IN THE COURT OF APPEALS FOR THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
CASE NUMBER B281167

SAMUEL A. PERRONI

Appellant,

v.

JIM McDONNELL, IN HIS OFFICIAL CAPACITY AS LOS ANGELES COUNTY SHERIFF AND THE COUNTY OF LOS ANGELES (SUED AS THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT)

Appellees.

From the Superior Court for the County of Los Angeles
The Honorable James C. Chalfant
Case No. BS 159430

APPELLANT'S PETITION FOR REHEARING

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TO THE HONORABLE SANDY R. KRIEGLER, ACTING PRESIDING JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION FIVE:

Samuel A. Perroni, *pro per*, Petitioner/Appellant herein, respectfully petitions the court to grant a rehearing of its decision filed on December 13, 2017.

This petition is timely filed.

REASONS FOR GRANTING REHEARING

Rehearing should be granted because:

1. The Court's decision neglects to follow established California rules governing statutory construction in judicially crafting an exception to Government Code § 6259 (d).
2. The Court's decision overlooks the mandatory "shall award…to the plaintiff should the plaintiff prevail…" language of Government Code § 6259 (d) and California precedent holding that the Legislative History of § 6259 (d) confirms that the Legislature intended the statute to be mandatory.
3. The Court's decision neglects to address the policy considerations advanced by Petitioner for awarding attorney fees under § 6259 (d) to a prevailing *pro per* plaintiff who seeks public records for public dissimilation.
4. The Court's decision misconstrues the Superior Court's Final Judgment in concluding that the discovery orders are not reviewable in this appeal.

ARGUMENT

1. Judicially Crafted Exception

To begin with, the Court's decision is in conflict with the California Supreme Court's holdings in *Freedom Newspapers, Inc. v. Orange County Employees Retirement System, (1993) 6 Cal. 4th 821, 826, 25 Cal. Rptr.2d 148 and O'Delaney v. Superior Court, (1990) 50 Cal. 3d 785, 798, 268 Cal. Rptr. 753.* Those cases stand for the proposition that the words the Legislature chose for a statute are the best indicators of its intention and where the statutory language is clear and unambiguous, there is no need for construction.

Next, whether to create an exception that limits the rights of plaintiffs in CPRA cases belongs exclusively to the California Legislature. The Court's decision trespasses upon the Legislature's domain by going beyond § 6259 (d)'s plain language in order to judicially graft upon the statute an exception for *pro per* plaintiffs.

The rules in California which govern statutory construction are uncomplicated and very settled. When construing a statute, the court's goal "is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute." *Estate of Griswold (2001) 25 Cal. 4th 904, 910, 108 Cal. Rptr. 2d 165, 24 P. 3d 1191.*

The California Supreme Court held, shortly after the passage of the attorney fees provision, that § 6259 "was enacted to carry out the purposes of the California Public Records Act." *Braun v. City of Taft (1984) 154 Cal. App. 3d 332, 349, 201 Cal. Rptr. 654.* The purposes of the Act are to broaden access to public records and its provisions are to be

broadly construed. *Newark Unified School District v. Superior Court (2015) 245 Cal. App. 4th 887, 906 190 Cal. Rptr. 3d 721.*

Judicial construction, and judicially crafted exceptions, are appropriate only when literal interpretation of a statute would yield absurd results or implicate due process. *Cassel v Superior Court (2011) 51 Cal. 4th 113, 124, 119 Cal. Rptr. 3d 437, 244 P. 3d 1080.* And, the absurdity doctrine is only to be used in extreme cases. *See, People v. Schoop (2012) 212 Cal. App. 4th 457, 470, 151 Cal. Rptr. 3d 200.* Otherwise, a statute "must be applied in strict accordance with [its] plain terms." *Cassel, at p. 124.* Under no circumstances, however, may a court rewrite the law or give the words an effect different from the plain and direct import of the terms used. In this regard, the court "must assume that the Legislature knew how to create an exception if it wished to do so. "*DiCampi-Mintz v. County of Santa Clara (2010) 55 Cal. 4th 983, 992, 150 Cal. Rptr. 3d 111, 289 P. 3d 1191.* And, this is so whatever the court may think of the wisdom or expediency of the law. It's not as if the Legislature has never heard of *pro per* plaintiffs before it passed § 6259 (d). The numerous statues cited by the Court establish as much. For, they explicitly address the *pro per* situation.

However, this Court neglected to apply the applicable statutory construction guidelines in this case when rewriting § 6259 (d) to read as follows:

> "The Court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section, except where the plaintiff is *pro per* or a *pro per* plaintiff attorney who is not licensed in the State of

> California or admitted to practice law in the State of California."

Unless this decision was only meant for the Arkansas attorney who is the prevailing plaintiff in this CPRA case, this Court's decision places the CPRA laws of this state on a slippery slope. The decision will lesson confidence in this state's Public Records Act and embolden state agencies to ignore CPRA requests from private citizens. Section 6259 (d) has "successfully braved the legislative gauntlet," and its mandatory terms should not be lightly diminished. *Halbert's Lumber, Inc. v. Lucky Stores, Inc., 6 Cal. App. 4th 1233, 1238, 8 Cal. Rptr. 2d 298.*

2. Mandatory Language

The Court's decision overlooks the holdings in *Belth v. Garamendi, (1991) 232 Cal. App. 3d 896, 889-890, 283 Cal. Rptr. 829; Filarski v. Superior Court, (2002) 28 Cal. 4th 419, 425-426, 121 Cal. Rptr.2d 844, 49 P.3d 194; and Bernardi* v. *County of Monterey, (2008) 167 Cal. App. 4th 1379, 1393, 84 Cal. Rptr. 3d 754* which state that when a CPRA plaintiff prevails, § 6259 (d) is mandatory. This list includes a 2008 decision of California Supreme Court, i.e., *Filarski v. Superior Court, supra,* citing, as its sole authority, *Belth v. Garamendi.* Moreover, this Court overlooked the fact that the afore-mentioned cases hold that from the Legislative History of § 6259 (d) the California Legislature intended § 6259 (d) to be mandatory.

As the Fifth District Court of Appeal stated in *People v. Bell (2015)241 Cal. App. 4th 315, 350, 194 Cal. Rptr. 3d 93,* it is an uncommon thing indeed to resolve a statutory construction issue

by relying on precedent that does not analyze or even cite the relevant statute. (Cf. *Fluor Corp. v. Superior Court (2015) 61 Cal. 4th 1175, 1180, 191 Cal. Rptr. 3d 498 [statute tracing back to 1872 prevails over contrary 2003 Supreme Court opinion that did not address the statute].*

Nevertheless, the decision of this Court, relying upon authorities and obiter dictum addressing other statutes and their construction, reads as if the Court concluded that the mandatory language of § 6259 (d) is unclear by holding that the words "attorney fees" means that a prevailing plaintiff under the CPRA must be represented by a non-party, licensed California attorney or a licensed attorney admitted to practice law in the state of California and incur or becomes liable to pay attorney's fees. [1]

For a prevailing *pro per* CPRA plaintiff, who happens to be an attorney, the question should not be whether he is "practicing law without a license," it should be whether, as an attorney, his professional time, knowledge and experience, which he would otherwise have to pay

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[1] In footnote 9 of the Court's decision, the Court questions whether Petitioner is "currently authorized to practice law" in any state because he is "effectively retired" as an attorney. In Petitioner's Declaration in support of his motion for court costs and reasonable attorney fees (R. 659), he states in paragraph 3, "I have been a licensed attorney for 42 years." That fact is completely undisputed and unchallenged in the record. Frankly, and with all due respect to the Court, the offending sentence, which Petitioner believes questions his veracity, is uncourtly and uncalled for. Accordingly, this Court should withdraw its decision and delete that sentence from the opinion.

an attorney for representing him, has value. application of § 6259 (d). That is a reasonable interpretation of the words "attorney fees." The same holds true for a *pro per CPRA* plaintiff who isn't an attorney. Otherwise, the tail wags the dog in application of § 6259 (d)

Turning this case on a strict definition of "attorney fees" from Black's Law Dictionary or *Trope*, for that matter, misconstrues the "attorney fees" language of § 6259 (d) that merely describes the type of mandatory award to which a prevailing plaintiff is entitled.

3. Policy Considerations

The Court failed to address petitioner's policy considerations for the mandatory award of attorney fees under § 6259 (d) to a prevailing *pro per* plaintiff seeking public records for public dissemination. That policy consideration is whether the Court's decision will embolden state agencies to withhold disclosable public records because they know a prevailing *pro per* plaintiff cannot be awarded attorney fees. That real threat will undermine the legislative history of the CPRA - to broadly construe the CPRA to the extent it furthers the peoples right of access. *Newark Unified School District v. Superior Court*, *supra*.

The Court's decision also discriminates between *pro per* plaintiffs and state agencies representing themselves. Under the Court's decision, a prevailing *pro per* plaintiff cannot be awarded attorney fees, but a self-represented agency can if the Superior Court finds that the plaintiff filed a clearly frivolous action. That was certainly not the Legislature's intent. The statute was drafted to incentivize state agencies to produce disclosable public records or suffer financial

consequences. To hold otherwise certainly cannot be the intended result of a statute whose principal aim is to facilitate public access and increase freedom of information. *Belth v. Garamendi, supra.*

4. Final Judgment

The Court's decision misconstrues the Final Judgment in this case. (R. 83). The Superior court entered a Final Judgment which covered not only attorney fees and costs, but all of the previous rulings included in its Tentative Decisions on disclosure. The case was over after the Final Judgment hearing. (R. 68-70)

This Court's holding that it did not have jurisdiction of the denials of Petitioner's motions to compel fails to consider the letter and spirit of Government Code § 6559 (c); Code of Civil Procedure § 4, and Code of Civil Procedure § 906. The Superior Court's Judgment ended the case in toto. There were no pending issues. And, nothing in § 6259 (c), or any other statute, permitted review of any discovery issue or ruling except the public official's refusal to disclose public records. *Times Mirror Company v. Superior Court, (1991) 53 Cal. 3d 1325, 1336, 283 Cal. RPTR. 893.*

Code of Civil procedure § 906 provides for an appeal of a decision which substantially effects the rights of the party. The facts of this case show beyond per adventure that Petitioner's right to evidence proving his claims of waiver and wrongful non-disclosure were substantially affected by the Superior Court's ruling on his motions to compel. Throughout the proceedings, petitioner steadfastly maintained that he was being denied a fair and meaningful

opportunity to present his case by the Superior Court's denial of discovery directly relating to CPRA waiver and to rebut the existence of an asserted CPRA investigative file exception. The denial of the motions to compel was properly before this Court.

CONCLUSION

For the reasons stated above, this Court should grant a rehearing and reverse the Superior Court's Final Judgment denying Appellant/ Petitioner attorney fees and limiting Petitioner's discovery pursuant to the Civil Discovery Act. Furthermore, this Court should direct the Superior Court to:

1) Determine reasonable attorney fees for Petitioner in his CPRA petition case;
2) Permit discovery as set forth in Petitioner's discovery motions; and
3) Render any and all other appropriate relief as this Court deems just and proper.

Dated: December 22, 2017

Respectfully Submitted,

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CERTIFICATE OF WORD COUNT

I certify pursuant to California Rules of Court, Rules 8.486 (a) (6) and 8.204 (c)(1) that this Petition for Review is proportionally spaced, has a typeface of 13 points, and contains 2516 words, excluding the cover, the Tables, and the Certificate, which is less than the total number of words permitted by the rules of Court. Counsel relies on the word count of the Microsoft Word 2013 word-processing program used to prepare this brief.

Dated: December 22, 2017

_____

Samuel A. Perroni
Petitioner *Pro Per*

PROOF OF SERVICE

On December 22, 2017, I served the foregoing document, described as Petition for Rehearing, on the interested parties in this action by email and by placing in the U.S. Mail a true copy thereof, enclosed in a sealed envelope, addressed as follows:

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There are no interested entities or persons that must be listed in this Certificate under rule 8.208

_____

Samuel A. Perroni, *Pro Per*