.5; *Volpicelli v. Jared Sydney Torrance Memorial Hosp.*, (1980) 109 Cal.
15 App. 3d 242, 167 Cal. Rptr. 610; *Smith v. Smith* (1942) 49 Cal. App. 2d 716, 718-719, 122 P.2d
16 346.

17 **III. PETITIONER WILL LIKELY PREVAIL ON THE MERITS AT HEARING**

18 The ruling on an application for preliminary injunction rests in the sound discretion of the
19 trial court. *Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1450. "An injunction properly
20 issues only where the right to be protected is clear, injury is impending and so immediately likely
21 as only to be avoided by issuance of the injunction." *Korean Philadelphia Presbyterian Church v.*
22 *California Presbytery* (2000) 77 Cal.App.4th 1069, 1084. "In deciding whether to issue a
23 preliminary injunction, a trial court weighs two interrelated factors: the likelihood the moving party
24 ultimately will prevail on the merits, and the relative interim harm to the parties from the issuance
25 or nonissuance of the injunction." *Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1449.
26 In deciding whether to issue the injunction, the court must also evaluate "the interim harm that the
27 Petitioner would be likely to sustain if the injunction were denied as compared to the harm the
28 Respondent would be likely to suffer if the preliminary injunction were issued." *Smith v. Adventist*

1 *Health System/West* (2010) 182 Cal.App.4th 729, 749.

2 Here, the balance of potential interim harm tips strongly toward the Petitioner. If
3 preliminary injunction is denied, and the Respondent makes the personnel record available in
4 response to the pending PRA requests, the record will irretrievably lose the confidentiality and
5 privacy protection to which employees are entitled.

6 The records sought, each of which is disciplinary action directed to Ms. Herrera, only, is a
7 personnel file record. They are contained in her personnel file, as are the responses she provided to
8 those disciplinary notices. These records are presumptively exempt from disclosure and should be
9 withheld. Cal. Govt. Code §§ 7922.000, 7927.700.

10 In making the determination to disclose her personnel file records, Respondent stated that
11 Ms. Herrera has “impacted the confidentiality of such records by providing staff and community
12 members with selected and misinformation about the contents of the 45-day notice. This is both
13 false and irrelevant and does not remove Petitioner’s right to privacy in her personnel records.

14 Respondent cited to *Marken v. Santa Monica-Malibu Unified School District* (2012) 202
15 Cal.App.4th 1250 in making this determination to disclose confidential personnel records in
16 response to a CPRA request. *Marken* provides no basis for claiming that any actions by Petitioner,
17 even if it did happen (which Petitioner does not concede) allegedly “impact the confidentiality of
18 such records” waives Petitioner’s right to privacy. Further, there has been no showing that any such
19 actions have taken place. Further, reliance on *Marken* in justifying disclosure of these records is
20 wholly misplaced. The records sought in *Marken* were third-party investigative documents,
21 performed by an outside agency and involved allegations of sexual misconduct affecting a minor.
22 In that instance, the court found a significant public interest (sexual misconduct) that shed light on
23 the public agency's performance of its duty (safety of students) outweighed the privacy rights of the
24 party whose personnel records were disclosed. This situation is wholly different.

25 The threshold for determining whether an exemption to CPRA disclosure requirements can
26 be overruled requires weighing whether the information sought is **both** of a substantial nature and
27 well-founded. Not every claim of misconduct contained in a personnel file is substantial or well
28 founded, and thus need not be disclosed. *American Federation of State etc. Employees v. Regents*

1 of *University of California* (1978) 80 Cal.App.3d 913 at p. 918. The right to information embodied
2 in the CPRA and the constitutional right to privacy requires “the recorded complaint be of a
3 substantial nature before public access is permitted.” (*American Federation*, supra, 80 Cal.App.3d
4 at p. 918.) SMJUSD appears to have performed neither of these analysis.

5 “The rule in *Chronicle Pub. Co. v. Superior Court* (1960) 54 Cal.2d 548, 7 Cal.Rptr. 109,
6 354 P.2d 637, has been applied to personnel records maintained by a school district. (*Bakersfield*
7 *City School Dist. v. Superior Court* (2004) 118 Cal.App.4th 1041, 1045-1046, 13 Cal.Rptr.3d 517.)
8 In *Bakersfield*, a newspaper sought complaints and disciplinary records of a school district
9 employee. (Id. at pp. 1043-1044, 13 Cal.Rptr.3d 517.) The trial court prevented disclosure of
10 records that were not substantial in nature but allowed disclosure as to complaints regarding one
11 incident described as sexual-type conduct, threats of violence, and violence. The court found these
12 complaints to be substantial in nature and reasonably well founded. (Ibid.) The Court of Appeal
13 affirmed, finding that the disclosure of the complaints to the public does not rest upon a finding
14 that the complaints were true or discipline was imposed. (Id. at p. 1046, 13 Cal.Rptr.3d 517.)
15 Rather, “[i]n evaluating whether a complaint against an employee is well founded within the
16 context of section 6250 et seq., both trial and appellate courts, ... originally and upon review, are
17 required to examine the documents presented to determine whether they reveal sufficient indicia of
18 reliability to support a reasonable conclusion that the complaint was well founded. The courts must
19 consider such indicia of reliability in performing their ultimate task of balancing the competing
20 concerns of a public employee's right to privacy and the public interest served by disclosure.
21 [Citations.]” (Id. at p. 1047, 13 Cal.Rptr.3d 517; cf. *Kelvin L. v. Superior Court* (1976) 62
22 Cal.App.3d 823, 830-831, 133 Cal.Rptr. 325 [under Evid. Code, § 1040, “the fact that the charges
23 against the officers were not substantiated [is a] factor[] which the court may weigh in deciding
24 whether the public interest favors disclosure”].)

25 “Upon de novo review of the entire record, we conclude the disposition letters provide a
26 sufficient basis upon which to reasonably deduce the complaints against Doe are not
27 substantial. (Marken, supra, 202 Cal.App.4th at p. 1272, 136 Cal.Rptr.3d 395 [“[A] proper
28 reconciliation between the right to information embodied in the CPRA and the

1 constitutional right to privacy requires ‘**the recorded complaint be of a substantial**
2 **nature before public access is permitted.**’ ”].) In comparison to Bakersfield and Marken,
3 none of the complaints against Doe involved allegations of **sexual-type conduct, threats of**
4 **violence, and violence.** (*Bakersfield*, supra, 118 Cal.App.4th at pp. 1043-1044, 13
5 Cal.Rptr.3d 517; Marken, at pp. 1274-1275, 136 Cal.Rptr.3d 395.)” (Emphasis added.)
6 *Associated Chino Tchrs. v. Chino Valley Unified Sch. Dist.*, (2018) 30 Cal. App. 5th 530,
7 542–43, 241.

8 There are no allegations of sexual-type conduct, threats of violence, or violence in the
9 documents subject to the CPRA requests. Nothing in case law provides that the contents of the
10 documents at-issue are of a “substantial nature” under the law. Furter, the records sought contain
11 little to reveal indicia of reliability in determining whether the complaints are well- founded. There
12 are no investigative reports, and only conclusory allegations based on documents provided without
13 context or the benefit of any investigation. As the documents sought do not concern allegations of a
14 substantial nature and have little indicia of reliability, they are not subject to disclosure

15 **IV. PETITIONER WILL SUFFER SERIOUS HARM IN THE ABSENCE OF A**
16 **TEMPORARY RESTRAINING ORDER AND INJUNCTION**

17 The documents contained within the Petitioner's file are not a sustained finding, nor a
18 legally substantiated finding. They concern no allegations of violence, threat of violence, or sexual-
19 type conduct. They are not investigative materials from an outside agency, but instead are internal
20 disciplinary documents that allege unprofessional conduct. To release these documents, when
21 there has been significant public interest in the employment of Petitioner, is a unique and highly
22 disturbing course of action which places Respondent’s motives for releasing protected documents
23 under scrutiny. If intentional, it smacks of the same kind of retaliatory tactics causing Petitioner to
24 suffer solely for her very public role in opposing some of SMJUSD’s practices by violating the
25 constitutionally protected privacy rights of Petitioner. It would be improper to allow the release of
26 Petitioner’s personnel records that contain neither threats of violence, violence, or allegations of
27 sexual-type conduct. Conversely, Respondent will suffer no harm if the Court orders that they are
28 enjoined from releasing the records in Petitioner's personnel file.

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V. CONCLUSION

Petitioner respectfully asks the Court to grant protective order to enjoin Respondent from releasing the records within her personnel file in response to the public requests. If the court wishes to fully brief this matter, Petitioner requests an order shortening time to hear this motion, with a protective order in place until the hearing such that the records at-issue are not released.

DATED: July 08, 2024

Respectfully submitted,

ROTHSCHILD & ALWILL, APC

By: 
Kristi D. Rothschild
Attorney for Petitioner

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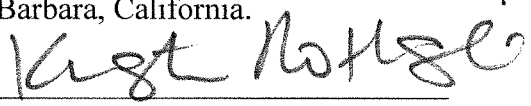
9. I have met and conferred in good faith on this matter in the hopes of obviating this Motion. Respondents have not offered any remedy other than disclosure.

10. There is no reasonable basis for plaintiff's personnel records that contain no threat of violence, violence, or sexual allegations not be subject to a protective order. Such records are private and privileged. Respondent should undertake the nominal burden of maintaining the confidentiality of the documents.

11. I have expended two and one half (2.5) hours trying to resolve this matter informally with Respondents as well as six (6.0) hours preparing this Application and the Application to file under Seal, Motion, and Declaration. I anticipate spending four (3.0) hours preparing a Reply and attending and preparing for this hearing. Additionally, my office has spent \$60.00 filing this Motion. My billable rate is \$425.00 per hour.

12. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed in Santa Barbara, California.

Dated: July 08, 2024



Kristi D. Rothschild

EXHIBIT 1

EXHIBIT 1



Santa Maria Joint Union
HIGH SCHOOL DISTRICT

Where greatness grows.

June 18, 2024

By In-person

Shanda Herrera
2326 Glacier Lane
Santa Maria, CA 93455

Re: Notice of Request for Personnel File Information

Dear Ms. Herrera:

On June 14, June 17, and June 18, 2024, the Santa Maria Joint Union High School District (“District”) received California Public Records Act (“CPRA”) (Gov. Code, § 7920.000, et seq.) requests from April Chavez of the Santa Maria Times, Evan Vega from KEYT, and Katheryn Herndon of KSBY, seeking records regarding your employment with the District. Specifically, these requests seek the following:

1. *A copy of the 45-day notice that Herrera received from the district*
2. *A copy of the 45-day notice related to [Principal] Herrera's possible termination*
3. *A copy of the 45-day notice of potential termination given to Herrera*

The District takes its responsibility as guardians of the public’s information seriously and is required by law to make its best efforts in responding to such requests within the limits of the law. As such, we are providing you with this notice that the District intends to provide responsive records, including records involving employee discipline, pursuant to the CPRA by Tuesday, June 25, 2024. (*Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250.) You have impacted the confidentiality of such records by providing staff and community members with selected and misinformation about the contents of the 45-day notice.

If you do not wish for these records to be produced, please provide the undersigned with a copy of an appropriate court-issued protective order precluding such production **by no later than 5:00 p.m. on Monday June 24, 2024**. If we do not receive such an order, the District intends to produce the requested documents in accordance with our legal obligations under the CPRA.

If you have any questions about your legal rights, you may wish to seek immediate legal counsel.

If you are represented in this matter, please immediately forward this letter to your attorney as this information is time-sensitive. Also, if you are represented in this matter, please inform us of your

attorney's contact information so that we may communicate with your attorney regarding this matter in the future. Please find attached the document that the District plans to produce.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Platt". The signature is fluid and cursive, with a large initial "K" and a stylized "Platt".

Kevin Platt
Assistant Superintendent, Human Resources

Rothschild & Alwill, APC

27 W. Anapamu, Suite 289
Santa Barbara, CA 93101
Tel: (805) 845-1190
Fax: (805) 456-0132

June 21, 2024

VIA ELECTRONIC MAIL

Kevin Platt

kplatt@smjuhsd.org

Assistant Superintendent, Human Resources
Santa Maria Joint Union High School District
2560 Skyway Drive
Santa Maria, DCA 93455

In Re: CPRA Records Request Concerning Shanda Herrera

Dear Mr. Platt:

We have been retained by Ms. Shanda Herrera to respond to the California Public Records Act ("CPRA") requests outlined in your June 18, 2024 correspondence to Ms. Herrera on behalf of multiple news agencies. Santa Maria Joint Union High School District (the "District") did not provide to Ms. Herrera with a copy of any of the actual requests. We ask that you immediately provide a copy of the actual CPRA records request which you indicate require these disclosures.

In accordance with CPRA, an agency who receives a request shall "within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public record ..and shall promptly notify the person making the request of the determination... If the agency determines the request seeks disclosable public records, the agency shall also state the estimated date and time when the records will be made available." Cal. Govt. Code § 7922.535. The District appears to be ready to produce the documents on Tuesday, June 26, less than ten days after the final request was received. There is no obligation to produce on this timeline, and doing so jeopardizes significant privacy rights of a long-term employee of the District. This is improper. As her employer, the District is obligated to safeguard Ms. Herrera's rights in documents in which it is custodian. By expediting the intended date of release, the District appears to be intentionally ignoring these rights and hindering Ms. Herrera's ability to protect them on her own. Further, the District and has taken the position that the records are discoverable. We disagree.

First, the records sought, each of which is disciplinary action directed to Ms. Herrera, only, is a personnel file record. They are contained in her personnel file, as are the responses she

EXHIBIT 2

EXHIBIT2

provides. These records are presumptively exempt from disclosure and should be withheld. Cal. Govt. Code §§ 7922.000, 7927.700.

In making the determination to disclose her personnel file records, you stated that Ms. Herrera has “impacted the confidentiality of such records by providing staff and community members with selected and misinformation about the contents of the 45-day notice. This is both false and irrelevant and does not remove Ms. Herrera’s right to privacy in her personnel records. You cited to *Marken v. Santa Monica-Malibu Unified School District* (2012) 202 Cal.App.4th 1250 in making this determination. This case provides no basis for claiming that any actions by Ms. Herrera which allegedly “impact the confidentiality of such records” waives Ms. Herrera’s right to privacy. Further, there has been no showing that any such actions have taken place. Further, reliance on *Marken* in justifying disclosure of these records is wholly misplaced. The records sought in *Marken* were third-party investigative documents, performed by an outside agency and involved allegations of sexual misconduct affecting a minor. In that instance, the court found a significant public interest (sexual misconduct) that shed light on the public agency’s performance of its duty (safety of students) outweighed the privacy rights of the party whose personnel records were disclosed. This situation is wholly different.

The threshold for determining whether an exemption to CPRA disclosure requirements can be overruled requires weighing whether the information sought is both of a substantial nature **and** well-founded. Not every claim of misconduct contained in a personnel file is substantial or well founded, and thus need not be disclosed. *American Federation of State etc. Employees v. Regents of University of California* (1978) 80 Cal.App.3d 913 at p. 918. The right to information embodied in the CPRA and the constitutional right to privacy requires “the recorded complaint be of a substantial nature before public access is permitted.” (*American Federation*, supra, 80 Cal.App.3d at p. 918.) The District appears to have performed neither of these analysis.

“The rule in *Chronicle Pub. Co. v. Superior Court* (1960) 54 Cal.2d 548, 7 Cal.Rptr. 109, 354 P.2d 637, has been applied to personnel records maintained by a school district. (*Bakersfield City School Dist. v. Superior Court* (2004) 118 Cal.App.4th 1041, 1045-1046, 13 Cal.Rptr.3d 517.) In *Bakersfield*, a newspaper sought complaints and disciplinary records of a school district employee. (Id. at pp. 1043-1044, 13 Cal.Rptr.3d 517.) The trial court **prevented disclosure of records that were not substantial in nature** but allowed disclosure as to complaints regarding one incident described as **sexual-type conduct, threats of violence, and violence**. The court found these complaints to be **substantial in nature** and reasonably well founded. (Ibid.) The Court of Appeal affirmed, finding that the disclosure of the complaints to the public does not rest upon a finding that the complaints were true or discipline was imposed. (Id. at p. 1046, 13 Cal.Rptr.3d 517.) Rather, “[i]n evaluating whether a complaint against an employee is well founded within the context of section 6250 et seq., both trial and appellate courts, ... originally and upon review, are required to examine the documents presented to determine whether they reveal sufficient indicia of reliability to support a reasonable conclusion that the complaint was well founded. The courts must consider such indicia of reliability in performing their

ultimate task of balancing the competing concerns of a public employee's right to privacy and the public interest served by disclosure. [Citations.]” (Id. at p. 1047, 13 Cal.Rptr.3d 517; cf. *Kelvin L. v. Superior Court* (1976) 62 Cal.App.3d 823, 830-831, 133 Cal.Rptr. 325 [under Evid. Code, § 1040, “the fact that the charges against the officers were not substantiated [is a] factor[] which the court may weigh in deciding whether the public interest favors disclosure”].)

Upon de novo review of the entire record, we conclude the disposition letters provide a sufficient basis upon which to reasonably deduce the complaints against Doe are not substantial. (*Marken*, supra, 202 Cal.App.4th at p. 1272, 136 Cal.Rptr.3d 395 “[A] proper reconciliation between the right to information embodied in the CPRA and the constitutional right to privacy requires **‘the recorded complaint be of a substantial nature before public access is permitted.’**”). In comparison to *Bakersfield* and *Marken*, none of the complaints against Doe involved allegations of **sexual-type conduct, threats of violence, and violence**. (*Bakersfield*, supra, 118 Cal.App.4th at pp. 1043-1044, 13 Cal.Rptr.3d 517; *Marken*, at pp. 1274-1275, 136 Cal.Rptr.3d 395.)” (Emphasis added.)

Associated Chino Tchrs. v. Chino Valley Unified Sch. Dist., (2018) 30 Cal. App. 5th 530, 542–43, 241.

There are no allegations of sexual-type conduct, threats of violence, or violence in the documents subject to the CPRA request as those requests have been represented by the District. Nothing in case law provides that the contents of the documents at-issue are of a “substantial nature” under the law. Further, the records sought contain little to reveal indicia of reliability in determining whether the complaints are well- founded. There are no investigative reports, and only conclusory allegations based on documents provided without context or the benefit of any investigation. As the documents sought do not concern allegations of a substantial nature and have little indicia of reliability, they are not subject to disclosure.

We ask that you review your position and respond by the close of business Monday, June 24, 2024, as to whether you still intend to disclose the records. Further, should you contend that the records are subject to disclosure, we ask for an extension of time, to and including July 8, 2024, within which to bring a motion for a protective order. This time is necessary given it constitutes six (6) court days following the current deadline you imposed of June 25, as Independence Day and multiple weekends fall within this period. This request complies with Cal. Govt. Code § 7922.535, as said extension is made necessary by the limited time in which you provided Ms. Herrera to respond. Further CPRA does not require *disclosure* within 10 days of a records request, as the District has stated it intends to do, and only notification of its intent to disclose. We believe that failure to grant this minimal extension given the limited time that was provided to her will be viewed as retaliatory in light of other actions taken by the District against Ms. Herrera.

Thank you for your attention to this matter, anticipated cooperation, and professional courtesies. Please do not hesitate to contact me should you wish to discuss the foregoing further.

Sincerely,

/s/ electronic signature

Kristi Rothschild

Attorney for Shanda Herrera

EXHIBIT 3

EXHIBIT 3



Chelsea Olson Murphy
Attorney at Law

E-mail: colsonmurphy@lozanosmith.com

June 24, 2024

By U.S. Mail & E-Mail: Kristi@ralegal.com

Kristi Rothschild
Rothschild & Alwill, APC
27 W. Anapamu, Suite 289
Santa Barbara, CA 93101

Re: CPRA Records Request Concerning Shanda Herrera

Dear Ms. Rothschild:

Our offices represent the Santa Maria Joint Union High School District (“District”) in the above-referenced matter and are responding to your June 21, 2024, letter (“Letter”). The Letter requests copies of the CPRA request(s) that the District has received for the 45-Day Notice of Unprofessional Conduct provided to Shanda Herrera. The requests received to date are attached here.

The District received the first CPRA request on June 14, 2024. As such, its initial response was due today, June 24, 2024, and the District has not expedited any timeline. It is the District’s view that here, the public interest in disclosure, outweighs the privacy of the notice. As we understand, Ms. Herrera informed the media and many in the District community about the existence of the notice, informed the community of the contents of the letter and told the District that she did not oppose its release although she did request specific redactions.

However, the District also recognizes Ms. Herrera’s right to oppose such a release and to obtain a protective order. Given the holiday schedule, the District agrees to an extension until July 8, 2024.

Kristi Rothschild
June 24, 2024
Page 2

Please let me know if you have any questions or would like to discuss further.

Sincerely,

LOZANO SMITH

A handwritten signature in blue ink, appearing to read 'Chelsea Olson Murphy', with a long horizontal flourish extending to the right.

Chelsea Olson Murphy

COM/ckd

Enclosure

Attachment A

From: [Kenny Klein](#)
To: [Elizabeth Enriquez](#)
Subject: FW: PVHS Principle Herrera Notice Request
Date: Monday, June 24, 2024 1:26:48 PM
Attachments: [Outlook-cztkbw0e.png](#)
[image001.png](#)

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Kenny Klein

Public Information Officer

Phone 805-922-4573 x4216

Web [smjuhsd.org](#) **Email** kklein@smjuhsd.org
2560 Skyway Drive, Santa Maria, CA 93455

From: Evan Vega

<evan.vega@keyt.com>

Sent: Monday, June 17, 2024
12:15 PM

To: Kenny Klein

<kklein@smjuhsd.org>

Subject: PVHS Principle Herrera Notice Request

EXTERNAL EMAIL: Please use caution in opening links or attachments. -
SMJUHSD I.T.

Hi Kenny,

May I please request a copy of the 45 day notice related to Principle Herrera's possible termination?

Thank you,

Evan Vega

Managing Editor

Santa Maria, CA

News Channel 3-12

keyt.com

805-455-1745

NEWS CHANNEL



T TELEMUNDO COSTA CENTRAL

From: [Kenny Klein](#)
To: [Elizabeth Enriquez](#)
Subject: FW: 45 day notice
Date: Monday, June 24, 2024 1:27:47 PM
Attachments: [image001.png](#)

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Kenny Klein

Public Information Officer

Phone 805-922-4573 x4216

Web smjuhsd.org **Email** kklein@smjuhsd.org

2560 Skyway Drive, Santa Maria, CA 93455

From: April Chavez

[<achavez@santamariatimes.com>](mailto:achavez@santamariatimes.com)

Sent: Friday, June 14, 2024 2:33

PM

To: Kenny Klein

[<kklein@smjuhsd.org>](mailto:kklein@smjuhsd.org)

Subject: 45 day notice

EXTERNAL EMAIL: Please use caution in opening links or attachments. -
SMJUHSD I.T.

Hi Kenny,

Would you be able to share a copy of the 45 day notice that Herrera received from the district?

Also has the date been chosen yet for the social meeting?

Thanks for your help,
April

From: [Kenny Klein](#)
To: [Elizabeth Enriquez](#)
Subject: FW: Request
Date: Monday, June 24, 2024 1:28:20 PM
Attachments: [SMJUHSD Herrera request.docx](#)
[image001.png](#)

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Kenny Klein

Public Information Officer

Phone 805-922-4573 x4216

Web [smjuhsd.org](#) **Email** kklein@smjuhsd.org
2560 Skyway Drive, Santa Maria, CA 93455

From: Herndon, Kathrene
<Kathrene.Herndon@ksby.com>

Sent: Tuesday, June 18, 2024 8:09 AM

To: Kenny Klein

<kklein@smjuhsd.org>

Subject: Request

EXTERNAL EMAIL: Please use caution in opening links or attachments. -
SMJUHSD I.T.

Hi Kenny,

Can you please forward the attached request to the appropriate person?

Thank you,

Kathrene

Kathrene Herndon
KSBY News Managing Editor
C. 805.471.0152
E. Kathrene.herndon@ksby.com

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Kathrene Herndon
KSBY-TV
1772 Calle Joaquin
San Luis Obispo, CA 93405

June 18, 2024

To whom it may concern,

Under the California Public Records Act § 6250 et seq., I am requesting an opportunity to inspect or obtain the 45-day notice of potential termination given to Shanda Herrera.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$20. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding as I am a member of the news media and this request is related to news gathering purposes. This information is not being sought for commercial purposes.

The California Public Records Act requires a response within ten business days. If access to the records I am requesting will take longer, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Sincerely,

Kathrene Herndon
KSBY News Managing Editor
(805) 471-0152

PROOF OF SERVICE

Jensen v. Giumarra Vineyards.

Kern County Superior Court No. BCV-18-100558

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am employed in the County of Santa Barbara, State of California. I am over the age of eighteen (18) years and not a party to the within action; my business address is 27 West Anapamu Street, Suite 289, Santa Barbara, CA 93101.

On July 8, 2024, I served the foregoing document described as **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER; DECLARATION OF JULIAN B. ALWILL WITH EXHIBITS "A" - "I"; REQUEST FOR SANCTIONS IN THE AMOUNT OF \$3,472.50; [PROPOSED] ORDER; AND [PROPOSED] PROTECTIVE ORDER** on the interested parties in this action by placing the original a true copy thereof enclosed in a sealed envelope addressed as follows:

Chelsea Olson Murphy
Lozano Smith

Attorneys for Respondents
Email: colsonmurphy@lozanoshmith.com

Evan Vega
Managing Editor

For Real Party In Interest KEYT
Email: evan.vega@keyt.com

April Chavez

For Real Party In Interest Santa Maria Times
Email: achavez@dsantamariatimes.com

Kathrene Herndon
KSBY News Managing Editor
1772 Calle Joaquin
San Luis Obispo, CA 93405

For Real Party In Interest KSBY
Email: Kathrene.Herndond@ksby.com

BY UNITED STATES MAIL

I deposited the sealed envelope with the United States Postal Service, with postage fully prepaid.

I placed the envelope for collection and mailing, following ordinary business practices. I am readily familiar with this law firm's business practice for collecting and processing documents for mailing. On the same day that mail is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am aware that service made pursuant to *Code of Civil Procedure* § 1013a(3) shall be presumed invalid upon motion of a party served if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing stated herein.

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

Executed on ~~September 04, 2018~~ ^{July 8, 2024} at Santa Barbara, California.

