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COUNTY OF CONTRA COSTA
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF CONTRA COSTA

10 NATHANIEL YU,
11 Plaintiff,
12 vs.
13 SAN RAMON VALLEY UNIFIED SCHOOL
DISTRICT,
14 Defendant.

) Case No. CIV-MSN-17-0585
)
) *AMICI CURIAE* ARMAAN RASHID AND
) ANUMITA JAIN'S MEMORANDUM IN
) SUPPORT OF MOTION TO UNSEAL
) RECORDS

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9 COUNTY OF CONTRA COSTA

10 NATHANIEL YU,) Case No. CIV-MSN-17-0585
11)
Plaintiff,)
12 vs.) *AMICI CURIAE* ARMAAN RASHID AND
SAN RAMON VALLEY UNIFIED SCHOOL)
13 DISTRICT,) ANUMITA JAIN'S MEMORANDUM IN
14 Defendant.) SUPPORT OF MOTION TO UNSEAL
RECORDS
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1 **I. INTRODUCTION**

2 *Amici curiae* Armaan Rashid and Anumita Jain seek an order pursuant to California Rules of
3 Court 2.551(h)(2) unsealing the Court records in this action for failure to comply with the Constitutional
4 and statutory requirements for sealing or, in the alternative, unsealing the Court docket, the sealing
5 order, sealing hearing transcript, sealing petition and any other documents that purport to demonstrate
6 that the complete sealing of the record in this action was proper.

7 Four decades ago, the California Court of Appeal recognized that
8 [i]f public court business is conducted in private, it becomes impossible to expose
9 corruption, incompetence, inefficiency, prejudice, and favoritism. For this reason
10 traditional Anglo-American jurisprudence distrusts secrecy in judicial proceedings and
favors a policy of maximum public access to proceedings and records of judicial
tribunals.

11 *Estate of Hearst*, 67 Cal. App. 3d 777, 784 (1977). In the years since, courts have confirmed time and
12 again that the First Amendment to the United States Constitution, the California Constitution, and the
13 California Rules of Court require public access to judicial records in all but the rarest of circumstances.

14 To protect the public’s Constitutional right of access, the California Rules of Court provide that
15 a court may not seal a record without holding a hearing and issuing an order that “expressly finds facts
16 that establish: (1) There exists an overriding interest that overcomes the right of public access to the
17 record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that
18 the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is
19 narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest.”
20 C.R.C. 2.550(d). Because the entire Court record in this action has been sealed, there is no record on
21 which *amici curiae* or other members of the public can determine whether these required findings were
22 made properly, or at all.

23 Moreover, there is almost certainly no interest sufficient to meet the five constitutional
24 requirements for sealing described in Rule 2.550 under the circumstances present here. This case
25 involves a garden-variety claim by a student against the San Ramon Valley Unified School District (the
26 “School District”). Many of the underlying facts have previously been publicly reported, as well as
27 publicly broadcast by the participants themselves. Even if some portion of a certain filing were sealable
28

1 under the rigorous constitutional analysis, the sweeping order sealing this entire case, including the
2 docket and sealing order, is *per se* overbroad and not narrowly tailored to protect only the interest at
3 issue while preserving the public’s First Amendment right of access.

4 **II. FACTUAL BACKGROUND**

5 This case involves a matter of public interest to the citizens of the San Ramon Valley and
6 implicates how School District officials perform their governmental duties and litigate at taxpayer
7 expense. In February 2017, shortly before student government elections at San Ramon Valley High
8 School (“SRVHS”), Nathaniel Yu, a candidate for student body president for the next school year,
9 posted a controversial campaign video to his Twitter account. The video, which depicted fictional
10 terrorists abducting and torturing a student, made, according to the School District, “repeated racist and
11 insensitive references to Middle Eastern people, stereotyping them based on their dress, accents and
12 language, names, manner of praying and religious dietary restrictions.” Angela Ruggiero, *Lewd, racist*
13 *details emerge about East Bay students ‘terror’ video*, East Bay Times (May 22, 2017),
14 <https://tinyurl.com/y99tlksr>. After learning of Yu’s video, school officials awarded the student body
15 presidency to Yu’s opponent, despite Yu receiving more votes.

16 In response to the school officials’ actions, Yu filed a petition for writ of mandamus to compel
17 the School District to restore his candidacy for student body president. On April 26, 2017, the Court
18 denied Yu’s petition for a writ of mandamus but encouraged Yu to commence a civil action to obtain
19 the injunctive relief that he sought. Tentative Ruling, April 26, 2017. Less than a month later, the
20 School District reversed course, awarding Yu the student body presidency.

21 These incidents caused an uproar in the San Ramon Valley community and generated significant
22 media attention. More than 50 people addressed School District board members regarding the video
23 and response at a standing-room-only, hours-long May 23, 2017 school board meeting. *See Erika*
24 *Alvero, Speakers protest reinstatement of SRVHS student leader at center of video controversy*,
25 *Danville San Ramon* (May 24, 2017), <https://tinyurl.com/yadbjhnz>. Just a few days later, on May 26,
26 2017, hundreds of SRVHS students walked out of classes in protest of the School District’s decision to
27
28

1 reinstate Yu as student body president. Angela Ruggiero, *“Terror” video sparks student walkout at San*
2 *Ramon Valley High School*, East Bay Times (May 26, 2017), <https://tinyurl.com/yaylhkbv>.

3 In addition to the media reports on the controversy surrounding the video and the School
4 District’s abrupt decision to reverse course, Yu’s parents and lawyer disclosed various facts and legal
5 positions in both traditional and social media. For example, Gill Sperlein, an attorney for Yu and his
6 parents, was extensively quoted in media articles on May 23 & 24, 2017, where he downplayed the
7 video as a humorous parody, said Yu had written an unprompted apology letter that was “from the
8 heart,” but refused to disclose other details because of unspecified privacy concerns. See Angela
9 Ruggiero, *Danville: “Terror” Video Student’s Attorney, Parents Speak Out*, East Bay Times (May 23,
10 2017), <https://tinyurl.com/y8vt4ovg>; Erika Alvero, *Speakers protest reinstatement of SRVHS student*
11 *leader at center of video controversy*, Danville San Ramon (May 24, 2017),
12 <https://tinyurl.com/yadbjhnz>.

13 Yu’s parents also wrote about the controversy on Facebook and in a 1,000-word “open letter”
14 posted on GoFundMe.com on June 22, 2017, which sought to raise \$25,000 to fund their legal action
15 against the School District. Erika Alvero, *Parents’ open letter continues debate over SRVHS student*
16 *campaign video*, Danville San Ramon (June 28, 2017), <https://tinyurl.com/ycacw49w>; David and
17 Leilanie Yu, *End Institutional Bullying*, GoFundMe (June 22, 2017), <https://tinyurl.com/y9xbwsyu>. In
18 the letter, which gained national media attention, Yu’s parents described their son’s video and heavily
19 criticized SRVHS’s and the School District’s responses, while disclosing additional details relating to
20 the controversy. *Id.*; see also Katherine Lam, *California parents of teen who made “terrorists” video*
21 *raise thousands of dollars to sue school district*, Fox News (June 29, 2017),
22 <https://tinyurl.com/yavwrhga>.

23 *Amici curiae* Rashid and Jain are staff writers for the *Wildcat Tribune*, a student-run newspaper
24 that serves the Dougherty Valley High School community and is accessible online to the general public.
25 In an attempt to get an unvarnished view of the facts, they have been investigating the controversy since
26 becoming aware of Yu’s video and the School District’s reaction in May. As part of their reporting,
27 Rashid and Jain made multiple attempts to obtain the documents filed in this action. On May 26, 2017,
28

1 through their advisor at the *Wildcat Tribune*, they submitted a California Public Records Act request to
2 the Court Records department for the case files in this action. On June 2, 2017, the Court Records
3 department returned the request without providing any records and without providing any reason for
4 denying the request.

5 Following this unsuccessful attempt, Rashid and Jain went in person to the Contra Costa County
6 courthouse on June 15, 2017 to request the case file from the Clerk’s Office. They initially requested
7 the file at the Court Records department but were told that they needed to go to the Superior Court
8 building. When Rashid and Jain requested the case file at the courthouse, they were told that the case
9 was sealed and that they could not access the file. They left but returned later in the day on June 15 to
10 request the Court’s sealing order and the docket sheet. A court employee told them that everything –
11 including the sealing order and docket sheet – had been sealed and were unavailable to the public.¹

12 Undeterred, Rashid and Jain made one last attempt to obtain certain documents. On July 1,
13 2017, Jain sent a California Public Records Act request to School District Superintendent Rick Schmitt
14 requesting Yu’s notice of claim and any settlement agreement between Yu and the School District. The
15 School District responded to Jain’s request on July 12, 2017, stating that it had no responsive
16 documents.

17 **III. ARGUMENT**

18 **A. Rashid and Jain, as Members of the Public, Are Permitted to and May**
19 **Proceed as *Amici Curiae* to Unseal the Sealed Records**

20 California Rule of Court 2.551(h)(2) provides that any “member of the public may move, apply,
21 or petition . . . to unseal a record.” Rule 2.551 “expressly permit[s] the public, which includes members
22 of the press, to seek the unsealing of court records.” *Overstock.com, Inc. v. Goldman Sachs Grp., Inc.*,
23 231 Cal. App. 4th 471, 488 (2014) (citing Rule 2.551(h)(2)). Thus, third parties seeking to unseal court
24 records may, “in addition to noticed proceedings in the trial court,” initiate “an original proceeding in
25 the reviewing court by way of a petition for writ of mandate to compel the lower court to unseal records

26 ¹ The undersigned counsel received a substantially similar response. On September 26, 2017, counsel
27 sent a runner to the courthouse to request the sealing order and docket sheet for the instant action. The
28 clerk explained that the entire case was sealed and therefore refused to provide any documents or
information regarding the case, including the date of the sealing order.

1 that were improperly sealed.” *Id.* (citation omitted). A member of the public, including a journalist,
2 who elects to file a noticed motion in the trial court to unseal records must do so as an *amicus curiae*.
3 *Id.* at 489-90 (holding *amicus curiae* petition, rather than intervention under California Code of Civil
4 Procedure §387, is appropriate method for third party seeking to unseal records).

5 Here, there is no question that Rashid and Jain, who live in Contra Costa County and attend
6 Dougherty Valley High School, are members of the public. Moreover, they are journalists whose
7 ability to inform the public about a case of public importance is severely constrained by the
8 unavailability of the sealed case file.² Accordingly, Rashid and Jain may petition this Court as *amici*
9 *curiae* to unseal the records in this case. C.R.C. 2.551(h)(2); *Overstock.com*, 231 Cal. App. 4th at 488.

10 **B. The First Amendment of the United States Constitution, the California**
11 **Constitution, Controlling California Supreme Court Case Law, and the**
12 **California Rules of Court All Compel This Court to Unseal the Record**

13 For well over a century, the California Supreme Court has recognized that “it is a first principle
14 that the people have the right to know what is done in their courts.” *In re Shortridge*, 99 Cal. 526, 530
15 (1893). More recently, the California Supreme Court, in its landmark opinion in *NBC Subsidiary*
16 (*KNBC-TV, Inc. v. Super. Ct.*, 20 Cal. 4th 1178 (1999), held that this principle is so necessary to and
17 embedded in our republican democracy that the public’s access to civil proceedings is protected under
18 the First Amendment to the United States Constitution. Thus, every member of the public “has a First
19 Amendment right of access to civil litigation documents filed in court and used at trial or submitted as a
20 basis for adjudication.” *Savaglio v. Wal-Mart Stores, Inc.*, 149 Cal. App. 4th 588, 596 (2007).

21 *NBC* was grounded in a long line of U.S. Supreme Court decisions establishing the
22 constitutional imperative of public access to records and proceedings in civil and criminal matters. 20
23 Cal. 4th at 1202-07 (relying on, among others, *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596 (1982)
(holding that statute mandating closure of courtrooms during minor victims’ testimony was

24 ² As journalists, Rashid and Jain are attempting to discharge their duties in the highest and best
25 ethical and professional tradition by obtaining direct access to first-hand documentation about a news
26 event. To report in a thorough, accurate and verifiable manner on this situation, Rashid and Jain seek
27 access to these records. Whether the records were appropriately sealed, however, does not turn on their
28 status as journalists or their need for the records. *See Hearst*, 67 Cal. App. 3d at 785-86 (“At issue here
are rights of public access to public court records The key factor here is the public nature of
records, not freedom of the press”).

1 unconstitutional); *Press-Enterprise Co. v. Super. Ct. of Cal.* (“*Press-Enterprise I*”), 464 U.S. 501
2 (1984) (overturning California state court’s closure of *voir dire* portion of jury selection); and *Press-*
3 *Enterprise Co. v. Super. Ct.* (“*Press-Enterprise II*”), 478 U.S. 1 (1986) (finding qualified right of access
4 to pretrial hearings and holding that closure must be reviewed under strict scrutiny)). Applying this line
5 of precedent, *NBC* concluded: ““The presumption of openness may be overcome only by an **overriding**
6 **interest** based on findings that closure is essential to preserve higher values and is narrowly tailored to
7 serve that interest. **The interest is to be articulated along with findings specific enough that a**
8 **reviewing court can determine whether the closure order was properly entered.**”” 20 Cal. 4th at 1204
9 (emphases in original) (quoting *Press-Enterprise I*, 464 U.S. at 510).

10 Thus, to overcome the public’s constitutional right of access by sealing documents or
11 proceedings in a civil matter, *NBC* held that the court must hold a hearing and expressly make findings
12 that: (1) there is an overriding interest that overcomes the right of public access to the record; (2) the
13 overriding interest supports sealing the record; (3) there is a substantial probability that the interest will
14 be prejudiced absent sealing; (4) the sealing order is narrowly tailored to serve the overriding interest;
15 and (5) there is no less restrictive means of meeting that interest. *McNair v. Nat’l Collegiate Athletic*
16 *Ass’n*, 234 Cal. App. 4th 25, 31-32 (2015); *NBC*, 20 Cal. 4th at 1217-18. Since the Supreme Court’s
17 decision in *NBC*, the public’s right to access for state court proceedings has been enshrined in the
18 California Constitution. Cal. Const. Art. I, §3(b)(1); *Savaglio*, 149 Cal. App. 4th at 597.

19 Following the Supreme Court’s decision in *NBC*, the California Judicial Council codified its
20 holding in California Rules of Court 2.550 through 2.551. *See McNair*, 234 Cal. App. 4th at 32. Rule
21 2.551(a) requires the court to issue a sealing order and prohibits parties from stipulating or agreeing to
22 file under seal. C.R.C. 2.551(a) (“A record must not be filed under seal without a court order. The
23 court must not permit a record to be filed under seal based solely on the agreement or stipulation of the
24 parties.”). Rule 2.550(c) provides that unless the law requires confidentiality, “court records are
25 presumed to be open.” A court may overcome that presumption and seal a record “only if it expressly
26 finds facts that establish” the five requirements set forth in *NBC*. C.R.C. 2.550(d). The Rules also
27 require that “[a]n order sealing the record must: (A) Specifically state the facts that support the findings;

1 and (B) Direct the sealing of only those documents and pages, or, if reasonably practicable, portions of
2 those documents and pages, that contain the material that needs to be placed under seal.” C.R.C.
3 2.550(e)(1).

4 Rules 2.550 and 2.551 represent California’s recognition of the long-established principle that
5 public access to judicial records and proceedings serves essential purposes in validating the public’s
6 trust and confidence in the judiciary. As the Court of Appeals for the Ninth Circuit observed in
7 *Courthouse News Serv. v. Planet*, 750 F.3d 776 (9th Cir. 2014), “access to public proceedings and
8 records is an indispensable predicate to free expression about the workings of government.” *Id.* at 785.

9 The court continued:

10 The news media’s right of access to judicial proceedings is essential not only to
11 its own free expression, but also to the public’s. . . . In a society in which each
12 individual has but limited time and resources with which to observe at first hand the
13 operations of his government, he relies necessarily upon the press. With respect to
14 judicial proceedings in particular, the function of the press serves to bring to bear the
15 beneficial effects of public scrutiny upon the administration of justice.
16 *Id.* at 786 (quoting *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 491-92 (1975)) (internal quotes and
17 ellipses omitted). California courts have expressed a similar rationale. *See, e.g., NBC*, 20 Cal. 4th at
18 1210-11 n.28 (“[T]he public has an interest, in *all* civil cases, in observing and assessing the
19 performance of its public judicial system ‘If public court business is conducted in private, it
20 becomes impossible to expose corruption, incompetence, inefficiency, prejudice, and favoritism. For
21 this reason traditional Anglo-American jurisprudence distrusts secrecy in judicial proceedings and
22 favors a policy of maximum public access to proceedings and records of judicial tribunals.’”) (citation
23 omitted and emphasis in original).

24 Here, although Rashid and Jain do not have access to the Court’s sealing order – which is itself
25 sealed – there is no reason to believe that *everything* about this case is so confidential that *nothing* may
26 be released to the public. As described above, many underlying facts have already been widely
27 publicized in both local and national media. Information already public cannot be sealed. *NBC*, 20 Cal.
28 4th at 1222 n.47 (relying on fact that press had already reported on certain details to hold that record
containing those details was improperly sealed). Further, the Yu family and its counsel have used the
megaphone of publicity to advance their interests in the litigation, including engaging the public in an

1 online funding campaign that attracted over 400 donations. Accordingly, there is no basis for sealing
2 any portion of any of the docket, filings or any other part of the record that merely repeats publicly
3 known or available information.

4 In fact, there is likely no basis for sealing anything in this case. California courts have
5 consistently rejected generalized claims of personal privacy and non-specific fears of personal harm as
6 insufficient to overcome the presumption that court records are publicly available. The Court of
7 Appeals has specifically stated that concern for personal privacy and fear of embarrassment – even to
8 uninvolved third parties – does not justify sealing documents filed with the court. *See Hurvitz v.*
9 *Hoeflin*, 84 Cal. App. 4th 1232 (2000) (ordering records unsealed, despite concern that unsealing
10 would disclose details about patients abused while under anesthesia). As the court said in *Hurvitz*,
11 “sparing citizens from embarrassment, shame, or even intrusions into their privacy has never been held
12 to outweigh the guarantees of free speech in our federal and state Constitutions.” *Id.* at 1244. The court
13 went on to recognize that once the underlying facts of a lawsuit are publicized – as is the case here –
14 any privacy interests in the contents of the court file evaporate, and “neither the state nor the federal
15 Constitution permits the court to lock the barn door after the horse is gone.” *Id.* at 1245.

16 The grounds for disclosure here are even more compelling than in *Hurvitz*. This case involves
17 the performance of a government agency rather than a private physician, which more squarely
18 implicates *NBC*’s rationale for public oversight. *See NBC*, 20 Cal. 4th at 1210-11. Further, it is
19 doubtful that any privacy interest here could rival that raised in *Hurvitz*, which involved humiliating
20 personal details regarding the mistreatment of patients during medical procedures. By contrast, the
21 facts here are anodyne and largely public – a video was disseminated and viewed through the decidedly
22 non-private conduit of social media, the school reacted by stripping Yu of his school presidency, and
23 the School District later reinstated him as president after facing this lawsuit. None of the facts here
24 come close to the privacy interests at issue in *Hurvitz*, which even there were insufficient to support
25 sealing of the record. Accordingly, there is no conceivable basis for sealing the entire court record here.

26 This case is analogous to *Copley Press, Inc. v. Super. Ct.*, 63 Cal. App. 4th 367 (1998), in which
27 the Court of Appeals granted journalists’ petition to unseal court records reflecting the terms of a
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1 settlement in a case involving a child sexually assaulted at school. The court repeatedly emphasized the
2 importance of public access to the records of civil judicial proceedings where – as in the case at hand –
3 the performance of a public entity such as a school district is at issue, holding that “the public has a
4 legitimate interest in knowing how public funds are spent and how claims (formal or informal) against
5 public entities are settled.” *Id.* at 376 (parentheses in original). Nothing in this case approaches the
6 sensitivity of the facts in *Copley Press*, which involved the sexual abuse of a 15-year-old child.
7 Continued concealment of the entire file in this case simply cannot be squared with that holding.

8 *Hearst* also supports unsealing the record in this case. 67 Cal. App. 3d 777. There, the trustees
9 of publishing magnate William Randolph Hearst’s trust sought to seal the probate court’s files and cut
10 off all public access, arguing that open access to the probate file would expose trust beneficiaries to
11 danger. *Id.* at 781. Specifically, the trustees cited the then-recent kidnapping of Patty Hearst, threats to
12 Hearst family members, and numerous bombings by radical organizations targeting the Hearst family.
13 *Id.* Despite these events and threats, the court rejected the trustees’ claim that the whole record must be
14 sealed, and held that, at *most*, only a *temporary* sealing order would be appropriate:

15 A sensible solution might temporarily seal portions of the Hearst files containing such
16 material as current names and addresses of little-known beneficiaries and the location of
17 tangible trust properties vulnerable to attack. Such material should be withheld from
18 public access only on a temporary basis, with the continuing burden resting on Trustees
19 to periodically show that the Hearst family continued under clear and present danger of
20 attack.

21 *Id.* at 785. Notably, the court did not agree that the names and details of well-known Hearst family
22 members should be sealed.

23 Here, by contrast, there is nothing in the record to suggest that unsealing the court file will
24 present a clear and present danger to Yu or his parents. Yu’s identity as the subject of the video
25 controversy and this lawsuit is already well established; and if there were any doubt, his parents’
26 GoFundMe.com “open letter” and the ensuing media coverage have laid it to rest. Additionally, Yu
27 decided to sue the School District and used his own name in doing so, thereby forfeiting any claims to
28 privacy. *See NBC*, 20 Cal. 4th at 1211 n.27 (“When individuals employ the public powers of state
courts to accomplish private ends, they do so in full knowledge of the possibly disadvantageous
circumstance that the documents and records filed will be open to public inspection. In a sense such

1 civil litigants take the good with the bad, knowing that with public protection comes public knowledge
2 of otherwise private facts.”) (internal quotes, ellipses and alterations omitted).

3 In the absence of disclosure of the court records explaining why the case was sealed, there is
4 simply no reason to believe that the information contained in the record in this case is of a type that
5 supports “an overriding interest that overcomes the right of public access to the record.” C.R.C.
6 2.550(d)(1). Nor is there any reason to believe that there is “a substantial probability [] that the interest
7 will be prejudiced if the record is not sealed.” C.R.C. 2.550(d)(3). Finally, even if there were some
8 conceivable basis to seal certain information in this case, sealing the *entire* case file and docket in no
9 way complies with the requirement that the sealing order is “narrowly tailored” to serve the overriding
10 interest and there is “[n]o less restrictive means” of meeting that interest. C.R.C. 2.550(d)(4)-(5);
11 *Copley Press*, 63 Cal. App. 4th at 374 (“Where the relief extends to sealing permanent court records,
12 the court must be careful to limit its denial of access by narrow and well-defined orders.”); *NBC*, 20
13 Cal. 4th at 1223 (holding the trial court’s “blanket and sweeping order” closing all proceedings without
14 identifying particular information that required sealing was not narrowly tailored); *see, e.g., McNair*,
15 234 Cal. App. 4th 25; *Huffy Corp. v. Super. Ct.*, 112 Cal. App. 4th 97 (2003); *see also In re Marriage of*
16 *Lechowick*, 65 Cal. App. 4th 1406, 1413 n.6 (1998) (holding that statute allowing sealing of family
17 court proceedings “certainly would not validate the sealing of the entire file”).

18 **C. At a Minimum, the Court Must Unseal the Docket, the Sealing Order,**
19 **and Any Briefs and Transcripts Related to the Sealing Order and**
20 **Hearing**

21 California Rule of Court 2.551(a) makes explicit that a court must issue a sealing order in order
22 to seal a record: “A record must not be filed under seal without a court order.” The order required by
23 Rule 2.551 must “expressly find[] facts that establish” the five requirements set forth in *NBC* and
24 “must: (A) Specifically state the facts that support the findings; and (B) Direct the sealing of only those
25 documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain
26 the material that needs to be placed under seal.” C.R.C. 2.550(d)-(e)(1). Before the requisite order is
27 issued, the court must also hold a hearing. *McNair*, 234 Cal. App. 4th at 31-32; *NBC*, 20 Cal. 4th at
28 1217-18. *NBC* and Rules 2.550-2.551 provide, in no uncertain terms, that these findings and procedural

1 perquisites are constitutional requirements necessary to satisfy the heavy burden of withholding
2 presumptively public court records from members of the public.³

3 When a sealing order is itself sealed, the detailed scheme set forth in California Rules of Court
4 2.550 and 2.551 becomes a dead letter. Without access to the sealing order and the required findings
5 within it, the public is not only deprived of the underlying information in the court record but of the
6 court’s justification for that deprivation. The court’s justification for sealing is not only required by
7 Rule 2.550 but integral to the public’s right to move to unseal records under Rule 2.551(h)(2). Without
8 knowing the reasons why a record was sealed and having access to the court’s factual findings
9 supporting sealing, a motion to unseal (like the instant motion) cannot directly challenge the legal and
10 factual basis for sealing.

11 Little could be more anathema to the First Amendment and the Supreme Court’s decision in
12 *NBC* than sealing the very documents necessary to understand why those and other records were sealed.
13 In fact, *NBC* specifically held that a trial court *must* provide public notice when considering whether to
14 seal a record and that “[w]hen a motion seeking closure is made in a written filing, adequate notice is
15 provided by publicly docketing the motion reasonably in advance of a determination thereon.” 20 Cal.
16 4th at 1217. Only through access to the sealing order and related briefing and transcripts can the public
17 verify whether the Court held the legally required hearing and made on-the-record findings of an
18 overriding need for closure, as the law requires. *See Huffy*, 112 Cal. App. 4th at 104 (explaining
19 prerequisites before court can enter order sealing records).

20 Further, the public’s right of access to the dockets of civil proceedings is firmly established and
21 of constitutional dimension. As the Second Circuit explained in *Hartford Courant Co. v. Pellegrino*,
22 380 F.3d 83 (2d Cir. 2004): “By inspecting materials like docket sheets, the public can discern the
23 prevalence of certain types of cases, the nature of the parties to particular kinds of actions, information

24 _____
25 ³ If the Court did not hold the required hearing, or issue the required sealing order, or make the
26 required factual findings in the sealing order, or specifically state the facts supporting those findings,
27 then the sealing was procedurally improper and the Court should immediately unseal the entire case file.
28 *See C.R.C. 2.550-2.551; Huffy*, 112 Cal. App. 4th at 105 (“No findings were made by the respondent
court. The sealing order therefore fails to comply with the findings requirements [] identified in
NBC.”).

1 about the settlement rates in different areas of law, and the types of materials that are likely to be
2 sealed.” *Id.* at 95-96; *see also Globe Newspaper Co. v. Fenton*, 819 F. Supp. 89, 94 (D. Mass. 1993)
3 (“It is not misleading to think of courthouse papers as comprising a vast library of volumes for which
4 docket sheets are the tables of contents. Without [docket sheets], a reader is left without a meaningful
5 mechanism by which to find the documents necessary to learn what actually transpired in the courts.”);
6 *NBC*, 20 Cal. 4th at 1217. Indeed, without access to the docket – which unquestionably contains no
7 information substantially probable to prejudice an overriding interest – there is no way to know what
8 motions were brought in the case, when the case was sealed, whether the School District defended
9 against Yu’s lawsuit before settling, and myriad other pieces of information that are required to be
10 public under the Constitution.

11 Accordingly, even if the Court refuses to unseal the entire record, the Court must, at a minimum,
12 unseal the docket sheet, the sealing order and any briefs and transcripts related to the sealing order and
13 hearing.

14 **IV. CONCLUSION**

15 For the foregoing reasons, the Court should (1) unseal the entire file and every record in this
16 case; or, in the alternative and at a minimum, (2) unseal the docket sheet and any briefs, hearing
17 transcripts and orders relating to the sealing order.

18 DATED: October 13, 2017

Respectfully submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

I, NHUNG LAI, not a party to the within action, hereby declare that on October 13, 2017, served the attached *AMICI CURIAE* ARMAAN RASHID AND ANUMITA JAIN'S MEMORANDUM IN SUPPORT OF MOTION TO UNSEAL RECORDS, by depositing a true copy thereof in a United States mailbox at San Francisco, California in a sealed envelope with postage thereon fully prepaid and addressed as follows:⁴

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I declare under penalty of perjury that the foregoing is true and correct. Executed on October 13, 2017, at San Francisco, California.



NHUNG LAI

⁴ Because the entire docket and case file is under seal, *amici curiae* are unable to determine the identities and addresses of every attorney and party in this case with certainty, and have therefore served this filing on the parties to this action, and on the lawyers who they are informed and believed represent them. *Amici curiae* will serve this filing on any additional counsel or parties promptly upon notification of their omission from this declaration.