

03/13/2026

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF SACRAMENTO**

15 ASIAN AMERICAN LIBERATION
NETWORK, a California non-profit
16 public benefit association; KHURSHID
KHOJA, an individual; ALFONSO
17 NGUYEN, an individual,

18 Petitioners/Plaintiffs,

19 v.

20 SACRAMENTO MUNICIPAL UTILITY
21 DISTRICT; PAUL LAU, in his official
capacity as the Chief Executive Officer
22 of the Sacramento Municipal Utility
District; CITY OF SACRAMENTO;
23 KATHERINE LESTER, in her official
24 capacity as Chief of Police of the City of
25 Sacramento Police Department,

26 Respondents/Defendants.

Case No.: 34-2022-80004019

**PETITIONERS KHOJA AND
NGUYEN'S NOTICE OF MOTION
AND MOTION FOR ATTORNEY'S
FEES AND COSTS; MEMORANDUM
OF POINTS AND AUTHORITIES
[C.C.P. 1021.5, 1032]**

Hearing Date: April 24, 2026

Time: 11:00 a.m.

Place: Department 21

Judge: Hon. Shelleyanne W. L.
Chang

Action Filed: September 21, 2022

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: On April 24, 2026,
2 at 11:00 a.m. or as soon thereafter as counsel may be heard in Department 21 of the
3 Superior Court of California, County of Sacramento, located at 720 Ninth Street,
4 Fourth Floor, Sacramento, California, Petitioners Khurshid Khoja and Alfonso
5 Nguyen (collectively “Petitioners”), and their counsel of record, will and hereby do
6 move pursuant to Code of Civil Procedure Sections 1021.5 and 1032 for an order
7 awarding attorney’s fees and costs in the amounts shown below:

8 Fees	\$1,382,745
9 Enhancement	1.5x
10 Subtotal Enhanced Fees	\$2,074,117.50
11 Fee Motion	\$14,850
12 Total Fees	\$2,088,967.50
Costs	\$19,880.47

13 This Motion is based on this Notice; the attached Memorandum of Points and
14 Authorities; the attorney Declarations of Saira Hussain, Aaron Mackey, Adam
15 Schwartz, Mario Trujillo, and Monty Agarwal; the Declaration of Khurshid Khoja; the
16 records of the action; and on such other argument or papers as may be received by this
17 Court.

18 PLEASE TAKE FURTHER NOTICE THAT: Pursuant to Local Rule 1.06(A),
19 the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. on the
20 court day before the hearing. The complete text of the tentative ruling for the
21 department may be downloaded from the Court’s public access site. If you do not have
22 online access, you may call the dedicated phone number for the department as
23 referenced in the local telephone directory, between the hours of 2:00 p.m. and 4:00
24 p.m. on the court day before the hearing, and listen to the tentative ruling. If you do
25 not call the Court and the opposing party by 4:00 p.m. on the court day before the
26 hearing, no hearing will be held.

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Dated: March 13, 2026

Respectfully submitted,

/s/ Saira Hussain
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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION 7

FACTS 7

ARGUMENT 10

 I. Petitioners Are Entitled to an Award of Attorney’s Fees..... 10

 A. The General Legal Standard 10

 B. Petitioners Are a “Successful Party.” 10

 C. Petitioners Enforced an Important Public Right. 12

 D. Petitioners’ Efforts Conferred a Significant Benefit on the
 General Public or a Large Class of Individuals..... 14

 E. The Financial Burden of Private Enforcement Was Necessary 14

 II. Petitioners’ Requested Fee Award Is Reasonable..... 15

 A. Petitioners’ Rates Are Reasonable. 15

 B. Petitioners’ Hours Are Reasonable. 17

 III. The Court Should Enhance Petitioners’ Lodestar. 18

 IV. Petitioners Are Entitled to an Award of Costs..... 20

 V. Petitioners Are Entitled to Fees on Fees..... 20

CONCLUSION..... 21

TABLE OF AUTHORITIES

Cases

1

2 **Cases**

3 *Baxter v. Salutary Sportsclubs, Inc.*

4 (2004) 122 Cal.App.4th 941 14

5 *California Common Cause v. Duffy*

6 (1987) 200 Cal.App.3d 730 15

7 *City of Oakland v. Oakland Police & Fire Retirement System*

8 (2018) 29 Cal.App.5th 688 13

9 *City of Sacramento v. Drew*

10 (1989) 207 Cal.App.3d 1287 15

11 *Collins v. City of Los Angeles*

12 (2012) 205 Cal.App.4th 140 15

13 *Conservatorship of Whitley*

14 (2010) 50 Cal. 4th 1206..... 15

15 *Dababneh v. Lopez,*

16 Sacramento County Superior Court case no. 34-2018-00238699-CU-DF-GDS..... 16

17 *Feminist Women’s Health Center v. Blythe*

18 (1995) 32 Cal.App.4th 1641 12

19 *Folsom v. Butte County Assn. of Governments*

20 (1982) 32 Cal.3d 668 10

21 *Friends of Spring Street v. Nevada City*

22 (2019) 33 Cal.App.5th 1092 12, 20

23 *Graham v. DaimlerChrysler Corp.*

24 (2004) 34 Cal. 4th 553..... 10

25 *Greer v. Dick’s Sporting Goods*

26 (E.D. Cal. 2020) 2020 WL 5535399 16

27 *Hogar Dulce Hogar v. Community Development Com. for City of Escondido*

28 (2007) 157 Cal.App.4th 1358 21

Hoglund v. Sierra Nevada Miners-Memorial Hospital

(2024) 102 Cal.App.5th 56 19

Ketchum v. Moses

(2001) 24 Cal.4th 1122..... 19

La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles

(2018) 22 Cal.App.5th 1149 10, 14

Lyons v. Chinese Hosp. Assn.

(2006) 136 Cal.App.4th 1331 10, 11

Maria P. v. Riles

(1987) 43 Cal.3d 1281 10, 11, 13, 15

Mostajo v. Nationwide Ins.

(E.D. Cal. 2023) 2023 WL 2918657 16

Planned Parenthood v. Aakhus

(1993) 14 Cal.App.4th 162 11

Press v. Lucky Stores, Inc.

(1983) 34 Cal.3d 311 14

1	<i>RiverWatch v. County of San Diego Dept. of Environmental Health</i>	
	(2009) 175 Cal.App.4th 768	12
2	<i>Ryan v. California Interscholastic Federation</i>	
3	(2001) 94 Cal.App.4th 1033	13
	<i>Serrano v. Priest</i>	
4	(1977) 20 Cal.3d 25	15
	<i>Singh v. Roadrunner Intermodal Services, LLC</i>	
5	(E.D. Cal. 2019) 2019 WL 316814	16
	<i>Sonoma Land Trust v. Thompson</i>	
6	(2021) 63 Cal.App.5th 978	19
7	<i>Sweetwater Union High School Dist. v. Julian Union Elementary School Dist.</i>	
8	(2019) 36 Cal.App.5th 970	13, 20
	<i>The Kennedy Com. v. City of Huntington Beach</i>	
9	(2023) 91 Cal.App.5th 436	15, 18, 19
10	<i>Venice Town Council, Inc. v. City of Los Angeles</i>	
	(1996) 47 Cal.App.4th 1547	11
11	<i>Wal-Mart Real Estate Business Trust v. City Council of San Marcos</i>	
	(2005) 132 Cal.App.4th 614	10
12	<i>Woodland Hills Residents Assn. Inc. v. City Council</i>	
13	(1979) 23 Cal.3d 917,	10, 12, 14
	Statutes	
14	Code of Civil Procedure Section 1021.5	<i>passim</i>
15	Code of Civil Procedure Section 1032.5	2, 20
	Government Code Section 7297.410	8
16	Public Utilities Code Section 8381	8, 13, 17, 19

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1 **INTRODUCTION**

2 Petitioners Khurshid Khoja and Alfonso Nguyen’s success in this case ended the
3 Sacramento Municipal Utility District’s (“SMUD”) practice of routinely sharing entire
4 zip codes’ worth of people’s private data with local law enforcement. Having
5 successfully ended this illegal surveillance program, Petitioners’ counsel seek their
6 fees and costs.

7 SMUD had the opportunity to avoid this suit and this Motion. Before bringing
8 suit, Petitioners wrote to SMUD in hopes of avoiding litigation. (Declaration of
9 Khurshid Khoja (“Khoja Decl.”) ¶ 2, Ex. 20.) SMUD, however, did not respond. (*Id.* ¶
10 3.)

11 Reaching this point took significant resources and effort. For more than four
12 years, without compensation, Petitioners’ counsel conducted legal and factual research
13 on the novel issues raised by this case. They waded through nearly 100,000 pages of
14 discovery and subpoenaed multiple agencies to get it, deposed seven fact witnesses,
15 and dealt with dueling expert witnesses (including reports and depositions). They also
16 tried to condense the record by preparing admissions and proposing stipulations, a
17 process that SMUD ignored. This substantial effort constituted quintessential public
18 interest litigation—everyday citizens guarding the public agencies that are supposed
19 to be the guardians of the people.

20 As successful parties, Petitioners seek a fee lodestar of \$1,382,745 plus an
21 upward multiplier of a factor of 1.5, for a total of \$2,074,117.50 in fees. Petitioners also
22 seek an additional \$14,850 in fees for their counsel’s work drafting this Motion. And
23 pursuant to the Memorandum of Costs already filed with this Court, Petitioners seek
24 an award of \$19,880.47 in costs.

25 **FACTS**

26 This litigation ended an ongoing law enforcement surveillance program that
27 illegally disclosed SMUD customers’ sensitive and private electrical usage data. As
28 this Court found, “SMUD and the City have developed a relationship beyond that of

1 utility provider and law enforcement,” that enabled police to routinely request, and
2 SMUD to disclose, entire zip codes’ worth of customer utility data, in violation of
3 Public Utilities Code Section 8381. (Nov. 20, 2025 Order on Submitted Matter
4 (“Order”) at p. 13.) This Court rightfully recognized that the program was “a dragnet
5 for all the users within a particular zip code,” (Declaration of Saira Hussain (“Hussain
6 Decl.”), Ex. 7, 16:16–17) and held that it was unlawful.

7 This Court rejected SMUD’s defense that its responses to law enforcement’s
8 requests for electricity usage above a certain threshold by zip code were made as part
9 of an “ongoing investigation” pursuant to Government Code Section 7297.410,
10 subdivision (c). (Order at pp. 12–13.) Instead, as this Court found:

11 SMUD’s production of entire zip codes of customers’
12 electrical consumption data, in response to a request made
13 on a SMUD-created preprinted form, on a cyclical basis,
14 with SMUD’s knowledge that the requests are not part of an
investigation beyond the City’s general interest in enforcing
marijuana laws, violates Public Utilities Code section 8381.

15 (Order at p. 10.) The Court likewise did not accept other defenses that SMUD raised—
16 including that it “owned” customer data, that it had a First Amendment right to
17 search that data, that customers consented to such searches, and that other provisions
18 of Section 7297.410 allowed disclosure. (See *id.* at p. 10, fn. 9.)

19 The Court’s Order and Peremptory Writ of Mandate benefitted all 650,000
20 SMUD customers whose electrical usage information SMUD queried each time it
21 fulfilled these requests, and who have no practical alternative to SMUD. Petitioners’
22 counsel, a nonprofit legal advocacy organization and an attorney at a boutique law
23 firm, spent more than four years to end the surveillance dragnet. (Hussain Decl. ¶¶ 4–
24 7). Counsel’s work included extensive research and fact development to draft the
25 combined complaint and writ petition, engaging Petitioners, and drafting demands to
26 the City of Sacramento (“City”) and SMUD. (*Id.* ¶ 4.) After ignoring Petitioners’ pre-
27 litigation outreach, (see Khoja Decl. ¶¶ 2–3), SMUD threatened an anti-SLAPP
28 motion, which Petitioners’ counsel had to beat back. (Hussain Decl. ¶ 5; Declaration of

1 Aaron Mackey (“Mackey Decl.”) ¶ 9b, Ex. 10.)

2 In support of their writ, Petitioners submitted a record of some 2,000 pages,
3 which was distilled from the nearly 100,000 pages produced in discovery. (Declaration
4 of Monty Agarwal (“Agarwal Decl.”) ¶ 13.) Counsel had to spend time understanding
5 the evidence so Petitioners could paint a coherent picture of the extent of SMUD and
6 law enforcement’s partnership in the energy surveillance program. Just getting the
7 evidence proved difficult, because SMUD did not retain much of its communications
8 with law enforcement. (*Id.* ¶ 12.) Counsel had to wade through a voluminous
9 production from the City and even subpoena other local governments to elucidate the
10 scope of SMUD’s surveillance and sharing. (*Id.* ¶¶ 12–13.) The documents also
11 required explanation. Petitioners took seven depositions of key fact witnesses to obtain
12 just that. (Hussain Decl. ¶ 6.) Petitioners also retained an expert witness to help them
13 understand the data. (*Id.*) And two experts ultimately provided reports and sat for
14 deposition. (*Id.*)

15 To streamline the record in light of the substantial evidence gathered,
16 Petitioners’ counsel developed a series of exhibits that sought to summarize the
17 voluminous evidence in this case with the goal of (1) reducing the amount of record
18 evidence that needed to be submitted to this Court, and (2) reducing the amount of
19 personally identifying information of SMUD customers that the parties would need to
20 file, and seek to seal. (Declaration of Adam Schwartz (“Schwartz Decl.”) ¶ 9c, Ex. 14;
21 Mackey Decl. ¶ 9h.) Although the City agreed to stipulate to a voluminous evidence
22 summary, SMUD did not. (Hussain Decl. ¶ 7; Schwartz Decl. ¶ 9c, Ex. 15.) Thus, in
23 filing Petitioners’ writ petition and the record, counsel had to include more
24 information in the record to meet their burden to establish facts regarding the
25 surveillance program and had to take time to redact sensitive information of SMUD
26 customers from the public record in this case. (Hussain Decl. ¶ 7; Mackey Decl. ¶ 9j.)
27 And Petitioners’ counsel had to draft and file their writ petition and reply brief, and to
28 prepare for and give argument at the hearing. (Hussain Decl. ¶ 7.)

1 **ARGUMENT**

2 **I. Petitioners Are Entitled to an Award of Attorney’s Fees.**

3 **A. Legal Standard**

4 Code of Civil Procedure Section 1021.5 is an exception to the rule that litigants
5 pay their own attorney’s fees. This “private attorney general” doctrine encourages
6 litigants to pursue meritorious public interest litigation enforcing an important right.
7 (See *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1288; *Woodland Hills Residents Assn.*
8 *Inc. v. City Council* (1979) 23 Cal.3d 917, 925.) Litigants are entitled to attorney’s fees
9 under Section 1021.5 if they meet four interrelated criteria: (1) they are a “successful
10 party in an action,” (2) the action “has resulted in the enforcement of an important
11 right affecting the public interest,” (3) the action “has conferred a significant benefit on
12 the general public or a large class of persons,” and (4) an attorney’s fees award “is
13 appropriate in light of the necessity and financial burden of private enforcement.” (*La*
14 *Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2018) 22
15 Cal.App.5th 1149, 1155–1156 [cleaned up] [affirming \$974,137.50 fee award where
16 trial court partly granted and partly denied writ petitions].)

17 A court’s discretion to deny attorney’s fees to a party that meets the statute’s
18 requirements is limited. (*Lyons v. Chinese Hosp. Assn.* (2006) 136 Cal.App.4th 1331,
19 1344, 1357 [reversing denial of fee award].)

20 **B. Petitioners Are a “Successful Party.”**

21 The term “successful party” means the party to litigation that “achieves its
22 objectives.” (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, 571, as modified
23 (Jan. 12, 2005).) The “critical fact is the impact of the action, not the manner of its
24 resolution.” (*Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668, 685.)
25 This assessment is a pragmatic one that asks whether a party has reached the
26 “sought-after destination”; if so, “the party ‘prevails’ regardless of the ‘route taken.’”
27 (*Wal-Mart Real Estate Business Trust v. City Council of San Marcos* (2005) 132
28 Cal.App.4th 614, 621 [internal citations omitted].) A party is considered “successful” if

1 the suit “contributed substantially to remedying the conditions at which it was
2 directed.” (*Planned Parenthood v. Aakhus* (1993) 14 Cal.App.4th 162, 174.) In other
3 words, “[a] ‘successful’ party means a ‘prevailing’ party . . . if they succeed on *any*
4 significant issue in litigation which achieves *some* of the benefit the parties sought in
5 bringing suit.” (*Lyons, supra*, 136 Cal.App.4th at p. 1346 [emphasis in original]
6 [quoting *Maria P., supra*, 43 Cal.3d at p. 1292 (cleaned up)].)

7 This Court’s order and writ stopping SMUD’s disclosure of entire zip codes’
8 worth of its customers’ data achieved Petitioners’ objectives, rendering them a
9 successful party. Petitioners brought this action to halt the unchecked, decade-long
10 partnership between a utility and law enforcement to surveil entire communities. (See
11 First Amended Verified Writ, ¶ 2 [“SMUD’s ongoing dragnet of its customers’ utility
12 usage and subsequent disclosure”].) At the writ hearing, the Court recognized SMUD’s
13 conduct just as Petitioners had described. (See Hussain Decl., Ex. 7, at 16:15-17 [“This
14 is . . . a dragnet for all the users within a particular zip code”].) This Court noted that
15 SMUD had allowed a “relationship beyond that of utility provider and law
16 enforcement,” and rejected multiple arguments that SMUD advanced. (Order at p. 13.)
17 The Court’s order and writ put an end to SMUD’s central role in the unlawful
18 surveillance. No more was required for Petitioners to be successful parties. (See
19 *Aakhus, supra*, 14 Cal.App.4th at p. 174 [holding that “the injunction makes
20 respondent a ‘successful party’ pursuant to section 1021.5”]; see also *Venice Town*
21 *Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1563 fn. 9 [noting that
22 writ and injunctive relief are functionally identical].)

23 SMUD has publicly acknowledged the impact, including the benefit that will
24 inure to SMUD. Shortly after the ruling, in a statement appearing in a news article,
25 SMUD is quoted as saying:

26 The decision also clarified the types and reduced the number
27 of circumstances under which SMUD must provide customer
28 usage data to law enforcement. SMUD is grateful for the
clarification in the law from this decision, which relieves
SMUD from having to respond to one particular type of

1 labor-intensive request from law enforcement for meter
2 usage data. SMUD will happily comply with the court's
3 decision.

4 (Hussain Decl., Ex. 8.)

5 The Court rulings against Petitioners on one claim and a few contentions do not
6 alter Petitioners' successful-party status. A "party seeking attorney fees need not
7 prevail on all its claims alleged in order to qualify for an award." (*RiverWatch v.*
8 *County of San Diego Dept. of Environmental Health* (2009) 175 Cal.App.4th 768, 782–
9 783; see also *Friends of Spring Street v. Nevada City* (2019) 33 Cal.App.5th 1092,
10 1102, 1108, 1111 [granting attorney's fees despite "only obtain[ing] relief from the
11 Court on one of its five causes"]; *Feminist Women's Health Center v. Blythe* (1995) 32
12 Cal.App.4th 1641, 1674 [awarding clinic full attorney's fees when it failed to increase
13 the speech-free zone around clinic, but obtained a permanent injunction against
14 certain activities by protesters].)

15 The successful-party test measures overall impact, not whether every litigation
16 battle was won. Here, Petitioners successfully ended the surveillance program at issue
17 through this Court's issuance of a writ of mandate. It made no difference that only two
18 Petitioners crossed the standing threshold. Two was double what was needed.
19 Moreover, Petitioners' constitutional cause was just a second route to the same relief
20 as their statutory claim. Finally, Petitioners' eventual dismissal of the City reflects
21 nothing more than a simple calculation that, having achieved the desired goal, no
22 further gain was to be had by continuing the litigation. It makes no difference how
23 many zip code lists law enforcement requests; SMUD cannot fulfill them under this
24 Court's command.

25 **C. Petitioners Enforced an Important Public Right.**

26 An "important public right" can have any legal source, "constitutional, statutory
27 or other." (*Woodland Hills, supra*, 23 Cal.3d at p. 925.) Courts have broadly
28 interpreted the important right concept and "frequently reject attempts to characterize
rights in their most narrow or personal light." (*Sweetwater Union High School Dist. v.*

1 *Julian Union Elementary School Dist.* (2019) 36 Cal.App.5th 970, 988 [internal
2 citations omitted].)

3 Petitioners enforced the public’s right to privacy and confidentiality, which are
4 societally important rights. (See *Maria P.*, *supra*, 43 Cal.3d at p. 1283 [finding that the
5 action “vindicated an important right affecting the public interest by protecting the
6 confidentiality of [] school records”].) Protecting privacy is also important because it is
7 the bedrock that underlies other important rights. (See *id.* at p. 1293 [protecting
8 privacy “served to protect these children’s right to equal educational opportunities, a
9 vitally important right in our society”].)

10 Here, Petitioners enforced the important bargain at the heart of Public Utilities
11 Code Section 8381, a privacy provision that protects the confidentiality of utility data
12 in the face of revealing technology like smart meters. (*City of Oakland v. Oakland*
13 *Police & Fire Retirement System* (2018) 29 Cal.App.5th 688, 710 [importance
14 “determined by realistically assessing the significance of that right in terms of its
15 relationship to the achievement of fundamental legislative goals”].)

16 As importantly, the enforcement addressed real harms caused by the
17 surveillance program. These harms included SMUD profiling customers based in part
18 on ethnicity or race to provide tips to law enforcement, (Memorandum of Points and
19 Authorities in Support of Petition for Writ of Mandate at pp. 12, 24), and police
20 harassment, home searches, and home raids based on SMUD’s warrantless and
21 suspicionless provision of customer information. (*Id.* at pp. 15–16.)

22 Petitioners’ enforcement of Section 8381 advances public rights in multiple
23 respects beyond compliance with the statute: it enhances a legislative goal, *and*
24 protects personal privacy, *and* maintains the sanctity of the home, *and* reduces the
25 opportunity to selectively target particular communities. This is the antithesis of a
26 lawsuit that enforces “trivial or peripheral public policies” with “miniscule benefit.”
27 (*Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th 1033, 1044;
28 *Baxter v. Salutory Sportsclubs, Inc.* (2004) 122 Cal.App.4th 941, 948 [no award where

1 suit conferred only a “miniscule benefit”].)

2 **D. Petitioners’ Efforts Conferred a Significant Benefit on the**
3 **General Public or a Large Class of Individuals**

4 Where a nonpecuniary benefit to the public is “the proper enforcement of the
5 law, the successful party must show that the law being enforced furthers a significant
6 policy.” (*La Mirada*, supra, 22 Cal.App.5th at p. 1158 [internal citations omitted].)
7 Courts have “consistently” awarded attorney’s fees for the enforcement of “well-
8 defined, existing obligations.” (*Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 318.) In
9 these cases, the significance of the benefit “dovetail[s]” with the “important” right
10 requirement. (*La Mirada*, supra, 22 Cal.App.5th at p. 1158.)

11 Here, as noted in the prior section, the benefit is significant because Petitioners
12 enforced an important legislative goal and addressed serious problems resulting from
13 an inappropriate relationship between a public utility and law enforcement.
14 (*Woodland Hills*, supra, 23 Cal.3d at p. 939 [significant benefit “may be recognized
15 simply from the effectuation of a fundamental constitutional or statutory policy”].)

16 SMUD’s zip code list dragnet also ensnared 650,000 of its customers. SMUD
17 generated lists by searching its trove of *all* customers’ data within a zip code and, for
18 the City of Sacramento, within *every* zip code. (Memorandum of Points and Authorities
19 in Support of Petition for Writ of Mandate at pp. 9–10; see also Order at p. 16.) SMUD
20 even provided tips and opinions of its own accord. (Memorandum of Points and
21 Authorities in Support of Petition for Writ of Mandate at p. 12.) This Court’s order and
22 writ protects all 650,000 customers from being subjected to the dragnet again—a large
23 class by any measure. Further, Petitioners’ efforts protected the privacy of the tens of
24 thousands of SMUD customers whose data had already been disclosed at least once to
25 law enforcement during the decade-long surveillance program, by ensuring such
26 disclosure could not recur. (See Petitioners’ Record 141; Schwartz Decl., ¶ 9b.) Even
27 SMUD is a “grateful” beneficiary of Petitioners’ efforts. (Hussain Decl., Ex. 8.)

28 **E. The Financial Burden of Private Enforcement Was Necessary**

1 The final criterion divides into two prongs: “whether private enforcement was
2 necessary” and “whether the financial burden of private enforcement warrants
3 subsidizing the successful party’s attorneys.” (*Collins v. City of Los Angeles* (2012) 205
4 Cal.App.4th 140, 154.)

5 Petitioners’ private enforcement was necessary and essential because SMUD
6 and local law enforcement—the very agencies obligated to protect the public—worked
7 together to violate residents’ privacy rights. Where governmental agencies and
8 officials are violating the law, private citizens must “guard the guardians,” and in such
9 cases “the necessity of private enforcement is obvious.” (*City of Sacramento v. Drew*
10 (1989) 207 Cal.App.3d 1287, 1299 [citations omitted], reh’g. den. and opinion modified
11 (Mar. 15, 1989).) No public enforcer was “available, or . . . sufficiently available.”
12 (*Conservatorship of Whitley* (2010) 50 Cal. 4th 1206, 1217.)

13 Petitioners did not seek a monetary benefit. They stepped up “in the public
14 interest” and “no Petitioner seeks any individual relief greater than the relief they
15 seek for the general public.” (First Amended Verified Writ, ¶ 27.) This was model
16 public interest litigation that justifies a fee award. (See, e.g., *California Common*
17 *Cause v. Duffy* (1987) 200 Cal.App.3d 730, 751 [upholding fee grant where the plaintiff
18 had “little or no personal financial interest in the outcome”].)

19 **II. Petitioners’ Requested Fee Award Is Reasonable.**

20 “The California Supreme Court has instructed that attorney fee awards under
21 section 1021.5 should be fully compensatory.” (*The Kennedy Com. v. City of*
22 *Huntington Beach* (2023) 91 Cal.App.5th 436, 465 [internal citations omitted].) The
23 award amount is based on the lodestar, which assesses the time spent and the
24 reasonable hourly compensation for each attorney. (*Maria P.*, *supra*, 43 Cal.3d at p.
25 1294; *Serrano v. Priest* (1977) 20 Cal.3d 25, 48.)

26 **A. Petitioners’ Rates Are Reasonable.**

27 The table below summarizes counsels’ years of experience and rates.
28

Name	Title and Office	Years of Experience	Hourly Rates
Aaron Mackey	Deputy Legal Director, EFF	13	\$550
Adam Schwartz	Privacy Litigation Director, EFF	30	\$725
Saira Hussain	Senior Staff Attorney, EFF	12	\$550
F. Mario Trujillo	Senior Staff Attorney, EFF	6	\$350
Monty Agarwal	Partner, Vallejo, Antolin, Agarwal & Kanter LLP	28	\$725

Four of the counsel work at the Electronic Frontier Foundation (“EFF”), a nonprofit organization devoted to challenging illegal surveillance and protecting data privacy. Counsel Agarwal has nearly three decades of litigation experience, including representing an innocent homeowner who was assessed a large penalty stemming from the challenged collaboration between SMUD and law enforcement. (Agarwal Decl. ¶¶ 6–8.)

The rates sought are reasonable and in line with prevailing rates in Sacramento. (See, e.g., *Mostajo v. Nationwide Ins.* (E.D. Cal. 2023) 2023 WL 2918657, *11 [approving \$650 to \$750 for three lawyers with over 30 years, and \$375 for a lawyer with 3 years]; *Dababneh v. Lopez* (Sept. 1, 2022) Sacramento County Superior Court case no. 34-2018-00238699-CU-DF-GDS [approving \$725 for an attorney with 30 years and \$500 for an attorney with 10 years] [Hussain Decl., Ex. 3]; *Greer v. Dick’s Sporting Goods* (E.D. Cal. 2020) 2020 WL 5535399, *9 [approving \$725 for a lawyer with 26 years, \$695 for three lawyers with 21 to 35 years, \$595 for three lawyers with 18 years, \$495 for one lawyer with 13 years, \$435 for two lawyers with 11 years, and \$295 for one lawyer with 5 years]; *Singh v. Roadrunner Intermodal Services, LLC* (E.D. Cal. 2019) 2019 WL 316814, *10 [approving \$720 for seven lawyers with 12 to 41 years, \$550 for two lawyers with six years, \$500 for one lawyer with 26 years, \$425 for four lawyers with 3 years, \$410 for one lawyer with 4 years, and \$350 for one lawyer with 5 years and another with 2 years].)

The rates requested are less than the rates in counsel’s Bay Area market. (See

1 Hussain Decl., Ex. 4.) Although counsel do not seek Bay Area rates, counsel brought
2 unique expertise to a decade-old problem that no counsel in Sacramento had tackled.
3 (See Hussain Decl. ¶ 1; Agarwal Decl. ¶¶ 8–9.)

4 **B. Petitioners’ Hours Are Reasonable.**

5 It took four years and over 2,000 hours to shine light on the extent of SMUD
6 and law enforcement’s collaboration in the surveillance program. Each attorney’s
7 efforts are set forth in their supporting declarations, which provide an overview of
8 work performed and attach contemporaneous time entries of the specifics.

9 Bringing this matter to the Court’s attention took significant effort. Petitioners’
10 counsel spent well over a year investigating and researching before even filing this
11 matter—as shown by the detail in their initial verified writ. Many of the issues were
12 novel, including the interpretation of Section 8381 and of the “ongoing investigation”
13 exemption under the Public Records Act, a phrase not previously interpreted in any
14 published (or unpublished) decision.

15 Also, prior to bringing the action, as noted above, Petitioners wrote to SMUD in
16 hopes of avoiding litigation. (Khoja Decl., ¶ 2 & Ex. 20.) SMUD did not respond to this
17 outreach. (Khoja Decl. ¶ 3.) Instead, shortly after Petitioners filed suit, SMUD
18 threatened Petitioners with an anti-SLAPP motion. (Mackey Decl. ¶ 9b, Ex. 10
19 [attaching SMUD correspondence].)

20 Discovery was a substantial undertaking. The 2,000-page record that
21 Petitioners filed with their writ was a fraction of the nearly 100,000 pages that they
22 obtained in discovery. (Agarwal Decl. ¶ 13.) SMUD did not retain much of what it had
23 disclosed to law enforcement, so subpoenas had to be issued to several local agencies
24 within SMUD’s service area. (*Id.* ¶ 12.) As the Court ultimately recognized, part of the
25 problem sought to be addressed was the intimate relationship between SMUD and law
26 enforcement. (See Order at p. 13.) There were seven fact depositions, two testifying
27 expert reports, and two expert depositions. (Hussain Decl. ¶ 6.)

28 Distilling discovery to an admissible record was also a significant effort.

1 Petitioners prepared a summary of voluminous records and negotiated stipulations
2 regarding the admissibility of the underlying documents. (Schwartz Decl. ¶ 9b, Ex.
3 13.) The process was hampered by SMUD’s counsel’s failure to respond to entreaties to
4 participate in reaching a stipulation. (*Id.* ¶ 9c, Ex. 14–15.) Even preparing the filing
5 took extra effort as substantial amounts of customer information had to be redacted
6 and care taken to file under seal, in part because SMUD’s counsel refused to stipulate
7 to a summary of voluminous records. (Hussain Decl. ¶ 7; Mackey Decl. ¶ 9j.) The
8 summary would have both reduced the materials Petitioners needed to file with this
9 Court and avoided the need to move to file so much of those materials—which
10 frequently contained SMUD customers’ personally identifying information—under
11 seal.

12 The table below calculates counsel’s lodestar of \$1,382,745, by multiplying their
13 reasonable rates and reasonable hours:

Name	Rate	Hours	Lodestar
Saira Hussain	\$550	443.1	\$243,705
Aaron Mackey	\$550	388.0	\$213,400
Adam Schwartz	\$725	695.0	\$503,875
F. Mario Trujillo	\$350	162.7	\$56,945
Monty Agarwal	\$725	503.2	\$364,820
Total	-	2,192	\$1,382,745

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19 **III. The Court Should Enhance Petitioners’ Lodestar.**

20 Petitioners also seek an upward multiplier by a factor of 1.5 because (1) this
21 case was a contingent matter; (2) the legal issues presented were novel and complex;
22 and (3) Petitioners’ counsel exhibited significant skill in pursuing them.

23 When deciding whether to apply a multiplier to a lodestar amount, “a court
24 should consider all relevant factors, including: (1) the novelty and difficulty of the
25 questions involved, (2) the skill displayed in presenting them, (3) the extent to which
26 the nature of the litigation precluded other employment by the attorneys, (4) the
27 contingent nature of the fee award.” (*The Kennedy Com.*, *supra*, 91 Cal.App.5th at p.
28 467.) Satisfaction of any one factor is sufficient to apply a multiplier. (*Id.*)

1 EFF and Counsel Agarwal took this matter on a pro bono, contingent basis to
2 advance Petitioners’ and the public’s privacy. Courts award upward multipliers when
3 nonprofit organizations and firms “employ[] their capabilities in the public interest.”
4 (*Id.*) This is what happened here. EFF attorneys undertook roughly 77% of the work
5 done. Any fee awarded to EFF goes to the organization rather than the individual
6 attorneys. Fee awards from successful efforts like this one are an important
7 component of sustaining EFF’s impact litigation mission, which includes challenging
8 surveillance that targets minority communities. (Hussain Decl. ¶¶ 1, 27.) Counsel
9 Agarwal’s work on this matter was contingent, and his firm bore the risk, which
10 included nearly \$60,000 in out-of-pocket costs. (Agarwal Decl. ¶ 16.) “[T]he purpose of
11 a fee enhancement is primarily to compensate the attorney for the prevailing party at
12 a rate reflecting the risk of nonpayment in contingency cases as a class.” (*Ketchum v.*
13 *Moses* (2001) 24 Cal.4th 1122, 1138.) Bearing the entire risk of this contingent
14 litigation justifies an upward multiplier. (*Hoglund v. Sierra Nevada Miners-Memorial*
15 *Hospital* (2024) 102 Cal.App.5th 56, 83.)

16 Additionally, an upward multiplier is warranted because of the novel legal
17 issues in this case and the skill displayed by Petitioners’ counsel. (*The Kennedy Com.*,
18 *supra*, 91 Cal.App.5th at p. 467.) Although courts should not double count these
19 factors in calculating the lodestar and any upward multiplier, “[a]n enhancement is
20 proper, however, when these factors, though partially reflected in the lodestar, are not
21 fully reflected in the lodestar.” (*Sonoma Land Trust v. Thompson* (2021) 63
22 Cal.App.5th 978, 988.) No court had interpreted either Section 8381 or the “ongoing
23 investigation” exception to it found in the Public Records Act. The issues were novel.
24 Notably, the dragnet continued for nearly a decade, and no counsel had challenged it
25 until the current counsel took the risk. Undoubtedly, EFF’s expertise in data privacy
26 contributed to Petitioners’ success. To the extent these factors are not fully accounted
27 for in the lodestar above, the Court can, and should, account for them fully by
28 providing an upward multiplier.

1 Finally, Petitioners’ success on the statutory claim but not the constitutional
2 claim is not cause for a reduction to their lodestar. A two-step inquiry assesses:
3 “whether the prevailing party’s successful and unsuccessful claims are related,” and if
4 so, the court must “evaluate the significance of the overall relief obtained . . . and
5 reduce the lodestar calculation if the relief is limited in comparison to the scope of the
6 litigation as a whole.” (*Sweetwater, supra*, 36 Cal.App.5th at pp. 996–997 [internal
7 citations omitted].) However, “the fee award should not be reduced simply because the
8 plaintiff failed to prevail on every contention raised in the lawsuit. Litigants in good
9 faith may raise alternative legal grounds for a desired outcome, and the court’s
10 rejection of or failure to reach certain grounds is not a sufficient reason for reducing a
11 fee.” (*Id.* at p. 997.) Petitioners’ constitutional claim was a related and alternative
12 theory to the successful statutory claim and stemmed from the same common core of
13 facts. The Court’s decision on it did not ultimately impact the significance of the
14 overall relief obtained, as both the statutory and constitutional claims sought the same
15 writ of mandate to end the data surveillance program between SMUD and law
16 enforcement. (See *id.*)

17 **IV. Petitioners Are Entitled to an Award of Costs.**

18 Petitioners are a prevailing party within the meaning of Code of Civil Procedure
19 Section 1032 for the same reasons that they are a successful party under Section
20 1021.5. (See *Friends of Spring Street, supra*, 33 Cal.App.5th at pp. 1104–1106, 1108.)
21 Petitioners’ counsel expended nearly \$60,000 in out-of-pocket expenses, only a third of
22 which is recoverable. (Agarwal Decl. ¶ 16.) Petitioners filed a memorandum of costs on
23 January 15, 2026, and attached a summary and receipts for each cost. (*Id.*) If Section
24 1032 requires this Court to issue an order awarding costs, Petitioners request that the
25 Court do so and award costs of \$19,880.47.

26 **V. Petitioners Are Entitled to Fees on Fees.**

27 Petitioners also seek \$14,850 in attorney’s fees for counsel’s work on this
28 Motion. A party seeking attorney’s fees under Section 1021.5 is entitled to recover for

1 the hours its counsel spends on prosecuting its fee motion. (*Hogar Dulce Hogar v.*
2 *Community Development Com. for City of Escondido* (2007) 157 Cal.App.4th 1358,
3 1371.) Here, Petitioners’ counsel only seek fees for the 27 hours that Counsel Hussain
4 spent putting together this Motion, despite several other attorneys assisting with its
5 preparation.¹ (See Hussain Decl. ¶ 19, Ex. 2.)

6 **CONCLUSION**

7 For the foregoing reasons, Petitioners respectfully request that the Court issue
8 an order awarding the requested attorney’s fees and costs.

9 Dated: March 13, 2026

Respectfully submitted,

10
11 /s/ Saira Hussain

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26
27
28 _____
¹ Petitioners do not seek an enhancement for their request for fees on fees.