2nd Civil No. B275566

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE SECOND APPELLATE DISTRICT

PASADENA POLICE OFFICERS ASSOCIATION; OFFICER MATTHEW GRIFFIN; OFFICER JEFFREY NEWLEN,

Plaintiffs and Respondents,

v.

CITY OF PASADENA,

Defendant and Respondent.

Civil Case No. BC556464

On Appeal From the Superior Court
of California, County of Los Angeles
Case Number: BC556464
Judge: Honorable James C. Chalfant

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES, CALIFORNIA STATE ASSOCIATION OF COUNTIES, CALIFORNIA SPECIAL DISTRICTS ASSOCIATION, AND THE CALIFORNIA LAW ENFORCEMENT ASSOCIATION OF RECORDS SUPERVISORS, INC. TO FILE AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENT

SHAWN HAGERTY, Bar No. 182435
HONGDAO NGUYEN, Bar No. 268994
BEST BEST & KRIEGER LLP
18101 Von Karman Avenue, Suite 1000
Irvine, CA 92612
(949) 263-2600; (949) 260-0972-Facsimile
Shawn.Hagerty@bbklaw.com
HongDao.Nguyen@bbklaw.com
Attorneys for *Amici Curiae*
League of California Cities, California State Association of Counties, California Special Districts Association, and California Law Enforcement Association of Records Supervisors, Inc.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

State Cases

TABLE OF AUTHORITIES
(continued)

Page

State Statutes

Rules

Other Authorities

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION ONE:

This Application is submitted by the League of California Cities ("League"), California State Association of Counties ("CSAC"), the California Special District Association ("CSDA"), and the California Law Enforcement Association of Records Supervisors, Inc. ("CLEARS") (collectively, "*Amici*"). Pursuant to Rule 8.200(c) of the California Rules of Court, *Amici* respectfully request leave to file the attached brief in support of Respondent City of Pasadena ("City").

The League is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

CSDA is a California non-profit corporation association consisting of approximately 1,000 special district members throughout the State.

These special districts provide a wide variety of public services to both suburban and rural communities, including water supply, treatment and distribution; sewage collection and treatment; fire suppression and emergency medical services; recreation and parks; security and police protection; solid waste collection, transfer, recycling and disposal; library; cemetery; mosquito and vector control; road construction and maintenance; pest control and animal control services; and harbor and port services. CSDA is advised by its Legal Advisory Working Group, comprised of special district attorneys throughout the state, which monitors litigation of concern to its members and identifies those cases that are of statewide significance. The CSDA Legal Advisory Working Group has identified this case as being of such significance.

CLEARS is a non-profit corporation. Membership consist of 492 Records Supervisors, Records Managers and associates from the law enforcement Records Units in the State of California. Responsibilities of the Records Units include but are not limited to the security, maintenance and dissemination of criminal records. CLEARS is an advocate for California Law Enforcement professionals tasked with compliance of statutes that pertain to the release of criminal offender record information ("CORI") and maintains an active position in regards to amendments and changes to the California Public Records Act ("CPRA"). CLEARS' focus and effort is to continue to educate our members on developing legislation and litigation that has potential to affect the way our agencies conduct business. CLEARS has identified this case as having such potential, and considers the case of substantial significance.

Counsel for *Amici* have reviewed the briefs on file in this case to date. *Amici* do not seek to duplicate arguments set forth in the briefs. Any overlap in the content of *Amici's* brief and others is minor. *Amici's* brief, as can be expected of statewide organizations whose members are California

cities, counties, special districts, and law enforcement professionals, emphasizes a "big picture" view of this case.

Among other things, the brief discusses the serious adverse impact on public entities, including every city, county, and special district throughout California, if the Court allows Intervenor Los Angeles Times ("Times") to recover all of its attorneys' fees in the underlying case, including fees spent on the reverse-CPRA action. The only success the Times obtained in the underlying case was a few pages of unredactions to a lengthy and sensitive law enforcement investigative report. Allowing the Times to obtain its fees above and beyond that narrow success would impose an undue burden on public agencies and would not further the public interest. We therefore believe the brief will aid this Court in its consideration of the case.

For these reasons, the League, CSAC, CSDA, and CLEARS respectfully request that the Court grant this Application, and accept the concurrently-filed *Amici* Brief.[1]

Dated: September 15, 2017

Respectfully Submitted,

By: _____

SHAWN HAGERTY
HONGDAO NGUYEN
Attorneys for *Amici Curiae*
League of California Cities, California State Association of Counties, California Special District Association, and California Law Enforcement Association of Records Supervisors, Inc.

---

[1] Pursuant to California Rule of Court 8.200(c)(3), the League, CSAC, CSDA, and CLEARS respectfully advise the Court that no party or counsel for a party in the pending appeal authored the proposed *Amici* brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than the *Amici*, its members or its counsel in the pending appeal.

PROPOSED ORDER

This Court, having read and considered Amici's Application, and good cause appearing therefore, IT IS HEREBY ORDERED that the Application is GRANTED, and the concurrently–lodged *Amici Curiae* Brief is FILED.

IT IS SO ORDERED.

Dated: _____, 2017

_____

PRESIDING JUSTICE

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION ONE:

I.

INTRODUCTORY STATEMENT

Amici Curiae League of California Cities ("League"), California State Association of Counties ("CSAC"), the California Special District Association ("CSDA"), and California Law Enforcement Association of Records Supervisors, Inc. ("CLEARS") (collectively, "*Amici*") respectfully submit this brief in support of Respondent City of Pasadena ("City"). *Amici's* brief asserts that this Court should affirm the trial court's fee awards because the City should not be forced to pay the Times' fees spent for the *entirety* of the underlying case. The bulk of those fees relate to a reverse California Public Records Act ("CPRA") action, in which the Court of Appeal upheld the City's decision to release a redacted report. The City does not contest its liability for the fees ordered by the trial court, and affirmance of the trial court's fee award aligns with both the CPRA and sound public policy.

II.

SUMMARY OF ARGUMENT

Like many CPRA disputes, this case involves a public agency called to balance its responsibilities under the State's open government laws while protecting legitimate privacy rights. The City was thrust into this dispute after it received a CPRA request for a report released after a fatal police shooting ("Report"). *Pasadena Police Officers Association v. Superior Court*, (2015) 240 Cal.App.4th 268, 277 ("PPOA"). The request prompted a reverse-CPRA action from the Pasadena Police Officers Association and the two officers involved in the shooting (collectively "PPOA") that sought

an order preventing the City from releasing *any portion* of the Report. *Id*. The Times challenged the PPOA's position and sought to have the entire Report released. *Id*. Caught between the PPOA and the Times, the City acknowledged that the Report was public, but proposed to redact the police officers' personnel information. *Id*. Ultimately, both the trial and appellate courts upheld the City's approach, except that the City was ordered by the appellate court to unredact approximately four pages of the Report. *Id.*, at p. 299. Now, the Times seeks *all* of its $352,422.30 of attorneys' fees and costs spent in both the reverse-CPRA portion of the litigation, as well as its time spent seeking the unredactions. Times' Opening Brief, pp. 57-58. If this Court upholds attorneys' fees for the Times, *Amici* urges the Court to limit those fees to time spent on the unredactions, only, for three reasons.

First, if the Court rules that public agencies are responsible for attorneys' fees in a reverse-CPRA action, it would expose public agencies to innumerable fees for which they have no control. By nature, reverse-CPRA actions place agencies in the middle of disputes between third parties and CPRA requestors. *See Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250. In such cases, agencies want to disclose records but are prevented by the action from doing so. Requiring public agencies to pay fees in a reverse-CPRA action would be unjust when the agency's hands are tied. Moreover, the facts show that from the beginning, the Times and the City agreed that the Report should be disclosed. *But for* the PPOA's reverse-CRPA action, the only dispute between the City and the Times would have been the breadth of redactions. The City has agreed to pay the Times' fees spent obtaining the unredactions, as ordered by the trial court, which is fair to both the parties.

Second, if the Court finds that the City is responsible for fees in the reverse-CPRA action, the City should only be liable for the fees associated with the unredactions. Here, the City redacted portions of the Report to

protect police officers' legitimately-held privacy rights. While the bulk of the redactions were found to be proper, the City was ordered to unredact a few, additional pages of the Report. Notably, this is not a case in which a public agency, in bad faith, hid documents from the public. Instead, this case demonstrates the difficulty public agencies face in redacting lengthy and sensitive documents with legal perfection. Each time a decision is made to apply an exemption, a public agency employee makes a judgment call, guided by the CPRA and case law. However, reasonable minds may differ on whether an exemption applies, and if so, to what extent. This is demonstrated by the numerous cases in which appellate courts have overturned trial court rulings on CPRA exemptions. Moreover, even when a public employee conscientiously carries out his or her duties under the CPRA, mistakes will occasionally and inevitably occur. Public agencies like the City have taken responsibility for their disclosures under the CPRA, and the City has agreed to pay the amount ordered by the trial court for the Times' efforts to unredact the Report. That is a reasonable and appropriate result.

Third, sound public policy supports a proportional imposition of legal fees in this matter. A decision supporting the Times' request for all of its attorneys' fees would beckon requestors to take a "kitchen sink" approach to records requests. Knowing that they could obtain all of their fees if they elicited minor errors in redactions, requestors would be motivated to make more burdensome CPRA requests. Public agencies and their employees are aware of the public's right to public documents and are diligent in carrying out their duties under the State's open government laws. However, no public agency has unlimited resources for fulfilling CPRA requests. Similarly, the courts do not have the capacity for the increase in CPRA litigation that is bound to result from a decision in the Times' favor. A ruling that incentivizes requestors to make onerous requests in hopes of

an attorneys' fees windfall would not be in the public interest.

III.

ARGUMENT

A. The Court Should Not Require Public Agencies To Pay For Attorneys' Fees In Reverse-CPRA Actions In Which Agencies Have Little To No Control

1. *Under the CPRA, public agencies have affirmative duties to disclose non-exempt, responsive records, and plaintiffs may statutorily seek their attorneys' fees if an agency fails to follow the CPRA*

The CPRA imposes a duty on public agencies to respond to records requests and prescribes the process of how agencies carry out that duty. Within 10 days of receiving a request, the agency must determine whether the agency has disclosable public records to provide. Gov. Code, § 6253, subd. (c). In that timeframe, the agency must also notify the requestor of its determination. When searching for potentially responsive records, public agencies must make a reasonable effort to locate and search requested records, including querying agency staff and consultants. *Community Youth Athletic Center v. City of National City*, (2013) 220 Cal.App.4th 1385, 1417-18. After conducting its search, there are only a limited number of possible responses that a public agency may give to the requestor. "If the search yielded no responsive records, the agency must so inform the requester. If the agency has located a responsive record, it must decide whether to: (1) disclose the record; (2) withhold the record; or (3) disclose the record in redacted form." *The People's Business, A Guide to the Public Records Act*, League of California Cities, Revised 2017, p. 24[2]; Gov't Code, § 6250 *et seq*. Though the statute does not define the deadline

[2] Found here: *https://www.cacities.org/Resources/Open-Government/THE-PEOPLE%E2%80%99S-BUSINESS-A-Guide-to-the-California-Pu.aspx*

in which a public agency must disclose responsive records to a requestor, the general rule is that disclosure should be as prompt as practicable. The CPRA provides, "[n]othing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records." Gov. Code, § 6253, subd. (d).

As keepers of the public's records, agencies largely hold the keys to whether they follow, or fail to follow, the CPRA. Under this statutory scheme, public agencies may be held liable if they do not carry out the strictures of the CPRA. Gov. Code, § 6259, subd. (d). As such, plaintiffs prevailing against public agencies in CPRA cases are statutorily allowed to seek attorneys' fees for their efforts spent seeking public records.

2. *A reverse-CPRA action leaves public agencies in legal limbo until outside, competing interests are appropriately balanced against the public's interest in disclosure*

Unlike a traditional CPRA case, public agencies have little to no control over the production of public records once a reverse-CPRA action commences. By nature, a reverse-CPRA action may arise when a requestor seeks the agency's disclosure of records and the agency "elects to disclose the record." *Marken, supra*, 202 Cal.App.4th at p. 1267. An interested third party may then seek to "obtain a judicial ruling precluding a public agency from improperly disclosing confidential documents." *Id*. Public agencies are then caught in the middle of a legal battle over the appropriate balance between these outside, competing interests.

The City attempted to reach the appropriate balance by releasing a redacted version of the Report to the public. But the PPOA sued the City in this textbook reverse-CPRA action to prevent the Report's disclosure. *PPOA, supra*, at p. 277. After the Times intervened to seek the Report's *full* disclosure, the City was stuck in legal limbo as the reverse-CPRA action proceeded. Specifically, the City was caught between its desire to

release to the public a Report redacted to preserve police officer privacy and the trial court's temporary restraining order preventing the City from doing so. *Id*. Once the reverse-CPRA action arose, the City was unable to appease either the PPOA or the Times' polarized perspectives.

Requiring public agencies like the City to pay for CPRA requestors' attorneys' fees in reverse-CPRA actions would be unjust. Unlike a pure CPRA action in which a public agency generally has control of whether it discloses a document or not, public agencies have little to no option as they wait for the reverse-CPRA action to resolve. These public agencies may also have little to no ability to control litigation costs, as the main dispute advances at the requestor's and interested third party's—and ultimately the trial court's—behest. Indeed, in its April 14, 2016 ruling, the trial court noted in the reverse-CPRA portion of the action, the "Times was principally opposed by PPOA throughout the litigation." 10 JA 2188. A ruling that finds the City liable for reverse-CPRA attorneys' fees could create a situation in which public agencies may be responsible for an innumerable amount of attorneys' fees over which they have no control. As such, *Amici* strongly urge the Court against creating a rule in which public agencies are held liable for attorneys' fees in reverse-CPRA actions.

3. *But for the reverse-CPRA action, the dispute between the Times and the City would not have been about the disclosure of the document, but would have been about the redactions*

The facts show that if the PPOA had not initiated a reverse-CPRA action, the only disagreement between the Times and the City would have been the redactions. According to this Court's chronology, on September 11, 2014, the City announced that "unless the court directed otherwise, *it planned to release a redacted copy of the Report* the following week. The City stated it intended to redact portions of the Report containing confidential police officer personnel records." *PPOA*, *supra*, at 277,

emphasis added. Less than a week later, the PPOA "filed an ex parte application seeking to enjoin the City from releasing any portion of the Report. The same day, the Times and others filed motions seeking to intervene in this action and writ petitions seeking to compel release of the Report *without redactions*." *Id*., emphasis added. The record reveals the Times' and City's alignment that the Report was a public record.

The Times also *admits* in its pleadings that the City was willing to disclose the Report. This is illuminated by the Times' repeated representation that the City made "excessive and unwarranted" redactions to the Report. Times' Opening Brief, pp. 3, 5, 10, 13, 43, 44, 49, 51, 53; Times' Reply Brief, pp. 14, 48. "Excessive" redactions (which they were not) are not equivalent to a wholesale withholding of a document. Rather, the Times' characterization highlights the City and the Times' *agreement* that the Report was a public document and subject to disclosure. As such, had the PPOA never appeared in this issue, the only sticking point between the Times and the City would have been: How much of the Report should the City redact to protect private police officer personnel information under the *Pitchess* statutes? The parties now know the answer to that question because it was resolved by the appellate court.

It would be unfair for this Court to require the City to pay the Times' attorneys' fees for the entire reverse-CPRA action when: the City wanted to disclose the Report; the City had no option to disclose the Report once the reverse-CPRA action commenced; and if the PPOA had never intervened, the only dispute between the City and the Times would have been a pure CPRA dispute over the redactions. The trial court properly exercised its discretion in its fee award, and the appellate court should uphold that result.

B. Public Agencies Should Not Be Unduly Burdened By Having To Pay The Entirety Of A Requestor's Fees When Agencies Are Unable to Redact Lengthy or Sensitive Documents with Legal Perfection

1. *Applying exemptions to potentially responsive records can be difficult, as illustrated by the number of cases in which the trial and appellate courts have disagreed*

If the Court finds that the City is responsible for fees in the reverse-CPRA action (which it should not), *Amici* urges the Court to hold the City liable for only the attorneys' fees the Times incurred to unredact the Report.

Throughout this case, the City correctly asserted that the Report was public but should be redacted to protect the police officers' legitimate privacy rights. *PPOA, supra*, at p. 290 ["[P]ortions of the Report culled from personnel information or officers' statements made in the course of the (police department's) administrative investigation of the McDade shooting are protected by the *Pitchess* statutes."] While the bulk of the redactions were found to be proper, the City was ordered to unredact a few additional pages of the Report. *Id.*, at. pp. 296-99. However, this is not a case in which a public agency, in bad faith, attempted to bury disclosable documents. Instead, this case demonstrates the difficulty in redacting lengthy and sensitive documents with legal precision.

The facts show that the trial court reviewed the City's proposed redactions, concurred with those redactions, and ordered the City to release the redacted Report. *Id.*, at p. 279. This Court later reviewed the redactions and found that the trial court too broadly applied CPRA exemptions. *Id.*, at p. 296. The difference in opinion between the trial and appellate courts shows the difficulty in applying exemptions to lengthy and sensitive public records.

Though there is little case law on the issue of CPRA redactions,

there is an abundance of case law that demonstrates the complexities involved in deciding when a record should or should not be exempt. In many of these cases, the trial and appellate courts—similar to this case—disagreed on whether, or to what extent, an exemption applies. For example, in *San Gabriel Tribune v. Superior Court*, an appellate court overturned a trial court's ruling that a waste disposal company's financial statements were exempt from disclosure as "official information" or "trade secrets." (1983) 143 Cal.App.3d 762. In *Wilson v. Superior Court*, an appellate court overturned a trial court's decision granting a newspaper's petition for copies of applications submitted to California's then-governor by potential appointees for a county board seat. (1996) 51 Cal.App.4th 1136. That case turned on the issue of whether information in the applications fit under the "deliberative process privilege." *Id*. In *CBS Broadcasting Inc. v. Superior Court (State Dept. of Social Services)*, an appellate court overturned a trial court's ruling that allowed the State Department of Social Services to avoid disclosing lists of "persons with criminal convictions" who received exemptions to work in licensed day care facilities. (2001) 91 Cal.App.4th 892. The crux of that dispute was whether or not privacy interests outweighed the public interest in disclosure.

These cases illustrate the difficulty that may arise when determining whether an exemption applies to a document. Applying exemptions to *portions* of a lengthy and sensitive document can be even more challenging. In *American Civil Liberties Union Foundation v. Deukmejian*, an appellate court reversed a trial court's decision that required California's Department of Justice to release index cards compiled by law enforcement departments. (1982) 32 Cal.3d 440. The cards listed persons suspected of being involved in organized crime, and included, among other things, the individual's name, alias, occupation, family members, vehicles, associates, modus

operandi, and physical traits. *Id*., at p. 444. The ACLU asserted that the cards should be provided with personal identifiers redacted. However, after reviewing the cards *in camera*, the appellate court concluded:

> "[I]n the present case the public interest predominates against disclosure of the cards. It is clear that the burden of segregating exempt from nonexempt information on the 100 cards would be substantial. The cards do not indicate which material is confidential, might reveal a confidential source, or identify the subject of the report; in many instances defendants would have to inquire from the law enforcement department supplying the information."

Id., at p. 453.

Deukmejian demonstrates the intricacies involved when public agencies redact lengthy or sensitive public documents. This is especially true of law enforcement records, when information about crimes, victims, and law enforcement may be co-mingled. Public agencies must be mindful that the courts have consistently found exemptions from disclosure must be construed narrowly. *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 476; *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1585. However, an overbroad disclosure of a document can have a real life impact on police investigations and individuals' personal lives. Public agency employees who review sensitive documents for a CPRA request make judgment calls—guided by the CPRA and case law—whether to redact a document. Reasonable minds—even reasonable *legal* minds—may disagree on how far to go.

As such, *Amici* urge the Court against creating a rule that a public agency that redacts a document in good faith must pay the entirety of a requestor's attorneys' fees if some unredactions are elicited in an action. Rather, this Court should find that the trial court did not abuse its discretion when it found that the City was only required to pay the Times for its

efforts in obtaining the unredactions. The City has acted reasonably in accepting responsibility for paying the fees awarded by the trial court.

2. *It is inevitable that on occasion, public agency employees will make a mistake in redacting a document*

Collectively, *Amici* represent over a thousand public agencies across the State. Among these agencies, some build roads, others provide safe drinking water, while others fight fire. Common among all of these agencies is that they are funded by taxpayer dollars, and they are accountable to the public. In this age of increasing calls for open government and transparency, public agencies are arguably more aware than ever of their responsibilities under California's "sunshine" laws that rightfully seek to shed light on the people's business. In this digital age, individuals and entities also appear to have a more heightened awareness of their rights under the CPRA and to act on them. Electronic communication lends itself to making a request at the click of a button.

Though *Amici* do not keep exact figures on this issue, *Amici* can assert with certainty that public agencies throughout the State receive thousands of CPRA requests each year. These requests come from varied interests including individuals seeking information about local government, business entities inquiring for their profit-seeking ventures, potential litigants building their cases, and media groups investigating for their readers. While some of these requests are as simple as pulling up a contract and forwarding it to a requestor, CPRA requirements imposed on public agencies are ever expanding, and responses to requests are becoming ever more complex. For example, a recent CPRA case involved the review of 65,000 potentially responsive documents. *Bertoli v. City of Sebastopol* (2015) 233 Cal.App.4th 353. Similarly, in *Crews v. Willows Unified School District*, a CPRA request encompassed an estimated 60,000 e-mails that a school district of five administrators had to review. (2013) 217

Cal.App.4th 1368, 1374. "Ultimately, District staff devoted nearly 200 hours to reviewing, printing, scanning, and transmitting approximately 60,000 e-mails to [the requestor]." *Id.*, at p. 1375. The 60,000 responsive records did not include nearly 3,200 pages of e-mails for which the district claimed an exemption or privilege. *Id.* While these requests may be outliers, *Amici* can attest that public agencies receive many requests that require employees to review hundreds, if not thousands of documents and devote dozens of hours to determine whether any need to be exempted or redacted. Because of limited resources, oftentimes only one or two people in an agency have the capacity to respond to CPRA requests. Ensuring that responses are provided within the short statutory timeframes and knowing that one slip up could mean thousands of dollars of attorneys' fees imposed against an agency can—at times—amount to enormous pressure on public employees. Gov. Code, §§ 6253, subd. (c); 6259.

In this context, it is inevitable that public employees will, at times, make a mistake in responding to a CPRA request, even despite diligent efforts to get the disclosure right. *See, e.g., Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176. A decision that provides requestors with *all* of their attorneys' fees for some unredactions will likely not equate to less errors in disclosures. If anything, it would encourage requestors to try to elicit or find more errors in a disclosure, as discussed below, in hopes of a full recovery of attorneys' fees. As such, if the Court imposes attorneys' fees on the City, *Amici* urges the Court against forcing the City to pay for *all* of the Times' fees spent in the underlying case. Instead, the award should be limited to the fees the Times spent obtaining the unredactions, as ordered by the trial court.

C. A Decision Supporting The Times' Request For All Of Its Fees Would Invite Requestors To Take A "Kitchen Sink" Approach To Records Requests

If the Court awards the Times $352,422.30 in attorneys' fees for the entirety of the underlying case, that result will invite requestors to take a "kitchen sink" approach to records requests. If requestors have knowledge that they could obtain all of their fees by eliciting minor errors in redactions, requestors would be motivated to make more burdensome CPRA requests. A ruling that incentivizes requestors to make onerous requests in hopes of an attorneys' fees windfall would have crippling results. CPRA requests that force agencies to review thousands upon thousands of documents will no longer be the outliers, but will become the norm. Moreover, the courts would be inundated with CPRA disputes in which requestors seek minor unredactions in hopes of obtaining all of their fees.

In deciding this attorneys' fees dispute, it is imperative to consider the public interest. The CPRA allows an agency to withhold a record from inspection based on the balance of the "public interest" served by *not* disclosing the record versus the "public interest" served by disclosing the record. Gov. Code, § 6255. In interpreting that statute, the *Deukmejian* Court opined, "Section 6255 speaks broadly of the 'public interest,' a phrase which encompasses public concern with the cost and efficiency of government. To refuse to place such items on the section 6255 scales would make it possible for any person requesting information, for any reason or for no particular reason, to impose upon a governmental agency a limitless obligation. Such a result would not be in the public interest." *Deukmejian*, *supra*, at p. 453.

Here, the same reasoning should apply to why it is in the public interest and sound public policy for the Court to affirm the trial court's

ruling that the City should not be required to pay for all of the fees the Times spent in the underlying case. The Court should consider the cost and efficiency of government in this matter and should not encourage results that would "impose on a governmental agency a limitless obligation." Surely, such a result would not be in the public interest.

IV.

CONCLUSION

For all the reasons stated above, *Amici* respectfully request that this Honorable Court find that the City should not be responsible for paying the entirety of the fees the Times' spent in the underlying matter. Rather, the City should only be liable for the Times' attorneys' fees incurred in obtaining the unredactions of the Report, as ordered by the trial court.

Dated: September 15, 2017

Respectfully submitted,

BEST BEST & KRIEGER LLP

By: _____

SHAWN HAGERTY
HONGDAO NGUYEN
Attorneys for *Amici Curiae*
League of California Cities, California State Association of Counties, California Special District Association, and California Law Enforcement Association of Records Supervisors, Inc.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately one-and-a-half-spaced 13 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, the brief contains 5,051 words up to and including the signature lines that follow the brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on September 15, 2017.

Dated: September 15, 2017

Respectfully Submitted,

By: _____

SHAWN HAGERTY
HONGDAO NGUYEN
Attorneys for *Amici Curiae*
League of California Cities, California State Association of Counties, California Special District Association, and California Law Enforcement Association of Records Supervisors, Inc.

PROOF OF SERVICE
PPOA, et al. v. City of Pasadena
2nd Civil No. B275566
On Appeal from LASC Case No. BC556464

I am a citizen of the United States and employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 18101 Von Karman Avenue, Suite 1000, Irvine, California 92612. On September 15, 2017, I served a copy of the within document.

On September 15, 2017, I served the foregoing document: **APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES, CALIFORNIA STATE ASSOCIATION OF COUNTIES, CALIFORNIA SPECIAL DISTRICTS ASSOCIATION, AND THE CALIFORNIA LAW ENFORCEMENT ASSOCIATION OF RECORDS SUPERVISORS, INC. TO FILE AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENT**, as follows:

[x] UNITED STATES MAIL by placing the document(s) listed above in envelopes sealed with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth in the Service List below. 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 in the ordinary course of business. 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.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct. Executed on September 15, 2017 at Irvine, California.

By: L Haas
Leslye Haas

SERVICE LIST
PPOA, et al. v. City of Pasadena
2nd Civil No. B275566

Richard A. Shinee, Esq. GREEN & SHINEE, A.P.C. 16055 Ventura Blvd., Ste. 1000 Encino, CA 91436	*Attorneys for Plaintiffs and Respondents Officer Matthew Griffin, Officer Jeffrey Newlen*
Timothy Keith Talbot, Esq. RAINS LUCIA STERN ST. PHALLE & SILVER, PC 2300 Contra Costa Blvd., Ste. 500 Pleasant Hill, CA 94523	*Attorneys for Plaintiff and Respondent Pasadena Police Officers Association (PPOA)*
Javan N. Rad, Esq. Chief Assistant City Attorney CITY OF PASADENA 100 North Garfield Ave., Ste. N210 Pasadena, CA 91109-7215	*Attorneys for Defendant and Respondent City of Pasadena*
Kelli L. Sager, Esq. DAVIS WRIGHT TREMAINE LLP 865 S. Figueroa St., Suite 2400 Los Angeles, CA 90017-2566	*Attorneys for Intervenor and Appellant Los Angeles Times Communications LLC*
Jean-Paul Jassy, Esq. JASSY VICK CAROLAN, LLP 6605 Hollywood Blvd., Suite 100 Los Angeles, CA 90028	
Jeffrey Glasser, Esq. LOS ANGELES TIMES COMMUNICATIONS LLC 202 West First St. Los Angeles, CA 90012	

California News Publishers Association: Amicus curiae for appellant	Nicole D. Moore California Newspaper Publishers Assn. 2701 K. St. Sacramento, CA 95811 Katielynn Boyd Townsend Reporters Committee for Freedom of the Press 1156 15th Street, Ste. 1250 Washington, DC 20005
The Reporters Committee For Freedom of the Press: Amicus curiae for appellant	Nicole D. Moore California Newpaper Publishers Assn. 2701 K. St. Sacramento, CA 95811 Katielynn Boyd Townsend Reporters Committee for Freedom of the Press 1156 15th Street, Ste. 1250 Washington, DC 20005
Hon. James C. Chalfant LOS ANGELES SUPERIOR COURT 111 North Hill St., Dept. 85 Los Angeles, CA 90012-3014 Superior Court of California CIVIL APPEAL UNIT, ROOM 111 111 North Hill Street Los Angeles, CA 90012-3117	*Trial Court* *Case No. BC556464*