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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

LAURA GUARINO,

Plaintiff and Appellant,

v.

CITY OF FONTANA,

Defendant and Respondent.

E054357

(Super.Ct.No. CIVDS905018)

OPINION

APPEAL from the Superior Court of San Bernardino County. David Cohn, Judge.

Reversed.

Schlueter & Schlueter and Jon R. Schlueter for Plaintiff and Appellant.

Lynberg & Watkins, S. Frank Harrell and Pancy Lin Misa for Defendant and Respondent.

Plaintiff and appellant Laura Guarino (plaintiff) filed a request for documents with defendant and respondent City of Fontana (City) under the California Public Records Act (CPRA). City responded it could not comply with plaintiff’s request. Plaintiff filed a petition for writ of mandate in the superior court seeking disclosure of the requested

documents. After correspondence and a meet and confer between the parties, City began disclosing some of the requested documents, but declined to provide others. The Honorable Janet M. Frangie issued an order directing City to provide further requested documents, but contrary to plaintiff's wishes, permitted City to redact some of the information contained in those documents.

Plaintiff filed a statutory motion for \$76,150.38 in attorney fees and \$530 in costs pursuant to Government Code section 6259, subdivision (d).¹ Due to the unavailability of Judge Frangie, the matter was transferred to the Honorable John M. Pacheco. After Judge Pacheco issued a tentative ruling granting plaintiff \$43,600.25 in attorney fees and \$468.04 in costs, City filed a peremptory challenge against Judge Pacheco pursuant to Code of Civil Procedure, section 170.6. The matter was reassigned to the Honorable David Cohn, who issued a ruling effectively denying attorney fees on several alternative bases.

Plaintiff appeals contending she was the prevailing party because City disclosed all the documents it did, only after the initiation of litigation. Plaintiff further argues the court erred in determining she was a "straw" plaintiff and her attorneys were actually representing themselves. Moreover, plaintiff maintains the court erroneously considered her motive in seeking disclosure of the documents and the public benefit, or lack thereof, in determining whether an award of attorney fees was proper. Finally, to the extent the court found she was the prevailing party and awarded attorney fees, plaintiff asserts the

¹ All further statutory references are to the Government Code unless indicated.

court erred in applying a negative multiplier reducing the award to zero. We agree with plaintiff with respect to all her challenges and remand the matter for an award of reasonable attorney fees and costs.

FACTUAL AND PROCEDURAL HISTORY

On March 23, 2009, plaintiff filed a request with City for the following:

“1. For the past six years, all claims against the City of Fontana claiming that a peace officer employed by the City violated a person[']s civil rights. When I [write] *claim*, I mean a demand for compensation submitted to the city under the requirements of the Government Code, as a precondition of bringing a lawsuit. This should include not only the claim, but all supporting documents submitted at the time of the original claim but also later. Such documents would include, without limitation, any records describing a medical condition or treatment of a medical [condition] allegedly caused or exacerbated by the alleged violation of civil rights.

“2. All written responses by the City to No. 1 above.

“3. For the past six years, any minutes of any meeting of any committee that deliberated about the city’s response to No. 1, above.

“4. For the past six years, all settlement agreements for any lawsuit filed against the city and any peace officer employed by the city, or either, claiming a violation of a person[']s civil rights.

“5. For the past six years, any correspondence to or from the plaintiff or plaintiffs['] attorney regarding settlement of any lawsuit filed against the city and any

peace officer employed by the city, or either, claiming a violation of a person[']s civil rights.

“6. For the past six years, all legal bills or invoices billed or invoiced to the city, or either, for legal services pertaining to any lawsuit filed against the city and any peace officer employed by the city, or either, claiming a violation of a person[']s civil rights. The city may redact any detailed description of the services performed if that description would reveal attorney work-product or disclose strategies of the attorney in performing his service for the city. This document should include litigation expenses.”

On March 25, 2009, City responded, “I regret to inform you that unless you are able to be more specific, i.e., name(s) of claimant, etc., we will be unable to assist you, due to the fact that the City receives many claims and they are listed by name of claimant, not the allegation.” City further informed plaintiff it retained records for only three years and that the Health Insurance Portability and Accountability Act (HIIPA) prohibited its disclosure of some of the records requested by plaintiff. On April 9, 2009, plaintiff filed a petition for writ of mandate with the superior court seeking disclosure of the requested documents.

City responded with a letter to plaintiff’s attorneys again noting, “[City] receives many claims and they are listed by name of claimant, not the allegation. For filing purposes, [City] only deals with claimants’ names. Your request, however, asked for records based on the allegations only. As such, [City] could not respond without further, specific information, including names and/or dates. [¶] We invite you to contact us directly in order to discuss your public records request. We are hopeful that further

discussions will provide [City] with the information it needs. We may also be able to assist in drafting a CPRA request understandable to all parties, such that [City] would then have a fair opportunity to review those requests, and respond accordingly.

[Citation.]”

Over the course of the ensuing four months, the parties engaged in communications primarily concerning City’s request that plaintiff define and refine the term “civil rights” and plaintiff’s assertion that no such refinement was necessary. On June 26, 2009, the parties engaged in a meet and confer during which the City communicated its willingness to search and turn over requested materials so long as plaintiff defined what she meant by “civil rights.” Plaintiff agreed to abide by City’s own reasonable interpretation of “civil rights” and would work with whatever documents were produced therefrom.² Plaintiff followed the meet and confer with a letter reiterating she would “accept any reasonable definition of ‘civil right’ [City] may elect.”

On July 31, 2009, City wrote to plaintiff indicating it was going to rewrite plaintiff’s request effectively dropping the term “civil rights” from all her requests. City contended it had yet to deny plaintiff’s requests. On August 25, 2009, City issued its first release of documents including, purportedly,³ over 300 pages of documents. City noted that it was not including pictures, medical records, or personnel records of claimants

² Contrary to City’s contention, after review of the entire transcript of the meet and confer, we find no mention by plaintiff’s attorney of attorney fees, no less his being “mostly focused on his claim for attorneys’ fees.”

³ We write purportedly because the documents are not actually included in the record. We rely on the reports of the parties in their respective filings below.

against City or peace officers; citizen complaint forms; letters from city attorneys to City; or claims still being litigated.

Plaintiff responded the redaction of police officer names was improper, the medical records submitted in support of citizen claims were not privileged, City had yet to provide or mention the request for correspondence between City and claimants, and had yet to release or mention minutes of committee deliberations regarding such claims. City replied it refused to provide claimants' names, police officer names, medical records, it had no correspondence between City and claimants, and was unaware of any meeting minutes concerning such.

On October 2, 2009, City communicated it would provide summaries of attorney invoices, but not the bills or invoices themselves as they were retained by a third party with no obligation to disclose. On November 11, 2009, City reiterated the documents it refused to provide plaintiff and noted, "This will serve as our formal denial of your requests for this information." On January 5, and February 18, 2010, City released further documents.

On February 16, 2010, plaintiff filed a brief disputing City's claim of confidentiality with respect to claimants' claims, names, peace officer names and City's contention it lacked a duty to disclose bills and invoices held by a third party. City countered it had no duty to release any of the information and documents plaintiff continued to seek. On July 6, 2010, the superior court issued an order in which it noted the documents City had produced after initiation of litigation. The court directed City to disclose tort claims against City involving peace officers, but redacting the officers'

names; provide unredacted medical documents of claimants excluding their social security numbers, dates of birth, and identifying medical providers; and produce all legal bills or invoices regarding such claims regardless of whether held by a third party.⁴

On August 2, 2010, City filed a petition for extraordinary writ in this court seeking to prevent disclosure of the names of citizen claimants regarding peace officers' on-duty conduct and City's legal bills.⁵ We denied the petition on August 11, 2010. On August 23, 2010, plaintiff filed an application for attorney fees and costs.⁶

The matter was transferred to Judge Pacheco after Judge Frangie, the judge issuing the order on the petition, was unavailable. Judge Pacheco issued a tentative ruling on January 27, 2011, "to grant [plaintiff] attorney fees as she is the prevailing party, notwithstanding the fact that she did not obtain disclosure of all the documents." "The court finds that a reasonable attorney fee is \$43,600.25 with a multiplier of 1.25 for a total attorney fee award of \$54,500.31 plus cost[s] in the amount of \$468.04" On

⁴ "City cannot shield itself from document [requests] by transmitting them to another entity. City is in constructive possession of these legal invoices. The CPRA would be meaningless if a public agency could merely place all of its documents within the possession of a third party."

⁵ By order filed May 13, 2013, we took judicial notice of case No. E051442.

⁶ Plaintiff claims fees and costs associated with her filing of a response to the writ petition in case No. E051442. City noted the response had never been filed in this court, attaching a copy of our docket in that case reflecting the response had been rejected. In a subsequent declaration, plaintiff's counsel expressed puzzlement regarding the docket, sure she had filed the response. In point of fact, the response was rejected and no such response is contained in the file in case No. E051442.

February 4, 2011, City issued a preemptory challenge for prejudice against Judge Pacheco; the matter was reassigned to Judge David Cohn.

At a hearing on March 2, 2011, Judge Cohn issued a tentative ruling that, “with respect to the recoverability of fees, I think it’s proper. I think that . . . [plaintiff] is the prevailing party, and the fact that [plaintiff] may not have prevailed on every single request doesn’t make any difference. I’m not able to parcel anything out in particular that was unsuccessful, that should be deleted from your bill. So I think you are the prevailing party and I’m going to consider your fee request in full.” “The court records it’s tentative to grant the motions as fees are properly recovered by the prevailing party.”

At a hearing on March 10, 2011, Judge Cohn stated, “I’m at a disadvantage in this case because Judge Frangie heard everything and was familiar with the litigation. And when I took over this case—well, I guess it initially went to Judge Pacheco. Judge Pacheco indicated tentatively what he was going to do and a [peremptory challenge] was filed against Judge Pacheco so it came to me.” The court focused on plaintiff’s motive in obtaining the documents, asking counsel to exposit on that motive. The court then ordered supplemental briefing on whether plaintiff’s use of the documents procured, and their benefit to the public, should be considered in awarding attorney fees.

At a hearing on April 18, 2011, after briefing, the court noted, “the case law seems to be clear that the amount of the fees are not to be limited by the degree of success. If there’s a determination that there is a prevailing party, you don’t piecemeal it and say, well, you got this document but you didn’t get that document. And if a writ issues, there is a prevailing party.” The court took the matter under submission.

On June 22, 2011, the court explicated its ruling on plaintiff's request for attorney fees. The court found the statutory bar against inquiring as to the purpose of a request for records pursuant to the CPRA extended only to the determination to disclose, but did not bar the court from inquiring as to the plaintiff's purpose in requesting the documents when issuing an attorney fee award. "I can reach only one reasonable conclusion from the facts that are before the Court. And that is that the entire purpose of this litigation was a vehicle for [plaintiff's attorney's] law firm to generate fees. That no one ever wanted these documents, that no one cares about these documents, and that they are likely sitting in a banker's box in [plaintiff's counsel's] office collecting dust because no one ever cared about them in the first place."

The court also found plaintiff "is a straw plaintiff in this case; is not truly the real party in interest. The real party in interest in this case [is plaintiff's counsel]. [¶] Case law is clear that an attorney representing himself . . . is not entitled to recover attorney fees. [¶] . . . I find that the Schlueter law firm is, in fact, in this case representing itself in this litigation, and I'm denying fees in entirety on that basis."

In the alternative, the court noted, "It is clear, I think, in this case that there are some documents that would not have been released but for the litigation. . . . So I think . . . that would make the petitioner in this case a prevailing party." Nonetheless, in reliance on dictum in the decision in *Los AngelesTimes v. Alameda Corridor Transp. Authority* (2001) 88 Cal.App.4th 1381, 1391-1392 (*Los Angeles*), it reasoned, "there is no indication to this Court, despite the Court's repeated inquiries, that there was any reason for seeking these documents other than the fact that they could be sought, and that there

were fees payable from the public trough at the end of the rainbow.” Thus, it found that the petitioner in this case was not the prevailing party.

However, in the event the Court of Appeal would disregard the dictum in *Los Angeles, supra*, the court found plaintiff would be the prevailing party, but “I find as a matter of fact, for the reasons I’ve articulated, that a reasonable attorney fee in this case is zero.” In the alternative, the court found, in large part, that plaintiff’s requested fees were reasonable; however, it determined to apply a negative multiplier. “What’s the fair market value of [plaintiff’s counsel’s] fee in this case? It was a meaningless, purposeless litigation that existed only for the purpose of generating a fee. So I think the fair market value . . . is zero. [¶] The negative multiplier that I’m applying in this case . . . is zero, which brings the fee under the loadstar [*sic*] calculation to zero.”

DISCUSSION

A. INTRODUCTION

“The CPRA . . . was enacted for the purpose of increasing freedom of information by giving members of the public “access to information in the possession of public agencies. [Citation.] The Legislature has declared that such access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” ([§] 6250).’ [Citation.] Thus, “[t]he CPRA embodies a strong policy in favor of disclosure of public records. . . .” [Citation.]’ [Citation.]” (*Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1392-1393 (*Bernardi*).

“Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of

disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. . . . When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available.” (§ 6253, subd. (c).)

“The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section.” (§ 6259, subd. (d).) “An award of costs and attorney fees pursuant to this provision is mandatory if the plaintiff prevails. [Citation.]” (*Galbiso v. Orosi Public Utility Dist.* (2008) 167 Cal.App.4th 1063, 1084-1085.)

B. PREVAILING PARTY

Plaintiff contends she was the prevailing party below and, as such, is entitled to the statutorily mandatory award of attorney fees and costs. We agree.

“[T]he threshold issue with respect to a plaintiff’s entitlement to an award of attorney fees in CPRA litigation, pursuant to section 6259, subdivision (d), is whether the plaintiff prevailed in the litigation. [Citations.] ‘A plaintiff is considered the prevailing party if his [or her] lawsuit motivated defendants to provide the primary relief sought or activated them to modify their behavior [citation], or if the litigation substantially contributed to or was demonstrably influential in setting in motion the process which eventually achieved the desired result.’ [Citations.]” (*Bernardi, supra*, 167 Cal.App.4th at p. 1393; *Galbiso v. Orosi Public Utility Dist., supra*, 167 Cal.App.4th at pp. 1088-1089; *Los Angeles Times, supra*, 88 Cal.App.4th at p. 1392 [“In short, if a public record

is disclosed only because a plaintiff filed a suit to obtain it, the plaintiff has prevailed”].)

We will uphold a court’s determination of the prevailing party in a CPRA claim if supported by substantial evidence. (*Motorola Communication & Electronics, Inc. v. Department of General Services* (1997) 55 Cal.App.4th 1340, 1347.)

Here, City did not release any documents until well after plaintiff filed suit, and was still ordered to release further documents by the superior court thereafter. Plaintiff served her records request on March 23, 2009. On March 25, 2009, City responded it was unable to comply with her request because plaintiff failed to indicate the names and dates of the cases and claims that she was requesting. On April 9, 2009, plaintiff filed the instant litigation. City mailed another letter on April 21, 2009, reiterating it could not comply with plaintiff’s request because it required the names and case numbers of the documents which plaintiff had requested.

During the meet and confer on June 26, 2009, City no longer regarded plaintiff’s failure to include names and case numbers as the hurdle preventing it from disclosing the requested documents; rather, City then contended it was the vague nature of plaintiff’s request for “civil rights” documents which left it to speculate as to what precisely plaintiff desired. Plaintiff indicated she was willing to accept any reasonable definition or interpretation of “civil rights” determined by City; plaintiff indicated her willingness to work with any document disclosure made pursuant to City’s own reasonable definition of “civil rights.” Plaintiff reiterated this understanding in a letter subsequent to the meet and confer.

Nonetheless, no documents were released until two months later, after City redrafted plaintiff's CPRA request dropping the term "civil rights." As plaintiff later noted, this redraft effectively broadened—rather than narrowed—plaintiff's original request. The final non-court ordered release of documents did not occur until February 18, 2010, eight months after the meet and confer and nearly 11 months after the request. Thus, it is difficult to understand why City could not have made the document disclosures it did on August 25, 2009, January 5, and February 18, 2010, with its own interpretation of plaintiff's request at an earlier date, or at least have informed plaintiff it would release those documents, but that it would take time to produce them. Indeed, it would appear that the bulk of the records plaintiff requested were produced by the City prior to any court order, but only after the filing of plaintiff's suit. This, in and of itself, is enough to proclaim plaintiff the prevailing party. (*Beth v. Garamendi* (1991) 232 Cal.App.3d 896, 901-902 [the plaintiff should be awarded requested attorney fees in a CPRA suit if her lawsuit induced the disclosure of documents regardless of whether it resulted in a judicial determination in her favor].)

Moreover, even after City's initial disclosures, plaintiff obtained a favorable ruling from the superior court requiring City to provide further disclosures including the names of citizen claimants, their medical records, and City's legal bills or invoices. The court only denied plaintiff's request for police officer names, claimants' personal information, and third party witness names. It did not bar plaintiff the recovery of any requested documents, it only allowed redaction of portions of those documents. Thus, plaintiff also

obtained a judicial determination in her favor. Insufficient evidence supports the court's determination plaintiff was not the prevailing party.

The trial court and City appear to contend plaintiff cannot be deemed the prevailing party because her purpose in obtaining the documents was frivolous, i.e., was solely for the purpose of generating attorney fees for her attorney employers. Indeed, the court relied on dictum in *Los Angeles, supra*, 88 Cal.App.4th 1381, providing "Circumstances could arise under which a plaintiff obtains documents, as a result of a lawsuit, that are so minimal or insignificant as to justify a finding that the plaintiff did not prevail." (*Id.* at pp. 1391-1392.) The contention of City and the trial court that plaintiff's procurement of the documents requested was "minimal or insignificant" such that she should not be deemed the prevailing party fails for several reasons.

First, the sheer volume of documents obtained by plaintiff mitigates against a determination her victory was "minimal." Second, plaintiff apparently obtained all the documents she requested, with only redactions of some of the personal information contained in those documents. Thus, plaintiff's victory could hardly be declared "insignificant." Third, *Los Angeles* itself failed to determine in what circumstances a victory could be deemed so "minimal or insignificant" as to justify a determination a plaintiff was not the prevailing party. We find the circumstances here do not justify such a finding.

Fourth, the CPRA statutory scheme does not require a plaintiff's request be of ponderable societal significance in order to justify a determination the plaintiff prevailed in litigation. Indeed, section 6257.5 provides: "This chapter does not allow limitations

on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.” “[T]he motive of the particular requester is irrelevant; the question instead is whether disclosure serves the *public* interest. ‘The Public Records Act does not differentiate among those who seek access to public information.’ [Citations.]” (*County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1324.)

“The purpose of the requesting party in seeking disclosure cannot be considered. [Citations.] *This is because once a public record is disclosed to the requesting party, it must be made available for inspection by the public in general.* [Citation.] It is also irrelevant that the requesting party is a newspaper or other form of media, because it is well established that the media has no greater right of access to public records than the general public. [Citation.] Nor is the convenience of researchers a factor to be considered. [Citation.]” (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1018, italics added.) Thus, a plaintiff’s request can be for any purpose: whether personal or public. Indeed, the CPRA does not bar someone from filing a request to obtain documents for use in cases filed by his or her attorney employer, the exact motive posited by plaintiff for her request below. (*County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 826.)

City and the trial court seek to distinguish between the propriety of considering motive for a request as it pertains to disclosure of the documents, with the separate determination of whether the party could be deemed to have prevailed if the request was “insignificant” or even self-serving. However, as discussed above, the purpose of the

CPRA is to provide the broadest possible disclosure of public documents on any basis to provide for transparency of governmental function. “The CPRA is based on the legislative finding that ‘access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.’ (§ 6250.)

The CPRA ‘does not differentiate among those who seek access to public information. It “imposes no limits upon who may seek information or what he may do with it.”

[Citations.] What is material is the *public* interest in disclosure, not the private interest of a requesting party; [the CPRA] does not take into consideration the requesting party’s profit motives or needs.’ [Citation.]” (*Orange County Employees Association, Inc. v. Superior Court* (2004) 120 Cal.App.4th 287, 295.)

Were courts to invade a requesting party’s motive in seeking disclosure of documents for the purpose of determining whether they prevailed in suit, the effect would be to chill pursuance of a CPRA request pursuant to litigation once the public agency has initially denied the request. This would be so despite whether disclosure of the documents occurred by the agency on its own after initiation of suit, by judicial order, or both. (*Bernardi, supra*, 167 Cal.App.4th at p. 1397 [“The rationale is that denying attorney fees . . . with respect to the public agency’s obligation to disclose some of the documents sought ‘would chill efforts to enforce the public right to information.’

[Citation.] A rule requiring an award of attorney fees to be commensurate with the degree of success in CPRA litigation could have a . . . chilling effect, if, as the [defendant] proposes, the trial court was required to reduce the lodestar amount in strict proportion to the ratio of successful to unsuccessful public record requests”].)

This would embolden public agencies to deny CPRA requests by underprivileged members of the public, believing the individual requesting the records would be less likely to obtain counsel to pursue the matter because they could not risk gambling that their purpose in obtaining the material would not be deemed grand enough in the eyes of the court even if and when they obtained disclosure of sought materials to be deemed the prevailing party. Thus, plaintiff's purpose in obtaining the requested materials is immaterial when determining whether she prevailed in this litigation. Rather, the proper determination is whether the City should have released the requested materials without litigation, and whether it eventually did disclose documents due to the suit. Here, the answer to both questions is yes.

Fifth, even if intent in obtaining the documents would be a matter of proper consideration when determining whether the plaintiff prevailed, here plaintiff did provide a proper explanation. Plaintiff explicated the request enabled her to scrutinize police performance and enabled her law firm to learn about agencies that had poor records, which might lead to civil rights litigation to compel such agencies to take corrective measures. (*Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278, 297 [“The public’s legitimate interest in the identity and activities of peace officers is even greater than its interest in those of the average public servant. ‘Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers’”].) Thus, plaintiff's purpose in obtaining the records, regardless of the potential personal remuneration, could

conceivably benefit the public at large. (*County of Los Angeles v. Superior Court, supra*, 82 Cal.App.4th at p. 826 [CPRA does not bar someone from filing request to obtain documents for use in cases filed by an attorney employer].)

Sixth, the court’s determination that “the entire purpose of this litigation was a vehicle for the . . . law firm to generate fees” is belied by the record. City maintains that plaintiff filed the instant suit “a mere 17 days after her initial document request to [City] with a claim for CPRA attorney’s fees—even though the City had not even denied [p]laintiff’s counsel access to any records.” However, section 6253, subdivision (c) requires the agency notify the person making a CPRA request whether it will disclose the requested materials within 10 days, and state the estimated time when the materials will be made available. It allows the agency to extend that time by 14 days in unusual circumstances. Here, City’s two letters to plaintiff dated March 25, and April 21, 2009, two and twenty-nine days after plaintiff’s request—both informed plaintiff City was unable to comply with her request. This was an effective denial of plaintiff’s request.⁷

⁷ City’s contention it did not deny defendant’s request until November 11, 2009, when it proclaimed: “This will serve as our formal denial of your requests for this information” is an unworkable rule of law. As the court itself observed, “what prevents a city, then, from delaying what both sides may know is inevitable, that it’s going to be a denial? . . . [W]hat prevents a city from doing that and delaying the plaintiffs’ [a]bility to get to court?” Any rule of law that would permit the agency to delay and then determine when it had “denied” a plaintiff’s request for records would have a chilling effect upon both the making of requests and the filing of litigation to enforce the CPRA. This is because those without resources, or attorneys who represent them on contingency, would be loathe to pursue drawn-out negotiations regarding the scope of disclosure, if the agency could interminably delay its disclosure or “denial” and thereby, correspondingly, significantly reduce its exposure to a claim for attorney fees once the plaintiff prevailed.

It is notable City's theory for its inability to comply with plaintiff's request was initially her failure to include claimants' names and case numbers. City, months later, discarded this theory for one that expounded the ambiguity of the term "civil rights" as a basis for withholding the requested documents. Although plaintiff refused to clarify what she meant by "civil rights," she agreed to adhere to any reasonable interpretation by City and to work with City regarding any documents she desired, which were not produced by that interpretation. A month later, City redrafted plaintiff's request, but did not begin releasing documents until yet another month had passed. City did not complete its non-ordered release of documents until February 18, 2010, 11 months after plaintiff's request and nearly seven months after City's redraft of the request. The record does not support the court's determination plaintiff filed the request and maintained the ensuing litigation solely to generate attorney fees; therefore, insufficient evidence supports the court's determination plaintiff was not the prevailing party. (*Moran v. Oso Valley Greenbelt Ass'n* (2004) 117 Cal.App.4th 1029, 1035 [proposition that records were requested only for the purpose of obtaining attorney fees irrelevant where entity was statutorily obliged to provide the requested documents, but failed to do so before litigation ensued].)

Seventh and finally, we note there were multiple rulings below, that plaintiff was the prevailing party. Judge Pacheco tentatively ruled plaintiff was the prevailing party. Judge Cohn tentatively ruled on March 2, 2011, that plaintiff was the prevailing party. On April 18, 2011, Judge Cohn again tentatively noted that "if a writ issues, there is a prevailing party." Here, a writ issued in plaintiff's favor. In his ruling on June 22, 2011, Judge Cohn again ruled, on an alternative basis, that plaintiff was the prevailing party.

Thus, insufficient evidence supported the court's determination plaintiff was not the prevailing party.

C. IN PROPRIA PERSONA

The court below ruled, on an alternative basis, that even if plaintiff was the prevailing party, she would not be entitled to an award of attorney fees because she “is a straw plaintiff in this case; is not truly the real party in interest. The real party in interest in this case is Peter and Jon Schlueter. [¶] Case law is clear that an attorney representing himself . . . is not entitled to recover attorney fees. [¶] . . . I find that the Schlueter law firm is, in fact, in this case representing itself in this litigation, and I'm denying fees in entirety on that basis.” City takes up this argument on appeal, as well as proposing that since plaintiff never expended any money on representation, to the extent she was not a “straw plaintiff,” she should likewise be barred from recovering attorney fees. We hold both theories for prohibiting plaintiff's recovery of attorney fees in this case wanting.

“Whether attorney fees may be awarded is a question of law, which we review de novo. [Citation.]” (*Dzwonkowski v. Spinella* (2011) 200 Cal.App.4th 930, 934.) “[A]n attorney who chooses to litigate in propria persona and therefore does not pay or become liable to pay consideration in exchange for legal representation cannot recover ‘reasonable attorney's fees’ under [statutory authority] as compensation for the time and effort he expends on his own behalf or for the professional business opportunities he forgoes as a result of his decision.” (*Trope v. Katz* (1995) 11 Cal.4th 274, 292.)

An attorney litigant represented by other attorneys in his firm is not in propria persona and therefore may recover attorney fees. (*Lockton v. O'Rourke* (2010) 184

Cal.App.4th 1051, 1074-1075.) A statutory attorney fee award is proper when an attorney successfully represents both himself and a codefendant. (*Ramona Unified School Dist. v. Tsiknas* (2005) 135 Cal.App.4th 510, 523-525.) In *Moran v. Oso Valley Greenbelt Assn.* (2001) 117 Cal.App.4th 1029, the appellate court found “patently without merit” an argument that the plaintiff, who was a paralegal in the firm that represented her in the litigation, was not entitled to an attorney fee award due to her employment in the firm. (*Id.* at p. 1035.) Thus, it is irrelevant that plaintiff worked for the firm because she met the threshold requirement that she was not acting in propria persona, i.e., “[w]here an attorney-client relationship exists, the courts uniformly allow for the recovery of attorney fees” (*Ramona*, at p. 524.)

City cites *Carpenter & Zuckerman v. Cohen* (2011) 195 Cal.App.4th 373 (*Carpenter*) for the proposition that an award of attorney fees is inappropriate where the prevailing litigant is an employee represented by the firm for which she works. (*Id.* at p. 385.) However, *Carpenter* involved a suit against an associate’s firm for interference with economic advantage and defamation; the firm successfully defended itself by virtue of an anti-strategic lawsuit against public participation motion. (*Id.* at p. 376.) The appellate court affirmed a denial of the associate’s request for attorney fees because the associate was “represented” by the firm for which she worked and, therefore, had “a direct financial interest in the outcome of the claims asserted against it.” (*Id.* at p. 385.) Here, no lawsuit was filed against the firm for which plaintiff worked. Loss of the suit that plaintiff initiated would not pose a direct financial hit against the firm. Moreover, plaintiff was not “an employee of that firm hired primarily to perform services for firm

clients and, presumably, to generate profits for the firm.” (*Ibid.*) Thus, plaintiff did not have a direct financial interest in the outcome of the litigation. Ergo, plaintiff was entitled to an award of attorney fees because she was not acting in propria persona.

With respect to City’s contention plaintiff incurred no legal fees and is therefore not entitled to an award of attorney fees, we respectfully note this theory has long been rejected: “Modern jurisprudence does not require a litigant seeking an attorney fee award to have actually incurred the fees. ‘[I]n cases involving a variety of statutory fee-shifting provisions, California courts have routinely awarded fees to compensate for legal work performed on behalf of a party pursuant to an attorney-client relationship, although the party did not have a personal obligation to pay for such services out of his or her own assets.’ [Citation.]” (*Moran v. Oso Valley Greenbelt Assn.* (2001) 117 Cal.App.4th 1029, 1036.) “In practice, it has been generally agreed that a party may ‘incur’ attorney fees even if the party is not personally obligated to pay such fees. ‘A party’s entitlement to fees is not affected by the fact that the attorneys for whom fees are being claimed were funded by governmental or charitable sources or agreed to represent the party without charge.’ [Citation.]” (*Lolley v. Campbell* (2002) 28 Cal.4th 367, 373.) Thus, the fact that plaintiff’s representation took the case under contingency did not bar her from recovering an award of attorney fees.

D. AMOUNT OF ATTORNEY FEES

Plaintiff contends, to the extent the court found her the prevailing party, the court abused its discretion in applying a negative multiplier, effectively depriving her of any award of attorney fees. We agree.

Although the court found, in large part, that plaintiff's requested attorney fees were reasonable, the court applied a negative multiplier of zero to the amount requested by plaintiff: "The negative multiplier that I'm applying in this case . . . is zero, which brings the fee under the loadstar [*sic*] calculation to zero." This was because the court determined plaintiff's attorney's work in the case "was a meaningless, purposeless litigation that existed only for the purpose of generating a fee." Thus, the court determined the fair market value of counsel's services was zero.

"California courts have long held that trial courts have broad discretion in determining the amount of a reasonable attorney's fee award. This determination is necessarily ad hoc and must be resolved on the particular circumstances of each case.' [Citation.] In exercising its discretion, the trial court may accordingly 'consider all of the facts and the entire procedural history of the case in setting the amount of a reasonable attorney's fee award.' [Citation.] An attorney fees award "will not be overturned in the absence of a manifest abuse of discretion, a prejudicial error of law, or necessary findings not supported by substantial evidence. [Citations.]" [Citation.] [Citation.] [¶] In reviewing the trial court's exercise of its discretion, we also recognize that '[t]he "experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong."' [Citation.]" (*Bernardi, supra*, 167 Cal.App.4th at p. 1394.)

"In determining the amount of reasonable attorney fees to be awarded under a statutory attorney fees provision, the trial court begins by calculating the 'lodestar'

amount. [Citations.] The ‘lodestar’ is ‘the number of hours reasonably expended multiplied by the reasonable hourly rate.’ [Citation.] To determine the reasonable hourly rate, the court looks to the ‘hourly rate prevailing in the community for similar work.’ [Citation.] Using the lodestar as the basis for the attorney fee award ‘anchors the trial court’s analysis to an objective determination of the value of an attorney’s services, ensuring that the amount awarded is not arbitrary. [Citation.]’ [Citation.]” (*Bernardi, supra*, 167 Cal.App.4th at pp. 1393-1394.)

“““Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative “multiplier” to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented.’ [Citation.] ‘The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services.’ [Citation.]””” (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556.)

“[A]ttorney fee awards ‘should be fully compensatory.’ [Citation.] Thus, in the absence of ‘circumstances rendering an award unjust, an attorney fee award should ordinarily include compensation for *all* of the hours *reasonably spent*, including those relating solely to the fee. [Citation.]’ [Citation.] However, ‘[a] fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the

award or deny one altogether.’ [Citation.]” (*Bernardi, supra*, 167 Cal.App.4th 1379 at p. 1394.)

Here, the court justified its application of a zero negative multiplier to plaintiff’s request for attorney fees based on its determination that her attorney’s work was meaningless and motivated purely to generate attorney fees. However, we have found no cases that have affirmed such a low negative multiplier in a case where the plaintiff prevailed. (See *San Diego Police Officers Assn. v. San Diego Police Department* (1999) 76 Cal.App.4th 19, 24 [negative multiplier of .20 affirmed where prevailing party achieved limited success, did not involve complex issue of law, case did not prevent attorneys from working on other matters, and did not involve a contingency fee].) Indeed, the court’s decision to impose a zero negative multiplier, effectively denying the mandatory attorney fee award, does not appear to be based on any objective criteria; rather, it appears to be based on its own subjective determination of the value of the litigation.

Furthermore, the court does not appear to have taken into consideration the facts and entire procedural history of the case in setting the amount of a reasonable attorney fee award. Judge Cohn was not the bench officer who presided over the merits of plaintiff’s request for documents. At an earlier hearing, Judge Cohn stated, “I’m at a disadvantage in this case because Judge Frangie heard everything and was familiar with the litigation. [¶] . . . So my view of this case was simply that I wasn’t involved in the merits and I was looking at the propriety of the attorney’s fees. . . . But I really didn’t get in to the underlying merits of the case, and maybe I should have done that.” It is not

altogether clear that Judge Cohn looked at the procedural history of the case before ruling on the request for attorney fees. We have explicated that factual and procedural history above. We hold the court abused its discretion in effectively denying plaintiff mandatory attorney fees by applying a negative multiplier of zero to a case in which plaintiff prevailed.

City expounds *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, for the proposition that where the primary purpose of a records request is personal to the individual requesting them, a court may deny an award of attorney fees. There, the plaintiff had been given access to personnel records in his capacity as a member of the city council before his public request for copies of the documents was refused. (*Id.* at pp. 338-339.) Thus, the plaintiff “was in no way injured or hampered in his attempts to publicize” a perceived governmental irregularity. (*Id.* at p. 349.) Although the court noted the plaintiff “may be seen as acting with the primary purpose of protecting his reputation as a member of the city council, rather than as a member of the public seeking withheld public information,” the plaintiff already had the documents that were the subject of his CPRA request, which could, thus, be deemed frivolous. (*Id.* at p. 349.) In any event, plaintiff was not a governmental figure seeking to protect her reputation as such; rather, she was a member of the public seeking withheld public information. As such, she is precisely the type of individual whom the CPRA seeks to empower.

City additionally explicates *Choates v. County of Orange* (2000) 86 Cal.App.4th 312 (*Choates*), for the same thesis. In *Choates*, the plaintiffs got drunk and admittedly provoked off-duty sheriff’s deputies into a street fight. (*Id.* at pp. 318-319.) The

plaintiffs were injured and filed suit against the deputies for 11 causes of action including federal civil rights violations. (*Id.* at pp. 319-320.) Choates recovered \$3,380 in compensatory damages and \$1,000 in punitive damages against one deputy on his civil rights claim. The jury absolved the remaining defendants. (*Id.* at p. 320.) The plaintiffs sought nearly \$250,000 in attorney fees. The trial court instead awarded the defendants \$240,000 in attorney fees. (*Id.* at pp. 318, 320-321.)

The appellate court noted, “Attorney fees ordinarily are awarded to prevailing civil rights plaintiffs *unless special circumstances render such an award unjust.* [Citation.]” (*Choates, supra*, 86 Cal.App.4th at p. 322, italics added.) United States Supreme Court interpretation of the statute under which Choates prevailed expressly recognized that sometimes, “a reasonable fee is zero, especially where the recovery is de minimis, establishes no important precedent and does not change the relationship of the parties.” (*Id.* at p. 324.) Moreover, in such a case, “the ‘most critical’ factor for determining the reasonableness of the fee award is “is the degree of success obtained.” [Citation.]” (*Ibid.*) Thus, although the appellate court reversed the trial court’s award of attorney fees to the defendants, it upheld the trial court’s denial of fees to the plaintiffs. (*Id.* at p. 318.)

Choates is in direct contradiction to the facts of the instant case. First, here the CPRA, not a federal civil rights statute, is at issue. Second, the CPRA does not permit the outright denial of an attorney fee to the prevailing party, unlike the civil rights statute at issue in *Choates*. Third, nothing in this case indicates an award in any amount other than zero would have been unjust. Fourth, the CPRA specifically excludes from consideration the degree of success obtained as a basis for determining an award of

reasonable attorney fees, contrary to the civil rights statute in *Choates* in which this was “the most critical factor.” The trial court’s effective denial of attorney fees to plaintiff as the prevailing party in this case was an abuse of discretion.

DISPOSITION

The judgment with respect to the award of attorney fees is reversed. The matter is remanded for the award of reasonable attorney fees to plaintiff. Appellant is awarded her costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

RICHLI
Acting P. J.

CODRINGTON
J.