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**SAN MATEO COUNTY**

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11 P. GREGORY COSKO and DEBORAH COSKO

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN MATEO

14 UNLIMITED JURISDICTION

CIV532574  
MPAS  
Memorandum of Points and Authorities in Supp:  
1524250  


Greenfield

15 P. GREGORY COSKO and DEBORAH  
16 COSKO,

17 Plaintiffs,

18 vs.

19 JANE LIAO and JASON ZHANG,

20 Defendants.

21 JANE LIAO and JASON ZHANG,

22 Cross-Complainants,

23 vs.

24 P. GREGORY COSKO and DEBORAH  
25 COSKO,

26 Cross-Defendants.

Case No: CIV 532574

**CROSS-DEFENDANTS'  
MEMORANDUM IN SUPPORT OF  
MOTION FOR ORDER (1) MODIFYING  
STATEMENT OF DECISION; OR, IN  
THE ALTERNATIVE, (2) SEALING  
COURT RECORDS; OR, IN THE  
ALTERNATIVE, (3) REDACTING  
STATEMENT OF DECISION  
AND SEALING THIS MOTION**

Date: February 4, 2019 **BY FAX**  
Time: 9:00 A.M.  
Dept.: 23, Courtroom 8A  
Judge: Hon. V. Raymond Swope

Complaint Filed: February 19, 2015

Cross-Complaint Filed: April 24, 2015

Trial Dates: March 22-24, 2017  
March 29-30, 2017  
June 12-16, 2017  
July 5, 2017  
October 17, 2017

**PUBLIC:  
Redacts Materials from  
Conditionally Sealed Record**

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Cross-Defendants P. GREGORY COSKO and DEBORAH COSKO ("*Mr. and Mrs. Cosko*" or the "*Coskos*") submit the following Memorandum in support of their Motion for an Order (1) Modifying Statement of Decision; or, in the alternative, (2) Sealing Court Records; or, in the alternative, (3) Redacting Statement of Decision and Sealing this Motion ("*Motion*");

1. INTRODUCTION.

In its written Statement of Decision, the Court sua sponte determined that [REDACTED]  
[REDACTED]  
(See Statement of Decision (Jul. 16, 2018) ("*July 16, 2018 Decision*") at 14:3-4; 13:9-10.)<sup>1</sup>

The Court's determination of these purported "facts" is not supported anywhere in the files and records of this case, including the 8-day trial transcript. More important, the Court's determination amounts to a violation of the Coskos' fundamental constitutional right to due process inasmuch as they were *not* afforded any opportunity to be heard or present evidence before the Court made its determination.

[REDACTED]

In this motion, the Coskos respectfully request the Court to modify its July 16, 2018 Decision to expunge its "additional findings of fact," as set forth in its Decision at page 13, commencing at line 9, with the words [REDACTED]

[REDACTED]

<sup>1</sup> The text of the Court's Statement of Decision does not line up with the left margin line numbers. In order to avoid confusion, the Coskos will cite the actual line number of the text without regard to the left margin line numbers.

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[REDACTED]

In the alternative, the Coskos request the Court to seal its July 16, 2018 Decision in order to prevent [REDACTED]

[REDACTED]

In the alternative, if the Court is unwilling to seal its July 16, 2018 Decision, then the Coskos request the Court to redact the objectionable portions thereof that are identified in this Memorandum.

Finally, and in any event, the Coskos request the Court to seal this Motion.

**2. STATEMENT OF FACTS.**

This case involves a "serious and intense" residential neighbor dispute between the Coskos, on the one hand, and Ms. Liao and Mr. Zhang, on the other hand.<sup>2</sup> (See Reporter's Transcript of Court Trial (Feb. 26, 2018) ("*RT*") at 3:9-10.)

The dispute arose out of a retaining wall that separates the parties' properties. The Coskos constructed the retaining wall in 2010. In 2011, Cross Complainants began performing extensive remodeling work at their property. In 2014, as part of their work, Cross-Complainants began construction of a new driveway using concrete pavers. "In order to install the driveway pavers, [Cross-Complainants'] contractor believed it was necessary to temporarily lower the grade of the driveway, including the area adjacent to the Coskos' driveway." (Statement of Decision at 2:16-18.) Before commencing the driveway construction, Cross-Complainants' contractor excavated beneath and removed a portion of

<sup>2</sup> For ease of reference, Ms. Liao and her former husband, Jason Zhang, will be referred to collectively as "**Cross-Complainants**," unless otherwise indicated.

1 the below-ground concrete footing supporting the retaining wall, which resulted in a loss of  
2 lateral and subjacent support. (*Id.* at 3:18-20.) The retaining wall is located entirely on the  
3 Cosko property.

4 Understandably, the Coskos were upset and dismayed that Cross-Complainants'  
5 contractor had decided unilaterally to destroy a portion of their retaining wall and  
6 permanently lower the grade without first informing them or seeking their permission.<sup>3</sup>

7 On March 31, 2014, the City of Burlingame notified the parties that the work being  
8 performed by Cross-Complainants' contractors had "compromised" the integrity of the  
9 retaining wall. It directed Cross-Complainants to cease all work "in the area immediately  
10 adjacent to the retaining wall." (See Trial Exh. 7, Letter from Joseph Cyr (Chief Building  
11 Official) to Gregory Cosko (Mar. 31, 2014).)<sup>4</sup>

12 Mr. and Mrs. Cosko filed suit against Cross-Complainants on February 19, 2015. In  
13 turn, Cross-Complainants filed a cross-complaint against the Coskos, which was  
14 subsequently amended four times. In their Third Amended Cross-Complaint, Cross-  
15 Complainants alleged ten causes of action, including cause of action for (1) Negligence; (2)  
16 Intentional Infliction of Emotional Distress; (3) Nuisance; and (4) Trespass. (See Third  
17 Amended Cross-Complaint (Mar. 1, 2016).)

18 The parties settled the main action before trial. The cross-action was tried for eight  
19 days over an eight-month period.

20 On February 26, 2018, the Court orally rendered its Proposed Statement of Decision  
21 finding in favor of Cross-Complainants. Five months later, the Court issued its July 16,  
22 2018 Decision, which substantially differed from its oral Proposed Statement of Decision.  
23 In its Decision, the Court made the following "additional findings of fact":

24  
25 <sup>3</sup> It was only *after* the damage to the Coskos' retaining wall and footing had occurred that Cross-  
26 Complainants asserted that a portion of the below-ground footing was encroaching a few inches onto  
their property.

27 <sup>4</sup> All trial exhibits referred to in this Memorandum are attached to and authenticated in the  
28 Declaration of Stephanie Southwick in Support of Cross-Defendants' Motion for Order Modifying  
Statement of Decision [etc.] (Nov. 28, 2018) ("Southwick Decl.").

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During the course of this trial, which spanned several days over a period of months, this court closely observed the demeanor of the parties. The observed behavior of the parties is something that is not evident or determinable from a cold record. Consequently, this Court believes it is imperative that its observations are described in this decision. The Court also believes the Coskos' courtroom conduct is essential in proving an element of intent to cause harm to the Cross-Complainants, and to prove the emotional damage arising from the distress caused by the Cross-Defendants. Specifically, the Court observed and found Ms. Cosko, in particular, behave in a manner that was resentful, rancorous and malevolent. This behavior was evident especially during her testimony about the Liao and Zhang family. Her hostility was palpable.

There is also evidence in the record that the Coskos offered to purchase the Liao and Zhang property for their son not long after Cross-Complainants bought their home. The Coskos' desire to buy the Cross-Complainants' home may ostensibly be an innocent gesture in a vacuum. However, when the court considers the Coskos' use of the camera on the fencepost, the disrespectful treatment of Ms. Liao and her construction workers, the constant harassment of Ms. Liao by e-mail, and their constant e-mail complaints to the City of Burlingame, along with the observed hostility of the Coskos in open court, and the effort to buy the property from Liao and Zhang,

[REDACTED]

(July 16, 2018 Decision at 13:11-19; 14:3-4 (emphasis added).)<sup>5</sup>

**3. DISCUSSION AND ANALYSIS.**

**A. There is absolutely no evidence to support the Court's finding**

[REDACTED]

[REDACTED]

Nor did they do so in their First Amended Cross-Complaint (Apr. 16, 2015), Second Amended Cross-Complaint (Feb. 16, 2016), or Third Amended Cross-Complaint (Mar. 1, 2016).

[REDACTED]

(See RT (Mar. 22, 2017) at 4:15-27:1.) Nor did they do so in their Closing Argument. (See RT (Oct. 17, 2017) at 61:12-90:21.) Moreover, even a

<sup>5</sup> We assume here that the Court is using the root words "rancor" and "malevolent" in their usually understood sense. "Rancor" is defined as "bitter deep-seated ill will." (Merriam Webster, Inc., *Webster's Ninth New Collegiate Dictionary* (1986) at p. 974.) "Malevolent" means wishing or having "intense often vicious ill will, spite, or hatred." (*Id.* at p. 720.)

1 cursory review of the Reporter's Transcript of Court Trial shows that [REDACTED]  
2 [REDACTED]

3 So too, nowhere in their Closing Brief do Cross-Complainants assert that the Coskos  
4 were guilty of racism. Indeed, among the litany of the Coskos' *thirty-one* purported acts and  
5 omissions, which, Cross-Complainants argued, established that Cross-Defendants had  
6 caused them emotional distress, [REDACTED] (See  
7 Cross-Complainants' Closing Brief (Sept. 5, 2017) at pp. 6-10.)

8 Most telling, however, is that nowhere in its oral Proposed Statement of Decision did  
9 the Court even suggest (let alone state) that the Coskos' purported "hostile behavior" toward  
10 Cross-Complainants "[REDACTED]"  
11 [REDACTED] 6

12 The Court's conclusion that Mr. and Mrs. [REDACTED] is based *solely* on its  
13 following "additional findings":

14 There is also evidence in the record that the Coskos offered to purchase  
15 the Liao and Zhang property for their son not long after Cross-Complainants  
16 bought their home. The Coskos' desire to buy the Cross-Complainants' home  
17 may ostensibly be an innocent gesture in a vacuum. However, when the court  
18 considers the Coskos' use of the camera on the fencepost, the disrespectful  
19 treatment of Ms. Liao and her construction workers, the constant harassment  
20 of Ms. Liao by e-mail, and their constant e-mail complaints to the City of  
21 Burlingame, along with the observed hostility of the Coskos in open court, and  
22 the effort to buy the property from Liao and Zhang [REDACTED]

23 (July 16, 2018 Decision at 13:20-24-19; 14:1-5.) Based on these findings, the Court found  
24 that "the conduct on the part of the Coskos taken in whole was a campaign that was  
25 malicious in nature to constitute the award of [\$250,000 in] punitive damages." (*Id.* at 17:9-  
26 13.)

27 Mr. and Mrs. Cosko are both second-generation Americans. Mr. Cosko's grand-  
28 parents emigrated from Slovakia and Ireland. Mrs. Cosko's grandparents emigrated from

29 \_\_\_\_\_  
30 <sup>6</sup> In its Proposed Statement of Decision, the Court stated only that it found that the Coskos'  
31 conduct "taken in whole was a campaign that was malicious in nature to constitute the award of punitive  
32 damages." (RT (Feb. 26, 2018) at 14:12-17.) The Court's finding in its oral Proposed Statement of  
33 Decision is virtually word-for-word the same as its finding in its July 16, 2018 Decision.

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Mexico and Germany.

[REDACTED]

(See Declaration of Deborah Cosko in Support of Cross-Defendants' Motion for Order Modifying Statement of Decision [etc.] (Nov. 14, 2018) ("D. Cosko Decl.") at ¶ 9.)

[REDACTED]

The Court's unsupported and insupportable finding that the

[REDACTED]

(See G. Cosko Decl., ¶ 5; D. Cosko Decl., ¶ 4.)

[REDACTED]

<sup>7</sup> See Declaration of P. Gregory Cosko in Support of Cross-Defendants' Motion for Order Modifying Statement of Decision [etc.] (Nov. 14, 2018) ("G. Cosko Decl.") at ¶ 6; ("D. Cosko Decl.") at ¶ 5).

1 [REDACTED]  
2 [REDACTED]  
3 **B. Mr. and Mrs. Cosko Request the Court to Modify its Statement of**  
4 **Decision to eliminate any award of punitive damages.**

5 A trial court may not award punitive damages unless "it is proven by clear and  
6 convincing evidence that the defendant has been guilty of oppression, fraud, or malice."  
7 (Civ. Code § 3294.) Here, the purported evidence supporting the Court's finding that the  
8 Coskos are guilty of "oppression, fraud, or malice" does not satisfy the "preponderance of  
9 the evidence" standard let alone the "clear and convincing evidence" standard.

10 First, no evidence was produced at trial contradicting the fact that in 2011 – three years  
11 before the parties' dispute arose – the Coskos informed Ms. Liao that they had some  
12 interest in purchasing Cross-Complainants' property for purpose of investment. Mr. Cosko  
13 also told Ms. Liao that if she and here husband were "committed" to holding onto their  
14 property, he (Mr. Cosko) knew that all of them would be "great neighbors." (Trial Exh. 17,  
15 Email from Gregory Cosko to Jane Liao (Aug. 15, 2011).)<sup>8</sup> In response to Mr. Cosko's  
16 email, Ms. Liao informed Mr. Cosko that they were "going to keep the house." (*Id.*, Email  
17 from Jane Liao to Gregory Cosko (Aug. 17, 2011).) Mr. Cosko then thanked Ms. Liao for  
18 giving "thought to our interest." He agreed that her place would be worth \$1.5 Million of it  
19 remained a 3-bedroom, 2-bath house." A five bedroom house, he said, "will be worth even  
20 more and that is good for all of us." (*Id.*, Email from Greg Cosko to Jane Liao (Aug. 18,  
21 2011).) *At no point, did the Coskos ever offer to purchase Cross-Complainants' property,*  
22 *as the Court has asserted in its July 16, 2018 Decision.*

23 Second, as the Court concluded, the Coskos' "use of the camera on the fencepost" did  
24 not constitute an actionable invasion of privacy." (See July 16, 2018 Decision at 15:3-11.)

25 Third, there is no evidence to support the Court's finding that the somewhat curt emails

26 \_\_\_\_\_  
27 <sup>8</sup> See Trial Exh. 17, Email from Greg Cosko to Jane Liao (Aug. 16, 2011) ["By the way, we are  
28 looking at a second property and just mention it if you guys are having challenges getting what you want  
out of the city . . . You never know, we might be able to work something out, but if you are committed  
to renovating your property, I know we'll both be great neighbors"].

1 that Mrs. Cosko sent to Cross-Complainants were part of a "general harassment campaign"  
2 against them. (See July 16, 2018 Decision at 3:21-22.)

3 For example, in December 2014, Mrs. Cosko informed Ms. Liao that her construction  
4 workers were trespassing and leaving debris on the Cosko property. She also informed  
5 Ms. Liao that the workers had destroyed survey markers on their property. Mrs. Cosko  
6 insisted that the workers not destroy the survey markers. (See Cross-Complainants' Exh.  
7 52, Email from Ms. Cosko to Ms. Liao (Dec. 22, 2018).) On January 2, 2015, Ms. Cosko  
8 again requested Ms. Liao to make sure that her workers did not throw "construction debris"  
9 on the Cosko property. (See Cross-Complainants' Exh. 53, Email from Ms. Cosko to Ms.  
10 Liao (Jan, 2, 2015).) A few days later, Ms. Cosko informed Ms. Liao that her workers were  
11 wrongfully performing an excavation on the Cosko property. Mrs. Cosko insisted: "Do not  
12 trespass on our property again. Instruct your workers to stay off our property. Stop  
13 destroying our property." (See Cross-Complainants' Exh. 57, Email from Ms. Cosko to Ms.  
14 Liao (Jan. 8, 2015).)

15 It cannot plausibly be said that these three emails over a 17-day period amount to a  
16 "general harassment campaign" or to "constant harassment. Moreover, the Coskos had  
17 every right to demand that Cross-Complainants cease from trespassing on the Cosko  
18 property, continuing to undermine their retaining wall, and destroying their survey markers.

19 Finally, it is well-established that the Coskos' "email complaints" to the City of  
20 Burlingame not only are constitutionally protected under the federal and state constitutions  
21 guarantying a person's right to petition the government, but they also are absolutely  
22 privileged under Civil Code section 47(b).

23 In summary, the Court's finding that the Coskos are "guilty of oppression, fraud, or  
24 malice" is without any evidentiary basis let alone a "clear and convincing" evidentiary basis.  
25 For this reason, Mr. and Mrs. Cosko respectfully request the Court to exercise its inherent  
26 authority and modify its July 16, 2018 Decision to eliminate any award of punitive damages.  
27 (See *Bay World Trading, Ltd. v. Nebraska Beef, Inc.* (2002) 101 Cal.App.4th 135, 141. See  
28

1 also *Phillips v. Phillips* (1953) 41 Cal.2d 869, 874-875 [until judgment is entered a trial court  
2 may change both its *conclusions of law and fact* and enter a judgment different than the  
3 one first announced]. In the alternative, the Coskos request the Court to exercise its  
4 inherent authority and modify its July 16, 2018 Decision to reduce the punitive damages  
5 award to \$5,000, as it originally did in its February 24, 2018 oral Proposed Statement of  
6 Decision.

7 C. [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 In rendering its July 16, 2018 Decision [REDACTED] the Court  
11 denied them any opportunity to contest the Court's finding and to present evidence  
12 establishing [REDACTED] This denial  
13 constitutes a violation of the Coskos' fundamental right to due process under both the  
14 federal and state constitutions. (See U.S. Const., Fourteenth Amendment; Cal. Const., Art.  
15 I, sec. 7.)

16 In *Moore v. California Minerals Products Corp.* (1953) 115 Cal.App.2d 834, the Court  
17 of Appeal reversed a judgment on the pleadings entered against the plaintiff. The trial court  
18 entered the judgment sua sponte following the parties' opening statements and without  
19 affording the plaintiff any opportunity to contest the court's ruling. In reversing the judgment,  
20 the Court of Appeal stated:

In our research, we have not discovered another case in which judgment was rendered upon a point of law raised by the court with no warning of counsel and no opportunity given to ward off the blow. Elementary principles of due process support our conclusion that if, during a trial, the court, sua sponte, unearths a point of law which it deems to be decisive of the cause, the party against whom the decision impends has the same right to be heard before the decision is announced that he has to produce evidence upon the issues of fact. *Denial of that opportunity deprived defendant of a substantial right to which it was entitled by virtue of the guarantee of due process.*

26 (*Moore, supra*, 115 Cal.App.2d at 837 (emphasis added), citing *Universal Consol. Oil Co.*  
27 *v. Byram* (1944) 25 Cal.2d 353, 361.)

1 A trial court may not award punitive damages unless "it is proven by clear and  
2 convincing evidence that the defendant has been guilty of oppression, fraud, or malice."  
3 (Civ. Code § 3294.) Here, the purported evidence supporting the Court's finding that the  
4 Coskos are guilty of "oppression, fraud, or malice" does not satisfy the "preponderance of  
5 the evidence" standard let alone the "clear and convincing evidence" standard.

6 First, no evidence was produced at trial contradicting the fact that in 2011 – three years  
7 before the parties' dispute arose – Mr. Cosko informed Ms. Liao that he had some interest  
8 in purchasing Cross-Complainants' property for "investment purposes." (See Email from  
9 Greg Cosko to Jane Liao (Aug. 16, 2011), which is included in Cross-Complainants' Exhibit  
10 17.)

11 Second, as the Court concluded, that the Coskos' "use of the camera on the fencepost"  
12 did not constitute an actionable invasion of privacy." (See July 16, 2018 Decision at 15:3-  
13 11.)

14 Third, there is no evidence to support the Court's finding that the somewhat curt emails  
15 that the Mrs. Cosko sent to Ms. Liao were part of a "campaign" of harassment or that they  
16 amount to "constant harassment." As discussed above, it cannot plausibly be said that  
17 three emails over a 17-day period amount to a "campaign" of harassment. But, in any event,  
18 even if it is assumed that the Coskos were angry (or even very angry) with Cross-  
19 Complainants, it is unrefuted that Coskos' anger is attributable *solely* to the "intense" dispute  
20 [REDACTED] (See D. Cosko Decl., ¶ 6 ["I was angry  
21 with Ms. Liao and the situation itself"];  
22 [REDACTED]  
23 [REDACTED].)

24 Finally, it is well-established that the Coskos' "email complaints" to the City of  
25 Burlingame not only are constitutionally protected under the federal and state constitutions  
26 guarantying a person's right to petition the government, but they also are absolutely  
27 privileged under Civil Code section 47(b).  
28

1 In summary, the Court's finding that the Coskos are "guilty of oppression, fraud, or  
2 malice" is without any evidentiary basis let alone a "clear and convincing" evidentiary one.

3 In its Proposed Statement of Decision, the Court awarded Cross-Complainants  
4 \$250,000 in diminution-in-value damages and \$5,000 in punitive damages. (See RT (Feb.  
5 26, 2018) at 14:12-17.)<sup>9</sup> However, in its July 16, 2018 Decision, the Court reversed its  
6 \$250,000 in diminution-in-value damages award while at the same time increasing its  
7 punitive damages award to \$250,000. In doing so, the Court denied Mr. and Mrs. Cosko

8 [REDACTED]  
9 [REDACTED] This denial constitutes a violation of the Coskos' fundamental right  
10 to due process under both the federal and state constitutions. (See U.S. Const., Fourteenth  
11 Amendment; Cal. Const., Art. I, sec. 7.)

12 **D. This Court has inherent authority to modify its July 16, 2018 Decision**  
13 **at any time before entry of judgment.**

14 A trial court had inherent power to amend its statement of decision at any time before  
15 judgment is entered. (See *Bay World Trading, Ltd. v. Nebraska Beef, Inc.* (2002) 101  
16 Cal.App.4th 135, 141.) Indeed, "[u]ntil a judgment is entered, it is not effectual for any  
17 purpose (Code Civ. Proc., § 664), and at any time before it is entered, the court may change  
18 its *conclusions of law* and enter a judgment different from that first announced. Moreover,  
19 a judge who has heard the evidence may at any time before entry of judgment amend or  
20 change his *findings of fact*." (*Phillips v. Phillips* (1953) 41 Cal.2d 869, 874-875.)

21 Here, the most straightforward way for the Court to deal with its unfounded "additional  
22 findings" that the Coskos' "hostile behavior" toward Cross-Complainants "[REDACTED]"

23 [REDACTED]  
24 [REDACTED] is simply to modify its July 16, 2018 Decision.

25 \_\_\_\_\_  
26 <sup>9</sup> In its oral Proposed Statement of Decision, the Court awarded Cross-Complainants total  
27 damages of \$443,400. However, in its July 16, 2018 Decision, the Court awarded Cross-Complainants  
28 total damages of \$438,400 – \$5,000 less than its initial award. Apparently, the Court increased its  
punitive damages award fifty-fold in order to reach what appears to have been the Court's pre-  
determined conclusion that Cross-Complainants should receive damages in an amount not less than  
\$438,400.

1       Should the Court decide to do so, the Coskos request the Court to substantially revise  
2 its July 16, 2018 Decision commencing at line 9, with the words "Further, it appears to this  
3 Court . . .," through page 14, concluding at line 5, with the words ". . . emotional harm to Ms.  
4 Liao and Mr. Zhang."

5       In any event, the Coskos also request the Court to delete altogether the following  
6 "findings":

- 7       • "Further, it appears to this Court that the behavior of the Coskos may  
8 have been a calculated effort to drive Cross-Complainants Liao and  
9 Zhang away from the neighborhood." (July 16, 2018 Decision at 13:9-  
10 10);
- 11       • "Specifically, the Court observed and found Ms. Cosko, in particular,  
12 behave in a manner that was resentful, rancorous and malevolent. This  
13 behavior was evident especially during her testimony about the Liao  
14 and Zhang family. Her hostility was palpable" (*Id.* at 14:4-5); and
- 15       • "There is also evidence in the record that the Coskos offered to purchase  
16 the Liao and Zhang property for their son not long after Cross-  
17 Complainants bought their home. The Coskos' desire to buy the Cross-  
18 Complainants' home may ostensibly be an innocent gesture in a  
19 vacuum. However, when the court considers the Coskos' use of the  
20 camera on the fencepost, the disrespectful treatment of Ms. Liao and her  
21 construction workers, the constant harassment of Ms. Liao by e-mail,  
22 and their constant e-mail complaints to the City of Burlingame, along with  
23 the observed hostility of the Coskos in open court, and the effort to buy  
24 the property from Liao and Zhang, [REDACTED]

25       [REDACTED]<sup>10</sup> (*Id.* at 13:20-24; 14:1-5.)

26       Finally, should the Court elect to revise its July 16, 2018 Decision, the Coskos request  
27 that the Court seal its July 16, 2018 Decision and this Motion. Obviously, nothing would be  
28 gained if the Court were to modify its Statement of Decision without also sealing its July 16,  
2018 Decision and this Motion.

29       <sup>10</sup> The Coskos respectfully suggest that this paragraph be reworded as follows:

30       When the court considers the Coskos' use of the camera on the fencepost, the  
31 disrespectful treatment of Ms. Liao and her construction workers, the constant  
32 harassment of Ms. Liao by e-mail, and their constant e-mail complaints to the City of  
33 Burlingame, along with the observed hostility of the Coskos in open court, when taken  
34 together, it appears to the Court that the conduct of the Coskos supports a finding of  
35 intent to cause emotional harm to Ms. Liao and Mr. Zhang.

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**E. In the alternative, the Court should seal its July 16, 2018 Decision under rules 2.550 and 2.551 of the California Rules of Court.**

Section 2.550(d) of the California Rules of Court provides:

The court may order that a record be filed under seal only if it expressly finds facts that establish:

- (1) There exists an overriding interest 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 overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

Rule 2.551 provides that a party requesting that a record be filed under seal must file a motion for an order sealing the record. The motion must be accompanied by a memorandum and a declaration containing facts sufficient to justify the sealing.

**F. Mr. and Mrs. Cosko have an overriding interest in protecting [REDACTED]**

Mr. Cosko is the president and chief executive officer of Hathaway Dinwiddie Construction Company, a large construction firm based in San Francisco. Hathaway Dinwiddie has been doing business for more than a century. Mr. Cosko, who joined the company in 1975, has headed the company for the last 22 years.<sup>11</sup>

In view of the Court's unsupported finding [REDACTED] it is not an exaggeration to state that [REDACTED]

<sup>11</sup> Hathaway Dinwiddie has constructed some of the most iconic buildings in San Francisco, including Grace Cathedral, the Transamerica Pyramid, and the Salesforce Tower, the tallest building in San Francisco. In Los Angeles, the company also constructed the iconic Getty Center, one of the world's major cultural institutions.

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[REDACTED]

It is indisputable that the Coskos have a substantial interest in protecting

[REDACTED]

We turn now to the issue whether the Coskos' substantial interest overrides the public's right of access.

**G. The Coskos' overriding interest in protecting**

[REDACTED]

As the Court has observed, this case involves a "serious and intense" between two neighbors about the location of a retaining wall. But, in the end, this case involves *only* a quotidian dispute between two neighbors. None of the parties are public figures. Under these circumstances, it is irrefutable that this case does not raise any substantial issue of public interest.

It may be that no member of the public or the press will examine the Court's July 16, 2018 Decision. But, in this age of social media, if someone with an underlying motive were to do so, it is probable that this Court's unsupported finding [REDACTED] could be indiscriminately broadcast far and wide. And, of course, if such dissemination were to occur, [REDACTED]

[REDACTED]

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1 As discussed in the previous section of this Memorandum, the Coskos have a  
2 substantial interest

[REDACTED]

7 The parties have filed scores of documents with the San Mateo County Clerk's Office  
8 in this case. These documents, particularly the pleadings, describe in excruciating detail  
9 the facts underlying the parties' dispute. Thus, members of the public – should they seek  
10 information about the nature of the parties' dispute – would not be hindered at all in pursuing  
11 their inquiries. They merely would be precluded from

[REDACTED]

13 **H. A substantial probability exists that the Coskos' overriding interest  
14 will be prejudiced if the Court declines to seal its July 16, 2018  
15 Decision as well as this Motion.**

15 In this dystopian era,

[REDACTED]

21 As the Court of Appeal held in the case,

In that case,

informed

that a large number of its employees

informed

that its use

could subject

to criminal liability.

then contacted these employees

and provided them with a substantial opportunity

Almost all

of the employees

[REDACTED]

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ignored [REDACTED] As a result, [REDACTED] was forced to terminate their employment.

Thereafter, several of the discharged employees began [REDACTED] The employees [REDACTED] proffered reason for their termination was a pretext and, in fact, [REDACTED] had terminated their employment [REDACTED]

[REDACTED] sued the employees [REDACTED] The employees then filed an anti-SLAPP motion under Code of Civil Procedure section 425.16 in which they sought dismissal of the suit. The trial court denied the employees' motion. Although the trial court found that the employees' actions constituted "protected activities" under the statute, it also found that [REDACTED] had established a substantial probability that it would prevail on its [REDACTED] claim. The employees appealed, contending that [REDACTED]

[REDACTED]

The Court of Appeal affirmed the trial court's ruling. The Court first observed that under some circumstances [REDACTED]

[REDACTED]

However, the Court found, the employees [REDACTED]

[REDACTED]

(Id.)

Greenfield

1 Here, of course, the Coskos [REDACTED] Nevertheless, the Court can  
2 still do the right thing to prevent any further harm [REDACTED] by sealing  
3 its July 16, 2018 Decision as well as this Motion.

4 **I. The proposed sealing of the Court's July 16, 2018 Decision and this**  
5 **Motion is narrowly tailored to protect both [REDACTED]**  
6 **[REDACTED] as well as the public's right of access.**

7 There would be no issue here if the Court had simply summarized in its July 16, 2018  
8 Decision those facts the Court found that Cross-Complainants were entitled to the relief that  
9 they sought in this action. But the Court did not limit its findings to these facts. Instead, it  
10 made "additional findings of fact [REDACTED]

11 [REDACTED] As discussed above,  
12 there is absolutely no evidentiary support for these "additional" findings. Certainly, the  
13 Court's perception that Mrs. Cosko was "resentful, rancorous and malevolent" during her  
14 examination at trial – even if it were accurate – [REDACTED]

15 Sealing the Court's July 16, 2018 Decision is narrowly tailored to avoid [REDACTED]  
16 [REDACTED] As discussed  
17 above, sealing the Decision would not preclude members of the public from obtaining  
18 information about the parties' dispute. They can always obtain such information by  
19 examining the pleadings in this action, especially Cross-Complainants' numerous Cross-  
20 Complaints.

21 However, if sealing the July 16, 2018 Decision is unacceptable, then Mr. and Mrs.  
22 Cosko request the Court to redact the offending portions of the Decision as set forth in the  
23 Appendix attached hereto.

24 Finally, the Coskos request the Court to seal this Motion. Obviously, nothing would be  
25 gained if the Court were to seal its July 16, 2018 Decision without also sealing this Motion  
26 requesting the Court to seal its Decision.

27 [REDACTED]  
28 [REDACTED]

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**J. No less restrictive means exist to achieve the Coskos' overriding interest.**

The Cosko's are requesting the Court to seal its July 16, 2018 Decision as well as this Motion in order to protect their substantial [REDACTED]. There are no less restrictive means to achieve protection of their substantial interest.

**4. CONCLUSION.**

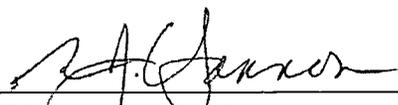
[REDACTED] The Court's findings simply are not supported by any evidence adduced at trial.

Accordingly, for the reasons set forth herein, Mr. and Mrs. Cosko respectfully request the Court to grant this Motion.

Respectfully submitted,

Dated: November 29, 2018

GREENFIELD DRAA & HARRINGTON LLP

By:   
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P. GREGORY COSKO and DEBORAH COSKO

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APPENDIX

Mr. and Mrs. Cosko respectfully request the Court to redact its July 16, 2018 Decision as follows:

The photography and videotaping of Ms. Liao and the construction workers, her back and side yards are sufficiently outrageous to support a finding of intentional infliction of emotional distress against the Coskos.

All of the videotaping, the e-mails, complaints, and letters to the City, taken together, constitute a deliberate and hostile campaign by the Coskos to cause emotional harm to the Liao and Zhang family. Further, it appears to this Court that the behavior of the Coskos may have been a calculated effort to drive Cross-Complainants Liao and Zhang away from the neighborhood.

During the course of this trial, which spanned several days over a period of months, this court closely observed the demeanor of the parties. The observed behavior of the parties is something that is not evident or determinable from a cold record. Consequently, this Court believes it is imperative that its observations are described in this decision. The Court also believes the Coskos' courtroom conduct is essential in proving an element of intent to cause harm to the Cross-complainants, and to prove the emotional damage arising from the distress caused by the Cross-Defendants. Specifically, the Court observed and found Ms. Cosko, in particular, behave in a manner that was resentful, rancorous and malevolent. This behavior was evident especially during her testimony about the Liao and Zhang family. Her hostility was palpable.

There is also evidence in the record that the Coskos offered to purchase the Liao and Zhang property for their son not long after Cross-Complainants bought their home. The Coskos' desire to buy the Cross-Complainants' home may ostensibly be an innocent gesture in a vacuum. However, when the court considers the Coskos' use of the camera on the fencepost, the disrespectful treatment of Ms. Liao and her construction workers, the constant harassment of Ms. Liao by e-mail, and their constant e-mail complaints to the City of Burlingame, along with the observed hostility of the Coskos in open court, and the effort to buy the property from Liao and Zhang



(July 16, 2018 Decision at 13:11-14:5 (strikethrough added).)