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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

ASIAN AMERICAN LIBERATION NETWORK, a California non-profit public benefit association; KHURSHID KHOJA, an individual; ALFONSO NGUYEN, an individual,

Petitioners/Plaintiffs,

v.

SACRAMENTO MUNICIPAL UTILITY DISTRICT; PAUL LAU, in his official capacity as the Chief Executive Officer of the Sacramento Municipal Utility District; CITY OF SACRAMENTO; KATHERINE LESTER, in her official capacity as Chief of Police of the City of Sacramento Police Department,

Respondents/Defendants.

Case No.: 34-2022-80004019

PETITIONERS' NOTICE OF MOTION AND MOTION TO FILE A RECORD UNDER SEAL; MEMORANDUM OF POINTS AND AUTHORITES IN SUPPORT THEREOF

Hearing Date: October 10, 2025
Time: 10:00 a.m.
Place: Department 21
Judge: Hon. Shelleyanne W. L. Chang

Action Filed: September 21, 2022

NOTICE OF MOTION AND MOTION

TO RESPONDENTS/DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 10, 2025 at 10 a.m., or as soon thereafter as the matter may be heard in Dept. 21 of the above-entitled court, located at 720 9th Street, Fourth Floor, Sacramento, California, Petitioners ASIAN AMERICAN LIBERATION NETWORK, KHURSHID KHOJA, and ALFONSO NGUYEN will and hereby do move the Court for an order sealing in part all personally identifying information of members of the public that appear in Petitioners' Record Evidence ("Record") in support of Petition for Writ of Mandate. Specifically, Petitioners seek to seal the names, addresses, social security numbers, driver's license numbers, and similar personal identifying information of Respondent Sacramento Municipal Utility District's customers.

Petitioners seek to seal, via redactions, only the personally identifying information that is has lodged under conditional seal with this motion. To assist the Court's resolution of the motion, Petitioners have lodged under conditional seal a second non-public version of the Record in which this personal information is marked in red.

This motion is made pursuant to California Rules of Court 2.550 and 2.551 of the California Rules of Court.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs/Petitioners ASIAN AMERICAN LIBERATION NETWORK, KHURSHID KHOJA, and ALFONSO NGUYEN seek to seal SMUD customers' personally identifying information in the Record, marked in red in the second sealed version of the Record filed herewith, to preserve their constitutional right to privacy and to prevent them from unwarranted scrutiny for simply using electricity. Respondents agree that sealing this information is justified under California Rules of Court 2.550. As explained more fully in Petitioners' Memorandum of Points and Authorities in Support of Petition for Writ of Mandate, this case seeks to halt an unconstitutional and unlawful surveillance program that has subjected SMUD customers to law enforcement scrutiny based on their sensitive and private energy usage data. Petitioners ask this Court to end the unconstitutional dragnet precisely because the energy data disclosed by SMUD to law enforcement is so sensitive—it can reveal a detailed picture of people's activities inside their homes. In pursuing their writ, Petitioners do not want to exacerbate the harm the public has already suffered from these privacy invasions by publicly disclosing their personal identifying information. Petitioners respectfully request that this Court grant the motion and seal the personally identifying information of SMUD customers contained in the Record.

II. FACTUAL BACKGROUND

Petitioners' writ of mandate seeks to end a decade-long program in which SMUD discloses entire zip codes worth of its customers' electricity data to law enforcement without a warrant or any legal process. *See* Memorandum of Points and Authorities in Support of Petition for Writ of Mandate pp. 7–17. SMUD has installed an advanced electricity metering system that collects residents' usage data in 15-minute increments. *Id.* at p. 7. Customers' electricity usage data is private and sensitive, and the intervals in which such data is reported reveals what people are

doing in their homes. *Id*. at pp. 7–8. SMUD has software that it can use to analyze, search, filter, and visualize residents' energy use. *Id*. at pp. 8–10.

Since 2014, SMUD has been disclosing lists of customers to law enforcement. SMUD personnel search through all customers' usage data to generate these lists, usually sorted by the zip code in which people live, to tip off law enforcement about the possibility of indoor cannabis growing. *Id*. at pp. 10–13. These zip code lists usually include SMUD customers' names, addresses, and electrical usage data. *Id*. SMUD has sometimes also disclosed to law enforcement other customer personal information, such as phone numbers, driver's license numbers, and similar. *Id*.

SMUD's process in disclosing these zip code lists to law enforcement can sweep in hundreds, and sometimes, thousands, of people. SMUD has, for example, disclosed lists containing more than 10,000 customers in a single quarter. *Id*. at pp. 11–12. After extensive back-and-forth between SMUD and police, SMUD analysts review the electrical usage data of each customer on the list to determine whether they believe the customer might be cultivating cannabis indoors. *Id*.

Portions of Petitioners' Record include these zip lists, law enforcement requests for them, and related inquiries from police seeking information about SMUD customers. The materials thus contain the personally identifying information of SMUD customers.

III. ARGUMENT

The Court should seal the personal identifying information of SMUD customers that Petitioners have redacted because those individuals' privacy interests override the public's presumptive right to access judicial records. The Court may order a document to be sealed, in whole or in part, "only if it expressly finds facts that establish (1) There exists an overriding that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the interest will be prejudiced if the record is not sealed; (4) The

proposed sealing order is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." Rule of Court 2.550(d).

There is an overriding interest is in protecting the personal information of SMUD customers from being publicly disclosed in the Record here. Rule of Court 2.550(d)(1). These individuals' have a constitutional right to privacy, which can constitute an overriding interest that displaces the presumption of public access. Art. 1, §1; *see In re M.T.* (2024) 106 Cal.App.5th 322, 337–38. SMUD's policies recognize that customers' electrical usage information is private and sensitive. Record 556.

Additionally, personally identifying information, such as social security numbers or similar information used for personal finances, can constitute an overriding interest because disclosure can facilitate criminal activity that victimizes those individuals. *See In re Marriage of Tamir* (2021) 72 Cal.App. 5th 1068, 1087–88.

Courts have recognized that private information contained in law enforcement records can constitute an overriding interest to support sealing. *See People v. Connor* (2004) 115 Cal.App.3d 521, 676. Courts have similarly permitted the sealing of information that would identify witnesses or victims to protect their privacy and personal safety. *See People v. Jackson*, 110 Cal. App. 4th 280, 289-90 (2003).

The personal information of SMUD customers Petitioners seek to seal here is analogous to the identifying information contained in law enforcement reports that identify witnesses and victims. Or it is at least akin to personal information contained in law enforcement reports. The reason SMUD customers wind up on a zip code list disclosed to law enforcement is because they used a certain amount of electricity. As SMUD personnel admitted, the use of large amounts of electricity is not a crime and there is no law or policy against it. *See* Record 1266.

SMUD customers' overriding privacy interests supports the limited redactions Petitioners propose. Rule of Court. 2.550(d)(2). As the above demonstrates, Petitioners have redacted identifying information from the Record to protect those individuals'

privacy. The redactions directly advance these individuals' privacy interests by preventing their information from being disclosed publicly.

A substantial probability exists that privacy interest of SMUD customers will be prejudiced absent sealing the information Petitioners propose. Rule Court 2.550(d)(3). Disclosing the personally identifying information of SMUD customers would prejudice them in several ways. First, it would needlessly invade the privacy of SMUD customers who are not parties to this litigation. The fact that these customers were caught in the surveillance dragnet that Petitioners challenge is precisely why their privacy should be maintained. Second, disclosing certain identifying information, such as social security numbers and similar, could result in financial or other crimes that harm these SMUD customers. Third, disclosure of these individuals' identities would associate them with law enforcement's efforts to identify residents who are illegally growing cannabis indoors. Using large amounts of energy is not by itself illegal. Identifying these customers would therefore needlessly associate them with law enforcement activity.

Petitioners' proposed redactions are narrowly tailored to seal only the personally identifying information of SMUD customers while still permitting the public to see the zip code lists that SMUD discloses to police. Rule Court 2.550(d)(4). Petitioners have applied redactions to remove customers' names and addresses from these zip code lists, while still making public other information contained in them, such as the zip code and the amount of energy used. Because the customer's identifying information is removed, the public can see what amounts of electricity use resulted in being put on a list. The public can also see the sheer volume of customers placed on these lists to understand the breadth of the surveillance program, all the while protecting those individuals' privacy.

Finally, there are no less-restrictive means to advance SMUD customers' privacy than redacting their personally identifying information. Rule Court 2.550(d)(5). The proposed redactions are also the least restrictive means of advancing

the privacy interests of these individuals. The redactions concern only the identifying information that would allow the public to know which customers appeared on a given list or were otherwise swept up in this surveillance program. Petitioners seek to seal no more than the information that would link those customers to this activity.

IV. CONCLUSION

For the above stated reasons, this Court should order that the personally identifying information of SMUD customers appearing in the Record be redacted and filed in identical form as the public redacted version of the Record filed today.

DATED: July 18, 2025

ELECTRONIC FRONTIER FOUNDATION

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