Public Entity
~ No Fee Required ~
Gov. Code, § 6103

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ___

COUNTY OF LOS ANGELES BOARD OF SUPERVISORS, ET AL., Petitioners, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, Respondent. _____ ACLU OF SOUTHERN CALIFORNIA, ET AL., Real Parties in Interest.	2d Civ. No. _____ Los Angeles Superior Court Case No. BS145753 Honorable Luis A. Lavin Department 82 Telephone: (213) 893-0530

PETITION FOR WRIT OF MANDATE, PURSUANT TO CALIFORNIA PUBLIC RECORDS ACT; MEMORANDUM OF POINTS AND AUTHORITIES [EXHIBITS FILED UNDER SEPARATE COVER]

_____

OFFICE OF THE COUNTY COUNSEL
COUNTY OF LOS ANGELES
John F. Krattli, County Counsel
Roger H. Granbo, Assistant County Counsel
Jonathan McCaverty, Deputy County Counsel
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012-2713
Telephone: (213) 974-1828
Facsimile:(213) 626-2105
Email: jmccaverty@counsel.lacounty.gov

GREINES, MARTIN, STEIN & RICHLAND LLP
Timothy T. Coates, SBN 110364
Barbara W. Ravitz, SBN 86665
5900 Wilshire Boulevard, 12th Floor
Los Angeles, California 90036
Telephone: (310) 859-7811
Facsimile:(310) 276-5261
Email: tcoates@gmsr.com ~ bravitz@gmsr.com

Attorneys for Petitioners
COUNTY OF LOS ANGELES BOARD OF SUPERVISORS
and THE OFFICE OF COUNTY COUNSEL

Court of Appeal
State of California
Second Appellate District

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number: _____

Case Name: County of Los Angeles Board Of Supervisors et al. v. Superior Court for the County of Los Angeles (ACLU of Southern California, et al.)

Please check the applicable box:

[✔] There are no interested entities or parties to list in this Certificate per California Rules of Court, Rule 8.208.

[ ] Interested entities or parties are listed below:

Name of Interested Entity or Person	Nature of Interest

Please attach additional sheets with Entity or Person Information if necessary.

Signature of Attorney/Party Submitting Form

Printed Name: Barbara W. Ravitz
Greines, Martin, Stein & Richland LLP
Address: 5900 Wilshire Blvd., 12th Floor
Los Angeles, CA 90036
State Bar No: 86665
Party Represented: Petitioners COUNTY OF LOS ANGELES BOARD OF SUPERVISORS and THE OFFICE OF COUNTY COUNSEL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Statutes & Codes

Other Authority

INTRODUCTION

Writ relief is sought here to prevent the imminent disclosure of documents that petitioners claim (1) contain confidential information and communications subject to the attorney-client privilege and (2) are exempt from disclosure under the California Public Records Act (CPRA). Both claims raise issues of first impression. The documents are billing records of law firms representing the County of Los Angeles in lawsuits brought by jail inmates alleging violence in the County's jails. Disclosure was requested by real parties ACLU of Southern California and Eric Preven.

Respondent court ordered the County to produce the records, rejecting the County's arguments that the documents contain specific information that is deemed privileged under Business and Professions Code sections 6149 and 6148, subdivision (a); that they contain "confidential communications" under Evidence Code section 952 which the County intended not be disclosed; and that they fall under the broad "catch-all" or "public interest" exemption to the CPRA.

Review of CPRA orders by appeal is foreclosed by statute. (Gov. Code, § 6259, subd. (c).) Writ review is the County's exclusive means of appellate review. The County urges this Court to issue a writ ordering respondent court to vacate its order directing disclosure of privileged and CPRA-exempt billing records.[1/]

[1/] Real parties have graciously agreed to stay compliance with the disclosure order pending disposition of the matter in the appellate court.

PETITION

Petitioners allege:

A. The Parties.

1. Petitioners County of Los Angeles Board of Supervisors and Office of County Counsel (collectively, the County) are the respondents in *ACLU of Southern California, et al. v. County of Los Angeles Board of Supervisors, et al.,* Los Angeles Superior Court Case No. BS145753. (III PE 10, p. 770.)[2/]

2. Respondent is the trial court exercising judicial functions in this case.

3. Real parties in interest ACLU of Southern California and Eric Preven (collectively, the ACLU) are the petitioners in the superior court action identified in paragraph 1 above. (III PE 10, p. 770.)

B. Timelines Of This Petition.

4. On June 5, 2014, respondent court filed its minute order and its Decision Granting in Part, and Denying in Part, the Petition for Writ of Mandate filed by the ACLU. (III PE 8, p. 747; 10, p. 770.) On June 11, 2014, the ACLU served written notice of entry of the Decision by mail. (III PE 10, pp. 770, 779.) The Decision ordered the ACLU to file and serve

---

[2/] The exhibits accompanying this petition (Petitioners' Exhibits ("PE")) are true and correct copies of original documents filed with respondent court, except for Exhibit 9, which is a true and correct copy of the reporter's transcript of the June 5, 2014 hearing before the Honorable Luis Lavin. The exhibits are in three volumes, index-tabbed by exhibit number and paginated consecutively in the lower right corner from page 1 to page 818.

a proposed judgment and a proposed writ of mandate within 10 days. (III PE 10, p. 778.) The ACLU did so on June 13, 2014. (III PE 11, p. 783; 12, p. 786.) As of the date of this petition, the County has not been served with either notice of entry of the judgment or the executed writ of mandate. Thus, this petition is timely filed. (Gov. Code, § 6259, subd. (c).)[3/]

C. The ACLU Requests Documents And The County Responds.

5. In 2011 and 2012, there were several "publicized investigations into allegations concerning the Los Angeles County Sheriff's Department's ('LASD') widespread use of excessive force" on jail inmates. (III PE 10, p. 770.)

6. In October 2011, the Los Angeles County Board of Supervisors (the Board) authorized the formation of the Citizens Commission for Jail Violence (the Commission). (I PE 1, p. 2.)

7. Some current and former jail inmates brought lawsuits against the County and others for alleged excessive force. (I PE 1, p. 3.) The ACLU sought to obtain documents from the County (1) "to determine what work was being done on the lawsuits, the scope of that work, the quality of the representation, and the efficiency of the work," and (2) "to review contracts between the County and certain individuals hired to consult on or oversee implementation of certain Jail Commission recommendations." (*Ibid*.)

[3/] All further unlabeled statutory references are to the Government Code.)

8. On July 1, 2013, the ACLU requested the County to disclose a number of public records under the CPRA, including (1) invoices specifying the amounts the County has been billed by any law firm in connection with nine different cases brought by inmates alleging jail violence, and (2) documents evidencing any service agreements between the County and Richard E. Drooyan, Joseph Brann, and Joseph McGrath relating to their service in consulting or working on implementing recommendations made by the Commission. (I PE 1, p. 5.)

9. On July 26, 2013, County Counsel responded that his office would produce redacted invoices for the three cases that were no longer pending; those invoices were produced on September 9, 2013. (I PE 1, pp. 6, 26, 29.) County Counsel stated that no invoices would be produced for the six cases that were still pending, citing sections 6254, subdivision (k) (records exempt under law) and 6255, subdivision (a) (public interest exemption). (I PE 1, pp. 6, 26 ["the detailed description, timing, and amount of attorney work performed . . . communicates to the client and discloses attorney strategy, tactics, thought processes and analysis"].) County Counsel further responded that the agreements with Messrs. Drooyan, Brann and McGrath were exempt from disclosure under section 6254, subdivision (k), Evidence Code sections 952 and 954 (attorney-client privilege), Code of Civil Procedure section 2018, *et seq*. (work product privilege), and Business and Professions Code sections 6148 and 6149 (attorney fee agreements). (I PE 1, pp. 6, 26.)

10. Previously, in March 2013, real party in interest Eric Preven, a County resident and taxpayer, had submitted similar CPRA requests, to which County Counsel had responded in a similar manner. (I PE 1, pp. 4, 6-7, 31, 42.)

D. Respondent Court Grants In Part And Denies In Part The ACLU's Petition, Ordering The County To Disclose Privileged Documents.

11. The ACLU and Mr. Preven filed their petition for writ of mandate on October 31, 2013 (I PE 1, p. 1), followed by the filing of the County's answer (December 4, 2013) (I PE 2, p. 58), the ACLU's supporting memorandum and request for judicial notice (April 21, 2014) (I PE 3, p. 65; 4, p. 96), the County's answering brief (May 12, 2014) (III PE 6, p. 704), and the ACLU's reply (May 23, 2014) (III PE 7, p. 731).[4/]

12. Respondent court heard argument on June 5, 2014, and adopted its tentative ruling as the order of the court. (III PE 9, pp. 748, 763.)

13. The same day, the court issued its decision. The court first ruled that the billing statements from the County's outside counsel in the lawsuits are not protected by the attorney-client privilege, rejecting the County's argument that because written attorney-client fee contracts are confidential and absolutely privileged (Bus. & Prof. Code, §§ 6149, 6068,

---

[4/] The ACLU dropped its requests for disclosure of the agreements of Messrs. Brann and McGrath, based on the County's representation that they were not in the County's possession. Those agreements are not at issue in this proceeding.

subd. (e)), and because such contracts are required to contain certain information concerning fees and the general nature of the legal services to be provided (Bus. & Prof. Code, 6148, subd. (a)), that information should be privileged whether it appears in a fee contract or a bill. (III PE 10, pp. 773-774.) The court also rejected the County's argument that the billing statements are privileged because they contain "confidential communications" that the client (the County) intended be kept confidential. (III PE 10, pp. 774-775.)

14. The court also ruled that the billing statements are not exempt from disclosure under the CPRA's "catch-all" provision (§ 6255, subd. (a)), finding that the County failed to demonstrate "a clear overbalance in favor of not disclosing the billing statements in the nine lawsuits" sought by the ACLU. (III PE 10, pp. 775-776.)

15. Thus, the court granted the ACLU's petition for a writ of mandate "directing the County to disclose the billing statements for the nine lawsuits" requested by the ACLU. To the extent these documents reveal an attorney's legal opinion, advice, mental impressions or theories of the case, "such limited information may be redacted." "The remainder of the billing documents, however, should not be redacted." (III PE 10, p. 778.)

16. As to the agreement between the County and Mr. Drooyan, the court denied the ACLU's petition. (*Ibid*.) The court found that the agreement was privileged and confidential and thus not subject to disclosure, pointing to the County's evidence demonstrating that the

purpose of the agreement was to allow Mr. Drooyan and his law firm "to provide legal services. . . ." (*Ibid*.)

17. Respondent court directed preparation of a judgment and a writ of mandate. (III PE 10, p. 9.) Although the County has not been served with either notice of entry of the judgment or the executed writ of mandate, pursuant to section 6259, subdivision (c), and out of an abundance of caution, the County is seeking review of the court's June 5, 2014, minute order granting real parties' petition. Upon service of notice of entry of judgment and the executed writ, the County will submit the documents to this Court as a supplement to the petition.

18. On June 13, 2014, the ACLU filed a Motion For Reconsideration Based On New Evidence of the court's denial of its petition with respect to the Drooyan contract; hearing is set for September 18, 2014. (III PE 13, pp. 787, 790.)

E. The Need For Writ Relief.

19. ***Review by appeal foreclosed by statute.*** The CPRA establishes a special, expedited judicial process governing the public's right to inspect or receive copies of public records. "Any person" may request a judge to compel a public agency to disclose public records; the judge sets the relevant deadlines "with the object of securing a decision as to these matters at the earliest possible time." (§ 6258.) To buttress this expedited process, section 6259, subdivision (c), subjects a trial court's order to immediate review by the filing of a petition for an extraordinary writ in the appellate court. This provision "unambiguously forecloses an appeal and

instead expressly authorizes a writ as the sole and exclusive means to challenge the trial court's ruling." *(MinCal Consumer Law Group v. Carlsbad Police Department* (2013) 214 Cal.App.4th 259, 264.)

20. The Legislature's purpose in replacing the usual, often lengthy, appeal process with writ review was to provide for *speedier* appellate review, not *less* appellate review. (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 112; *Times-Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1336.) Accordingly, when, as here, writ review is the exclusive means of appellate review, "an appellate court may not deny an apparently meritorious writ petition" that is "timely presented" and "procedurally sufficient" merely because "the petition presents no important issue of law or because the court considers the case less worthy of its attention than other matters." (*Powers, supra,* 10 Cal.4th at p. 114.) (This petition, however, does present important issues of law. See below, ¶¶ 25-29.)

21. ***Imminent disclosure of privileged documents.*** As the County demonstrates below (pp. 15-24), the billing records in the pending lawsuits that respondent court ordered disclosed are subject to the attorney-client privilege. (Bus. & Prof. Code, §§ 6148, subd. (a), 6149; Evid. Code, § 952.) It is well settled that the attorney-client privilege applies to documents sought under the CPRA. (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 370-373; *Sanchez v. County of San Bernardino* (2009) 176 Cal.App.4th 516, 527 [CPRA "does not require of disclosure of a document that is subject to the attorney-client privilege"].)

22. When a court orders production of documents that "may be subject to a privilege," interlocutory review by writ of mandate is "the only adequate remedy," because "'once privileged matter has been disclosed there is no way to undo the harm which consists in the very disclosure.'" (*Korea Data Systems Co. v. Superior Court* (1997) 51 Cal.App.4th 1513, 1516.)

23. "The attorney-client privilege 'deserves a particularly high degree of protection in this regard since it is a legislatively created privilege protecting important public policy interests, particularly the confidential relationship of attorney and client and their freedom to discuss matters in confidence.'" (*Ibid.* [holding attorney-client privilege not waived for failure to file timely privilege log; writ of mandate issued]; see also, e.g., *Bank of America, N.A. v. Superior Court* (2013) 212 Cal.App.4th 1076, 1101 [subpoenaed documents protected by attorney-client and work product privileges; writ of mandate issued]; *Tritek Telecom, Inc. v. Superior Court* (2009) 169 Cal.App.4th 1385, 1387 [writ of mandate issued to protect corporate records generated in defense of suit brought by disgruntled director].)

24. Even if review by extraordinary writ were not statutorily required here, it would be warranted because respondent court's order granting the ACLU's petition for writ of mandate as to the billing statements threatens the confidential relationship between the County and its attorneys. (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 732.)

25. ***Important issues of first impression.*** Writ review should be granted for the further reason that the County raises two important issues of first impression. (*Baeza v. Superior Court* (2011) 201 Cal.App.4th 1214, 1221 [granting writ petition that "presents issues of first impression, requiring interpretation of statutory provisions"]; *Los Angeles Gay & Lesbian Center v. Superior Court* (2011) 194 Cal.App.4th 288, 300 ["review is appropriate where the order raises an issue of first impression of general importance to the legal community"].)

26. The first issue is whether information found in attorney billing statements—such as the basis for compensation, amount of fees and charges, and the general nature of the services provided—is protected by the attorney-client privilege. No California decision has provided a clear answer, and two decisions suggest opposite conclusions. One court referred to a law firm's legal bills as "privileged documents" that may not be produced to third parties if the client/holder of the privilege objects. (*Smith v. Laguna Sur Villas Community Assn.* (2000) 79 Cal.App.4th 639, 642-643.) Another court simply opined that it "seriously doubt[s] that all—or even most—of the information on each of the billing records proffered to the court was privileged." (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1326-1327.)

27. Much of the confusion on this issue likely stems from some California courts' reliance on federal cases, which hold that, under *federal common law,* billing information is not privileged. But California has a unique *statutory* system covering this issue, which presents an important

issue of first impression: Whether billing information that *must* be included in an attorney-client fee agreement and thus is unquestionably protected by the attorney-client privilege (Bus. & Prof. Code, §§ 6148, subd. (a), 6149) loses its protection when the very same information is found in the bills themselves.

28. The second issue of first impression is whether the billing statements in the six pending lawsuits are exempt from disclosure under the CPRA's "public interest" or "catch-all" exemption. (§ 6255, subd. (a).) The ACLU contended that this issue was "settled" in favor of disclosure in *County of Los Angeles v. Superior Court* (*Anderson-Barker*) (2012) 211 Cal.App.4th 57. (I PE 3, p. 79.) However, the issue is far from settled; it has not been addressed in any appellate decision. Respondent court did address the issue, but rejected the County's arguments on erroneous grounds. (See below, pp. 33-35.)

29. Whether certain information contained in billing statements is protected by the attorney-client privilege or is exempt from disclosure under the CPRA's catch-all exemption are issues of great importance to the public, to public entities and to the legal community. The Court should decide the issues.

PRAYER

Petitioners therefore pray that this Court:

1. Issue a peremptory writ of mandate directing respondent court:

a. To vacate its June 5, 2014 minute order and Decision directing the County to disclose the billing statements for nine lawsuits identified in the ACLU's CPRA request dated July 1, 2013; and

b. To enter a new judgment denying the ACLU's petition for writ of mandate; or

2. In the alternative, issue an alternative writ of mandate directing respondent court to show cause why the peremptory writ of mandate requested in paragraph 1 should not issue, and thereafter issue a writ of mandate directing respondent court to act as set forth above; and

3. Grant such other relief as may be proper.

Dated: June 30, 2014

OFFICE OF THE COUNTY COUNSEL
COUNTY OF LOS ANGELES

GREINES, MARTIN, STEIN & RICHLAND LLP

By: _____
Barbara W. Ravitz
Attorneys for Petitioners COUNTY OF LOS ANGELES BOARD OF SUPERVISORS and THE OFFICE OF COUNTY COUNSEL

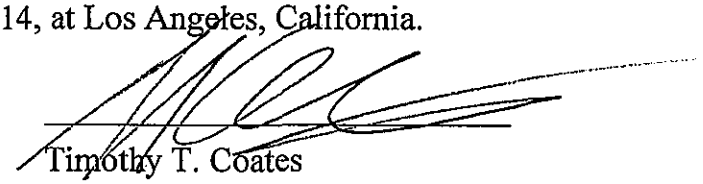
VERIFICATION

I, Timothy T. Coates, declare:

I am an attorney duly licensed to practice law in California. I am a partner at Greines, Martin, Stein & Richland, attorneys of record for petitioners County of Los Angeles Board of Supervisors and The Office of County Counsel in this proceeding. I have reviewed and am familiar with the records and files that are the basis of this petition. I make this declaration because I am more familiar with the particular facts, i.e., the state of the record, than are my clients. This petition's allegations are true and correct.

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

Executed on June 30, 2014, at Los Angeles, California.



Timothy T. Coates

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL PRINCIPLES AND STANDARDS OF REVIEW

In enacting the CPRA, the Legislature found that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§ 6250.) Yet, "the people's right to know is not absolute." (*Humane Society of U.S. v. Superior Court* (2013) 214 Cal.App.4th 1233, 1254 (*Humane Society*).) The CPRA specifies over two dozen express exemptions (§ 6254, subds. (a)-(ac)), as well as a "broad catchall" or public interest exemption (§ 6255, subd. (a)). (*Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, 1071 (*Michaelis*).)

Interpretations of the CPRA, as well as application of those interpretations to undisputed facts, are questions of law, subject to de novo review. (*Consolidated Irr. Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 708-709.) The CPRA is broadly construed, and its exemptions are narrowly construed. (*County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57, 60 (*Anderson-Barker*).) The attorney-client privilege is liberally construed, "to promote a full and free relationship between the attorney and the client." (*Musser v. Provencher* (2002) 28 Cal.4th 274, 283; *Kroll & Tract v. Paris & Paris* (1999) 72 Cal.App.4th 1537, 1545.)

II. RESPONDENT COURT ERRED IN RULING THAT THE REQUESTED BILLING RECORDS AND INFORMATION THEY CONTAIN ARE NOT ATTORNEY-CLIENT PRIVILEGED.

The CPRA expressly exempts privileged records from disclosure. (§ 6254, subd. (k) [permitting withholding of "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law," including "provisions of the Evidence Code relating to privilege"].) Accordingly, the CPRA protects confidential attorney-client privileged communications and attorney work product. (See Evid. Code, §§ 950 et seq.; Bus. & Prof. Code, §§ 6148, 6149 [written fee contracts]; *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 786.)

The attorney-client privilege is "absolute[,] and disclosure may not be ordered" regardless of "relevance, necessity or any particular circumstances peculiar to the case." (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 732.) "Indeed, the inviolability of the privilege is such that the law prohibits even *in camera* revelation of a pertinent communication to the court when it evaluates a claim of privilege." (*Shannon v. Superior Court* (1990) 217 Cal.App.3d 986, 995; Evid. Code, § 915, subd. (a).) The privilege attaches to "factual" as well as "legal" information. (*Mitchell v. Superior Court* (1984) 37 Cal.3d 591, 601.)

As we next demonstrate, the documents requested here are attorney-client privileged on two separate grounds: They contain information that is "deemed to be a confidential communication" under Business and Professions Code sections 6149 and 6148, subdivision (a); and they reveal "confidential communications" between attorney and client within the meaning of Evidence Code section 952.

A. California's Unique Statutory Scheme Protects The Billing Information Sought Here.

California's scheme for protecting attorney-client communications, including attorney fee contracts and the financial information they contain, appears to be unique. This strong protection began in 1986, when the Legislature expanded attorneys' statutory duties by adding key provisions to the Business and Professions Code, including:

- Section 6149, which provides: "A written fee contract shall be deemed to be a confidential communication within the meaning of subdivision (e) of [Bus. & Prof. Code] Section 6068 and of Section 952 of the Evidence Code." Business and Professions Code section 6068, subdivision (e), in turn, states that an attorney has a duty "[t]o maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." Evidence Code section 952 defines "'confidential communication between client and lawyer'" to mean "information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which . . .

discloses the information to no third persons" except "those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship."

- Section 6148, subdivision (a), which provides in part: "The written contract shall contain . . . (1) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the case. (2) The general nature of the legal services to be provided to the client."

Taken together, Business and Professions Code sections 6149, 6068 and 6148, subdivision (a) make clear that attorney fee contracts *and* the information they contain about financial arrangements and services provided are deserving of the highest level of confidentiality.

In sharp contrast, the Ninth Circuit follows the far narrower rules of federal common law, under which "the nature of [an attorney's] fee arrangements with his clients [is] not [a] confidential communication[] protected by the attorney-client privilege." (*In re Osterhoudt* (9th Cir. 1983) 722 F.2d 591, 592.)[5/] Under the more restrictive federal privilege

---

[5/] While some California cases have relied on federal cases and authorities regarding the attorney-client privilege, we are aware of none that was decided after the enactment of Business and Professions Code sections 6149 and 6148. Those cases are thus inapplicable. (See, e.g., *Willis v. Superior Court* (1980) 112 Cal.App.3d 277, 291-295.)

rules, attorney bills and fee statements are not protected from disclosure unless they reveal an attorney's impressions, conclusions, opinions, legal research or strategy. (*Clarke v. American Commerce Nat. Bank* (9th Cir. 1992) 974 F.2d 127, 130 (*Clarke*) [requiring disclosure of attorney's billing statements containing information including "the amount of the fee and the general nature of the services performed"]; *U.S. v. Amlani* (9th Cir. 1999) 169 F.3d 1189, 1194 [same, citing *Clarke*].)[6/]

To our knowledge, no decision has directly addressed the issue whether the sort of fee and billing information sought in this case is privileged under California law. One decision presumes, but does not decide, that billing documents are privileged. In *Smith v. Laguna Sur Villas Community Assn.* (2000) 79 Cal.App.4th 639, 642-643, condominium owners demanded review of a law firm's "work product and legal bills" in a

---

[6/] In any event, a lawyer's opinions and strategy can be found not just in obvious forms (e.g., an opinion letter) but in more subtle ones as well. As the Supreme Court recently observed in a case holding that witness statements are protected work product, "disclosing a list of witnesses from whom an attorney has taken recorded statements may, in some instances, reveal the attorney's impressions of the case"; for example, taking statements from only 10 out of 50 witnesses to an accident case "may well indicate the attorney's evaluation or conclusion as to which witnesses were in the best position to see the cause of the accident." (*Coito v. Superior Court* (2012) 54 Cal.4th 480, 501, 494-495 [summary of witness statements prepared at attorney's request was protected work product because "its very existence is owed to the lawyer's thought process"; statement "would not exist but for the attorney's initiative, decision, and effort to obtain it"; interior quotation marks omitted].) Information included in attorney billing statements may well include similar clues to the attorney's opinions and strategy. (See below, pp. 31-32.)

construction defect action brought by the condominium association. The association objected on the grounds of attorney-client and work product privileges. The court held that the association was the holder of the privilege and therefore the individual owners "could not demand the production of privileged documents." Another decision presumes, but does not decide, just the opposite. (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1326-1327 [court "seriously doubt[s] that all—or even most—of the information on each of the billing records proffered to the court was privileged"].)

Neither of these decisions, and none other of which we are aware, considered California's unique statutory scheme of "deeming" certain information to be confidential communications between lawyer and client. Nor did respondent court, which adopted the ACLU's argument that since one statute (Bus. & Prof. Code, § 6148) requires lawyers to include certain information in their fee contracts (subd. (a)) and in their bills (subd. (b)), and another statute (Bus. & Prof. Code, § 6149) deems fee contracts (but not bills) to be confidential communications, it must be concluded that the Legislature did not intend bills to be confidential communications. (III PE 7, p. 737; 10, p. 774.) There are two major flaws in this analysis.

First, the County does not contend that Business and Professions Code section 6149 affords privileged status to bills themselves, but rather only to certain specific *information* they contain—information *identical* to that which contracts *must* contain, namely, "[a]ny basis of compensation" as

to fees and other charges and the "general nature of the legal services to be provided to the client." (Bus. & Prof. Code, § 6148, subds. (a)(1) & (a)(2).) Since fee contracts are deemed absolutely privileged, it is indisputable everything in them is privileged, most particularly the information the Legislature mandated be included. The Legislature may have found it unnecessary to separately deem the same information confidential when found in a bill, reasoning the information itself is privileged under another statute.[7/]

Second, to say that the identical information that is deemed privileged in a contract becomes unprivileged in a bill would render Business and Professions Code section 6149 "a nullity, thereby violating one of the most elementary principles of statutory construction." (*Cal. Pacific Collections, Inc. v. Powers* (1969) 70 Cal.2d 135, 139; *City of Huntington Park v. Superior Court* (1995) 34 Cal.App.4th 1293, 1300 ["cardinal" rule of statutory construction is that courts "do not presume the Legislature performs idle acts"].) Any member of the public could evade the privilege conferred by section 6149 by filing a CPRA request for the same information, thereby accomplishing indirectly what cannot be accomplished directly—a result the Legislature could not have intended. (Cf. *Wheeler v. Board of Administration* (1979) 25 Cal.3d 600, 605-606.)

[7/] In some cases, the client may waive the attorney-client privilege in order to claim attorney's fees (Evid. Code, §§ 953, 954), but that does not mean the information is not privileged.

In choosing not to seek disclosure of the County's actual contracts with its lawyers, but only of the billing information required to be included in those contracts, the ACLU attempted an end-run around the privilege laws. This should not be permitted.

B. The Billing Records Contain Confidential Communications That Were Made In The Course Of The Attorney-Client Relationship And Were Intended Not To Be Disclosed To Third Parties.

In addition to containing information that is "deemed" confidential and thus privileged under the Business and Professions Code, attorney bills that reflect "confidential communications" are privileged under the Evidence Code as well. As noted, "confidential communications" is broadly defined as "information transmitted between a client and his or her lawyer in the course of that relationship and in confidence . . . ."; that term "includes"—*but is not limited to*—the lawyer's legal opinions and advice given in the course of the relationship; the privilege extends to communications, made even to third parties, that is "reasonably necessary" for "the accomplishment of the purpose for which the lawyer is consulted." (Evid. Code, § 952.)

Intent plays a crucial role. "The attorney-client privilege applies to communications in the course of professional employment that are intended to be confidential. [Citations.]" (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 371 ("*Roberts*"); *City & County of San Francisco v. Superior*

Court (1951) 37 Cal.2d 227, 236 [if "'the communication is intended to be confidential . . . , the privilege comes into play'"].) The client holds the privilege "to prevent the disclosure of confidential communications" between the client and the attorney. (*Roberts, supra,* 5 Cal.4th at p. 371.)

"Once a party claims the attorney-client privilege, the communication sought to be suppressed is *presumed confidential.* A party opposing the privilege has the burden of proof to show the communication is one not made in confidence. (Evid. Code, § 917.)" (*Alpha Beta Co. v. Superior Court* (1984) 157 Cal.App.3d 818, 824-825, emphasis added.)

Here, the County claimed the attorney-client privilege as to the billing records in nine lawsuits. (I PE 1, p. 26.) Although that claim alone established the presumption of confidentiality, the County also submitted the declaration of County Counsel stating that the County at all times intended the records to remain confidential. (III PE 6, pp. 724-727.) The ACLU submitted no evidence to the contrary. Therefore, it is undisputed that the billing records were "confidential communications within the scope of the attorney-client relationship"—the only factual showing necessary to establish the privilege. (*Roberts*, *supra*, 5 Cal.4th at p. 371.)

Nevertheless, respondent court found that the County's privilege-by-intent argument "has no traction." (III PE 10, p. 774.) The court ruled that attorney-client communications are not "automatically" privileged, citing *People v. Gionis* (1995) 9 Cal.4th 1196, 1210. (*Ibid*.) Not only did the County not make that argument, but *Gionis* does not so hold. *Gionis* held

that the defendant was *not* the attorney's client, and therefore, "no attorney-client relationship existed," even though the two individuals may have discussed "issues touching upon legal matters." (9 Cal.4th at pp. 1210-1212.) Here, there is no dispute that an attorney-client relationship exists between the County and its outside counsel.

Respondent court also ruled that "a party claiming the privilege must assert specific facts, usually via declarations, demonstrating how the challenged document qualifies as a privileged communication," and that the County had "not alleged any specific fact demonstrating why the billing statements . . . would qualify as privileged communications . . . ." (III PE 10, pp. 774-775.) This formulation, however, reverses the burden of proof—which, as shown above, requires the party *opposing* the privilege to show the communication was *not* made in confidence. Moreover, the court's authorities merely reiterate the settled law on the burden of proof explained above. (III PE 10, p. 774, citing *Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 889, 911 and *Costco Wholesale Corp. v. Superior Court*, *supra*, 47 Cal.4th at p. 733.)

The County did exactly what the law commands: It asserted the attorney-client privilege and proved that "the attorney-client relationship existed when the communication was made." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 8:192, p. 8C-52.) Nothing more was required.

In any event, even without the presumption making the County's billing records confidential, it should be clear to any lawyer or anyone who has ever been a client why this must be so. Imagine a cocktail party where a person involved in litigation runs into his lawyer. He takes her aside to a quiet corner where they cannot be overheard and asks a couple of quick questions about the case: Who's working on it? And how much is the bill this month? The lawyer responds that she and a new associate are doing the work and that the bill is $26,000. Not even the most unsophisticated client would believe that this was not a "confidential communication." In legal terms, the information was transmitted "between a client and his or her lawyer" in "the course of that relationship"; it was intended not to be disclosed to third parties; and it concerned the very "purpose for which the lawyer [was] consulted"—representing the client in litigation. (Evid. Code, § 952.) There is no logical or legal reason why the result should be any different when the same information is transmitted via a written bill.

When a client, such as the County here, intends its communications with counsel to be confidential, and there is no evidence to the contrary, the communications are privileged. Respondent court erred in ordering disclosure of the County's privileged billing records.

III. RESPONDENT COURT ERRED IN RULING THAT THE BILLING RECORDS IN THE PENDING LAWSUITS ARE NOT EXEMPT FROM DISCLOSURE UNDER THE CPRA'S "CATCH-ALL" EXEMPTION.

A. The Balancing Test.

Regarding the billing records in the nine lawsuits the ACLU requested, the County asserted the CPRA's "catch-all" or "public interest" exemption (§ 6255, subd. (a)) as to the six suits that were still pending. (I PE 1, p. 26; II PE 6, p. 717.) This is a "broad" exemption that requires courts to balance the public interests in disclosure against those in nondisclosure. (*Michaelis, supra*, 38 Cal.4th at p. 1071.)[8/]

The CPRA does not specifically identify the public interests that might legitimately be "served by not disclosing the record," but their nature "may be fairly inferred, at least in part, from the specific exemptions contained in section 6254." (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1338-1339 [noting that section 6255 "'was designed to act as a catchall for those individual records *similar in nature* to the categories of records exempted by section 6254 . . . . [T]he provisions of section 6254 will provide appropriate indicia as to the nature of the public interest in

---

[8/] The broad catch-all exemption permits a public agency to "justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (§ 6255, subd. (a).)

nondisclosure and will thus aid the courts in determining the disclosability of a document under section 6255'"].)

1. The timing factor.

The timing of the disclosure of public documents can be critical; the question often is not *whether* they must be disclosed but *when*. This is true not only under the pending litigation exemption (*Anderson-Barker, supra*, 211 Cal.App.4th at p. 65 [exemption protects records a public entity "'has an interest in keeping to itself until litigation is finalized'"]) but also under the public interest exemption. In *Michaelis, supra,* 38 Cal.4th 1065, the Supreme Court, facing questions of "availability and timing of public disclosure," held that under section 6255, disclosure of competitive bids submitted to a city agency to secure a lease of a hangar facility "may await conclusion of the agency's negotiation process . . . ." (*Id.* at pp. 1067, 1068.) The Court disagreed with the Court of Appeal majority, which had concluded "that the public had a legitimate interest in knowing *during the negotiating process,* whether the city had acted in accordance with its guidelines, or instead had improperly favored certain proposers." (*Id.* at p. 1070, original emphasis.) Instead, the Court relied heavily on Justice Mosk's dissent, which concluded that "little if any public benefit would derive from premature disclosure of the competing proposals, and that such disclosure could impair the city's selection and negotiating process." (*Id.* at p. 1071.)

The Supreme Court undertook an "independent reweighing of the various public interest factors," and came out in the city's favor. (*Id.* at p. 1072.) First discussing the "public interest in disclosure," the Court concluded that "public disclosure of the various competing proposals after negotiations are complete . . . would give the public and all interested parties ample opportunity to scrutinize and protest the proposed award. No reason appears why disclosure of the various proposals prior to negotiations would provide any significantly greater benefit to the public." (*Id.* at pp. 1072-1074.)

Next the Court discussed the "public interest in nondisclosure," observing that "premature disclosure would reveal specific, confidential details of the competing proposals to the other proposers, thereby potentially impairing the city's negotiation and selection processes," that "advance disclosure of the various proposals could adversely affect the city's ability to maximize its financial return on the lease," and that the threat that a competitor might steal another's creative ideas could cause proposers not to present their best work, resulting in "submission of inferior proposals, to the ultimate detriment of the public interest." (*Id.* at pp. 1074-1075.) Finally, "'[t]he idea that members of the public should have input into the selection of, and negotiation with, potential lessees would add undesirable pressures, political and otherwise, to the process.'" (*Id.* at p. 1075.)

The timing of disclosure also played an important role in *Humane Society*, *supra*, 214 Cal.App.4th 1233. The Humane Society sought *pre*publication communications concerning the funding, preparation and publishing of a public university's research study. (*Id*. at p. 1238.) Applying section 6255, the Court of Appeal held that "the public interests served by not disclosing the records clearly outweigh the public interests served" by disclosing them. (*Ibid*.) The Court reasoned that the public's interest was adequately served by reviewing the published study itself. "[G]iven the public interest in the quality and quantity of academic research, we conclude that this alternative to ensuring sound methodology serves to diminish the need for disclosure" of the prepublication records. (*Id*. at p. 1268.)

2. The potential-settlement factor.

Another factor courts have considered in applying the public interest exemption is the need to protect the negotiation process (see, e.g., *Michaelis, supra*, 38 Cal.4th at p. 1071) and the closely related settlement process, which, of course, usually involves negotiation. The Court of Appeal has held, under the pending litigation exemption, that settlement documents need not be produced to third parties while litigation is pending. "[T]o allow disclosure to the public of such documents would chill the parties' ability in many cases to settle the action before trial. Such a result runs contrary to the strong public policy of this state favoring settlement of

actions." (*Board of Trustees of California State University v. Superior Court* (2005) 132 Cal.App.4th 889, 899 (*Trustees*).)

It matters not that the cases involving settlement arose under the pending litigation exemption, which is not at issue here. As explained, in performing their balancing function under the public interest exemption, courts often look to the express exemptions for guidance as to the nature of the public interest that would justify nondisclosure. (See above, pp. 25-26.)

3. The strategy factor.

A further factor that can tip the balance in favor of nondisclosure under the public interest exemption is the need to keep confidential a public entity's "game plan" or strategy. In *Eskaton Monterey Hospital v. Myers* (1982) 134 Cal.App.3d 788, three Medi-Cal-provider hospitals that had been audited by the Department of Health Services sought disclosure of the fiscal portions of the department's audit manual. (*Id.* at pp. 790-791.) The trial court denied the request, finding that the manual contained the department's "'game plan' or strategy" for conducting audits. (*Id.* at p. 793.) The Court of Appeal affirmed, concluding there was no public interest in a disclosure that would enable potential law violators to escape detection. (*Id.* at p. 794.)

B. The Balancing Test Clearly Favors Disclosure In This Case.

This case requires a balancing of the public interests in the disclosure of billing records kept by the County in six still-pending lawsuits. The question is whether, before the cases are concluded, the public interests in nondisclosure clearly outweigh the public interests in disclosure. We demonstrate that they do.

1. Public interest in pre-finality disclosure.

The public has a general interest in the openness of government records because the records contain "information relating to the conduct of the public's business." (§ 6252, subd. (e).) Thus, "there *is* a public interest in disclosure"; the question is how much *weight* to give it. (*Humane Society, supra,* 214 Cal.App.4th at pp. 1267-1268.) The answer depends on the nature of the information and on "'whether disclosure would contribute significantly to public understanding of government activities.'" (*Ibid*.)

While there is always a "strong public interest in knowing how the government spends its money" (*International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 333), when such information is publicly disclosed mid-stream—before a case is over—it is difficult to see what significant contribution would be made to "the public's understanding of government" (*Humane Society, supra*, 214 Cal.App.4th at p. 1268). Such understanding is likely to be greater if the information is complete, not partial. As one

court observed, "it strains the imagination to believe that release of the amounts of fees paid in one isolated case *before it has been concluded* would provide a significant public benefit." (*Freedom Newspapers, Inc. v. Superior Court* (1986) 186 Cal.App.3d 1102, 1111, original emphasis.) To paraphrase the Supreme Court in a case involving the public interest exemption, there is "no compelling reason why public scrutiny of this process cannot as effectively take place *after*" the litigation is completed. (*Michaelis, supra,* 38 Cal.4th at p. 1073, original emphasis.) This is especially true where, as here, early disclosure could significantly harm the public.

2. Public interest in pre-finality nondisclosure.

Information typically found in billing records such as those sought here—e.g., the amounts billed and paid in the course of ongoing litigation, the identity and speciality of the lawyers working on the case and when they performed their work—potentially gives litigants opposing a public entity significant tactical insights to exploit. To cite a few examples, knowing how much the other side is spending or has spent might allow a lawyer to decide how hard to push the litigation, how hard to advocate for settlement, or when is the best time to make a settlement offer. Such knowledge could influence or even determine one's position in litigation. If a lawyer sees that the other side's bills have plateaued or tapered off, perhaps indicating a diminishment of funds or a decision that a limit has been reached, he might find it opportune to intensify discovery efforts or make a settlement

overture. A lawyer who knows that the opposing firm's senior partner, an intellectual property expert, is suddenly billing a large number of hours, may make strategic decisions as to what experts might be most effective.

Similarly, a party that has put off discovery in a matter, perhaps even precipitously so, might be alerted to the threat of a heretofore unanticipated motion for summary judgment by simply reviewing defense counsel's bills. Bills that show a steep rise in defense expenditures or time might signal the need to initiate discovery as soon as possible.

Again, *Michaelis* provides guidance. The Supreme Court, applying the public interest exemption, observed that a public entity forced to disclose records before contract negotiations are complete "could enjoy considerably less leverage in attempting to negotiate" a favorable contract. (38 Cal.4th at p. 1074.) The same is true in the context of litigation and settlement. Requiring a public entity, during pending litigation, to disclose the type of fee records sought here could considerably lessen its leverage in attempting to settle the litigation or to prevail in it. (See also *Trustees, supra,* 132 Cal.App.4th at p. 899 [disclosure of documents while litigation pending may chill parties' ability to settle, contrary to strong public policy favoring settlement].)

Such disclosures before a case is concluded would put public entities at the very sort of disadvantage the CPRA was designed to avoid. (See *Roberts*, *supra*, 5 Cal.4th at p. 372 [purpose of pending litigation exemption was to ensure that litigants did not have advantages over public entities by

procuring litigation-related information not otherwise available in discovery].) As demonstrated, courts may look to the purposes underlying the CPRA's express exemptions (such as the pending litigation exemption) to determine the disclosability of documents under the public interest exemption. (See above, pp. 25-26.)

On balance, the public interest in waiting until litigation is completed to disclose the sensitive financial information requested here clearly outweighs the public interest in disclosing the information in the middle of the litigation.

C. Respondent Court's Reasoning Is Flawed.

Respondent court concluded that the balance clearly tipped in the ACLU's favor, citing two reasons: the facts in the County's authorities are "clearly distinguishable from the facts giving rise to this action," and the County "failed to present *any* evidence demonstrating how the public-interest balance clearly tips in favor of not disclosing the billing statements." (III PE 10, p. 775.) Neither reason is persuasive.

Although the court briefly summarized the facts in the leading cases of *Michaelis* and *Humane Society* (ignoring the County's other authorities) (III PE 10, pp. 775-776), it failed to explain why any factual differences should dictate a different result, or why the legal principles of those cases should not apply here. Merely pointing to a different set of facts is insufficient. (See *Harris v. Superior Court* (1992) 3 Cal.App.4th 661, 666 ["The *Palsgraf* rule . . . is not limited to train stations"].) *Michaelis,* the

Supreme Court's only decision to address the importance of timing in disclosures under the CPRA's catch-all exemption, deserves careful attention. Certainly its holding that premature disclosures of competing proposals for a public facility would produce "little if any public benefit" and "could impair the city's selection and negotiation process" is relevant to the disclosure of billing records in pending lawsuits that, like all litigation, have potential for a negotiated settlement. More broadly, *Michaelis* teaches that a public entity should not be put at a competitive disadvantage in any adversarial context, be it contract negotiations or litigation. Similarly, *Humane Society* draws an important distinction between the public's interest in disclosure before and after an important event.[9/]

The court's second reason for granting the ACLU's petition—the County's failure to produce any evidence demonstrating how the balance tips in favor of nondisclosure of bills in pending lawsuits—is equally unconvincing. The court faulted the County for "not elaborat[ing] on how or why disclosing redacted billing statements revealing, at a minimum, the amount of hours billed, the rate at which those hours were billed, and the identity of the attorney billing those hours would place significant burdens on the County's ability to litigate and negotiate pending cases." (III PE 10,

---

[9/] Respondent court may have glossed over the "timing" issue because it erroneously believed the County was asserting the catch-all exemption as to all nine requested lawsuits, whether completed or pending. (III PE 10, p. 776 (last ¶).) As to the three completed suits, the County claimed no exemption, and did produce the billing records—albeit redacted for information falling under the attorney-client privilege. (I PE 1, p. 26.)

p. 776.) The court overlooked the County's explanation that, armed with such information, litigants opposing a public entity "might accelerate or prolong litigation at a particular point, modify their trial strategy or choice of experts, form a more 'educated guess' about the entity's valuation of a case, time a settlement demand or calculate a response to a settlement offer." (III PE 6, p. 722.) These are the basic commonsense realities of litigation, well within the knowledge of every attorney—and judicial officer.

Respondent court plainly erred in determining that the billing records in the nine lawsuits at issue here are not protected by California's unique statutory scheme governing attorney-client privilege and that the records in the six still-pending lawsuits are not exempt from disclosure under the CPRA's catch-all or public interest exemption.

CONCLUSION

For these reasons, petitioners respectfully request that this Court grant the requested relief.

Dated: June 30, 2014

Respectfully submitted,

OFFICE OF THE COUNTY COUNSEL
COUNTY OF LOS ANGELES
John F. Krattli, County Counsel
Roger H. Granbo, Assistant County Counsel
Jonathan McCaverty, Deputy County Counsel

GREINES, MARTIN, STEIN & RICHLAND LLP
Timothy T. Coates
Barbara W. Ravitz

By: _____
Barbara W. Ravitz
Attorneys for Petitioners COUNTY OF LOS ANGELES BOARD OF SUPERVISORS and THE OFFICE OF COUNTY COUNSEL

CERTIFICATION

Pursuant to California Rules of Court, Rule 8.204(c)(1), I certify that this PETITION FOR WRIT OF MANDATE, PURSUANT TO CALIFORNIA PUBLIC RECORDS ACT; MEMORANDUM OF POINTS AND AUTHORITIES contains 7,822 words, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Dated: June 30, 2014

Barbara W. Ravitz

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On **June 30, 2014**, I served the foregoing document described as: **PETITION FOR WRIT OF MANDATE, PURSUANT TO CALIFORNIA PUBLIC RECORDS ACT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by serving:

Jennifer L. Brockett, Esq.
Davis Wright Tremaine LLP
865 South Figueroa Street, Suite 2400
Los Angeles, California 90017-2566
Email: JenniferBrockelt@dwt.com
Telephone: (213) 633-6800
Facsimile: (213) 633-6899

Peter J. Eliasberg, Esq.
ACLU Foundation of Southern California
1313 West 8th Street
Los Angeles, California 90017
Email: PEliasbergACLU-SC.org
Telephone: (213) 977-9500
Facsimile: (213) 977-5299

Counsel for Real-Parties-in-Interest *ACLU OF SOUTHERN CALIFORNIA and ERIC PREVEN*

Clerk for the Honorable Luis A. Lavin
Los Angeles Superior Court
Department 82
111 North Hill Street
Los Angeles, California 90012-3014
Telephone: (213) 893-0530
[*LASC Case No. BS145753*]

Frederick R. Bennett III, Esq.
Court Counsel
Los Angeles Superior Court
111 North Hill Street, Rm. 546
Los Angeles, California 90012
Telephone: (213) 893-1224

(✓✓) By U.S. Mail: by placing () the original **(✓✓)** a true copy thereof enclosed in a sealed envelope addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and pickup, following our ordinary business practices:

As follows: I am "readily familiar" with firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served; service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit. The envelope was deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

Executed on **June 30, 2014.**

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

Pauletta L. Herndon