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 \*Application forthcoming

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12 UNITED STATES DISTRICT COURT  
 13 SOUTHERN DISTRICT OF CALIFORNIA

15 ELIZABETH MIRABELLI, an  
 16 individual, and LORI ANN WEST, an  
 17 individual,

Plaintiffs,

v.

20 MARK OLSON, in his official capacity as  
 21 President of the EUSD Board of  
 22 Education, et al.,

Defendants.

Case No.: 3:23-cv-0768-BEN-WVG

**Plaintiffs' Second Ex Parte  
 Application to Seal in Support of  
 Motion for a Preliminary Injunction**

Judge: Hon. Roger T. Benitez  
 Courtroom: 5A

1 **TO: THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**  
2 **RECORD:**

3 PLEASE TAKE NOTICE that Plaintiffs Elizabeth Mirabelli and Lori Ann  
4 West, by and through counsel, will and hereby do apply to the Court for an order  
5 sealing unredacted copies of Exhibit 23 to the Complaint and Exhibit 45 to the  
6 Rebuttal Declaration of Elizabeth Mirabelli. Redacted copies of Exhibit 23 and  
7 Exhibit 45 have already been filed with the Court. (*See* ECF No. 1, Complaint,  
8 pp.189-192; ECF No. 18-2, Rebuttal Declaration of Elizabeth Mirabelli, pp.7-16.)

9 Exhibit 23 is an email from EUSD listing transgender students and their  
10 preferred names; Exhibit 45 is a nine-page document collecting instances when  
11 classified staff did not comply with EUSD’s gender identity policies by using those  
12 student’s legal names instead of their preferred names.

13 This Application is made on the grounds that the exhibits contain the names of  
14 minor children at Rincon Middle School. As a result, there is a compelling justification  
15 for sealing the exhibits to protect the children’s privacy. Because Plaintiffs have  
16 already filed a redacted copy of the exhibits, those redacted copies satisfy the public’s  
17 legitimate interests in understanding the context of the legal proceedings in this case.

18 This Application is supported by the accompanying Memorandum of Points and  
19 Authorities, by the previously filed declarations of Plaintiffs Elizabeth Mirabelli and  
20 Lori Ann West, and by such further argument and evidence that may be adduced at  
21 any hearing on this matter.

22 Respectfully submitted,

23 LiMANDRI & JONNA LLP

24  
25 Dated: June 19, 2023

By:



26 Charles S. LiMandri

27 Paul M. Jonna

28 Jeffrey M. Trissell

Attorneys for Plaintiffs

## MEMORANDUM OF POINTS & AUTHORITIES

1  
2 In support of their motion for a preliminary injunction, Plaintiffs have filed as  
3 Exhibit 23 to the Complaint a redacted email from EUSD listing transgender students  
4 and their preferred names, and as Exhibit 45 to the Declaration of Elizabeth Mirabelli  
5 a redacted nine-page document collecting instances when classified staff did not  
6 comply with EUSD's gender identity policies by using student's legal names instead of  
7 their preferred names. (*See* ECF No. 1, Complaint, pp.189-92, ¶164 & Ex.23; ECF No.  
8 18-2, Rebuttal Declaration of Elizabeth Mirabelli, pp.7-16, ¶4 & Ex.45.) To protect  
9 those students' privacy, Plaintiffs now apply to the Court for an order sealing the  
10 unredacted copies of Exhibit 23 and Exhibit 45.

### LEGAL STANDARD

11  
12 In *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978), the Supreme  
13 Court recognized "a general right to inspect and copy public records and documents,  
14 including judicial records and documents." *Id.* at 597. The main reason for this  
15 general right is to accommodate "the citizen's desire to keep a watchful eye on the  
16 workings of ... government." *Id.* at 598. However, the Supreme Court also stated  
17 that "the right to inspect and copy judicial records is not absolute." *Id.* at 589.  
18 "Every court has supervisory power over its own records and files, and access has  
19 been denied where court files might have become a vehicle for improper purposes,"  
20 such as "to gratify private spite or promote public scandal," or to serve as a source of  
21 "business information that might harm a litigant's competitive standing." *Id.*  
22 (internal citations omitted).

23 Except for certain documents "traditionally kept secret," federal courts begin  
24 a sealing analysis with "a strong presumption in favor of access to court records."  
25 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). A party  
26 seeking to seal a judicial record then bears the burden of overcoming this strong  
27 presumption by meeting the "compelling reasons" standard. *Id.*; *Kamakana v. City &*  
28 *Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (applying compelling reasons

1 standard to dispositive motions); *DISH Network, L.L.C. v. Sonicview USA, Inc.*, No.  
2 09-cv-1553-L, 2009 WL 2579052, at \*1 (S.D. Cal. Aug. 20, 2009) (treating motion for  
3 preliminary injunction as dispositive for sealing analysis because the motion directly  
4 addresses the merits and seeks injunctive relief before trial). That is, the party must  
5 “articulate [ ] compelling reasons supported by specific factual findings,” *Foltz*, 331  
6 F.3d at 1135, that outweigh the general history of access and the public policies  
7 favoring disclosure, such as the “public interest in understanding the judicial  
8 process.” *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995).

### 9 ARGUMENT

10 In support of their motion for a preliminary injunction, Plaintiffs submitted an  
11 email from EUSD identifying transgender students and their preferred names. (*See*  
12 ECF No. 1, Complaint, at pp.189-92, ¶164 & Ex. 23.) Plaintiffs also submitted a nine-  
13 page document collecting instances when classified staff did not comply with  
14 EUSD’s gender identity policies by using student’s legal names instead of their  
15 preferred names. (*See* ECF No. 18-2, Rebuttal Mirabelli Decl., pp.7-16, ¶4 & Ex.45.)  
16 In that document, Plaintiffs have collected hall passes, merit certificates, overdue  
17 library book notices, and other instances when EUSD classified staff have not  
18 complied with EUSD’s gender identity policies. (*Id.*) Plaintiffs submit this evidence  
19 to rebut Integrated Student Services Director Tracy Schmidt’s declaration in which  
20 she contends that classified staff have been trained on compliance with EUSD’s  
21 gender identity policies.<sup>1</sup>

22 However, these students have very important privacy rights. Thus, Plaintiffs  
23 request that the Court seal the exhibits. The Federal Rules recognize that minor’s

24 \_\_\_\_\_  
25 <sup>1</sup> The original version of Exhibit 23 to the Complaint contained physical redactions  
26 through a pen, and then was re-redacted electronically. To obtain a clean copy of  
27 Exhibit 23 for this motion to seal, Plaintiffs had to re-print the exhibit to a new PDF.  
28 This new version appears longer than the original version solely because the original  
August 12, 2022 email that started the chain is no longer collapsed in the subsequent,  
responding emails.

1 privacy interests are particularly important and preclude the use of their names in  
2 legal filings. *See* Fed. R. Civ. P. 5.2(a)(3). As a result, courts have not hesitated to seal  
3 information regarding children. *See, e.g., Beas-Campo v. Case*, No. CV-23-00199,  
4 2023 WL 3306485, at \*2 (D. Ariz. May 5, 2023); *United States v. Gomez-Marentes*,  
5 No. CR20-0092-JCC-19, 2022 WL 2805614, at \*1 (W.D. Wash. July 18, 2022);  
6 *Hollowell v. Arizona Dep't of Child Safety*, No. CV-15-02045, 2016 WL 1593814, at \*4  
7 (D. Ariz. Apr. 20, 2016); *Mubita v. Blades*, No. 1:08-CV-00310, 2015 WL 2064476, at  
8 \*4 (D. Idaho May 4, 2015). This is especially appropriate in the case of transgender  
9 or gender diverse children. *Tingley v. Ferguson*, 47 F.4th 1055, 1069-70 (9th Cir.  
10 2022), *cert. petition docketed* No. 22-942 (Mar. 28, 2023) (transgender children would  
11 satisfy standards for pseudonymous litigation); *D.T. v. Christ*, 552 F. Supp. 3d 888,  
12 897 (D. Ariz. 2021) (court had sealed photograph of natal male/transgender female  
13 child).

14 Plaintiffs are also not requesting that the Court seal more than necessary to  
15 preserve the children's privacy. Plaintiffs have submitted redacted copies of the  
16 exhibits with the children's names obscured. (*See* ECF No. 1, Complaint, pp.189-92,  
17 ¶164 & Ex.23; ECF No. 18-2, Rebuttal Mirabelli Decl., pp.7-16, ¶4 & Ex.45.) These  
18 exhibits satisfy any legitimate interest the public has in viewing public court records as  
19 it adequately conveys the substance of the exhibits without violating students' privacy.  
20 *See Stone Brewing Co., LLC v. Millercoors LLC*, No. 3:18-CV-00331-BEN, 2019 WL  
21 13164179, at \*4 (S.D. Cal. Nov. 5, 2019) (“[T]he Court finds that ... the parties' [ ]  
22 Motions to Seal are narrowly tailored such that they do not impede upon the public's  
23 ability to understand the nature of the proceedings and the factual basis for the  
24 parties' claims.”).

25 Here, the public's only interest is in understanding the judicial process, which  
26 is being adequately served by knowing the general nature of what the exhibits depict.  
27 The public has no interest in knowing the identity of the children. Who they are will  
28 not form any part of the analysis concerning the exhibits' relevance. In contrast,

1 revealing the children’s names could result in improper use and would prejudice  
2 them. This case has already drawn a good deal of public attention, and has been  
3 covered in the media. (See ECF No. 5-4, West Decl., ¶5.) It involves a controversially  
4 and socially divisive issue, and making the children’s names public would invite  
5 people on both sides of the issue to harass them or use them against their will as part  
6 of a public debate.

7 **CONCLUSION**

8 For the foregoing reasons, Plaintiffs respectfully request that this Court grant  
9 their application to seal the unredacted copies of Exhibit 23 to the Complaint and  
10 Exhibit 45 to the Rebuttal Declaration of Elizabeth Mirabelli.

11  
12 Respectfully submitted,

13 LiMANDRI & JONNA LLP

14  
15 Dated: June 19, 2023

16 By:   
17 Charles S. LiMandri  
18 Paul M. Jonna  
19 Mark D. Myers  
20 Jeffrey M. Trissell  
21 Milan L. Brandon II  
22 Attorneys for Plaintiffs  
23 Elizabeth Mirabelli & Lori Ann West  
24  
25  
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27  
28

**CERTIFICATE OF SERVICE**

***Elizabeth Mirabelli v. Mark Olson, President of the EUSD Board of Education, et al.***  
USDC Court Case No.: 3:23-cv-00768-BEN-WVG

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; my business address is P.O. Box 9120, Rancho Santa Fe, California 92067, and that I served the following document(s):

- **PLAINTIFFS’ SECONDE EX PARTE APPLICATION TO SEAL IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION; and**
- **[Proposed] ORDER GRANTING PLAINTIFFS’ EX PARTE APPLICATIONS TO SEAL.**

on the interested parties in this action by placing a true copy in a sealed envelope, addressed as follows:

Thomas Prouty, Deputy General Counsel  
California Department of Education  
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Sacramento, CA 95814  
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**Attorneys for EUSD Defendants**

  X   **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Rancho Santa Fe, California in the ordinary course of business. The envelope was sealed and placed for collection and mailing on this date following our ordinary practices. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

  X   **(BY ELECTRONIC MAIL)** I served a true copy, electronically on designated recipients via electronic transmission of said documents.

  X   **(BY ELECTRONIC FILING/SERVICE)** I caused such document(s) to be Electronically Filed and/or Service using the ECF/CM System for filing and transmittal of the above documents to the above-referenced ECF/CM registrants.

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

Executed on June 19, 2023, at Rancho Santa Fe, California.

  
\_\_\_\_\_  
Kathy Denworth