Case No.____________________

IN THE

SUPREME COURT OF CALIFORNIA

Samuel A. Perroni, Petitioner

vs.

Respondents,

Mark A. Fajardo, M.D., in his Official Capacity as Chief Medical Examiner/Coroner and Jim McDonnell, in his Official Capacity as Sheriff; and the County of Los Angeles (sued as the Los Angeles County Medical Examiner and Los Angeles County Sheriff's Department)

After a Decision by the Court of Appeal

Second Appellate District
Case Number B281167

# PETITION FOR REVIEW

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Petitioner *Pro Per*

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IN THE

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Samuel A. Perroni, Petitioner

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Superior Court of the State of California,
County of Los Angeles

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## ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeal's decision to judicially craft an exception to the mandatory "shall award…to the Plaintiff should the Plaintiff prevail…") language of § 6259 (d) of the California Public Records Act for prevailing *Pro Per* Plaintiffs conflicts with holdings of the First District in *Belth v. Garamendi;* the Sixth District in *Bernardi v. County of Monterey* and this Court in *Filarski v. Superior Court (*citing with approval *Belth v. Garamendi)*.

2. Whether the Court of Appeal's decision to judicially craft an exception to Government Code § 6259 (d), conflicts with this Court's established rules governing statutory construction when an appellate court crafts an exception to a statute with clear language.

3. Whether the Court of Appeal's decision to judicially craft an exception to Government Code § 6259 (d), violates state policy for the awarding of attorney fees under the California Public Records Act.

## PROCEDURAL HISTORY

This California Public Records Act (hereinafter "CPRA") case concerns Petitioner's request to the Los Angeles County Medical Examiner/Coroner's Office and Sheriff's Department (hereinafter "Coroner" and "LACSD") for records relating to the Catalina Island drowning death of actress Natalie Wood Wagner on November 29, 1981.

The Superior Court granted Petitioner's Petition, in part, for a Writ of Mandate as to both Coroner and LACSD public records on January 26, 2017. *Exhibit A*. Petitioner, as required by the CPRA, filed a

Writ with the Court of Appeal concerning the remaining public records which was denied on April 21, 2017. *Exhibit B. P*etitioner sought Review from this Court which was subsequently denied on June 28, 2017.

Based on California appellate procedure and the provisions of the CPRA, because Petitioner, a licensed Arkansas attorney, was found to be a prevailing plaintiff, he requested attorney fees and costs. Petitioner's costs were awarded, but he was denied attorney fees by the Superior Court because he was *Pro Per.* Thereafter, Petitioner filed an appeal of the Superior Court's refusal to award him attorney fees as a prevailing CPRA plaintiff.[1]

The Court of Appeal, on December 13, 2017, affirmed the Superior Court's Decision. *Exhibit C.* Petitioner filed a timely Petition for Rehearing claiming that the Court of Appeal neglected to follow established California rules governing statutory construction in judicially crafting an exception to Government code § 6259 (d) for prevailing *Pro Per* Plaintiffs; pointing out that the Court of Appeal decision overlooked the Mandatory "shall award…to the Plaintiff should the Plaintiff prevail…) language of Government Code § 6259 (d) and that its decision conflicted with decisions of the First and Sixth Districts and this Court's holding in *Filarski v. Superior Court (2002) 28 Cal. 4th 419, 425-426, 121 Cal. Rptr. 2d 844, 49 P. 3d 194* (holding that the

---

[1] Petitioner also appealed the Superior Court's order denying two motions to compel discovery. The Court of Appeal held it didn't have jurisdiction because the Final Judgment wasn't final.

legislative history of § 6259 (d) establishes that the Legislature, without exception, intended the statute to be mandatory); and pointing out that the decision neglected to address the policy considerations advanced by Petitioner for awarding attorney fees under Government Code § 6259 (d) to prevailing plaintiffs who seeks public records.

The Petition for rehearing was denied on January 2, 2018. *Exhibit D*.

## BRIEF SUPPORTING REVIEW

### I. The Second District's Decision Conflicts with Decisions of the First and Sixth Districts and a Decision of This Court.

Government Code § 6259 (d) provides, in pertinent part:

> (d) The court shall award court costs and reasonable attorney fees to the Plaintiff should the Plaintiff prevail in litigation filed pursuant to this Section.
>
> ****
>
> If the court finds that the Plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

In order to secure uniformity of decisions involving the CPRA and to treat similar situated CPRA plaintiffs similarly, this Court should grant review of this case. The Court of Appeal's decision conflicts with established holdings in the First and Sixth District Courts of Appeal in *Belth v. Garamenti (1991) 232 Cal. App. 3d 896, 889-890, 283 Cal. Rptr. 829 and Bernardi v. County of Monterey (2008) 167 Cal. App. 4th 1379, 1393, 84*

*Cal. Rptr. 3d 754* and this Court's holding in *Filarski v. Superior Court (2002) 28 Cal. 4th 419, 425-426, 121 Cal. Rptr.2d 844, 49 P.3d 194* (citing as its sole authority, *Belth vs. Garamendi, supra*). The holdings in those cases unequivocally state that when a CPRA plaintiff prevails, the attorney fees and costs provision of § 6259 (d) is mandatory.

Furthermore, it has been undeniably held that the California Legislature intended § 6259 (d) to be mandatory*, Belth v. Garamendi, supra; Bernardi v. County of Monteray, supra; and Filarski v. Superior Court, supra,* and the Court of Appeal's decision conflicts with the Legislature's expressed intent.

The decision of the Court of Appeal, relying upon authorities and *obiter dictum* addressing other statutes and their construction, reads as if the Court of Appeal 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 this state and incur or becomes liable to pay attorney fees, the Court of Appeal passes over the desired purpose of § 6259 (d), i.e., mandating an award of attorney fee and costs to a prevailing CPRA plaintiff.

The Courts have emphasized that "the very purpose of the attorney fees provision is to provide **protections and incentives for members of the public** to seek judicial enforcement of their right to inspect public records subject to disclosure." (Emphasis added)

*Community Youth Athletic Center vs. City of National City (2013) 220 Cal. App. 4th 1385, 1447, 164 Cal. Rptr. 3d 644.*

Petitioner raised the question below of how the Court of Appeal could possibly reconcile the mandatory language of the attorney fees provision of Government Code § 6259 (d) with the Superior Court judicially created exception for prevailing *Pro Per* plaintiffs and that question was ignored. Both Petitioner and the public deserve an answer to that important question of law if the public is to have confidence in the courts and the CPRA.

## II. In Judicially Crafting an Exception to Government Code § 6259 (d) for Prevailing *Pro Per* Plaintiffs, the Court of Appeal's Decision Conflicts with Decisions of This Court and Other District Courts of Appeal.

Whether to create an exception to the mandatory language of § 6259 (d) that limits the rights of prevailing plaintiffs in CPRA cases belongs exclusively to the California Legislature. Consequently, the Court of Appeal's decision trespasses upon the Legislature's domain by going beyond § 6259 (d)'s plain language to judicially craft upon the statute an exception for prevailing *Pro Per* plaintiffs.

By creating that exception, the Court of Appeal's decision conflicts with this 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 set forth the long-standing 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.

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.* And, under no circumstances may a court rewrite the law or give the words an effect different from the plain and direct import of the terms used.

It is a peculiar thing indeed that the Superior Court and Court of Appeal resolved a purported statutory construction issue by relying on a precedent that does not analyze or even cite the relevant statute. (Compare, *Flur 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.]*

The appellate courts "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.* It's not as if the Legislature had never heard of *Pro Per* plaintiffs before it passed Government Code § 6259 (d). Numerous statutes passed by the Legislature establish that they had indeed recognized the existence of *Pro Per* parties by expressly addressing the *Pro Per*

situation. See, for example, *California Civil Code § 1717; Government Code § 800; California Code of Civil Procedure §§ 128.5 and 128.7 (d) and California Civil Code of Procedure §§ 2030 (l) and 2023 (b) (1) (repealed).*

Notwithstanding, the Court of Appeal neglected to address or apply the applicable statutory construction guidelines in this case when rewriting Government Code § 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, *unless the Plaintiff is Pro Per or a Pro Per Plaintiff attorney who is not licensed or admitted to practice law in the State of California. In that event, the prevailing Pro Per plaintiff is only entitled to costs."*

The rules in California which govern statutory construction are uncomplicated and very well 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 intent of the Legislature was that § 6259 (d) be mandatory so as 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.* So, the intent of the Legislature as to the language of Government Code § 6259 (d) has already been ascertained.

Furthermore, Government Code § 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.*

Creating an exception to Government Code § 6259 (d) is an important question of law in this state and this Court should grant review to determine if that exception, which will affect countless *Pro Per* plaintiffs in CPRA cases, is consistent with prior holdings and the established intent of the Legislature.

### III. The Court of Appeal Decision is Contrary to the Stated Public Policy of California in CPRA Cases

Appellant has found no case that holds, as a matter of law, that Gov. Code § 6259 (d) is a "fee-shifting statute." Up to this point, that may have been the assumption of the Superior Court and Appellees below, but that assumption ignores the plain language of the statute.

The words the Legislature chose are the best indicators of its intent." *Freedom Newspapers, Inc. v. Orange County Employees Retirement System, (1993) 6 Cal. 4th 821, 826, 25 Cal. Rptr.2d 148*. Moreover, when statutory language is clear and unambiguous, there is no need for construction. *O'Delaney v. Superior Court, supra.*

While not defining a fee-shifting statute, the courts have universally stated that the "purpose" of a "fee-shifting" statute is "to enable private parties to obtain legal help in seeking redress for injuries resulting from the actual or threatened violation of specific laws." *See*, for example, *Flannery v. Prentice, (2001) 26 Cal. 4th 572, 583, 28 P.3d 860.* That purpose, however, is inconsistent with the stated legislative

mandates of the CPRA, including § 6259 (d), and the plain language of the statute – which reads the court shall award…attorney fees to the *Plaintiff* should the *Plaintiff* prevail…." (Emphasis added). Gov. Code § 6259 (d).

Instead, Gov. Code § 6259 (d) is a fee-awarding/incentive statute. In other words, the purpose of § 6259 (d) is to impose attorney fees and costs on a government agency (if a Plaintiff prevails against a government agency that improperly withholds public records) to give the agency an incentive to disclose disclosable records without a lawsuit. Next, the attorney fees are awarded not as property of an attorney, but by way of an award to a prevailing plaintiff. Likewise, if a plaintiff, whether *Pro Per* or not, files a clearly frivolous lawsuit against a government agency, the statute imposes an award of attorney fees and costs on the plaintiff to give plaintiffs an incentive to only file meritorious claims.

An example of the built-in fee imposition incentive factor for government agencies under § 6259(d), is found in *Belth v. Garamendi, supra*. In *Belth v. Garamendi*, the court pointed out that the recognition of the prospect of imposition of attorney fees, when an agency improperly withholds public records, amounts to a consequence that would likely make them think twice about doing so. *Belth, supra. at 902*. That position upholds the CPRA's objective of increasing freedom of information. *Ibid*.

By turning this case on a strict definition of "attorney fees" from Black's Law Dictionary or *Trope v. Katz, (1995) 11 Cal.4th 274, 282,* for

that matter, misconstrues the "attorney fees" language of § 6259 (d) which merely describes the type of mandatory award to which a prevailing plaintiff is entitled - not the status of the plaintiff.

Although raised by petitioner in his original brief and rehearing petition, the Court of Appeal 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. The important policy consideration of this case is whether the Court of Appeal'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* - and lesson the public's confidence in the CPRA.

Petitioner submits, that threat is precisely what happened in this case. There was no excuse or rational explanation for why both government agencies in this case refused to disclose one solitary record to Petitioner before he filed his petition with the Superior Court to enforce the provisions of the CPRA. When the dust settled, Petitioner obtained nearly 300 pages of records.

The Court of Appeal's decision will also make any *Pro Per* member of the public hesitant to pursue public records under the CPRA if they cannot secure representation on a contingency fee basis or cannot afford to advance a small fortune to a local attorney to

pursue their case hopeful that at some point in the future, they would not only prevail, but be reimbursed dollar for dollar by a Superior Court.

If agencies are aware that *Pro Per* members of the public are pursuing a CPRA case, what incentive do they have to act in good faith? The evidence in this case leads to one inescapable conclusion, i.e., the sheriff and the LACSD intentionally failed to comply with their statutory duties under the CPRA and obstructed petitioner's efforts to obtain clearly disclosable records, believing their actions would go without consequence. Petitioner submits the California Legislature suspected that would happen. That is why they passed the mandatory statute imposing attorney fees on an agency that improperly withholds records and a plaintiff who files a clearly frivolous action.

The Legislature wasn't focused on attorney-client (agency) relationships and obligations to pay. They were focused on requests for disclosable public records that are denied and prevailing plaintiffs who must file suit to bring about the disclosure of those records.

The Court of Appeal's decision also discriminates between *Pro Per* plaintiffs and state agencies representing themselves. At this point, 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 plaintiffs to file meritorious actions and state agencies to produce disclosable public records or suffer financial consequences. To hold otherwise

cannot be the intended result of a statute whose principal aim is to facilitate public access and increase freedom of information.

Finally, 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 an attorney for representing him, has value.[2] 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 (attorney fees) wags the dog (prevailing plaintiffs).

There is simply no sound reason for crafting a requirement for recovery of attorney fees under § 6259 (d)) that an economically challenged or personally motivated member of the public must convince a non-litigant attorney of the merits of their case and retain that attorney before they can pursue their rights under the California Constitution and the CPRA.

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[2] In footnote 9 of the Court of Appeal's decision, the Court questions whether petitioner is authorized to practice law in any state because he is "effectively retired as an attorney." Petitioner's declaration in support of his motion for court costs and reasonable attorney fees states in paragraph three "I have been a licensed attorney for 42 years." That fact is completely undisputed and unchallenged in the record below.

## CONCLUSION

Based on the need to settle important issues of law in CPRA litigation concerning prevailing plaintiffs and the need to secure uniformity of decisions, this Court should grant review.

Respectfully submitted,

Dated: January 19, 2018

__________________________

Samuel A. Perroni
Petitioner *Pro Per*

**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 3,411 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 2016 word-processing program used to prepare this brief.

Dated: January 19, 2018

______________________________
Samuel A. Perroni
Petitioner *Pro Per*

**PROOF OF SERVICE**

I, the undersigned, am the assistant to the Petitioner herein and am over the age of 18 years, and not a party to the above-entitled action. My business address is 190 W. Cimarron Place, Unit 659, Farmington, AR 72730.

On January 19, 2018 I served the foregoing document, described as PETITION FOR REVIEW, on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

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XX BY MAIL

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 date, with postage thereon fully prepaid, at Farmington, Arkansas, 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 an affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 19, 2018, at Farmington, Arkansas.

___________________________

Lorraine Markum
Assistant to Samuel A. Perroni, Esq.

**SERVICE LIST**
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**Case No. B281167**

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