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ELECTRONICALLY FILED
Superior Court of California
County of Sacramento
04/13/2026
By: C. Torres Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

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

Petitioners/Plaintiffs,

v.

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

Respondents/Defendants.

Case No.: 34-2022-80004019

PETITIONERS' OPPOSITION TO RESPONDENTS SACRAMENTO MUNICIPAL UTILITY DISTRICT AND PAUL LAU'S MOTION TO STRIKE OR, ALTERNATIVELY, TO TAX COSTS

Hearing Date: April 24, 2026
Time: 11:00 a.m.
Place: Department 16B
Judge: Hon. Shelleyanne W. L. Chang

Action Filed: September 21, 2022

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INTRODUCTION

Petitioners Khurshid Khoja and Alfonso Nguyen (collectively, "Petitioners") prevailed in their challenge of a decade-long energy surveillance program, involving the zip-code-based disclosure of personal and sensitive customer data by the Sacramento Municipal Utility District ("SMUD") to local law enforcement. This Court issued a judgment in Petitioners' favor and a writ of mandate prohibiting SMUD's disclosure of this data, thereby shutting down the program. Despite the concession of Respondents SMUD and Paul Lau (collectively, "SMUD Respondents") that Petitioners prevailed in a public interest lawsuit (see SMUD Respondents' Motion to Strike or Tax Costs ["Mot."] at p. 3), citing just a single case, SMUD Respondents attempt to nickel and dime the costs that were necessary to litigate the case. They also fail to recognize that many of the costs arose directly because of their own actions during the litigation.

Petitioners respectfully request that the Court award in full the amount sought in their Memorandum of Costs: $19,880.47.

FACTS

Petitioners filed a joint writ petition and complaint seeking to end the partnership between SMUD Respondents and local law enforcement in an energy surveillance program involving the requesting and disclosure of customers' energy usage data by zip code. (*See generally* Nov. 2, 2022 First Amended Verified Petition for Writ of Mandate ["Amended Writ Petition"].) Petitioners brought two claims: one under an energy privacy statute, Public Utilities Code Section 8381, and the other under Article 1, Section 13 of the California Constitution. (*Id.* at pp. 17–20.)

On November 20, 2025, this Court issued an order finding that SMUD Respondents' disclosure of customers' energy consumption data by zip code violated Section 8381. (Nov. 20, 2025 Order on Submitted Matter ["Order"] at p. 10.) The Court found that "SMUD and the City have developed a relationship beyond that of

utility provider and law enforcement" (*id.* at p. 13), and at the hearing on the writ, characterized the program as a "dragnet for all users within a particular zip code" (Declaration of Saira Hussain ["Hussain Decl."], Ex. 4 at p. 16:15–17). The Court rejected SMUD Respondents' defenses, including that the utility disclosed customer data pursuant to an "ongoing investigation" exemption under Government Code Section 7927.410(c). (Order at pp. 10, 12–13.) This Court then issued judgment against SMUD Respondents and a peremptory writ prohibiting them from disclosing customer data by zip code. (Jan. 8, 2026 Judgment Granting in Part and Denying in Part Peremptory Writ of Mandate, at ¶ 2.)

Having ended the energy surveillance program, Petitioners filed a Memorandum of Costs, which attached a detailed summary and 41 pages of actual receipts documenting the amounts sought as costs. (Declaration of Monty Agarwal ["Agarwal Decl."], Ex. 1.)

ARGUMENT

I. The Court Should Award Costs Because Petitioners Are a "Prevailing Party."

California allows a "prevailing party" to recover costs. (Code of Civ. Pro. § 1032(b).) The statute identifies the right to costs for four categories of prevailing parties: "[1] the party with a net monetary recovery, [2] a defendant in whose favor a dismissal is entered, [3] a defendant where neither plaintiff nor defendant obtains any relief, and [4] a defendant as against those plaintiffs who do not recover any relief against that defendant." (*Id.* at § 1032(a)(4).)

Where, as here, "any party recovers other than monetary relief," the "prevailing party shall be determined by the court." (*Id.*; see also *Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1333.) The determination turns on "whether the party succeeded at a practical level by realizing its litigation objectives . . . and the action

yielded the primary relief sought in the case." (*Friends of Spring Street v. Nevada City* (2019) 33 Cal.App.5th 1092, 1104 (internal citations omitted).)

Here, this Court's order, judgment against SMUD Respondents, and issuance of a writ stopping SMUD's disclosure of entire zip codes' worth of its customers' data renders Petitioners a prevailing party. Petitioners' objective was to halt the unchecked, decade-long partnership between a utility and law enforcement to surveil entire communities. (See Amended Writ Petition at ¶ 2 [challenging "SMUD's ongoing dragnet of its customers' utility usage and subsequent disclosure"].) At the writ hearing, the Court recognized SMUD's conduct just as Petitioners had described. (See Hussain Decl., Ex. 4 at p. 16:15-17 ["This is . . . a dragnet for all the users within a particular zip code"].) By contrast, the Court rejected multiple arguments that SMUD advanced to justify its unlawful conduct, (Order at pp. 12-13, 15 n.9), and this Court recognized that SMUD had allowed a "relationship beyond that of utility provider and law enforcement," (*id.* at p. 13). The Court's order and writ commanding SMUD Respondents to stop disclosing customers' data by zip code achieved the "primary relief" Petitioners sought. (See *Friends of Spring Street*, *supra*, 33 Cal.App.5th at p. 1104.) No more is required for Petitioners to be a "prevailing party" within the meaning of Section 1032.

The Court's rulings against Petitioners on one claim and a few contentions do not alter Petitioners' prevailing-party status. (See Mot. at p. 4.) Petitioners need not succeed on every claim to be a prevailing party. (See *Friends of Spring Street*, *supra*, 33 Cal.App.5th at pp. 1104–1106 [finding plaintiff a prevailing party for purposes of costs despite "only obtain[ing] relief from the Court on one of its five causes"]; see also *Sears v. Baccaglio* (1998) 60 Cal.App.4th 1136, 1155–1156 [holding that even a plaintiff's "failure to succeed on all but one of several 'shotgun' causes of action has been held insufficient to deny a party fees and costs"].)

What ultimately matters is the "practical" result, not whether every litigation battle was won. (See *Friends of Spring Street*, *supra*, 33 Cal.App.5th at p. 1104.) Here, the Court's writ ended the surveillance program. Petitioners' constitutional claim was just a second route to the same relief as their statutory claim. Moreover, the writ achieved the same practical result as that sought by Petitioners' declaratory and injunctive relief claims. Petitioners' eventual dismissal of Respondents City of Sacramento and Katherine Lester (collectively, "City Respondents") reflects nothing more than a simple calculation that, having achieved the primary relief, no further gain was to be had by continuing the litigation. (See *id.*) It makes no difference how many zip code lists law enforcement requests; SMUD cannot fulfill them under this Court's command.

Finally, a number of courts have recognized that where a party is declared a "successful party," or a prevailing party, for purposes of attorney's fees under Code of Civil Procedure Section 1021.5, that same analysis applies to a "prevailing party" for purposes of costs under Section 1032. (See *Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 251; see also *Friends of Spring Street*, *supra*, 33 Cal.App.5th at pp. 1104–1106, 1108.)

The Court should deny SMUD Respondents' motion to strike.

II. Petitioners' Costs Were Reasonably Necessary.

The Court should also deny SMUD Respondents' motion to tax costs. Petitioners' counsel incurred nearly $60,000 in expenses but seek an award of $19,880.47, which is about one-third of the actual expenses. (Agarwal Decl. at ¶ 2.) SMUD Respondents' motion details scattered complaints that are short on, and contrary to, legal authority and the facts. Petitioners respond to SMUD Respondents' arguments in turn.

A. SMUD Respondents misunderstand invoice billing codes as pertaining to a specific petitioner rather than the matter.

SMUD Respondents assert that "various invoices" should be taxed since Petitioner Asian American Liberation Network ("AALN") was found to lack standing and is thus not a prevailing party. (Mot. at pp. 4–5.) SMUD Respondents' assertion is premised on some e-filing receipts showing "Billing Code … AALN." (See Agarwal Decl., Ex. 1.) These e-filing charges, however, were not for Petitioner AALN *specifically*, but for the AALN matter *generally*. Petitioners' counsel frequently e-filed documents using the OneLegal platform, which allows for an optional, shorthand billing code to facilitate tracking. The "AALN" billing code that counsel entered and appears on the receipt is just shorthand for the matter and does not represent a charge specifically for Petitioner AALN. (Agarwal Decl. at ¶ 4.)

B. SMUD Respondents erroneously claim deficiencies in Petitioners' Memorandum of Costs.

SMUD Respondents argue that Petitioners do not declare that the costs were necessary or reasonable. (Mot. at p. 5.) This is incorrect. On January 15, 2026, counsel timely filed a Memorandum of Costs using Judicial Council Form MC-010. The bottom of the form contains the requisite declaration that the claimed "costs are correct and were necessarily incurred in this case." (Agarwal Decl., Ex. 1 at Memorandum of Costs.) To the extent the Court prefers it stated again, Counsel Agarwal provides the declaration anew. (Agarwal Decl. at ¶ 2.)

Likewise, SMUD Respondents assert that Petitioners' "memorandum appears to solely be supported by an unsworn collection of alleged receipts." (Mot. at p. 5.) Again, on January 15, 2026, counsel filed a Memorandum of Costs using Judicial Council Form MC-010. The bottom of the form contains the requisite declaration that the "costs are correct and were necessarily incurred in this case." (Agarwal Decl., Ex. 1 at Memorandum of Costs.) Respondents do not cite any law requiring

more in the context of a Memorandum of Costs. (Cf. *Friends of Spring Street*, *supra*, 33 Cal.App.5th at p. 1104 [upholding trial court's reaching of the merits on costs as against charges of procedural defects].) To the extent the Court prefers a declaration that each and every receipt is authentic, Petitioners' counsel provides it. (See Agarwal Decl. at ¶ 3; Hussain Decl. at ¶ 2.)

C. SMUD Respondents mischaracterize some costs as vague.

SMUD Respondents complain of "numerous vague costs (See, e.g., 'Summary: Other')." (Mot. at p. 5.) This is incorrect. Petitioners' Memorandum of Costs attached a detailed summary and a receipt substantiating each claimed cost. (Agarwal Decl. at ¶ 2 & Ex. 1 at Summary.) Only three of 45 line item entries are in the "Other" category, and each of these three is accompanied by a specific explanation. Two were for physical delivery of the sealed exhibits per local rule. One was for the physical delivery of the reply brief for the petition for writ of mandate. The costs were necessary to meet this Court's order to "deliver **two hard copies of all filings** to Department 21 on the same day that the motion or pleading is e-filed" (emphasis original), and California Rule of Court 2.551, which requires lodging of documents to be sealed.

D. SMUD Respondents do not cite authority for their claim that they should bear deposition costs only for SMUD employees.

Without citing to any legal authority, SMUD Respondents argue they should not have to bear costs for the non-SMUD deponents. (Mot. at p. 5–6.) Deposition costs are recoverable if "reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation." (*Charton v. Harkey* (2016) 247 Cal.App.4th 730, 743.)

Petitioners deposed seven fact witnesses. There were also two expert depositions in the case. SMUD Respondents do not assert, let alone demonstrate, that the non-SMUD witness depositions were "merely convenient or beneficial." (*Id*.)

To the contrary, Petitioners' depositions of four City employees were integral to exposing the deep partnership between SMUD and law enforcement on the energy surveillance program, which this Court recognized in its order as problematic. (See Order at p. 13.) The Court's order cited the City's expert witness. (See *id*. at pp. 12–13.) As to the other expert, Petitioners did not request or take this deposition. They obtained only a copy of the transcript. During the deposition, both SMUD Respondents and City Respondents asked questions. (Agarwal Decl. at ¶ 5.)

E. SMUD Respondents err in claiming that a video deposition was unnecessary.

SMUD Respondents incorrectly take issue with the one videotaped deposition in the case. (Mot. at p. 6.) Code of Civil Procedure Section 1033.5(a) provides for recovery of the costs of "video recording, and transcribing depositions." The videotaping occurred only during part of the deposition of SMUD employee Jason Burkhalter. (Agarwal Decl. at ¶ 6 & Ex. 2.) For a part of the deposition, Burkhalter projected on a screen the computer applications and databases that SMUD's analysts used to generate the zip code lists. As Petitioners alleged, "SMUD analysts ... used SMUD's systems to search consumer records for entire regions of Sacramento." (Amended Writ Petition at ¶ 46.) The deposition was necessary to see the software in operation and to observe how SMUD queried, filtered, and generated the zip code lists. Video recording was necessary (1) to preserve the projected information since the dynamic demonstration could not be transcribed; (2) to allow Petitioners to show the information to a consulting expert as needed, and (3) to show what SMUD did with customer information, if it was ever needed, to this Court.

F. SMUD Respondents' poor retention practices required Petitioners to undertake additional costs to serve third-party subpoenas.

SMUD Respondents take issue with the costs of serving third-party subpoenas. (Mot. at p. 6.) Petitioners served an initial set of subpoenas on Elk Grove, Rancho Cordova, and Sacramento County in May 2023 and then a subsequent set on Rancho Cordova and Sacramento County in May 2025. Petitioners averred that SMUD disclosed customer information to the Sacramento County Sheriff's Office (Amended Writ Petition at ¶¶ 22–24), which provides services to Rancho Cordova. Likewise, Petitioners' brief in support of writ showed that SMUD shared lists with law enforcement throughout SMUD's coverage area. (July 18, 2025 Memorandum in Support of Petition for Writ of Mandate at p. 9.)

Petitioners sent the first set of subpoenas to obtain the zip code lists that SMUD turned over to these local agencies. Petitioners first sought the information from SMUD, but SMUD had deleted these lists. (Agarwal Decl. at ¶ 8 & Ex. 3.)

Petitioners sent the second set of subpoenas because SMUD declined to admit a straightforward request for admission. On April 14, 2025, Petitioners served a fourth set of requests for admission asking SMUD to admit the authenticity of documents that SMUD had disclosed to police relating to Brian Decker, whose story Petitioners told in their opening memorandum. SMUD denied the requests. (*Id.* at ¶ 9 & Ex. 4.) The subpoena responses ultimately resulted in two declarations from law enforcement proving that SMUD had provided the information that led deputies to wrongly search Decker's home. The declarations were part of the Petitioners' evidence given to this Court in connection with Petitioners' writ. (*Id.* at ¶ 10 & Exs. 5–6.)

G. SMUD Respondents' actions substantially contributed to the volume of filings.

SMUD Respondents incorrectly complain of "[o]verly-voluminous and unnecessary" filings. (Mot. at pp. 6–7.) Petitioners undertook these filings after SMUD Respondents failed to respond to numerous entreaties to streamline the case and reduce the record before the Court.

SMUD Respondents point to a "Stipulation and Notice of Lodging," which they claim did not involve SMUD Respondents, as an example of an unnecessary filing. (Mot. at 6–7.) In actuality, that filing consisted of an exhibit that sought to summarize voluminous evidence with the goal of (1) reducing the record before the Court, and (2) reducing the amount of personally identifying information of SMUD customers that the parties would need to file and seek to seal. (Hussain Decl. at ¶ 5.) Although City Respondents agreed to stipulate to this summary of voluminous evidence, SMUD Respondents did not. (*Id*. at ¶ 6.) Thus, in filing Petitioners' memorandum in support of writ of mandate and supporting record, counsel had to include more information in the record to meet their burden to establish facts regarding the surveillance program and had to file under seal associated sensitive information of SMUD customers. (*Id*. at ¶ 7.)

Further, SMUD Respondents erroneously complain about a filing that supposedly was not "procedurally authorized." (Mot. at p. 7.) The filing was authorized by the Court. Petitioners spent nearly two months attempting to get SMUD Respondents to agree to a briefing schedule and hearing date on the writ petition. (Hussain Decl. at ¶ 9.) After SMUD Respondents failed to respond, Petitioners' counsel contacted the court clerk to ask how to proceed. (*Id*.) After conferring with the Court, the court clerk instructed counsel to file the letter at issue. (*Id*. at ¶¶ 9–12.)

CONCLUSION

For the foregoing reasons, Petitioners respectfully request this Court deny SMUD Respondents' Motion to Strike or, Alternatively, to Tax Costs, and award Petitioners' costs in the amount of the $19,880.47, as set forth in Petitioners' Memorandum of Costs filed on January 15, 2026, and as prayed for in Petitioners' concurrently pending motion for attorney's fees and costs.

DATED: April 13, 2026

Respectfully submitted,

/s/ *Saira Hussain*

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