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Superior Court of California, County of Alameda
Hayward Hall of Justice

Newark Unified School District Plaintiff/Petitioner(s) VS. Snyder Defendant/Respondent(s) (Abbreviated Title)	No. RG14738281 Order Motion to Tax Costs Partial Grant

The Motion to Tax Costs filed for Elizabeth Brazil was set for hearing on 03/28/2018 at 09:00 AM in Department 507 before the Honorable Jeffrey Brand. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

ORDER (1) DENYING WITHOUT PREJUDICE MOTION OF NEWARK FOR ATTORNEYS' FEES; (2); AND (3) DENYING WITHOUT PREJUDICE MOTION OF BRAZIL FOR ATTORNEYS' FEES; AND (2) GRANTING MOTION OF BRAZIL TO STRIKE NUSD'S MEMO OF COSTS.

The motion of plaintiff Newark Unified School District ("NUSD") for an award of attorneys' fees and the motion of defendant Elizabeth Brazil "(Brazil") for an award of attorneys' fees both came on for hearing on March 28, 2018, in Department 507 of this Court, the Honorable Jeffrey Brand presiding. After consideration of the briefing and the argument, the court ORDERS: The motion of NUSD for an award of attorneys' fees and the motion of BRAZIL for an award of attorneys' fees are both DENIED without prejudice to seeking fees incurred in this case at the conclusion of trial court proceedings in the related case of Brazil v. Newark Unified School District, RG17-859813. The motion of Brazil to strike NUSD's memorandum of costs is GRANTED without prejudice to seeking costs incurred in this case at the conclusion of trial court proceedings in the related case.

FACTS

On 6/18/14, Brazil made a request for public records to NUSD under the California Public Records Act (Govt Code 6250 et seq [the "CPRA"]). On 7/3/14, NUSD mailed a responsive letter. (Ngo Dec. filed 1/27/17, para 6 and 7, Exh D and E.)

On 8/22/14, NUSD responded to the CPRA and released a thumb drive, four CDs, and three hard copy sets of responsive public records. (Erwin Dec filed 8/26/14, para. 6.) Approximately 6 hours later, NUSD realized that it had produced documents that had not been reviewed for attorney-client privilege and work product (the "Inadvertently Produced Records"). (Erwin Dec filed 8/26/14, para. 7.) NUSD asked Brazil to return the Inadvertently Produced Records, asserting that the Records were subject to the attorney-client privilege and exempt from production under the CPRA. Brazil refused to return the Records.

On 8/26/14, NUSD filed this action, Newark Unified School District v. Snyder, RG14-738281 (the "Injunction Action") seeking an injunction requiring Brazil to return or destroy all the NUSD asked

Brazil to return the Inadvertently Produced Records. NUSD's complaint did not assert a claim under the CPRA's Govt Code 6258, under which a person can seek "to enforce his or her right to inspect or to receive a copy of any public record or class of public records." NUSD's complaint sought to remedy NUSD's inadvertent response to a CPRA request.

On 9/9/14, the trial court entered an order holding that under Govt Code 6254.5 any disclosure of public records to the public is a "disclosure" of a public record "to any member of the public" and constitutes a waiver of the CPRA exemptions from disclosure. Based on that legal conclusion, the trial court denied NUSD's request for a preliminary injunction directing Brazil to return or destroy all the NUSD asked Brazil to return the Inadvertently Produced Records. NUSD sought relief in the Court of Appeal.

On 7/31/15, the Court of Appeal reversed the trial court. (Newark Unified School District v. Superior Court (2015) 245 Cal.App.4th 887.) The Court of Appeal held that for purposes of Govt Code 6254.5 the word "disclosure" excludes an inadvertent disclosure. (245 Cal.App.4th at 903.) The Court of Appeal returned the case to the trial court with instructions "to resume and complete these proceedings as to real party in interest Elizabeth Brazil in a manner consistent with this decision." (245 Cal.App.4th at 910-911.)

On 5/10/17, Brazil filed Brazil v. Newark Unified School District, RG17-859813 (the "CPRA Action"). The CPRA Action asserted that Brazil made CPRA requests (para 13) and that NUSD has withheld and redacted public records that must be produced under the CPRA (para 14).

The parties briefed the merits of the Injunction Action and on 9/15/17 the court entered both its statement of decision and the judgment in the case. The statement of decision states:

This Statement of Decision does not and the judgment will not address or decide in this case whether the public records identified in paragraph 2 are privileged under Evidence Code 950, exempt from release under the CPRA by application of Gov. Code 6254(k), or are otherwise exempt under the CPRA. Brazil and NUSD have yet to resolve Brazil's underlying CPRA requests. On 5/10/17, Brazil filed Brazil v. Newark Unified School District, RG17-859813 (the "CPRA case"), regarding those requests. The court will address Brazil's CPRA claims asserted in the CPRA case in the context of that case.

The judgment states: (1) "NUSD's request for injunctive relief under the CPRA is GRANTED IN PART," (2) "NUSD's request for declaratory relief under CCP 1060 is DENIED," (3) "Any party may seek costs and fees as permitted by CCP 1032 et seq and CRC 3.1700 and 3.1702," and (4) "This judgment does not address or decide which party is the prevailing party in this case and issues related to awarding costs and fees."

On 10/17/17, NUSD filed a memorandum of costs. On 11/22/17, Brazil filed a motion to strike the memorandum of costs.

On 11/22/17, Brazil filed a motion for an award of attorneys' fees and costs under the CPRA. (Govt Code 6258(d).) On 2/5/18, NUSD filed its opposition brief.

On 12/1/17, NUSD filed a motion for an award of fees under the CPRA. (Govt Code 6258(d).) On 2/5/18/18, Brazil filed her opposition brief, which included a request for sanctions.

The CPRA Action has not yet been resolved.

STATUTORY CONSTRUCTION REGARDING MEANING OF "PLAINTIFF."

NUSD argues that it is entitled to an award of fees under the CPRA's fee shifting section because it is the plaintiff in this case, it sought relief under the CPRA, and the court awarded relief under the CPRA. This presents the legal issue of whether a public agency responding to a CPRA request can be a "plaintiff" for purposes of a CPRA fee award.

Govt Code 6259(d) states:

The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. 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.

The court applies the established statutory interpretation analysis. City of San Jose v. Superior Court (2017) 2 Cal.5th 608, 616-617, states:

When we interpret a statute, [o]ur fundamental task ... is to determine the Legislature's intent so as to effectuate the law's purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of

the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy.

(See also Newark Unified School District v. Superior Court (2015) 245 Cal.App.4th 887, 898-899; Regents of University of California v. Superior Court (2013) 222 Cal.App.4th 383, 396-397.)

The court starts with the plain meaning of the word "plaintiff" in isolation. The plain meaning of the word "plaintiff" is the party initiating a civil action. CCP 308 states, "In [a civil] action the party complaining is known as the plaintiff, and the adverse party as the defendant." (See also Groves v. Superior Court in and for Los Angeles County (1944) 62 Cal.App.2d 559, 564.)

The court then turns to use of the word "plaintiff" in the statutory section. Gov't Code Govt Code 6259(d) states in its second and third sentences, "The costs and fees shall be paid by the public agency" and "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." The second sentence presumes that if the "plaintiff" has prevailed that the plaintiff has prevailed against the "public agency." The third sentence presumes that if the "plaintiff" has filed a frivolous CPRA claim that the prevailing party is the "public agency." These strongly suggest that the legislature under stood that the "plaintiff" would be the person seeking public records.

The court looks at the use of the word "plaintiff" in the statutory scheme as a whole. (Ardon v. City of Los Angeles (2016) 62 Cal.4th 1176, 1183 ["We construe statutory language in the context of the statutory framework, seeking to discern the statute's underlying purpose and to harmonize its different components"].) The CPRA's private right of action section is Govt Code 6258, which states:

Any person may institute proceedings ... to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter.

The person who initiates CPRA proceedings is the person seeking "to enforce his or her right to inspect or to receive a copy of any public record or class of public records." This suggests that the legislature presumed that the public agency responding to a CPRA request would not be the person who initiates CPRA proceedings.

In the CPRA's definition section it defines "person" (Govt Code 6252(c)) separately from "public agency" (Govt Code 6252(d).) This suggests that a "public agency" cannot be a "person" for purposes of initiating a CPRA action under Govt Code 6258.

The CPRA's remedy section is Govt Code 6259(a), which states:

(a) Whenever it is made to appear ... that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record ...
(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public.

The remedy section presumes that in granting relief that the court will be ordering a public agency, or its officer, to make records public. The remedy section does not anticipate that a public agency will be seeking a remedy against a CPRA requestor.

The court looks at case law. In Filarsky v. Superior Court (2002) 28 Cal.4th 419, the California Supreme Court held that the CPRA "does not authorize a public agency to initiate an action to determine the agency's obligation to disclose public records after the agency denies a request for disclosure, and that permitting a public agency to maintain such an action would thwart the intent and purpose of the Act." (28 Cal 4th at 432-433.) As part of its analysis, the court considered the CPRA's fee shifting provision and stated:

The provision authorizing an award of attorney fees to a prevailing plaintiff is limited expressly to litigation filed pursuant to section 6259. (§ 6259, subd. (d).) This provision also reflects a legislative intent that the plaintiff in a proceeding pursuant to sections 6258 and 6259 cannot be the public agency from which disclosure is sought, because the provision contemplates that the public agency always will pay any costs and attorney fees "should the plaintiff prevail." (§ 6259, subd. (d).)

Filarsky strongly suggests that a public agency cannot be a "plaintiff" in a CPRA case for purposes of the CPRA fee shifting provision. (See also Galbiso v. Orosi Public Utility Dist. (2008) 167 Cal.App.4th 1063, 067-1068 ["Indeed, 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"].)

The court looks to the responsibilities of public agencies under the California Constitution and the CPRA as a whole. The California Constitution states that "The people have the right of access to information concerning the conduct of the people's business, and therefore, ... the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. I, § 3, subd. (b)(1).) Govt Code 6253 says that public agencies have an obligation to produce public records to members of the public. A public agency has the burden of establishing that a CPRA exemption applies. (Sacramento County Employees' Retirement System v. Superior Court (2011) 195 Cal.App.4th 440, 453.)

In responding to a CPRA request, a public agency's responsibility is to comply with the law and to respond consistent with the legislative balance between public disclosure of public records and the exclusion of certain information, including employee privacy. (City of San Jose v. Superior Court (2017) 2 Cal.5th 608, 626 ["a crabbed and categorical interpretation of the 'public records' definition is unnecessary to protect employee privacy"].) A public agency's responsibility is to the public as a collective body, which includes the CPRA requestor, the public as a whole, and any individuals whose names or actions might be recorded in the public records. (People v. Eubanks (1996) 14 Cal.4th 580, 589-590 ["The prosecutor speaks not solely for the victim, or the police, or those who support them, but for all the People. That body of 'The People' includes the defendant and his family and those who care about him."].) A public agency that prevails in a CPRA case does so as a public entity representing the public as a body, not as an institution whose goal is to protect the privacy of persons identified in public records.

The court looks to CCP 1021.5 for guidance because both Govt Code 6259(d) and CCP 1021.5 are designed to encourage counsel to represent clients in cases that further the public interest. CCP 1021.5 states "With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities ..." What this means is that "a public entity is not to receive attorney's fees under the private attorney general theory." (City of Carmel-By-The-Sea v. Board of Supervisors (1986) 183 Cal.App.3d 229, 255.) (See also
People ex rel. Cooper v. Mitchell Brothers' Santa Ana Theater (1985) 165 Cal.App.3d 378, 385-386.) It would be consistent with that legislative policy if the court could not award fees to public agencies except where a CPRA lawsuit was "clearly frivolous." (Govt Code 6259(d).)

The court is thus presented with a situation where the plain language of a statute, taken out of context, suggests one meaning, and the legislative purpose of a statute, as apparent in the statutory scheme and case law, suggests a different meaning. The court follows the statutory interpretation analysis in City of San Jose v. Superior Court (2017) 2 Cal.5th 608, 616-617.

The "plain and commonsense meaning" of "plaintiff" in isolation is the person who initiates the case The meaning of "plaintiff "in the context of the CPRA statutory framework as a whole" is a person seeking an order to direct a public agency to release public records. (Govt Code 6258, 6259.) A "literal interpretation" of the word "plaintiff" in this context "would result in absurd consequences the Legislature did not intend," and would be inconsistent with the second and third sentences of Govt Code 6259(d), the CPRA's statutory scheme, the Supreme Court's statements in Filarsky, and the consistent legislative principle that public agencies cannot recover attorneys fees for prevailing on matters of public concern absent clear statutory authorization. The court holds as a matter of statutory construction that for purposes of the attorney fee provision in Govt Code 6259(d) that "plaintiff" means a person seeking an order directing a public agency to disclose public records. (Govt Code 6258, 6259.)

NUSD'S MOTION FOR ATTORNEY'S FEES.

The motion of NUSD for an award of attorneys' fees as a prevailing plaintiff under Govt Code 6259(d) is DENIED. NUSD did not file this case under Govt Code 6258 seeking an order directing a public agency to disclose public records and NUSD did not seek the relief authorized under Govt Code 6259, so NUSD is not a "plaintiff" for purposes of Govt Code 6259(d).

The court's denial of the motion of NUSD for an award of attorneys' fees as a prevailing is without prejudice to NUSD filing a motion to recover attorneys' fees under the final sentence of Govt Code 6259(d), which states, "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." NUSD may make such a motion at the conclusion of the CPRA Action.

The request of Brazil that the court award Brazil the fees she reasonably incurred in opposing NUSD's motion is DENIED. The court does not find that NUSD's motion was presented primarily for an improper purpose. The court cannot find that it was clearly frivolous for NUSD to argue that the word "plaintiff" in Govt Code 6259(d) has the generally applicable meaning in CCP 308.

AWARDS OF INTERIM FEES GENERALLY AND UNDER THE CPRA SPECIFICALLY.

The general rule is "that fees and costs are not authorized for only interim success, but are awarded at the conclusion of the litigation, when the trial court can evaluate the parties' relative degree of success and declare one or the other, or neither, as having prevailed in the lawsuit." (Artus v. Gramercy Towers Condominium Association (2018) 19 Cal.App.5th 923, 937.) (See also DisputeSuite, LLC v. Scoreinc.com (2017) 2 Cal.5th 968, 977 ["fees under section 1717 are awarded to the party who prevailed on the contract overall, not to a party who prevailed only at an interim procedural step"]; Moore v. Liu (1999) 69 Cal.App.4th 745, 754-755 ["the issue of the right to attorney's fees for the successful appeal is deferred until the final resolution of the merits of the case"].) Absent express statutory or case law authority, the court does not award fees to a party on the basis that they prevailed at an interim step of a case.

There is some express statutory authority for an award of interim fees. The court is authorized to make an interim award of fees in probate matters (People ex rel. Harris v. Shine (2017) 16 Cal.App.5th 524, 539), in family law matters (Family Code 2030), and under the California Homeowner Bill of Rights, Civil Code 2924.12(i) (Monterossa v. Superior Court (2015) 237 Cal.App.4th 747, 756.) The court is authorized by case law to make an interim award of fees under CCP 1021.5. "[I]nterim fee awards may have a legitimate place under section 1021.5." (Center for Biological Diversity v. California Fish and Game Comm. (2011) 195 Cal.App.4th 128, 142.) "[A]n action must not always be completely resolved prior to an award of fees. ... Although a case need not be completely final prior to an award of section 1021.5 fees, the benefit obtained must be "secure" before the fees may be awarded." (Urbaniak v. Newton (1993) 19 Cal.App.4th 1837, 1844) (See also Bell v. Farmers Ins. Exchange (2001) 87 Cal.App.4th 805, 832.)

Under the CPRA's statutory scheme, if a person brought a CPRA case under Govt Code 6258, the court ordered production under Govt Code 5259, the public entity inadvertently produced records, and the public entity then sought the return of the records under Ardon v. City of Los Angeles (2016) 62 Cal.4th 1176, then the public entity's motion seeking the return of the records would simply be an interim step in the CPRA case as a whole. In the situation envisioned by the legislative scheme, there is no provision for a separate free-standing lawsuit on the return of records that might be inadvertently produced in response to a CPRA request. In that situation, any motion or order regarding the return of inadvertently released public records would be an interim order that was issued in the course of the CPRA case as a whole.

The court holds as a matter of statutory construction that the CPRA does not authorize or permit an interim award of attorneys' fees. The CPRA's fee shifting provision does not expressly permit an award of interim attorney's fees and there is no case law on the subject, so the court will apply "the general rule that fees and costs are not authorized for only interim success, but are awarded at the conclusion of the litigation." (Artus, 19 Cal.App.5th 923, 937.) In addition to the general rule, Govt Code 6259(d) refers to "costs and fees," suggesting the court should award fees when it awards costs, which is at the end of the case. (CCP 1032; CRC 3.1700.) Finally, Govt Code 5258 states that the trial court shall set the case schedule "with the object of securing a decision as to these matters at the earliest possible time," suggesting that party that obtains a secure benefit before the conclusion of a CPRA action will not need to wait long before the action is concluded and she, he or it can make a motion for an award of fees.

In this case, Brazil had received NUSD's public records and had no need to file a CPRA case when NUSD filed the Injunction Action. NUSD's complaint was presented as a separate and free-standing lawsuit, but it sought relief that would have been interim relief if Brazil had previously initiated a CPRA action under the CPRA statutory scheme. The result of this Injunction Action was that Brazil was required to return or destroy the Inadvertently Produced Documents to NUSD. NUSD then could conduct its review of the public records for privilege, decide whether a CPRA exemption applied, and release documents as required under the CPRA.

The Court of Appeal in Newark implied that that the Injunction Action included both NUSD's request for interim injunctive relief Brazil's request under the CPRA for the disclosure of public records. The Court of Appeal stated, "Amici also argue certain of the documents listed on the privilege log are not actually privileged. ... this issue can presumably be raised with the trial court on remand." (245 Cal.App.4th at 910 fn 9.) On remand, the parties wrestled with whether the trial court should resolve NUSD's claims for injunctive relief Brazil's claims under the CPRA under the Injunction Action. (Letters filed 7/21/17-8/8/17. The 9/15/17 judgment in this case clarified the distinction between the two cases and stated: "This judgment does not address or decide whether the public records identified in paragraph 2 (or any other public records) are privileged under Evidence Code 950, exempt from release under the CPRA by application of Gov. Code 6254(k), or are otherwise exempt under the CPRA."

In this case, the court decides that for purposes of any fee award under Govt Code 6259(d), the proper course of action is to treat the Injunction Action is an interim stage in Brazil's efforts to obtain public records from the NUSD under the CPRA and the resulting CPRA Action. The court will not torture the

text of the CPRA to accommodate the unusual and peculiar procedural posture of this case. Rather, the court looks past the unusual case-specific procedural posture and frames the case in the context of the CPRA's statutory process. The court does so under the principle that "The law respects form less than substance." (Civil Code 3528.) (See also Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc. (2015) 232 Cal.App.4th 1332, 1356 [courts determine whether contract provisions are penalty based on substance and effect]; Austin v. Los Angeles Unified School District (2016) 244 Cal.App.4th 918, 930 [" The nature of a motion is determined by the nature of the relief sought, not by the label attached to it"].)

INTERIM FEES - MOTION OF NUSD FOR ATTORNEYS' FEES.

NUSD argues that it is entitled to an award of fees in this action because this Injunction Actin is complete and a judgment has been entered. The court has denied the motion of NUSD for an award of attorneys' fees as the prevailing plaintiff on the merits. In the alternative, the court would DENY the motion without prejudice because the Injunction Action was an interim step in the the broader context of the CPRA request and resulting CPRA Action.

At the hearing on 3/28/17, NUSD argued that the Injunction Action is complete and that it and the CPRA Action concern completely different sets of rights. The Injunction action is complete given that the court has entered judgment. The Injunction Action is, however, an interim step in a larger process that started with the CPRA request and will conclude when the CPRA Action concludes. The court would not enter prevailing party fees to a party that prevailed on a motion to change venue, a motion to compel discovery, or a motion for summary judgment if they were simply interim steps in the progression of a dispute from beginning to ultimate resolution. The court applies the same analysis on this motion.

At the hearing on 3/28/17, NUSD also argued that in Newark Unified School District v. Superior Court (2015) 245 Cal.App.4th 887, the Court of Appeal suggests that NUSD could be a prevailing party in this Injunction Action. The Court of Appeal decision in Newark concerned an issue of law and was decided in the context of reviewing a temporary restraining order. The Court of Appeal expressly did not decide whether the court could grant effective relief to NUSD, stating "We have not granted the District's request for a writ of mandate directing return of the documents because this and other issues, such as the availability of effective relief, remain to be resolved." (245 Cal.App.4th at 910 fn 9.) Given that the Court of Appeal did not resolve the merits of the Injunction Action, any suggestion that NUSD was the prevailing party in the Injunction action would have been premature. The court will not read suggestions into the Newark opinion that the Court of Appeal would likely not have placed there intentionally.

The Newark opinion does conclude, "The District is entitled to costs incurred in these writ proceedings." (245 Cal.App.4th at 911.) An award of costs on appeal does not include an award of attorneys' fees. (CRC 8.278(d)(2); Presley of Southern California v. Whelan (1983) 146 Cal.App.3d 959 [referring to "the well settled rule" that an award of costs on appeal does not include the award of attorney fees.],) Furthermore, the Court of Appeal's award of costs on appeal to one party does not determine the prevailing party for the action as a whole. (Butler-Rupp v. Lourdeaux (2007) 154 Cal.App.4th 918, 926-928.)

INTERIM FEES - MOTION OF BRAZIL FOR ATTORNEYS' FEES.

Brazil argues that she is entitled to an award of fees because she was in effect the CPRA plaintiff in this case, she was in effect seeking relief under Govt Code 6259, that as a result of her efforts in the CPRA request, this Injunction Action, and the ongoing CPRA Action the NUSD has produced public records under the CPRA, and that she can seek fees in this case. The motion of Brazil for an award of attorneys' fees is DENIED without prejudice because the Injunction Action was an interim step in the the broader context of the CPRA request and resulting CPRA Action.

The court considered awarding fees to Brazil on the authority of Fontana Police Dept. v. Villegas-Banuelos (1999) 74 Cal.App.4th 1249. In Fontana, the CPRA requestor made a CPRA request, the public agency filed a pre-emptive lawsuit seeking a protective order, the trial court ordered production of the public records subject to conditions, and then denied the CPRA requestor's motion for attorney's fees under Govt Code 6259(d). The Court of Appeal reversed the order on attorneys' fees, stating:

[T]he final question we must resolve is whether the order in which the parties get to the courthouse, as appellant puts it, makes a difference in whether a party is entitled to recover fees and costs under the Public Records Act. We think not. ...

The happenstance of who gets to the courthouse first should not dictate whether attorney's fees and costs should be recoverable by the prevailing party. Because the proceeding in this case was the

functional equivalent of a proceeding to compel production of the unedited tapes under the Public Records Act and appellant was the prevailing party in the proceeding, he is entitled to recover attorney's fees despite the fact that he was not denominated "plaintiff" in the action.
(74 Cal.App.4th at 1252-1253.) In this aspect, Fontana suggests that the court could award fees to Brazil for the time expended in this case even though she is not identified as the "plaintiff" on the caption of this case.
Fontana is, however, distinguishable on the issue of interim fees. In Fontana, the CPRA requestor had made a CPRA request and in the resulting litigation the trial court ordered the public agency to produce the requested public records. Fontana states, "Appellant was legally entitled to the unedited tapes which Fontana refused to produce until ordered to do so by the trial court. Therefore, the lawsuit was the motivating factor behind production of those tapes." (74 Cal.App.4th at 1252.) In contrast, this Injunction Action is merely an interim step in Brazil's efforts to obtain the release of public records under CPRA. The filings in both this Injunction Action and in the CPRA Action indicate that NUSD has produced some records in response to Brazil's CPRA request, but the CPRA Action is not complete and disputes apparently still remain to be resolved by agreement or court order.

INTERIM FEES - FURTHER PROCEEDINGS
The court does not at this time address or resolve whether NUSD or Brazil is entitled to fees under Govt Code 6259(d) in the CPRA Action. In the event NUSD or Brazil files a motion for fees at the conclusion of the CPRA Action, the court encourages the parties to address the CPRA law on the award of fees for prelitigation efforts and the law generally on the award of fees for prelitigation efforts and when proceedings are intertwined. (Stokus v. Marsh (1990) 217 Cal.App.3d 647. 654-656; Wallace v. Consumers Cooperative of Berkeley, Inc. (1985) 170 Cal.App.3d 836, 846-849.) The court can then consider the factual record of the CPRA requestor's request(s), NUSD's responses, NUSD's inadvertent disclosures, the NUSD initiated Injunction Action, and the CPRA requestor initiated CPRA Action, as well as review whether NUSD ultimately released all, some, or none of the inadvertently released documents that were the subject of the Injunction Action. It is only then that the court can determine which party was the prevailing party, what fees were reasonably incurred, and related issues.
At the hearing on 3/28/17, Brazil and NUSD addressed whether Jennifer Snyder can recover fees in this Injunction Action either as a separate action or as an interim step in the dispute spanning from the CPRA request to the resolution of the CPRA Action. The court will address any motion by Jennifer Snyder to recover fees if she files such a motion at the conclusion of the CPRA Action.

MOTION OF BRAZIL TO STRIKE MEMO OF COSTS.
The motion of Brazil to strike NUSD's memorandum of costs is GRANTED without prejudice to either Brazil or NUSD filing a memorandum of costs seeking costs incurred in this case at the conclusion of trial court proceedings in the related CPRA Action.

Dated: 04/10/2018

Digital

Judge Jeffrey Brand