2nd Civil No. B269525

IN THE

COURT OF APPEAL OF THE STATE OF CALIFORNIA IN AND FOR

THE SECOND APPELLATE DISTRICT, DIVISION SEVEN

CITY OF LOS ANGELES,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent.

CYNTHIA ANDERSON-BARKER,

Real Party In Interest.

LASC Case No. BS156058

On Appeal From the Superior Court of California,
County of Los Angeles
Judge: Honorable Joanne B. O'Donnell

APPLICATION OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION SEVEN	Court of Appeal Case Number: B269525
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	FOR COURT USE ONLY
APPELLANT/PETITIONER: City of Los Angeles RESPONDENT/REAL PARTY IN INTEREST: Cynthia Anderson-Barker	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): California State Association of Counties

2. a. ☑ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest *(Explain):*
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: April 1, 2016

Shawn Hagerty
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

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

This Application is submitted by the California State Association of Counties ("CSAC"). Pursuant to Rule 8.200(c) of the California Rules of Court, CSAC respectfully requests leave to file the attached brief in support of Petitioner City of Los Angeles (the "City").

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

Counsel for CSAC has reviewed the briefs on file in this case to date. CSAC does not seek to duplicate arguments set forth in the briefs. Any overlap in the content of CSAC's brief and others is minor. CSAC's brief, as can be expected of statewide organizations whose members are California cities and counties, emphasizes a "big picture" view of this case.

Among other things, the brief discusses the serious adverse impact the Superior Court's decision, if upheld, would have on public entities, including every city, county and special district throughout California, and explains that the Court should use caution in applying civil discovery rule in writ proceedings because writ proceedings are meant to expedite review. We therefore believe the brief will aid this Court in its consideration of the case.

For these reasons, CSAC respectfully requests that the Court grant this Application, and accept the concurrently-filed *Amicus* Brief.[1]

Dated: April 1, 2016

Respectfully Submitted,

By: _____

SHAWN HAGERTY
REBECCA ANDREWS
VICTORIA HESTER
Attorneys for Amicus Curiae
The California State
Association of Counties

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

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately one-and-a-half-spaced 13 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, the brief contains 2,453 words up to and including the signature lines that follow the brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on April 1, 2016.

Dated: April 1, 2016

Respectfully Submitted,

By: _____

SHAWN HAGERTY
REBECCA ANDREWS
VICTORIA HESTER
Attorneys for Amicus Curiae
The California State Association of Counties

PROPOSED ORDER

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

IT IS SO ORDERED.

DATED: _____, 2016

_____
PRESIDING JUSTICE

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am an employee in the County of San Diego, State of California. I am over the age of 18 and not a party to the above-entitled action. My business address is 655 West Broadway, 15th Floor, San Diego, CA 92101.

On April 1, 2016, I served the document, described as: **"APPLICATION OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER;[PROPOSED] ORDER RE AMICUS APPLICATION"** on all interested parties in this action as follows:

Form of Service:

A **(BY MAIL)** As follows:

I placed such envelope, with postage thereon prepaid, in the United States mail at Riverside, California.

I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid, at Riverside, California, in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation or postage meter date is more than one day after the date of deposit for mailing in this affidavit.

B **(BY OVERNIGHT DELIVERY)** by causing it to be mailed by method of overnight delivery with instructions for delivery the next business day with delivery fees paid or provided for.

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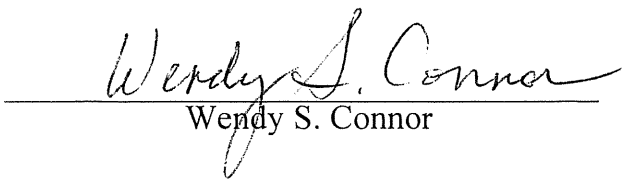
SEE ATTACHED SERVICE LIST:

I declare, under penalty of perjury under the laws of the State of California, that the above is true and correct.

Executed on April 1, 2016, at San Diego, California.



Wendy S. Connor

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Federal Express	Hon. Joanne B. O'Donnell Los Angeles Superior Court 111 N. Hill St., Dept. 86 Los Angeles, CA 90012	Respondent Superior Court of Los Angeles County

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

I.

INTRODUCTION

Amicus Curiae California State Association of Counties ("CSAC") respectfully submits this brief in support of Petitioner City of Los Angeles ("City"). CSAC urges the court to reverse the ruling of Respondent Superior Court of the State of California for the County of Los Angeles that the Civil Discovery Act applies uniformly to writ of mandate proceedings to compel the disclosure of public records under the California Public Records Act ("CPRA").

CSAC represents the 58 counties in California. Some of these counties have thousands of employees and dozens of departments. Many smaller counties are much larger in size, scope and complexity than when the CPRA was enacted nearly a half-century ago. Though precise figures are unavailable, CSAC can in good faith represent that each year public entities in California receive several thousands of public records requests. (*Ardon v. City of Los Angeles* (2016) Case No. S223876, 2016 Cal. LEXIS 1572, *21-22.) A large county will annually receive at least hundreds of requests, and possibly more. (*Ibid.*) In general, the number of requests seems to be ever-increasing, perhaps due in part to the ease with which requests can be made electronically (including, with a requester's push of the "send" button to multiple addresses). (*Ibid.*)

The volume of public records requests attests to the strength of our system of open government in California. The CPRA is designed to make the process of obtaining public records relatively easy. The Act does not restrict who may make a request, how many requests may be made, or the

purpose for which a request is made. (Gov. Code § 6257.5.) It also severely limits fees that may be charged requesters. (Gov. Code § 6253(b).)

The volume of records covered by even one public records request can be staggering. (*Ardon, supra*, at *22.) Public agencies review records requests and requested records, and disclose records as "promptly" as possible in an effort to further the CPRA's goal of ensuring transparency in government while protecting individual privacy rights. (Cal. Const. art. I, § 3(b)(2), (3); Gov. Code, §§ 6250, 6253.)

Public employees functioning under these pressures will inevitably make mistakes in the processing of public records requests, and documents will be incorrectly withheld. (*Ardon, supra*, at * 22.) Writ proceedings provide a petitioner with expedited review to determine whether a document has been properly withheld. Uniform application of the Civil Discovery Act to actions brought under the CPRA, without reference to the nature of the underlying action, is inappropriate, and will result in delayed disclosure of records by agencies and an extended judicial review process.

II.

SUMMARY OF ARGUMENT

The CPRA balances the goals of ensuring transparency in government while protecting individual privacy rights. (Cal. Const. art. I, § 3(b)(2), (3); Gov. Code, §§ 6250, 6253.) Uniform application of the Civil Discovery Act to writ proceedings under the CPRA cuts against the CPRA's goals of transparency and expedited judicial review. The CPRA provides a requestor the option of seeking injunctive or declaratory relief or filing a petition for writ of mandate to enforce the right to inspect public records and establishes the procedures for judicial review. (Gov. Code, §§ 6258, 6259.)

A writ proceeding is an expedited process that reviews the disclosability of documents that have been withheld by the public agency. This expedited review consists of an in camera review by a judge, who may request additional information if necessary. (Gov. Code, § 6259.) By electing to proceed under a writ petition, a petitioner elects expedited review and is subject to the accompanying limitations on discovery. Traditional CPRA writ proceedings do not include discovery when at issue is only the narrow legal question of whether documents have been properly withheld. This procedure is consistent with general writ proceedings under California law and federal Freedom of Information Act ("FOIA") litigation, which also limit discovery. Applying the Civil Discovery Act to CPRA writ proceedings will transform a public records request into a prolonged discovery battle, delaying both the judicial determination of disclosability and the public agency's initial response to a CPRA request.

III.

ARGUMENT

A. Uniform Application of the Civil Discovery Act to all CPRA Litigation is Improper

The CPRA sets out the exclusive procedure for CPRA litigation and allows discovery only by judicial direction. This limitation on discovery provides the petitioner expedited review of a CPRA case. Traditionally, a petitioner's election to pursue CPRA writ proceedings is an election to seek expedited review and to forego civil discovery. The limited discovery allowed in CPRA writ proceedings is consistent with limited discovery in writ proceedings generally. The uniform application of civil discovery to all CPRA litigation is therefore improper.

1. Section 6258 Provides the Exclusive Procedure for Litigating CPRA Actions and Allows Discovery Only On Judicial Direction

California Government Code sections 6258 and 6259 ("Section 6258" and "Section 6259" respectively) provide the exclusive procedure for enforcing the right to inspect or receive a copy of any public record. (Gov. Code, § 6258; see also *Filarsky v. Super. Ct.* (2002) 28 Cal.4th 419, 423 ["in enacting sections 6258 and 6259, the Legislature specified the exclusive procedure in these circumstances for litigating disputes regarding a person's right to obtain disclosure of public records under the Act."].) A person may elect to enforce rights under the CPRA by bringing a complaint for "injunctive or declarative relief or writ of mandate[.]" (Gov. Code, § 6258.)

Where a petitioner elects to enforce rights under the CPRA pursuant to writ proceedings, the specific procedures set forth in Sections 6258 and 6259 prevail over contradictory provisions in the Code of Civil Procedure. (*Filarsky, supra*, 28 Cal.4th at p. 423; see also, Code Civ. Proc., § 1854 ["a particular intent will control a general one that is inconsistent with it."].) Section 6258 directs the court to set the "times for responsive pleadings and for hearings … with the object of securing a decision as to these matters at the earliest possible time." (Gov. Code, § 6258.) Similarly, Section 6259 directs the court to "decide the case after examining the record in camera, … papers filed by the parties and any oral argument and additional evidence as the court may allow." (Gov. Code, § 6259, subd. (a); see e.g., *League of California Cities v. Super. Ct.* (2015) 241 Cal.App.4th 976, 982 [judge ordered creation of a privilege log to aid court's determination of privilege].)

The CPRA thus envisions a writ proceeding consisting of a petition (generally alleging a record was improperly withheld on specific statutory

grounds) and response (setting out the legal justification for withholding the record), the withheld record, oral argument, and any other evidence a judge needs to determine the appropriateness of the claimed grounds for withholding a record. (See Gov. Code, § 6259, subd. (a); *Filarsky, supra*, 28 Cal.4th at p. 426 ["If it appears from the plaintiff's verified petition that 'certain public records are being improperly withheld from a member of the public,' the court must order the individual withholding the records to disclose them or to show cause why he or she should not do so."].)[2]

In essence, after a petitioner demonstrates a record was requested and withheld, the burden shifts to the public agency to justify the withholding. (Gov. Code, § 6259, subd. (b).) If the public agency fails to provide the court with sufficient justification for withholding the record, the court orders disclosure not discovery. (*Ibid.*) The exclusive procedure for CPRA writ review set forth in Sections 6258 and 6259 allows discovery only on judicial direction. In CPRA writ proceedings, discovery is the exception, not the rule.

2. Writ Proceedings Are Subject to Expedited Review and Limited Discovery

The limitation on discovery in Sections 6258 and 6259 is consistent with the limited availability of discovery in writ actions, generally. (*See Western States Petroleum Assn v. Super. Ct.* (1995) 9 Cal.4th 559, 579.) Where a writ of mandate is opposed by an answer that includes factual disputes, limited discovery may be appropriate at the direction of the court.

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[2] Cases demonstrating this typical litigation pattern include the following, for example: *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065 [determining whether proposals regarding the lease of a parcel of land at a city-owned airport were properly withheld under Gov. Code, § 6255]; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1064 [determining whether law enforcement records were properly withheld under Gov. Code, § 6254 subd. (f)].

(See, *Western States, supra*, 9 Cal.4th at p. 576 [evidence is admissible only if relevant to proving a disputed fact of consequence to the determination of the action]; Gov. Code, § 6259, subd. (a) [judge directs discovery].) When a petition or answer only raises questions of law, however, the matter is decided on the pleadings, the verified documents and oral argument. (See, e.g., *Baumgardner v. City of Hawthorne* (1951) 104 Cal.App.2d 512, 517 (holding that where an answer raised only questions of law and evidence was not required, and the court properly heard and decided the case on the pleadings); Gov. Code, § 6259 subd. (a) [directing a court to determine the case after an in camera record review, papers filed by the parties, oral argument, and additional evidence allowed by the judge].)

A person is not obligated to enforce CPRA rights only pursuant to writ proceeding with limited discovery. A person can file a combined initial pleading—a petition and a complaint for damages, declaratory relief, or injunctive relief, as may be appropriate, see, e.g., *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 735, or an independent complaint, see, e.g., *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385. Filing a combined pleading or independent complaint "[m]ay have the effect of prolonging the proceedings, e.g., because of additional discovery prompted by the claims in the complaint or because those claims take longer to resolve by summary judgment or trial." (Cal. Civ. Proc. Before Trial (Cont.Ed.Bar 4th ed. 2015) § 5.119.) By electing expedited review, a petitioner elects the limited discovery procedures set forth in Sections 6258 and 6259.

Limited discovery under the CPRA is also consistent with the general unavailability of discovery under the Freedom of Information Act ("FOIA"). (5 U.S.C. § 552; see also *Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 25, 2000 U.S. Dist. LEXIS 11682, *8 (D.D.C. 2000).) FOIA litigation is typically resolved by summary judgment after

the court considers the pleadings and the affidavits of agency officials. (*Ibid.*) In *Judicial Watch*, the court considered whether certain documents had been properly withheld. (*Id.* at p. 24.) The court rejected the petitioner's request for discovery and held that summary judgment was appropriate because the petitioner failed to raise a sufficient factual question as to the agency's good faith in processing or in its search. (*Id.* at p. 25.) The court explained that where a petition or an answer fails to raise an issue of material fact, discovery is "generally inappropriate." (*Ibid.*)

Consistent with general writ proceedings under California law and federal FOIA litigation, Sections 6258 and 6259 do not apply the Civil Discovery Act to writ petitions, but instead make discovery available at the discretion of the judge. By electing to proceed under a verified petition, a petitioner elects the proceedings set forth in Sections 6258 and 6259.

B. Categorical Application of the Civil Discovery Act in CPRA Writ Proceedings Will Delay the Public's Access to Records.

The categorical application of the Civil Discovery Act in writ proceedings will have the unintended consequence of delaying the public's access to records at two points in the process. First, allowing discovery in all CPRA actions may result in delayed judicial determinations, thereby "frustrat[ing] the significant public purposes underlying the [CPRA]." (*Wilder v. Superior Court* (1998) 66 Cal.App.4th 77, 83.) Second, allowing discovery in all CPRA actions will delay disclosure of records by public agencies as they seek additional legal review prior to determining a record's disclosability.

1. Uniform Application of the Civil Discovery Act in CPRA Litigation Will Delay Judicial Determinations of Disclosability

The application of the Civil Discovery Act in writ proceedings will delay judicial determinations of disclosability. As this Court noted in

Wilder, Section 6259(c) was intended to prevent public agencies from "delay[ing] disclosure of the records in question for a considerable period of time (often years) simply by filing an appeal of [an] adverse judgment[.]" (*Wilder, supra*, 66 Cal.App.4th at p. 84.) Similarly, "[t]he legislative purpose of expediency and immediate reviewability, recognized by the Supreme Court ..., cannot be served by transforming a public record request into a drawn out discovery battle." (*Ibid.*)

If discovery under the Civil Discovery Act is applicable in all CPRA cases, without regard to the nature of the underlying action, CPRA writs may become extended discovery battles rather than expedited judicial reviews. Section 6259(a)'s provision for in camera review of the disputed record may morph into a prolonged discovery dispute focused on the propriety of revealing the very document that has been withheld. (See *Judicial Watch, Inc., supra*, 108 F. Supp. 2d at p. 25.) This manner of expanding discovery will increase costs to all litigants, divert scarce public resources toward litigation, and delay ultimate judicial determination of the appropriateness of an exemption to a particular record.

2. Uniform Application of the Civil Discovery Act in CPRA Litigation Will Delay Agency Determinations of Disclosability

Furthermore, the application of civil discovery to CPRA actions may delay public agency disclosures under the CPRA. As public agencies face the prospect of a prolonged discovery battle for each erroneous withholding, they will seek increased legal review prior to releasing or withholding records. The requirement that a record be made "promptly available" will thus be adjusted to account for additional legal review of withheld records. (Gov. Code, § 6253.) Considering that many local agencies already expend significant staff time and resources in order to keep up with the existing stream of CPRA requests (with many agencies

receiving thousands of requests each year), *Ardon, supra*, at *21-22, expanding the scope of each review would inevitably increase response time and delay disclosure.

The legislative purpose of CPRA writ proceedings is to provide expedient review to determine whether a record has been properly withheld. Applying the Civil Discovery Act to CPRA writ proceedings would frustrate this purpose by potentially transforming a public records request into a prolonged discovery battle. Expanding review in this manner would increase costs for litigants and delay judicial determinations of disclosability. In addition, public agencies facing the prospect of drawn-out discovery for each erroneous withholding will likely seek additional legal review before making disclosures. This additional review will delay what is designed to be a "prompt" response by the public agency. (See Gov. Code, § 6253.) Uniform application of the Civil Discovery Act to all CPRA writ proceedings is therefore improper.

IV.

CONCLUSION

For the reasons set forth above, the trial court's decision should be reversed.

Dated: April 1, 2016

Respectfully Submitted,

By: _____

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