

(ENDORSED)
FILED

MAY 22 2012

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

S.G. ROMAN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

VIETNAMESE AMERICAN COMMUNITY)
OF NORTHERN CALIFORNIA, a non-profit)
corporation,)

Plaintiff,

v.

CITY OF SAN JOSE; CITY COUNCIL OF)
SAN JOSE; REVELOPMENT AGENCY OF)
THE CITY OF SAN JOSE; AND DOES 1-20,)

Defendant.

Case No. 1-08-CV-107082

ORDER REGARDING ATTORNEYS'
FEES

Plaintiff's motion for attorneys' fees and Defendant's motion to tax costs were heard on February 10, 2012. At the conclusion of the hearing, the parties were ordered to submit briefs providing authority as to whether the Court could re-open the October 11, 2011 judgment to include Brown Act claims. Plaintiff's brief was due on February 27, 2012 and the defense's response due on March 12, 2012. In addition, Plaintiff's firm was ordered to produce the Shepard, Mullen billing and cost records by March 12, 2012. The matter was deemed submitted on March 12, 2012.

BROWN ACT FEES

Plaintiff requested attorneys' fees under the Brown Act. Both Plaintiff and Defendant agree that any such award is left to the sound discretion of the trial court.

1 The violation of the Brown Act was the sole cause of action in the original complaint
2 filed February 28, 2008 and, when that complaint was subsequently amended on two occasions
3 it became the first of two causes of action.

4 On February 16, 2010, the Honorable Mark Pierce granted a motion for summary
5 judgment in favor of the City thus eliminating the Brown Act claim. In ruling on the summary
6 judgment the Court noted that the second amended complaint alleged that the Brown Act
7 violation was cured when the City rescinded Resolution No. 74127 (passed November 20, 2007)
8 by the passage of Resolution No. 74271 on March 4, 2008. The Court noted that, at best, there
9 was a one-time violation of the Brown Act which had been cured. The Court further found that
10 Plaintiff had not clearly demonstrated that Defendant had committed past acts or violations that
11 were related to the present or future ones or that such violations were likely to recur. Thus
12 Plaintiff was not entitled to injunctive or declaratory relief.

13 If a violation of the Brown Act occurred, it was because the City exceeded the 30 day
14 cure period, a minor transgression, under the circumstances of this case. This Court concludes
15 that Plaintiff did not prevail on its first cause of action so as to warrant an award of attorneys'
16 fees. The request for attorneys' fees under the Brown Act is DENIED.

18 CALIFORNIA PUBLIC RECORDS ACT

19 The Court finds that Plaintiff is the prevailing party under CPRA and, pursuant to
20 Government Code § 6529(d) is entitled to an award of reasonable attorneys' fees and costs.
21 Although Plaintiff was not successful on all of its claims, it is true that the City failed to fulfill
22 its statutory obligation, in part, and by erroneously invoked the cost shifting provisions of the
23 CPRA. The burden is on Plaintiff to establish that the time spent and rates charged by its
24 attorneys are reasonable under the circumstances of this case.

25 The Court has considered all written submissions of the parties relating to attorneys' fees
26 including the several declarations and extensive billing records. In addition, the Court heard the
27 formal motion for attorneys' fees and has considered the arguments presented at that hearing.
28

1 In general, and applicable to both the McManis and Sheppard, Mullin billing statements
2 is an overall lack of detail sufficient to enable the Court to isolate charges that relate to the
3 Brown Act from those that relate to the CPRA claim. The Court has attempted to allocate,
4 where possible, and in a logical way, but where that was impossible, the charge was not deemed
5 proved and thus was disallowed.

6 The bills of the McManis firm, but also, to some extent the Sheppard, Mullin firm,
7 include multiple conferences among attorneys, in-house memoranda, memos to file, case
8 reviews, team meetings and the like which, in the court's view, are duplicative and unnecessary.
9 Also, multiple hands participated in motions, records, briefs, trials, etc.; where appropriate the
10 Court has reduced these charges to a level it considers reasonable for the requirements of this
11 case.

12
13 SHEPPARD, MULLIN

14 The Sheppard, Mullin bills contain James Chadwick's analysis of the percentage of a
15 particular billing entry that related to the Brown Act as opposed to the CPRA. In many
16 instances the Court has accepted the percentages as applied, in others it has not and, on
17 numerous occasions, has simply eliminated a line item billing as being duplicative, unrelated,
18 excessive or insufficiently documented. The Court will note, briefly, the amounts allowed per
19 bill with occasional comment.

20
21 BILLING OF FEBRUARY 25, 2008

22 The Court accepts Chadwick's allocation and awards \$2,161.

23
24 BILLING OF MARCH 7, 2008

25 The Court accepts Chadwick's allocation but disallows some of the billings regardless of
26 allocation and awards \$2,372.

1 BILLING OF APRIL 17, 2008

2 The Court disallows attendance at council meetings, editorial writing and related
3 charges, accepts some of Chadwick's percentages but not all of the unallocated items and
4 awards \$1,016.

5
6 BILLING OF MAY 12, 2008

7 The Court accepts Chadwick's allocation and awards \$690.

8
9 BILLING OF JUNE 17, 2008

10 The Court accepts Chadwick's allocation and awards \$48.

11
12 BILLING OF JULY 9, 2008

13 The Court disallows all of the unallocated charges and some of the allocated charges and
14 awards \$1,321.

15
16 BILLING OF AUGUST 13, 2008

17 The Court disallows duplicates and unrelated items and allows 50 percent of the balance
18 and awards \$3,475.

19
20 BILLING OF SEPTEMBER 11, 2008

21 The Court accepts Chadwick's allocation and awards \$224.

22
23 BILLING OF OCTOBER 13, 2008

24 The Court accepts Chadwick's allocation and awards \$350.

25
26 BILLING OF NOVEMBER 13, 2008

27 The Court disallows duplicates and unrelated items; accepts Chadwick's allocation on
28 the balance and awards \$378.

1
2 BILLING OF DECEMBER 10, 2008

3 The Court accepts Chadwick's allocation and awards \$12.
4

5 BILLING OF JANUARY 20, 2009

6 The Court accepts Chadwick's allocation and awards \$1,050.
7

8 BILLING OF SEPTEMBER 11, 2008

9 The Court accepts Chadwick's allocation and awards \$574.
10

11 BILLING OF MARCH 18, 2009

12 The Court eliminated some of the charges, accepted Chadwick's allocation as the
13 balance and awards \$1,230.
14

15 BILLING OF MARCH 25, 2009

16 The Court allows 50 percent of the unallocated numbers, allows 3 hours at \$280 per hour
17 for correspondence, etc. and awards \$1,568.
18

19 BILLING OF APRIL 8, 2009

20 The Court accepts Chadwick's allocation and awards \$1,848.
21

22 BILLING OF MAY 15, 2009

23 The Court disallows duplicates and unrelated items, accepts Chadwick's allocation of
24 the balance and awards \$544.
25

26 BILLING OF JUNE 11, 2009

27 The Court allows 50 percent of the unallocated charges and accepts Chadwick's
28 allocation of the balance and awards \$3,689.

1
2 BILLING OF JULY 15, 2009

3 The Court allows 50 percent of billings not allocated to the Brown Act and awards
4 \$1,423.

5
6 BILLING OF AUGUST 13, 2009

7 The Court has excluded and eliminated items unrelated to the CPRA including
8 depositions, notices and related activities and awards \$4,218.

9
10 BILLING OF SEPTEMBER 14, 2009

11 The Court has excluded and eliminated items unrelated to the CPRA including
12 subpoenas, service, etc. and awards \$714.

13
14 BILLING OF OCTOBER 13, 2009

15 The Court has excluded and eliminated items unrelated to the CPRA including
16 depositions and related items and awards \$546.

17
18 BILLING OF NOVEMBER 13, 2009

19 The Court has excluded and eliminated items unrelated to the CPRA and has allowed 80
20 percent of the accepted items and awards \$313.

21
22 BILLING OF DECEMBER 16, 2009

23 The Court has excluded and eliminated items unrelated to the CPRA including
24 depositions and accepts most of Chadwick's allocations and awards \$416.

25
26 BILLING OF JANUARY 22, 2010

27 The Court has eliminated duplicates and unrelated items and has accepted Chadwick's
28 allocation of the balance and awards \$15,467.

1
2 BILLING OF FEBRUARY 11, 2010

3 The Court has eliminated duplicates and related items, including a conference, has
4 accepted Chadwick's allocation of the balance and awards \$8,256.
5

6 BILLING OF MARCH 12, 2010

7 The Court has eliminated duplicates and unrelated items, accepts Chadwick's allocation
8 as to the remainder and awards \$4,221.
9

10 BILLING OF APRIL 15, 2010

11 The Court allocates 80 percent of the charges to the Brown Act and awards \$4,085.
12

13 BILLING OF MAY 14, 2010

14 The Court allocates 80 percent of the charges to the Brown Act and awards \$925.
15

16 BILLING OF JUNE 16, 2010

17 The Court accepts Chadwick's allocation and awards \$1,288.
18

19 BILLING OF JULY 9, 2010

20 None.
21

22 Total of fees allowed as relating to the CPRA claim by the Sheppard, Mullin firm was
23 \$64,422.
24

25
26 McMANIS LAW FIRM

27 BILLING - AUGUST 9, 2010 THROUGH DECMEBER 9, 2010
28

1 The McManis firm officially took over this case in October 2010. There were no court
2 appearances or discovery conducted between then and the trial date. Most of the charges during
3 this period are inadequately described and, considering the nature and extent of the work
4 performed by the Sheppard, Mullin firm, almost certainly are transitional in nature and not
5 recoverable.

6 Plaintiff voluntarily chose to change counsel from Sheppard, Mullin to McManis
7 Faulkner in October 2010. Plaintiff is not entitled to recover transition fees and none will be
8 awarded. The Court has reviewed the billings between August 9, 2010 and December 10, 2010
9 and will allow entries of August 9th, September 1st, and November 30th, plus the last two entries
10 of December 2nd and the second entry of December 3rd as being necessary in the handling of the
11 case. These entries total 1.3 hours at \$750/hour and 1.6 hours at \$450/hour for a total of
12 \$1,695.

13
14 BILLING - DECEMBER 10, 2010 THROUGH JANUARY 20, 2011

15 There are numerous entries inadequately described making it difficult to review. The
16 Court notes multiple conferences, meetings and memos between and among attorneys and staff;
17 some have been allowed as necessary to provide direction to attorneys and staff but many others
18 are disallowed as excessive. All contacts with clients, witnesses, consultants and opposing
19 counsel are allowed.

20 After full review the Court has determined that 116.8 of the hours charged (at various
21 rates) is reasonable at a total charge of \$41,233.

22
23 BILLING - JANUARY 18, 2011 THROUGH JANUARY 20, 2011

24 Trial occurred on January 18, 2011 (full day) and January 20, 2011 (half day). The
25 billing sheets include full hourly billings for three attorneys and a paralegal. The Court, having
26 heard the case, believes that multiple attorneys were unnecessary; one attorney with a paralegal
27 would have been more than adequate to represent Plaintiff's interests. The Court thus finds that
28 the trial day charges of Mr. McManis of 13 hours at \$750/hour (total \$9,750) are reasonable and

1 necessary. The Court will also allow paralegal charges of 11.6 hours at \$150/hour for a total of
2 \$1,740. The total trial charges allowed are \$11,490.

3
4 BILLING - JANUARY 2011 THROUGH MARCH 11, 2011

5 The great bulk of the time billed on and after January 2011 through March 11, 2011 is
6 concerned with the preparation of the court ordered brief. Clearly, all entries referencing a post
7 trial brief relate; other entries, such as unspecified conferences, memos, meetings and reviews
8 may or may not relate to briefing. The total time expended in briefing, and related activities, as
9 described above is 120.5 hours at various billing rates for the total charges of \$37,195.

10 The Court, having heard the one-and-a-half day trial, and having read pre- and post-trial
11 briefs, and rendered a decision, finds that the number of hours and the fees charged to prepare
12 the briefs are excessive under the circumstances. The Court will allow a total of \$28,500 in fees
13 as reasonable for the work described.

14 In addition, the billing sheets for this period, non-brief related, include entries for post-
15 trial work involving objections to the Statement of Decision, contact with clients, consultants,
16 etc. that are unrelated to briefing. The Court has reviewed that material and concludes that 35.2
17 hours for a total of \$13,723 in attorneys' fees will be allowed for those general file handling
18 activities.

19
20 BILLING - POST-TRIAL MOTIONS – ATTORNEYS' FEES, TAX COSTS

21 Initially the Court would note what appears to be well in excess of 150 hours spent on
22 the attorneys' fee motion alone; a number the Court considers excessive. The Court does
23 acknowledge that reasonable attorneys' fees are recoverable for the preparation of a motion to
24 collect fees but it has to bear some relationship to what was achieved and the time spent in
25 achieving it.

26 The Court will allow a total of 37.5 hours for preparation of the motion and
27 communication with opposing counsel regarding said motion for a total blended billing of
28 \$11,500. The Court will allow a total of 13.6 hours for a total blended billing of \$3,775 as fees

1 to file opposition to the City's motion to tax costs. The Court will allow 15.8 hours to prepare
2 and file a reply in support of Plaintiff's motion for attorneys' fees for a total blended billing of
3 \$3,950. The Court will allow a total of 5.7 hours for preparation and attendance at the attorneys'
4 fees hearing for a total of \$4,275.

5 The total attorneys' fees allowed for these various motions is \$23,500.

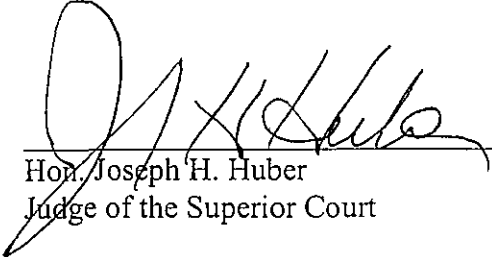
6 The McManis firm is awarded attorneys' fees in the total sum of \$120,141.

7
8
9 Plaintiff's counsel is ordered to prepare an appropriate order and judgment reflecting the
10 following:

- 11 1. Attorneys' fees awarded to the Sheppard, Mullin firm in the sum of \$64,422.
- 12 2. Attorneys' fees awarded to the McManis firm in the sum of \$120,141.

13 IT IS SO ORDERED

14 Dated: 5-21-12

15
16 
17 Hon. Joseph H. Huber
18 Judge of the Superior Court
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. First Street
San Jose, CA 95113-1090

TO: FILE COPY

RE: Vietnamese-American Community Of Northern California Vs City Of San Jo
Case Nbr: 1-08-CV-107082

PROOF OF SERVICE

ORDER REGARDING ATTORNEYS' FEES

was delivered to the parties listed below in the above entitled case as set forth in the sworn declaration below.

Parties/Attorneys of Record:

CC: James H. McManis , McManis Faulkner
50 W. San Fernando Street, 10th Floor, San Jose, CA 95113
Robert R. Fabela , City Attorney's Office - SJ
200 East Santa Clara St., 16th Floor Tower, San Jose, CA 95113-1905

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/TDD California Relay Service, (800)735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 05/22/12. DAVID H. YAMASAKI, Chief Executive Officer/Clerk by Sylvia Roman, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. First Street
San Jose, CA 95113-1090

(ENDORSED)
FILED

MAY 22 2012

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY
S.G. ROMAN

TO: James H. McManis
McManis Faulkner
50 W. San Fernando Street 10th Floor
San Jose, CA 95113

RE: Vietnamese-American Community Of Northern California Vs City Of San Jo
Case Nbr: 1-08-CV-107082

PROOF OF SERVICE

ORDER REGARDING ATTORNEYS' FEES

was delivered to the parties listed below in the above entitled case as set forth in the sworn declaration below.

Parties/Attorneys of Record:

CC: Robert R. Fabela , City Attorney's Office - SJ
200 East Santa Clara St., 16th Floor Tower, San Jose, CA 95113-1905

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/TDD California Relay Service, (800)735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 05/22/12. DAVID H. YAMASAKI, Chief Executive Officer/Clerk by Sylvia Roman, Deputy



Superior Court of California
County of Santa Clara

Downtown Superior Court
191 North First Street
San Jose, California 95113

RETURN SERVICE REQUESTED

PRESORTED
FIRST CLASS



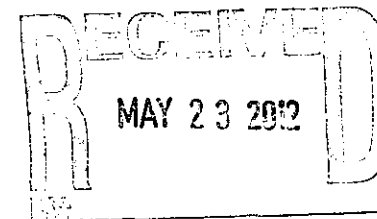
Hasler

016H26514080

\$00.654

05/22/2012

Mailed From 95113
US POSTAGE



016H26514080

