



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA  
DOWNTOWN COURTHOUSE  
191 NORTH FIRST STREET  
SAN JOSÉ, CALIFORNIA 95113  
CIVIL DIVISION**

**Christina Ann Hickey  
Best Best & Krieger LLP  
2001 N Main St Ste 390  
Walnut Creek CA 94596**

**RE: Tom Williams et al vs City of Milpitas et al  
Case Number: 17CV309235**

**PROOF OF SERVICE**

**Order Regarding First Amendment Coalition's Motion for Attorney Fees and Costs** was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

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If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

**DECLARATION OF SERVICE BY MAIL:** I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on October 04, 2018. CLERK OF THE COURT, by Mark Rosales, Deputy.

**cc:** James Montgomery Chadwick Sheppard Mullin Richter & Hampton LLP 379 Lytton Ave Palo Alto CA 94301  
Sean Brian Gentry Ad Astra Law Group LLP 582 Market St 17th Floor San Francisco CA 94104  
David Edward Snyder First Amendment Coalition 534 4th St Suite B San Rafael CA 94901-3334

Decision on Submitted Matter

**FILED**

SUPERIOR COURT OF THE STATE OF CALIFORNIA OCT - 4 2018

SANTA CLARA COUNTY

Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY M. Rosales DEPUTY

**M. Rosales**

6 TOM WILLIAMS,  
7           Petitioner and Plaintiff,  
8 v.  
9 CITY OF MILPITAS et al.,  
10           Respondent and Defendants.  
11 and  
12 ALIYAH MOHAMMED et al.,  
13           Real Parties in Interest.

Case No. 17CV309235  
(consolidated for all purposes with Case No.  
17CV310994)

**ORDER REGARDING FIRST  
AMENDMENT COALITION'S MOTION  
FOR ATTORNEY FEES AND COSTS**

14  
15 FIRST AMENDMENT COALITION,  
16           Petitioner,  
17 v.  
18 CITY OF MILPITAS,  
19           Respondent.

21 **I. INTRODUCTION**

22           I deal now with the aftermath of this consolidated action. Specifically, I must decide the  
23 motion by First Amendment Coalition ("FAC") for attorney fees and costs from the City of  
24 Milpitas ("City") and Tom Williams, the other active litigants in this action.

1 **II. BACKGROUND**

2 A Procedural

3 This consolidated case featured two petitions for writs of mandate. Mr. Williams, a  
4 former Milpitas city manager, had filed the first writ petition, seeking to block disclosure by the  
5 City of various public records primarily relating to him. FAC had filed the second writ petition,  
6 seeking under the California Public Records Act (“CPRA”) certain public records relating to  
7 alleged misconduct of both Mr. Williams and Richard Tran, the mayor of the City. Because  
8 there was a substantial overlap in the records at issue in both petitions, the two cases were  
9 consolidated for all purposes.

10 After receiving briefing and hearing argument, I issued a Final Statement of Decision  
11 (“FSOD”) in May 2018. In the FSOD, I, among other things, vacated the then-existing  
12 temporary restraining order shielding documents from disclosure (the “*Williams* TRO”), granted  
13 FAC’s writ petition, and denied Mr. Williams’s writ petition. I also ordered the City to produce  
14 to FAC certain previously-withheld documents. (The City had voluntarily produced other  
15 documents to FAC during the pendency of the litigation.) I stated in the FSOD that I was “not  
16 ruling on attorney fees or making any prevailing party determination at this time,” but would  
17 permit parties to file future motions on those subjects.

18 Well, that future has now arrived. FAC has filed a motion seeking an award of attorney  
19 fees and costs from the City and Mr. Williams. Both the City and Mr. Williams oppose FAC’s  
20 motion. After reviewing the parties’ briefs and supporting documents, the Court held a hearing  
21 on this issue on September 6, 2018, and then took the matter under submission.

22 B. Factual

23 My FSOD set forth in detail the factual background for this case, and I incorporate it by  
24 reference here.

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**III. ANALYSIS**

FAC seeks attorney fees and costs from the City under the CPRA (namely, Government Code section 6259, subdivision (d)) for the CPRA case.<sup>1</sup> It also seeks fees and costs from Mr. Williams under Code of Civil Procedure section 1021.5<sup>2</sup> for the reverse-CPRA case. Because Government Code section 6259, subdivision (d) and section 1021.5 are separate statutes, I address them separately throughout much of this Order.

A. Prevailing/Successful Party Determination

A threshold requirement for a CPRA record requester to receive attorney fees and costs is that the requester “prevail.” (Gov’t Code, § 6259, subd. (d).) “[I]f a public record is disclosed only because a plaintiff filed a suit to obtain it, the plaintiff has prevailed” under the CPRA. (*Los Angeles Times v. Alameda Corridor Transp. Auth.* (2001) 88 Cal.App.4th 1381, 1391.)

In our case, FAC was the plaintiff-requester in the CPRA case. During the pendency of this consolidated action, the City voluntarily produced numerous documents. These voluntarily-produced documents were not covered by the *Williams* TRO, as the City admits. (See 8/23/18 City Opp’n, at p. 8.) And they were not provided in response to FAC’s original CPRA request. I thus find that they were produced in response to FAC’s CPRA case, as the City seems to concede. Therefore, I find that at least for this reason, FAC was the prevailing party in the CPRA case.

As for the reverse-CPRA case, a party must be “successful” in the case to qualify for a fees and costs award under section 1021.5. The terms “successful party,” as used in section

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<sup>1</sup> As used in this Order: a) the “CPRA case” is the case filed by FAC against the City, seeking the disclosure of public records under the CPRA; and b) the “reverse-CPRA case” is the case filed by Mr. Williams against the City, in which Mr. Williams sought to block disclosure of public records under the authority of *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250.

<sup>2</sup> All further undesignated statutory references will be to the Code of Civil Procedure, unless otherwise stated.

1 1021.5, and “prevailing party” are synonymous. (*Graham v. DaimlerChrysler Corp.* (2004) 34  
2 Cal.4th 553, 570.) Also, courts take a “broad, pragmatic view” on what constitutes “success”  
3 under section 1021.5. (*Id.* at p. 565.)

4 FAC won the reverse-CPRA case by having the *Williams* TRO dissolved and causing  
5 documents to be released. Any “victories” Mr. Williams claims by obtaining certain, limited  
6 redactions were minimal. Evaluating the litigation pragmatically, I find that FAC was the  
7 successful party under section 1021.5 in the reverse-CPRA case.

8 B. Entitlement to Attorney Fees

9 A prevailing plaintiff-requester in a CPRA case automatically is entitled to an award of  
10 reasonable attorney fees. (Gov’t Code, § 6259, subd. (d); *Filarsky v. Superior Court* (2002) 28  
11 Cal.4th 419, 427 (*Filarsky*)). FAC prevailed as the plaintiff-requester in this CPRA case, as  
12 discussed above. That means FAC is entitled to reasonable attorney fees from the City for this  
13 case.<sup>3</sup>

14 For the reverse-CPRA case, section 1021.5 “authorizes an award of fees when (1) the  
15 action resulted in the enforcement of an important right affecting the public interest, (2) a  
16 significant benefit was conferred on the general public, and (3) the necessity and financial  
17 burden of private enforcement make the award appropriate. [Citation.]” (*Pasadena Police*  
18 *Officers Ass’n v. City of Pasadena* (2018) 22 Cal.App.5th 147, 159 (*Pasadena Police II*)). Fees  
19 are mandatory under section 1021.5 when these factors have been met “unless special  
20 circumstances render such an award unjust.” (*Robinson v. City of Chowchilla* (2011) 202  
21 Cal.App.4th 382, 391.)

22  
23  
24 <sup>3</sup> The City cites to *National Conference of Black Mayors v. Chico Community Publishing* (2018)  
25 Cal.App.5th 570, as support for denying an award of attorney fees and costs. I find this case  
26 to be distinguishable, as the fee requester in that case had *not* filed an affirmative CPRA action  
and thus was not eligible to receive attorney fees and costs under the CPRA. Here, of course,  
FAC had filed a CPRA case against the City.

1 Here, FAC's work resulted in the release of documents that described possible financial  
2 and other misconduct of the City's top officials (Messrs. Williams and Tran). The benefit  
3 obtained through FAC's work was not a narrow one that affected "only private rights." (Cf.  
4 *Adoption of Joshua S.* (2008) 42 Cal.4th 945, 958 (*Joshua S.*)) Rather, there were, and are,  
5 significant public interests in understanding whether high-ranking city officials were acting  
6 improperly, and in understanding the City's response to such alleged misconduct. Without  
7 FAC's "private enforcement," it is unlikely whether any previously-withheld documents would  
8 have been disclosed. And in my view, there are no special circumstances that would render an  
9 award of fees to FAC unjust.

10 This case is factually similar to *Pasadena Police II*. In that case, a newspaper filed a  
11 CPRA action against the city of Pasadena seeking full release of a report concerning a police  
12 shooting, and also intervened in a reverse-CPRA action that sought to shield certain portions of  
13 the report from disclosure. Eventually the trial court disclosed the report with far fewer  
14 redactions than the reverse-CPRA plaintiff (a police officer union) had wanted. The newspaper  
15 then sought attorney fees from the reverse-CPRA plaintiff under section 1021.5.

16 The *Pasadena Police II* court characterized the lawsuit as "involving public officials who  
17 sought to suppress an important public record, thus adversely affecting the public interest."  
18 (*Pasadena Police II, supra*, 22 Cal.App.5th at p. 166.) It accordingly held that the "private  
19 rights" exception of *Joshua S.* did not apply, and found that an award of fees under section  
20 1021.5 was appropriate. (*Ibid.*) Similarly, our case involves documents that were of significant  
21 public interest which Mr. Williams attempted to keep from the public. *Joshua S.* does not apply  
22 in our case, either.

23 In sum, I find that the criteria set forth in section 1021.5 have been met, and that FAC is  
24 entitled to an award of reasonable attorney fees from Mr. Williams in the reverse-CPRA case.

1 C. Joint and Several Liability

2 FAC asks me to find the City and Mr. Williams jointly and severally liable for its  
3 attorney fees and costs. I agree with FAC that joint liability is possible for two co-defendants  
4 where the fees and costs were assessed against both defendants *under the same statute* (for  
5 instance, under section 1021.5). (See 7/9/18 FAC's Open. Br., at pp. 17-18.)

6 But that is not our situation. As discussed above, the City and Mr. Williams are liable for  
7 fees and costs under different statutes: Government Code section 6259, subdivision (d) for the  
8 City, section 1021.5 for Mr. Williams. FAC cites no case that has ever assessed joint and several  
9 liability for attorney fees on two different parties, where each party is liable under a separate  
10 statute.

11 In fact, the *Pasadena Police II* court explained that liability for attorney fees and costs for  
12 a CPRA case is separate from liability for attorney fees and costs under section 1021.5 for a  
13 reverse-CPRA case. (See *Pasadena Police II, supra*, 22 Cal.App.5th at p. 155 n.7.) Allowing  
14 joint and several liability in our situation would impermissibly blur the line between CPRA and  
15 reverse-CPRA cases. It also would expose the City to liability for fees and costs under section  
16 1021.5 and the CPRA, and liability for fees under both statutes is not allowed. (See *Bell v. Vista*  
17 *Unified School Dist.* (2000) 82 Cal.App.4th 672, 689-690.)

18 I therefore deny FAC's request to impose joint and several liability on the City and Mr.  
19 Williams for its claimed attorney fees and costs. Instead, I will: 1) allocate fees and costs on the  
20 City based on the fees and costs incurred by FAC for the CPRA case; and 2) allocate fees and  
21 costs on Mr. Williams based on the fees and costs incurred by FAC for the reverse-CPRA case.

22 D. Lodestar Calculation and Apportionment of Attorney Fees

23 "[T]he fee setting inquiry in California ordinarily begins with the 'lodestar,' i.e., the  
24 number of hours reasonably expended multiplied by the reasonable hourly rate . . ." (*PLCM*  
25 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) This type of calculation applies to a wide  
26 range of statutory fee-shifting provisions, including the CPRA and section 1021.5. (See

1 *Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1393 [CPRA] (*Bernardi*); *Keep*  
2 *Our Mountains Quiet v County of Santa Clara* (2015) 236 Cal.App.4th 714, 736-737 [section  
3 1021.5].) I have carefully reviewed the briefs, declarations, and supporting exhibits submitted  
4 by all parties concerning the lodestar.

5 I first “split” the overall lodestar into two lodestars: one for the CPRA case and one for  
6 the reverse-CPRA case. I do this “splitting” to properly allocate FAC’s fees and costs to the  
7 appropriate case, as discussed above. FAC states in its reply brief that its proposed lodestar for  
8 the CPRA case is \$181,603.00 and its proposed lodestar for the reverse-CPRA case is \$7,699.00.  
9 I will use those numbers to start my analysis.

10 I then find, based on my experience with comparable legal services in the community,  
11 that the hourly rates charged by counsel for FAC for both cases was reasonable—on the higher  
12 end, to be sure, but still reasonable.

13 I next review the hours billed by FAC’s counsel. After that review, I find that a  
14 substantial amount of work for the CPRA case was unnecessary. For instance, it was  
15 unnecessary in my opinion for FAC’s counsel to brief (and thus spend billable hours on)  
16 tangential issues in the case, such as the effect of the City’s sunshine ordinance, the intricacies of  
17 intervention, or whether the *Williams* TRO was an unconstitutional prior restraint. That  
18 unnecessary work justifies a reduction in awarded fees. (See *Ketchum v. Moses* (2001) 24  
19 Cal.4th 1122, 1132 (*Ketchum*).)

20 In addition, the CPRA case was directly responsible only for the City’s voluntary  
21 production of documents. It was not responsible—at least by itself—for the City disclosing  
22 documents previously covered by the *Williams* TRO. The limited success of FAC’s work on the  
23 CPRA case hence also justifies a reduction in the fee award for that case. (See *Bernardi, supra*,  
24 167 Cal.App.4th at p. 1398 [“the degree of the plaintiff’s success in obtaining the objectives of  
25 the litigation is a factor that the trial court may consider in determining an award of reasonable  
26 attorney fees under a fee statute . . . [Citation] . . . , including the CPRA fee statute . . . .”].)



1 For all of those reasons, I am reducing the total lodestar for the CPRA case by 50%. That  
2 means FAC is entitled to 50% of \$181,603.00, or \$90,801.50, from the City in attorney fees. As  
3 for the reverse-CPRA case, I believe that the stated number of hours for that case was  
4 reasonable. I therefore award \$7,699.00 (FAC's requested amount) in attorney fees to FAC,  
5 payable by Mr. Williams.

6 E. Enhancement of Attorney Fees

7 I have discretion to increase the amount of awarded attorney fees based on several  
8 factors, including "(1) the novelty and difficulty of the questions involved, (2) the skill displayed  
9 in presenting them, (3) the extent to which the nature of the litigation precluded other  
10 employment by the attorneys, [and] (4) the contingent nature of the fee award. [Citation.]"  
11 (*Bernardi, supra*, 167 Cal.App.4th at p. 1399 [quoting *Ketchum, supra*, 24 Cal.4th at p. 1132].)  
12 The above factors apply to all cases where fee shifting to the prevailing party occurs by statute.  
13 (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1240.) Both CPRA and reverse-CPRA  
14 cases are such "statutory fee-shifting" cases.

15 After evaluating these above-listed factors, I decline to enhance the lodestar amount. In  
16 my view, the legal questions in this case were not unusual or complex, especially since the  
17 propriety of reverse-CPRA actions already had been established. This case was relatively small  
18 and should not have precluded FAC's counsel from taking on other work. And while the fee  
19 award was contingent on success and FAC presented the issues well, I am not persuaded that  
20 these factors justify fee enhancement. In any event, a trial court "is not required to include a fee  
21 enhancement to the basic lodestar figure for contingent risk, exceptional skill, or other factors  
22 . . . ." (*Ketchum, supra*, 24 Cal.4th at p. 1138.) Therefore, I deny FAC's request for  
23 enhancement of its CPRA and reverse-CPRA attorney fee awards.

24 F. Costs

25 The CPRA mandates an award of costs to the prevailing party if the prevailing party was  
26 the plaintiff-requester. (Gov't Code, § 6259, subd. (d); *Filarisky, supra*, 28 Cal.4th at p. 427.)

1 Since FAC was the plaintiff-requester and prevailed against the City in the CPRA case, the City  
2 must pay any costs FAC incurred for the CPRA case.

3 As for the reverse-CPRA case, there is no specific statute governing the award of costs to  
4 a prevailing party in such a case. I therefore rely on the general rule applicable to civil cases in  
5 California: absent a contrary statute, "a prevailing party is entitled as a matter of right to recover  
6 costs in any action or proceeding . . . ." (§ 1032, subd. (b).) FAC is the prevailing party in the  
7 reverse-CPRA case and thus is entitled from Mr. Williams to its costs incurred for the reverse-  
8 CPRA case.

9 I have reviewed the claimed costs and am satisfied they were reasonable and necessary.  
10 Moreover, neither Mr. Williams nor the City challenges the claimed costs. I therefore will award  
11 \$1,260.00 in costs.

12 Unfortunately, FAC's counsel did not allocate their claimed costs between the two cases.  
13 I therefore allocate the costs between the two cases in proportion to the fees claimed for each  
14 case. Because the fees claimed by FAC for the reverse-CPRA case (\$7,699.00) were 4.07% of  
15 the total fees claimed by FAC for both cases (\$7,699.00 + \$181,603), I will allocate 4.07% of the  
16 total costs to the reverse-CPRA cases, or \$51.28. The remaining costs (\$1208.72) are  
17 attributable to the CPRA cases.

#### 18 **IV. CONCLUSION**

19 As explained above, I now make the following findings and orders:

20 1. FAC is the prevailing party under Government Code section 6259, subdivision (d)  
21 in the CPRA case. FAC also is the "successful party" / prevailing party under Code of Civil  
22 Procedure section 1021.5 in the reverse-CPRA case.

23 2. FAC is entitled to attorney fees from the City in the CPRA case. FAC also is  
24 entitled to attorney fees from Mr. Williams in the reverse-CPRA case.

25 3. There is no joint and several liability between the City and Mr. Williams for  
26 attorney fees and costs sought by FAC.

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4. FAC's request for enhanced attorney fees is denied.

5. Mr. Williams must pay FAC \$7699.00 in attorney fees and \$51.28 in costs, for a total of \$7750.28. Mr. Williams must make this payment in full within 90 calendar days of filing of this Order. I leave it to the parties to work out any remaining logistics of the payment.

6. The City must pay \$90,801.50 in attorney fees and \$1208.72 in costs, for a total of \$92,010.22. The City must make this payment in full within 90 calendar days of filing of this Order. I leave it to the parties to work out any remaining logistics of the payment.

**IT IS SO ORDERED.**

10/4/18

Date



The Hon. Sunil R. Kulkarni  
Judge of the Superior Court