No. B334408

In the Court of Appeal, State of California

SECOND APPELLATE DISTRICT DIVISION FIVE

DESOLINA DI LAURO
Plaintiff and Appellant,

vs.

CITY OF BURBANK
Defendant and Respondent.

Appeal From the Superior Court of the State of California,
County of Los Angeles. Case No. 23STCV15014
Honorable William F. Highberger, Judge Presiding

APPLICATION TO FILE AMICI CURIAE BRIEF AND BRIEF OF AMICI LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF RESPONDENT CITY OF BURBANK

Appeal From Los Angeles Superior Court
Case No. 23STCV15014
Hon. William F. Highberger

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

This is the initial certificate of interested entities or persons submitted on behalf of Amici Curiae League of California Cities and California State Association of Counties ("Local Government Amici") in the case number listed above.

The undersigned certifies there are no interested entities or persons that must be listed in this Certificate under California Rules of Court, rule 8.208.

DATED: September 6, 2024

COLANTUONO, HIGHSMITH & WHATLEY, PC

/s/ Holly O. Whatley
HOLLY O. WHATLEY
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Statutes

Rules

APPLICATION TO THE HONORABLE PRESIDING JUSTICE FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

Pursuant to Cal. Rules of Court, 8.520,(f), the California Cities and California State Association of Counties (together, "Local Government Amici") respectfully seek leave to file the amici curiae brief accompanying this application in support of Respondent City of Burbank.

The issues in this case are significant to Local Government Amici because the counties and cities they represent are collectively responsible for responding annually to tens of thousands of requests under the California Public Records Act (CPRA). In particular, Local Government Amici have a substantial interest in who has standing to sue to enforce the CPRA and the available enforcement remedies. If, as Appellant urges, persons may pursue class actions to enforce the CPRA rights of others, local agencies throughout the state would be subject to an additional, enormous burden with no concomitant benefit to the public.

Local Government Amici wish to address these issues and believe their proposed brief will assist the Court to decide the issues this appeal presents.

IDENTITY AND INTEREST OF AMICI CURIAE

The **League of California Cities** (Cal Cities) is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 254 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

The **California State Association of Counties** (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.

CONCLUSION

For the reasons stated in this application and further developed in the proposed brief, Local Government Amici

respectfully request leave to file the amici curiae brief submitted concurrently with this application.

The firm Colantuono, Highsmith & Whatley, PC, authored the brief on a pro bono basis, and no other person made a monetary contribution to its preparation or submission.

Respectfully submitted.

DATED: September 6, 2024

COLANTUONO, HIGHSMITH & WHATLEY, PC

/s/ Holly O. Whatley
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Attorneys for Local Government Amici

AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT

INTRODUCTION AND SUMMARY OF ARGUMENT

Cities and counties throughout California collectively respond to hundreds of requests for public records submitted daily under the California Public Records Act (CPRA). (Gov. Code, § 7920.000 et seq.) The types of records sought range from police reports and city council member and county supervisor emails, both among the most frequently requested records, to the more obscure, such as traffic signal timing records. No matter the topic, local agencies search for the documents, notify the requestor whether responsive documents exist and whether a particular exemption justifies withholding the record, and, if no exemption applies, produce the requested records within a reasonable time.

In crafting the CPRA, the legislature created both the right to inspect or copy public records and the statutory procedure by which those who contend public records were wrongfully withheld could enforce such rights. What it did not do, as the trial court properly recognized, was open the CPRA's enforcement mechanism to enable a named plaintiff to assert the CPRA rights of other unnamed plaintiffs.

The plain language of the statute defining who may sue and the available remedies reflects the legislative intent to limit claims to

real parties in interest, not unnamed class members. Permitting class action enforcement, as Appellant urges, contradicts that plain language and is antithetical to the expedited procedures the legislature put in place to ensure prompt resolution of CPRA claims. Pre-certification discovery, the certification briefing, and the notice and opt-out procedures for certified classes, would all delay (for at least a year) the trial court reaching the merits of the CPRA claims, despite the legislature's command that CPRA suits be expeditiously resolved.

Nor does class treatment present advantages over the existing CPRA remedial scheme. It is not needed to incentivize plaintiffs to pursue claims collectively where damages are too small for individuals, the classic reason to allow class claims. Damages are not available in a CPRA claim, and the legislature incentivized the public to enforce their rights by providing that prevailing plaintiffs can recover attorneys' fees and costs.

Also, class treatment does not streamline resolution of CPRA claims, which are factually intensive inquiries into whether one of the myriad exemptions may apply, which itself can turn on how the information in the subject record was collected and when.

Finally, allowing class treatment of CPRA enforcement claims will place enormous burdens on public agencies with no

corresponding benefit to the public. For example, agencies' limited resources and staff will be diverted to complying with class-wide discovery, rather than discovery focused on the real party in interest's request, all while continuing to comply with new incoming CPRA requests. This burden is not illusory. Appellant's proposed class includes persons who had already received their requested documents from the City of Burbank ("City"), but whose requests Appellant nonetheless intends to include within the scope of certification and merits discovery to the City. This is but one example of an undue burden Appellant's position creates.

The California Supreme Court recognized that class actions are not the panacea that Appellant's class counsel urge. "While termination of a defendant's alleged wrongdoing is a factor to be considered [citation] it does not warrant group action for damage when the members will not recover damage, and when a simpler remedy such as mandate is available. (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 386.) Here, the legislature provided that simpler remedy; an expedited procedure via either declaratory relief or writ of mandate to determine if records were withheld wrongfully and attorneys' fees recoverable by a prevailing plaintiff. And if the records at issue are ordered produced, they are available to the public and not solely the named plaintiff. The trial court

recognized that class action treatment is not available in CPRA enforcement actions, and its ruling should be affirmed.

JOINDER IN CITY OF BURBANK'S STATEMENT OF THE CASE

Local Government Amici join in the Statement of the Case of Respondent City of Burbank. (Cal. Rules of Cal. Rules of Court, 8.204, and 8.520.)

ARGUMENT

I. Legislative Intent, Reflected in the CPRA's Plain Language, Precludes Class Treatment to Enforce Compliance

The California Public Records Act (CPRA) states plainly who may sue to enforce the right to inspect or receive a copy of a public record—the person who requested the record. "Any person may institute a proceeding for injunctive or declarative relief, or for a writ of mandate, in any court of competent jurisdiction, to enforce **that person's** right under this division to inspect or receive a copy of any public record or class of public records." (Gov. Code, § 7923.000.) This single sentence succinctly describes who may sue (the person who requested the record) and the available remedy (access to inspect or a copy of the requested record).

In interpreting statutes, courts are to "follow the Legislature's intent, as exhibited by the plain meaning of the actual words of the law . . .." (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 634.) And in so doing, courts are to give those words a "plain and commonsense meaning." (*Ibid.*)

Applying this well-founded rule of statutory construction here precludes class treatment in CPRA enforcement actions. Having used the term "any person" at the beginning of the sentence, the legislature chose not to use it again at the end when defining whose rights "any person" may sue to enforce. Instead, it chose the more precise indicator—"that person." Merriam-Webster defines "that" as "the person, thing, or idea indicated, mentioned, or understood from the situation." (https://www.merriam-webster.com/dictionary/that.) Here, "that" functions as a limiting pronoun in Gov. Code, § 7923.000. It identifies the specific person whose rights may be asserted in the suit to enforce the CPRA. Appellant's request to ignore the legislature's deliberate drafting decision invites this Court to rewrite the statute. But courts must avoid a construction making any word "surplusage." (*Skidgel v. California Unemployment Ins. Appeals Bd.* (2021) 12 Cal.5th 1, 21.) So too must they avoid rewriting the law. (*California Teachers Assn.*, *supra*, 14 Cal.4th at p. 632.) The trial court declined Appellant's

invitation to rewrite the statute, and Local Government Amici urge this Court to similarly decline.

The trial court's construction gave effect to every word in the statute and followed the California Supreme Court's interpretation of the CPRA's plain language to outline the remedial bounds of a claim. In *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 426, the Supreme Court held, "The plain language of this provision contemplates a declaratory relief proceeding commenced only by an individual or entity seeking disclosure of public records, and not by the public agency from which disclosure is sought." Similarly, in *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1415, the Court of Appeal held "[t]he statute provides neither explicit nor implicit authority for one person to enforce another's inspection rights." The decision in *County of Santa Clara v. Superior Court* (2009) 171 Cal.App.4th 119, 127, states it the clearest of all: "The CPRA provides *no* judicial remedy for any other person or entity or a remedy that may be utilized for any purpose other than to determine whether a particular record or class of records must be disclosed." (Emphasis in original.)

Such construction is also consistent with the Constitution's mandate that the CPRA be interpreted broadly to effectuate its

intent. It leaves untouched a person's right to sue to obtain access to a record they allege the agency wrongfully withheld. It leaves untouched the interpretation of the myriad of CPRA exemptions a public agency might rely on to withhold documents. It leaves untouched the timelines for CPRA compliance and the expedited procedures to appeal trial court CPRA rulings. Indeed, as noted in Section II, *infra*, limiting standing to the person who requested the record at issue advances the CPRA's goal to expedite determining whether that person has a right to access the public records.

Moreover, a prevailing individual benefits all, belying any need to enable class action treatment. If an individual CPRA plaintiff prevails and obtains access to a previously withheld record, that record is publicly available to all. (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1018; *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 656; See also Gov. Code, § 7921.505, subd (b).) Thus, the individual action benefits the general public, and certifying a putative class imports no added value.

The trial court's construction is consistent with other decisions that interpreted state statutes to foreclose class claims. For example, in *Woosley v. State of California* (1992) 3 Cal.4th 758, *as modified on denial of reh'g (Dec. 31, 1992)*, the Supreme Court interpreted Vehicle Code section 42231, which specifies who may apply for and receive

a refund for excessive vehicle license fees and use taxes. The statute provides: "[T]he person who has paid the erroneous or excessive fee or penalty, or his agent on his behalf, may apply for and receive a refund of the amount thereof as provided in this article...." (Veh. Code, § 42231.) As the Appellant does here, the plaintiff in *Woosley* argued that *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447 mandated interpreting this statute to permit class action recovery. (*Woosley*, *supra*, 3 Cal.4th at p. 788.) The Supreme Court concluded otherwise. It examined the statutory scheme the legislature created for such refunds to determine the legislature's intent. The Court concluded the term "person" did not include a class, and a class representative filing a claim without the knowledge or consent of others could not be an agent of the purported class.[1] (*Woosley*, *supra*, 3 Cal.4th at p. 789.) Instead, the term "person" was modified by the phrase "who has paid" the challenged tax and, the language thus prohibited claims brought on behalf of others. So too here. The

[1] A later decision determined that, unlike statutes, local ordinances cannot prohibit class actions claims for local tax refunds under the Government Claims Act. (*McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, 620.) But *McWilliams* does not undermine *Woosley*'s holding that state statutes (of which the CPRA is one) can, and do, limit who has standing to pursue claims on behalf of others.

rights that may be vindicated in a CPRA suit are those of "that person" who files suit and no others.

Similarly, in *Padilla v. City of San Jose* (2022) 78 Cal.App.5th 1073, *review denied (Aug. 10, 2022)*, no class-wide relief was permitted in a refund claim for solid waste collection fees. There, plaintiff filed a putative class action to recover garbage collection fees the city collected after it recorded liens against customers' property for delinquent charges. The trial court sustained the city's demurrer without leave to amend, finding Health & Safety Code section 5472 permitted only those who had paid under protest and first followed the procedure in Revenue & Taxation Code section 5140 et seq. to pursue such claims. The court construed Health & Safety Code section 5472 in the context of the complete statute, which reads: "After fees, rates, tolls, rentals or other charges are fixed pursuant to this article, any person may pay such fees, rates, tolls, rentals or other charges under protest and bring an action against the city or city and county in the superior court to recover any money which the legislative body refuses to refund." It determined that only those persons who paid under protest, not just "any person," could sue. *Padilla*, *supra*, 78 Cal.App.5th at pp. 1077–1078; see also (*Los Altos Golf & Country Club v. County of Santa Clara* (2008) 165 Cal.App.4th 198.) Moreover, where refund claims are governed by Revenue &

Taxation Code section 5140 et seq. (as are those made under Health & Safety Code section 5472), only the person who paid the tax can sue; the statutory language effectively prohibits class claims as a result. (See *Neecke v. City of Mill Valley* (1995) 39 Cal.App.4th 946, 961–62.)

Thus, as the trial court did here, where the legislature has provided the procedure to vindicate the right at issue, courts will apply the canons of statutory construction to determine who may sue to enforce those rights. The plain language of the CPRA reflects the legislature's intent that it is only the rights of the named plaintiff that can be at issue. The trial court was far from the first court to construe a state statute to prohibit representative claims.

II. Permitting Class Action Enforcement of the CPRA Does Not Serve the Purpose of the CPRA or Class Actions

A. Class Action Treatment Defeats the CPRA's Purpose to Expeditiously Resolve Disputes Regarding Access to Public Records

The CPRA is designed to provide quick access to documents regarding the conduct of the people's business. The entire CPRA scheme is built to advance that purpose. The CPRA provides

deadlines by which public agencies should respond to such requests. And even after a suit is filed, CPRA claims are entitled to calendar preference. "[T]he court shall set the times for hearings and responsive pleadings with the object of securing a decision as to the matters at issue at the earliest possible time." (Gov. Code, § 7923.005.) Appellate review of a trial court decision regarding document disclosure is reviewable only by an immediate appellate writ petition filed within 20 days after service of notice of entry of the trial court order. (Gov. Code, § 7923.500.) The Supreme Court in *Filarsky* recognized the importance of these timelines.

> Indeed, the Act's provision regarding a public agency's obligation to act promptly upon receiving a request for disclosure [citation], the provision directing the trial court in a proceeding under the Act to reach a decision as soon as possible [citation], and the provision for expedited appellate review [citation] all reflect a clear legislative intent that the determination of the obligation to disclose records requested from a public agency be made expeditiously.

(*Filarsky*, *supra*, 28 Cal.4th at pp. 426–27.)

Class action treatment of CPRA claims thwarts the legislature's statutory scheme deliberately crafted to ensure prompt

resolution of disputes. Appellant's case illustrates the problem. It was filed in Los Angeles Superior Court, which has a complex court division to which most class actions are assigned, including Appellant's putative class claim. As is the common practice in the complex division, the trial court issued a stay pending the court conducting the initial status conference. (AA0027-0029.) Though filed on June 27, 2023, the matter would have been stayed until October 31, 2023—four months after filing—but for the City's ex parte application to advance the briefing on the City's demurrer.

The parties' joint initial status conference statement highlights further delays the proposed class action approach triggers. In the parties' joint initial status conference statement, Appellant stated, "Plaintiff will need to conduct discovery as to the number of CPRA requestors in order to estimate the class size." (AA0163.) No such discovery would be necessary for an individual CPRA claim. Petitioner asserted she would need to take discovery "concerning the City's other responses to CPRA requests to obtain information and its policies and procedures regarding CPRA requests that could be helpful to delineating the issues at the pleading stage. . .." (AA0165.) Again, time and effort not otherwise spent in an individual CPRA claim.

Worst of all is the time devoted solely to deciding whether to certify the class before even reaching the merits of the claim. The joint initial status conference statement proposes a schedule where the hearing on class certification would take place 50 weeks—almost a full year—after the suit was filed. (AA0166.) A year spent on discovery and procedures related to class treatment alone and not addressing, at all, the underlying dispute whether the City wrongfully withheld a record. And in the unlikely event the class was certified, the opt-out process Appellant proffered would likely take no less than four more months, and usually more, to print and distribute notices and process the returned opt-outs. (AA0164.) At least **sixteen months** after the suit was filed would pass before the merits on the CPRA claim would be addressed.

If class action treatment is available in CPRA enforcement actions, the protracted timeline illustrated above cannot be avoided. The delays are not "occasional" as Appellant contends. (Reply Brief, p. 26.) Though trial courts generally may manage a CPRA case to ensure prompt adjudication, in class action cases that power is significantly limited. Defendant public agencies, as do all class action defendants, have a due process right to ensure class certification issues are resolved before a decision on the underlying merits to ensure class members are bound by the merits ruling.

(*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1082.) Thus, while swift resolution of individual CPRA claims is possible using efficient case management techniques, and indeed mandated by the CPRA, a class action CPRA claim cannot be swiftly resolved. The tension between a defendant's constitutional due process rights as recognized in *Fireside Bank* and the CPRA's direction to promptly resolve a plaintiff's claim to access records is easily resolved by limiting any CPRA remedy as the legislature dictated to only the named plaintiff. Doing so is consistent with the statutory remedies provided and the legislative intent.

And it's not only the trial court class action procedures that defeat swift resolution of CPRA claims. The appellate processes for class actions do as well. A trial court order denying class certification but leaving individual claims remaining is a directly appealable order under the death knell doctrine. (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 699.) A trial court ruling ordering disclosure or supporting denial of disclosure under the CPRA, however, is not appealable. (Gov. Code, § 7923.500, subd. (a).) It is reviewable only by extraordinary appellate writ filed within 20 days of service of the notice of entry of order. (Gov. Code, § 7923.500, subd. (b).) The writ procedure is, as with the CPRA's other remedial provisions, designed to support swift determination of the right to public

records. A standard appeal permitted for denial of class certification, by contrast is not. And while such an appeal winds its way through the regular appeal process, the purported CPRA claims of the putative class members go unresolved much longer than the legislature intended.

Yet again, Appellant's case demonstrates the delay. The trial court's ruling, among other things, supported the City's denial of disclosure of the record at issue based on its finding that the First Amended Petition reveals Appellant "never made a request in the manner which would impose CPRA duties on the City or its utility BWP." (AA0395.) Curiously, although section 7923.500, subdivision (a) provides that a trial court order supporting denial of disclosure is only reviewable by an appellate writ filed within twenty days of notice of entry of order, Appellant filed no such writ, instead proceeding by appeal and citing Code of Civil Procedure section 904.1(a)(1) in her opening brief as providing appealability.[2] (Opening Brief, p. 16.)

[2] In light of Appellant's procedural gambit, this Court may dismiss Appellant's appeal of the trial court's ruling on her individual claims for lack jurisdiction. (E.g., *Austin v. City of Burbank* (2021) 67 Cal.App.5th 654.)

Though Appellant doesn't address it in her statement of appealability, it appears she chose to sacrifice her individual claim by not proceeding by the required writ to seek review, instead proceeding by appeal to focus on the class claims the trial court's ruling in sustaining the demurrer eliminated. A better illustration of how injecting class claims into the CPRA remedial structure destroys its utility could not be found. Now, prompt resolution of Appellant's individual claim by extraordinary appellate writ is foregone, at worst, or delayed over one year after the original petition was filed, at best. Either scenario makes the point.

B. Class Action Treatment Provides No Advantage to the CPRA's Existing Enforcement Procedure

1. The CPRA's Built-in Incentives to Encourage Enforcement Actions Belie Any Need for Class Action Treatment

The CPRA's remedial provisions focus on the prompt production of public records not otherwise exempt from disclosure. Available remedies include an order that the public agency produce the requested record and, for prevailing plaintiffs, recovery of attorneys' fees and costs. (Gov. Code, § 7923.000 and § 7923.115.)

Damages are not permitted. Thus, the typical advantage cited for class action cases, and the one on which Appellant rely—incentivizing plaintiffs to pursue collective claims where the damages are too small, or even non-existent, to support individual claims—is absent. CPRA plaintiffs are never entitled to damages, whether individually or as a class member.

However, by ensuring that prevailing CPRA plaintiffs are entitled to recover fees and costs, the legislature, mindful of the expense to enforce CPRA rights where no damages are recoverable, solved the problem that Appellant wrongly claims can be achieved only via class treatment. (Gov. Code, § 7923.115.) "The very purpose of the [CPRA] 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." (*Law Offices of Marc Grossman v. Victor Elementary School Dist.* (2015) 238 Cal.App.4th 1010, 1013.) The CPRA has already built in the incentive Appellant claims is only achieved through class treatment.

Accordingly, class action treatment for CPRA enforcement is not necessary, nor indeed beneficial. There is precedent for courts to limit litigation tools otherwise available in civil actions to achieve the legislature's goal of prompt dispute resolution in the CPRA context. For example, courts recognize that while discovery may be

permitted in some CPRA cases, such discovery cannot "supplant the specific legislative prescriptions in the Public Records Act for promptly resolving the disputes as to the scope of an agency's obligation to disclose public records in its possession." (*County of San Benito v. Superior Court* (2023) 96 Cal.App.5th 243, 261–262.) Limiting discovery in ways not otherwise permitted in non-CPRA cases avoids "discovery practice and litigation . . . only delay[ing] adjudication of whether" a public agency has wrongfully withheld a public record. (*Id.* at p. 262.) In *San Benito*, the Court of Appeal reversed a trial court's discovery order permitting extensive discovery and observed that such order "came at the expense of early adjudication of the threshold issue. . .." (*Ibid.*) Even the general "prodiscovery policies underpinning the Civil Discovery Act" had to cede ground to the "narrow question presented by a special proceeding under the Public Records Act." (*Id.* at pp. 265–266.)

And aligning the procedural tools available in CPRA cases with the legislative intent for expedient resolution does not, as Appellant argues, create a path for public agencies to avoid CPRA compliance. The legislature equipped the CPRA with robust features to ensure prompt compliance and to incentivize plaintiffs who contend an agency is shirking its duty to make public records available on request. The trial court must "set the times for hearings

and responsive pleadings with the object of securing a decision as to the matters at issue at the earliest possible time." (Gov. Code, § 7923.005.) If a court determines the public agency wrongfully withheld the records, it may order their disclosure, and find the officer in contempt if they refuse. (Gov. Code, § 7923.100, § 7923.110, subd. (a) and 7923.500, subds. (a) and (e).) And a trial court ruling regarding record disclosure is not an appealable order, but reviewable only by petition to the court of appeal for an extraordinary writ. (Gov. Code, § 7923.500, subd. (a).) "The purpose of the provision limiting appellate review of the trial court's order to a petition for extraordinary writ is to prohibit public agencies from delaying the disclosure of public records by appealing a court decision and using continuances in order to frustrate the intent of the Act." (*Filarsky*, *supra*, 28 Cal.4th at pp. 426–427.)

This robust statutory scheme, with procedural rules not applicable to non-CPRA cases, "does not leave a plaintiff at the mercy of a public agency that is unreasonably or indefinitely delaying its production." (*San Benito, supra*, 96 Cal.App.5th at p. 263.) Appellant's parade of horribles if class action treatment is not extended to CPRA enforcement actions is a fiction belied by the CPRA enforcement provisions themselves. As recognized in *San Benito*, prompt resolution of CPRA claims supports limiting the

procedural tools routinely used outside the CPRA context, such as class treatment, when those tools provide no advantage to expeditious rulings on the underlying merits. The trial court's ruling should be affirmed.

2. Whether a Document Was Properly Withheld or Unreasonably Delayed in its Production is a Fact-Specific Inquiry Not Suitable for Class Treatment

Public agencies throughout the state collectively field tens of thousands of CPRA requests annually. The breadth of public records routinely requested from public agencies is vast and not susceptible to summary description. Illustrative examples include emails to and from city councilmembers and county supervisors, police reports, 911 calls, body-cam footage, fire incident reports, responses to requests for proposals, planning approvals, building permit applications, site plans, code enforcement records, business license data, public contracts, and lease agreements. Hundreds more examples exist.

Similarly, the volume of records covered by a single request can range from a single page (e.g., a copy of a site plan) to tens of thousands of pages (e.g., all emails to/from the city regarding a

controversial development plan). And the volume of records collected and created by public agencies has mushroomed with computers and the proliferation of electronically stored information. (See *Getz v. Superior Court* (2021) 72 Cal.App.5th 637, 642.)

But despite the volume and variety of public records, the CPRA's enforcement structure is designed to resolve disputes in context and expeditiously. Specifically, the CPRA contemplates the trial court will examine the withheld record in camera, if otherwise permitted by Evidence Code section 915, subdivision (b). (Gov. Code, § 7923.105, subd. (a).) Concentrating CPRA relief on solely the documents at issue in the named plaintiff's request ensures the trial court can promptly resolve the dispute in the proper context. This narrow focus makes practical sense. Given the breadth of types of public records requested and the myriad reasons any of them might properly be withheld, how does it advance prompt resolution to have the trial court review withheld records to individually determine if the public agency was justified in withholding it? Whether it was reasonable to withhold all or a portion of a police investigation will not overlap with the same inquiry regarding a city council member's email, which in turn will not overlap with the analysis regarding internally circulated drafts of a proposed county ordinance. So too, for example, whether a thirty-day period to

produce law enforcement body worn camera footage that required redacting images of multiple minors involved in the incident was reasonable will not overlap with the analysis for a thirty-day period to produce a city's check warrant register.

Appellant's construction of the CPRA would have such disputes handled class wide and encourage the procedural means—class action treatment—to swallow, if not drastically delay, the ends. Appellant's proposed class, again, illustrates the fault in her approach. Her proposed class includes, among others, every person who submitted CPRA requests to the City of Burbank and for which the City did not produce responsive documents within the alleged 10-day or extended 24-day deadline.[3] (AA0090.) This includes persons who received no records because the City determined the requested documents were not subject to disclosure, and those who received public records, but who received them after the listed

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[3] Though Appellant's proposed class refers to the purported "10-day initial deadline or the 24-day extended deadline to produce documents." No such deadline to produce exists. The referenced deadlines apply to when the agency should inform the requestor whether disclosable records exist, not when they must be produced if they do exist. (Gov. Code, § 7922.535, subd. (a).) Indeed, in that notification, the agency "shall state the estimated date and time when the records will be made available."(*Id.*)

"deadlines." For the latter group, once a record is produced, no CPRA remedy remains but a potential claim for fees if they were the prevailing party in a CPRA suit to access the record. And for the former, the only way a trial court can adjudicate the issue is to examine each withheld document and determine, based on the context and facts specific to it, whether the City was justified in withholding it. In short, class treatment for CPRA enforcement provides no advantage over the legislature's statutory scheme for individual enforcement. To the contrary, as noted in Section II.A above, it hinders expedient enforcement.

III. Expanding the CPRA's Enforcement Mechanism to Encompass Class Actions Imposes an Enormous Burden on Public Agencies With No Corresponding Public Benefit

Expanding the CPRA beyond the scope of section 7923.000 to include claims other than those of the individually named plaintiffs would create an enormous burden for public agencies with no corresponding benefit to the public. First, class treatment would threaten to overwhelm already stretched public staff and resources during the class certification stage when class certification discovery would be conducted even as the public agency's obligation to continue to respond to ongoing CPRA requests continued. As noted

above, Appellant intended to seek discovery regarding the City's responses to other CPRA requests. And based on the putative class definition, that discovery would include requests for which the City had already produced records. Appellant's plan would mean the City must comply with the CPRA requests on the one hand and produce in discovery to a person who did not seek such documents discovery related to those other requests.

At this point, the tail is wagging the dog. As the court in *San Benito* recognized, discovery regarding the CPRA request at issue alone threatens to invert the "means and ends" and only delays adjudication of the alleged underlying CPRA violation. (*San Benito*, 96 Cal.App.5th at p. 262.) Class action treatment would multiply that threat exponentially and divert public agencies' limited resources for no corresponding benefit. Though both CPRA requests and discovery requests create some burden on public agencies, courts have recognized that both can create undue burden, which must be considered when weighing the public interest and which also encompasses "public concern with the cost and efficiency of government." (*American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 453.)

Here, the burden Local Government Amici focus on is not that of complying with the underlying CPRA requests, but that of being

hauled into court to litigate, and conduct discovery on, not just the named plaintiff's claims, but those of, in this illustrative case, every person who submitted CPRA requests to the City of Burbank—at any time—and to whom the City did not produce responsive records within 10 or 24 days after receiving the request—even those who received the requested records more than 10 or 24 days later. (AA0090.) Class treatment of such claims denies swift resolution to both the requestor and the responding agency. And delayed resolution hurts all involved—the public seeking records, the public whose tax dollars support local government staff, and the local governments who must efficiently deliver a myriad of public services to all persons within their jurisdictions.

Second, class action treatment places public agencies in an untenable conundrum when seeking appellate review of any order to produce documents following class certification. This is particularly so for those agencies who exercise their *Fireside Bank* due process rights to have any ruling on the merits follow class certification. A trial court ruling certifying the class, unlike a ruling denying certification, is not immediately appealable, but can be appealed only after final judgment is entered. (See *Alch v. Superior Court* (2004) 122 Cal.App.4th 339, 360.) A trial court ruling ordering

a document produced is not appealable at all. (Gov. Code, § 7923.500, subd. (a).)

Thus, if a public agency wants to challenge the class certification order, it must await a final judgment to file its appeal; meanwhile to challenge any order to release records, the agency must file an appellate writ petition within 20 days of service of notice of entry of the trial court order. This procedural quagmire may render rulings granting class certification unreviewable as a practical matter should CPRA class plaintiffs claim the issue is moot once a public record is released.

All of this is avoided when the plain language of the CPRA is enforced to limit enforcement actions to the named plaintiff. Doing so does not limit the CPRA's force or effectiveness. Rather, it limits efforts to convert any claim into a class action claim without regard to the limiting language of the underlying statute. The trial court declined to ignore the CPRA's limiting language, and Local Government Amici urge this Court to do the same.

IV. Conclusion

The CPRA's plain language limits enforcement actions to the named plaintiff. Representative and class claims are not allowed. Construing the CPRA to permit class claims contradicts its plain

language and substantially interferes with the statutory scheme's mechanisms designed to ensure prompt resolution of disputes on the merits. And class action treatment is not needed to incentivize enforcement. The CPRA accomplishes that on its own by permitting prevailing plaintiffs to recover fees and providing that a public record disclosed to one must be disclosed to all, so that a single plaintiff's individual action benefits the entire general public. For these reasons, Local Government Amici respectfully request this Court affirm the trial court's ruling.

DATED: September 6, 2024

COLANTUONO, HIGHSMITH & WHATLEY, PC

/s/ Holly O. Whatley

HOLLY O. WHATLEY
Attorneys for Local Government Amici

CERTIFICATE OF COMPLIANCE WITH CAL. RULES OF COURT, RULE 8.204(c)(1)

Pursuant to California Rules of Court, rule 8.204(c)(1), the foregoing Application to File Amici Curiae Brief and Brief of Amici League of California Cities and California State Association of Counties in Support of Respondent City of Burbank is produced using 13-point Palatino Linotype font and contains 5,962 words (excluding the tables, cover information, and Certifications) and is thus within the Court-ordered limit of 18,000 words. In preparing this Certificate, I relied on the word count generated by Microsoft Word for Office 365 MSO.

DATED: September 6, 2024

COLANTUONO, HIGHSMITH & WHATLEY, PC

/s/ Holly O. Whatley
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PROOF OF SERVICE

Desolina Di Lauro v. City of Burbank

Second Appellate District, Division 5

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 790 E. Colorado Boulevard, Suite 850, Pasadena, CA 91101-2109.

On September 6, 2024, I served true copies of the following document(s) described as **APPLICATION TO FILE AMICI CURIAE BRIEF AND BRIEF OF AMICI LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF RESPONDENT CITY OF BURBANK** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC SERVICE: I electronically transmitted the above document(s) to the person(s) at the e-mail address(es) set forth below via the TrueFiling electronic service portal.

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

Executed on September 6, 2024, at Pasadena, California.

Christina M. Rothwell

SERVICE LIST
Desolina Di Lauro v. City of Burbank
Second Appellate District, Division 5
Case No. B334408

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