S253115

In the Supreme Court of the State of California

SAN BERNARDINO COUNTY SHERIFF'S EMPLOYEES' BENEFIT ASSOCIATION
Petitioner,

v.

COUNTY OF SAN BERNARDINO
Respondent.

PROPOSED INTERVENORS' NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE

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NOTICE OF MOTION FOR LEAVE TO INTERVENE

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that proposed intervenors First Amendment Coalition ("FAC"), Los Angeles Times Communications, LLC ("LAT"), KQED Inc. ("KQED"), and California News Publishers Association Services, Inc. ("CNPA") (collectively, "Intervenors") hereby seek leave to intervene in this action. Intervenors seek intervention as of right, pursuant to California Code of Civil Procedure section 387, subdivision (d)(1)(B), on the ground that Intervenors have an interest in the public access rights at issue in this action and are so situated that the disposition of this action will impair or impede Intervenors' ability to protect their interests, unless their interests are adequately represented by Respondent County of San Bernardino. In the alternative, Intervenors seek permissive intervention pursuant to California Code of Civil Procedure section 387, subdivision (d)(2).

This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities in support thereof, the [Proposed] Complaint in Intervention, and any further matters as this Court may consider.

December 28, 2018 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
Including Professional Corporations

By: _____
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Attorneys for Proposed Intervenors

December 28, 2018 FIRST AMENDMENT COALITION

By _____
DAVID E. SNYDER
Attorney for Petitioner First Amendment Coalition

December 28, 2018 LOS ANGELES TIMES COMMUNICATIONS LLC

By _____
JEFF GLASSER
Attorney for Petitioner Los Angeles Times Communications LLC

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v.

COUNTY OF SAN BERNARDINO
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PROPOSED INTERVENORS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The proposed intervenors in this action are organizations that promote and defend the right of access to government records and seek to advance government transparency and accountability through public oversight. First Amendment Coalition ("FAC"), Los Angeles Times Communications LLC ("LAT"), KQED Inc. ("KQED") and California News Publishers Association Services, Inc. ("CNPA") (collectively, "Intervenors") each have a strong and direct interest in accessing government records concerning serious misconduct by law enforcement officers, and in promoting laws and policies that increase public access to such information.

The Verified Petition for Writ of Mandamus or Other Extraordinary Relief ("Petition") filed by Petitioner San Bernardino County Sheriff's Employees' Benefit Association ("Petitioner" or "SEBA") on December 18, 2018 seeks to prevent the disclosure of all law enforcement records relating to conduct occurring before January 1, 2019. Specifically, SEBA contends that SB 1421 should be applied prospectively only, such that records regarding conduct occurring before January 1, 2019 therefore are not accessible to the public.

Respondent County of San Bernardino ("Respondent" or "the County") may file an Answer and may otherwise oppose the Petition.

However, the County cannot adequately represent and speak for the interests of the Intervenors. The County's primary concern in this action is compliance with its legal obligations under the California Public Records Act. It has little if any direct interest in ensuring that SB 1421 is construed in a manner consistent with its Legislative purpose of expanding public access to information regarding the use of force and serious misconduct by law enforcement officials. In contrast, Intervenors have an independent, substantial, and direct interest in protecting the right of access to government records. Should this Court grant the relief sought by Petitioner, Intervenors' access rights would be significantly harmed.

Accordingly, because the Court's determination of whether to grant Petitioner's request has the potential to cause direct harm to Intervenors, Intervenors respectfully request leave to intervene in this action to oppose the Petition and to vindicate the public's and the press's right of access to government records under the California Public Records Act and Article I, § 3(b) of the California Constitution.

A copy of Intervenors' Proposed Complaint in Intervention is submitted herewith as **Exhibit A**. Intervenors' Preliminary Opposition to the Petition is submitted herewith as **Exhibit B**.

II. FACTUAL BACKGROUND

A. The Enactment of SB 1421

In recognition of the public's need for information about serious police misconduct, officer-involved shootings, and other uses of force by law enforcement officers, the California Legislature passed and Governor Jerry Brown signed into law SB 1421, which becomes effective January 1, 2019. (Complaint in Intervention, Ex. A, ¶¶ 1, 14.) The new law makes certain categories of information subject to public disclosure through the California Public Records Act (the "CPRA"), specifically the following:

> (1) Incidents involving the discharge of a firearm at a person by a peace officer;
>
> (2) Incidents involving the use of force by a peace officer against a person, resulting in death or great bodily injury;
>
> (3) Incidents in which a sustained finding was made by a law enforcement agency or oversight agency that a peace officer or custodial officer engaged in the sexual assault of a member of the public; and
>
> (4) Incidents in which a sustained finding was made by a law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, and the destruction, falsifying, or concealing of evidence.

(*Ibid.*; See Pen. Code § 832.7, subd (b) [as amended].) For many years prior to the enactment of SB 1421, such information was available only through discovery in civil or criminal litigation, pursuant to a motion made in accordance with Penal Code section 1043. (Ex. A, ¶ 2.)

The declaration of intent in SB 1421 reflects the Legislature's findings that the public has a particularly strong interest in disclosure of records concerning police misconduct and officer-involved shootings:

> (a) Peace officers help to provide one of our state's most fundamental government services. To empower peace officers to fulfill their mission, the people of California vest them with extraordinary authority — the powers to detain, search, arrest, and use deadly force. Our society depends on peace officers' faithful exercise of that authority. Misuse of that authority can lead to grave constitutional violations, harms to liberty and the inherent sanctity of human life, as well as significant public unrest.
>
> (b) The public has a right to know all about serious police misconduct, as well as about officer-involved shootings and other serious uses of force. Concealing crucial public safety matters such as officer violations of civilians' rights, or inquiries into deadly use of force incidents, undercuts the public's faith in the legitimacy of law enforcement, makes it harder for tens of thousands of hardworking peace officers to do their jobs, and endangers public safety.

(Ex. A, ¶ 15; SB 1421, § 1.)

SB 1421 was passed on August 31, 2018, signed by Governor Brown on September 30, 2018, and enacted as Chapter 988 of the 2017-

2018 Regular Session. It amends Penal Code sections 832.7 and 832.8, and becomes effective January 1, 2019. (Ex. A, ¶ 17.)

B. SEBA's Petition

On December 18, 2018, more than two and a half months after SB1421 was enacted but just two weeks before the bill was scheduled to go into effect, SEBA filed this Petition contending that SB 1421 is prospective only, and that it does not apply to records regarding conduct occurring before January 1, 2019. (Ex. A, ¶¶ 3, 18.) Accordingly, Petitioner sought a writ of mandamus directing Respondent County of San Bernardino ("Respondent" or the "County") to refrain from "retroactively" enforcing SB 1421 by releasing any pre-2019 records that would otherwise be subject to public disclosure under the CPRA. (*Ibid.*) Petitioner also asked the Court to issue an alternative writ of mandate and an immediate order staying or enjoining any retroactive enforcement of SB 1421 by Respondent and by any other public agency that employs peace officers (as defined in Penal Code section 830.1) during the pendency of these proceedings. (*Ibid.*)

C. The Intervenors

Intervenors each have a strong interest in accessing government records concerning serious misconduct and uses of force by law enforcement officers, and in promoting laws and policies that increase public access to such information. (Ex.A, ¶ 5.)

FAC is a nonprofit public benefit corporation dedicated to advancing the public's right to participate in government and access information regarding the conduct of the people's business. The public has a particularly strong interest in accessing government records concerning serious misconduct by law enforcement officers, and FAC is interested in promoting laws and policies that increase public access to such information. (Ex.A, ¶ 7.)

FAC was active in supporting SB 1421. On April 9, 2018, FAC sent an open letter to Senator Nancy Skinner, the bill's author, expressing its strong support of SB 1421. That same day, FAC posted the letter on its website, urging others to also support of the bill. FAC is listed in the official legislative analyses among the organizations that publicly supported SB 1421. FAC's support of SB 1421 reflects its mission to advance transparency and accountability of government and government employees, including law enforcement officers, and to prevent government secrecy and censorship. (Ex.A, ¶ 21.)

Los Angeles Times Communications LLC ("LAT") is the largest daily newspaper based in California. LAT's popular news and information website, www.latimes.com, attracts a national audience. LAT regularly joins litigation defending the public's rights of access to government records and meetings. Before this Court, LAT vindicated the public's rights of access to the names of police officers (*Commission on Peace*

Officer Standards & Training v. Superior Court (2007) 42 Cal.4th 278 *(POST)*) and the names of most officers involved in shootings in California (*Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59 *(LBPOA)*). In recent years, LAT also ensured public access to a consultant's report on the shooting by Pasadena police of an unarmed teenager (*Pasadena Police Officers Association v. City of Pasadena* (2015) 240 Cal.App.4th 268) and the names of officers who pepper sprayed student protesters at the University of California, Davis (*Federated University Police Officers Assoc. v. Superior Court* (2013) 218 Cal. App. 4th 18). As part of these cases, this Court has recognized that the "public's interest in the qualifications and conduct of peace officers is substantial" (*POST*, *supra*, 42 Cal.4th at p. 297-299) and that "officers hold one of the most powerful positions in our society; our dependence on them is high and the potential for abuse of power is far from insignificant" (*LBPOA*, *supra*, 59 Cal.4th at p. 73-74) (internal citation omitted)). Because LAT reports on San Bernardino County and maintains a strong interest in inspecting records concerning misconduct of San Bernardino peace officers, LAT has a concrete interest in ensuring public access to all disclosable San Bernardino disciplinary records, including those created before the law's enactment. (Ex.A, ¶ 10.)

KQED Inc. is a nonprofit public benefit corporation organized under the laws of California and engaged in dissemination of news and

information since its founding as a public broadcasting station in 1953. At all times relevant to the Complaint in Intervention, KQED's core mission has been the pursuit and publication/broadcast of information in the public's interest. KQED has advanced this purpose not only through its consistent San Francisco Bay Area- and statewide news reporting, which relies heavily on the use of the California Public Records Act, but also as a champion of public access to some of the most serious information maintained by government: law enforcement use of deadly force, police misconduct and the broader operations of our state's criminal justice system. (See, e.g., *Houchins, Sheriff of the County of Alameda, California v. KQED Inc., et al.* (1978) 438 U.S. 1.) KQED is beneficially interested in ensuring that public agencies throughout the state faithfully comply with their legal duties to disclose information that SB 1421 addresses—records concerning serious misconduct and/or use of deadly force by law enforcement officers—under the new law as well as under Section 3, Article I of the California Constitution and California common law. (Ex.A, ¶ 9.)

CNPA is a California industry trade association serving the common interests of its news media members and promoting the general welfare of the California newspaper and news media industry. CNPA has more than 500 daily, weekly and campus newspaper members. Founded in 1888, the California News Publishers Association has served and promoted protected

the interests of the news media throughout the state, and the public interest in ensuring access to information and public accountability, for 130 years. CNPA was a co-sponsor of SB 1421, and its arguments in support of the bill are quoted in the legislative history. SB 1421 provides public access to information vital to the mission of CNPA's members in providing information that is, as the Court has recognized, necessary to inform the public on matters intense and legitimate public concern. (Ex.A, ¶ 8.)

III. INTERVENORS ARE ENTITLED TO INTERVENE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 387

California Code of Civil Procedure section 387 ("section 387") provides for both mandatory and permissive intervention. The purpose of intervention is "to promote fairness by involving all parties potentially affected by a judgment" and to avoid multiplicity of actions. (*Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1199 (*Simpson Redwood*) [citations omitted]; see also *San Bernardino County v. Harsh Cal. Corp.* (1959) 52 Cal.2d 341, 346.) As such, "section 387 should be liberally construed in favor of intervention." (*Simpson Redwood*, *supra*, 196 Cal.App.3d at p. 1200 [citations omitted].)

A. Intervenors Are Entitled to Intervene As of Right

California Code of Civil Procedure section 387(d)(1) provides, in relevant part:

> The court shall, upon timely application, permit a nonparty to intervene in the action or proceeding if . . . :
>
> (B) The person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties.

(Code Civ. Proc. § 387.) Thus, intervention is mandatory where (1) the proposed intervenor has an interest relating to the property or transaction which is the subject of the pending case; (2) the proposed intervenor's ability to protect that interest may be impaired or impeded by the disposition of the pending case; (3) the proposed intervenor's interests are not adequately represented by the existing parties; and (4) the proposed intervenor's application is timely. (*Ibid.*; see also *Siena Court Homeowners Ass'n v. Green Valley Corp.* (2008) 164 Cal.App.4th 1416, 1423–24 [citations omitted].)

1. Intervenors Have a Direct Interest in the Subject of the Pending Case

Intervenors have a direct and significant interest in the transaction that is the subject matter of this action. Under section 387, "transaction" is broadly interpreted as "[s]omething which has taken place, whereby a cause of action has arisen." (*California Physicians' Service v. Superior Court* (1980) 102 Cal.App.3d 91, 96 [citations omitted].) An intervenor's interest in the transaction is direct and immediate where the intervenor stands to

"gain or lose by the direct legal operation and effect of the judgment." (*Jersey Maid Milk Products Co. v. Brock* (1939) 13 Cal.2d 661, 663 [citations omitted].) "A person has a direct interest justifying intervention in litigation where the judgment in the action of itself adds to or detracts from his legal rights without reference to rights and duties not involved in the litigation." (*Continental Vinyl Products Corp.* v. *Mead Corp.* (1972) 27 Cal.App.3d 543, 549.) As this Court has noted, "the code does not attempt to specify what or how great that interest shall be in order to give a right to intervene. Any interest is sufficient." (*Bechtel v. Axelrod* (1942) 20 Cal.2d 390, 392 [*citing Dennis v. Kolm* (1900) 131 Cal. 91, 93; *Coffey v. Greenfield* (1880) 55 Cal. 382, 383 [internal citations omitted]].)

The "transaction" that is the subject of this action is the enactment of SB 1421, and the question of whether it is to be applied retroactively in accordance with the intent of the Legislature. Intervenors' have a direct interest in this litigation because the Court's determination will directly affect their right of access to government records and their ability to inform the public regarding the information contained in those records—specifically, Intervenors' ability to access government records of peace officer use of force and serious and confirmed misconduct under the CPRA, pursuant to SB 1421.

2. Intervenors' Ability to Protect Their Interests Will Be Impaired or Impeded By the Disposition of This Case in Their Absence

Intervenors must also show that they are "so situated that the disposition of the action may impair or impede [their] ability to protect that interest." (Code Civ. Proc. § 387; *Hodge* v. *Kirkpatrick Dev., Inc.* (2005) 130 Cal.App.4th 540, 555 (*Hodge*)) Once this showing is made, the Court must permit Intervenors to intervene unless their interests are "adequately represented by existing parties." (Code Civ. Proc. § 387; *Hodge*, *supra*, 130 Cal.App.4th at p. 554–55.)

Because this action concerns the interpretation of a new law that has yet to take effect, if Intervenors are not allowed to assert their interests in this action, they will be unable to protect their interests in ensuring access to government records. The outcome of SEBA's preemptive litigation will directly impact Intervenors' members and/or employees who regularly request and obtain records under the CPRA, and who intend to seek or are already seeking records of police use of force and misconduct related to conduct occurring before January 1, 2019, pursuant to the amendments to Penal Code Sections 832.7 and 832.8 under SB 1421.

3. Intervenors' Interests Are Not Adequately Represented By the Existing Parties to This Action

Intervenors' interests are directly contrary to those of Petitioner, and clearly are not adequately represented by the County. A proposed

intervenor need only show that the "representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." (*Trbovich v. United Mine Workers of America* (1972) 404 U.S. 528, 538, n.10 [citations omitted, analyzing the required showing for intervention under analogous federal procedure].)[1]

The County cannot adequately represent Intervenors' interests because the County's primary objective is merely to comply with the CPRA, not to vindicate the public's and the press's right of access to government records. In fact, SEBA's request that SB 1421 apply prospectively only would reduce the administrative burden on the County, since the County would not be required to search and produce records related to conduct occurring before January 1, 2019 in response to Public Records Act requests. The County's interests are thus not directly opposed to SEBA's and may even be aligned with SEBA's in some respects.

In *Redevelopment Agency* v. *Commission on State Mandates* (1996) 43 Cal.App.4th 1188, for example, the court held that one government subdivision did not adequately represent another subdivision because it could not "be said to have adequately represented *all* the interests of [the

[1] Because section 387 was modeled after and is "virtually identical to" Rule 24 of the Federal Rules of Civil Procedure, California courts may look to federal court decisions in interpreting and applying the statute where there is otherwise no controlling California authority on point. See *Ziani Homeowners Ass'n v. Brookfield Ziani LLC* (2015) 243 Cal.App.4th 274, 280-81.

other subdivision], even though here its staff agreed with [the position of the other] on the merits." (*Id.* at p. 1198 [emphasis added].) Likewise, the fact that the County may oppose SEBA's request does not mean that its interests are identical to those of the Intervenors, because the County's interests include institutional concerns that Intervenors do not have and the Intervenors' interests include the access rights of requesters under the CPRA and the interest of the general public in access to records and the oversight of public agencies (including the County), which the County, by virtue of its position, cannot adequately assert. Intervenors have a direct interest in protecting and maintaining the right of access to government records to the fullest extent possible. Intervenors thus have unique and important interests in this matter that the parties cannot represent.

4. Intervenors' Motion for Leave to Intervene Is Timely

Intervenors' Motion is timely. Intervention is considered timely if it is "asserted within a reasonable time" and the intervenor is not "guilty of an unreasonable delay . . . ." (*Sanders v. Pac. Gas & Elec. Co.* (1975) 53 Cal.App.3d 661, 668 [permitting intervention 18 months after notice of litigation]; see also *Truck Ins. Exch. v. Superior Court* (1997) 60 Cal.App.4th 342, 351 [finding motion to intervene timely even where filed two years after notice of litigation].) Because SEBA filed its Petition on

December 18, 2018, Intervenors' Motion submitted just 10 days later is undoubtedly timely under section 387.

Accordingly, because Intervenors satisfy all of the requirements of Section 387(d)(1), the Court should permit intervention as of right.

B. In the Alternative, Intervenors Should Be Granted Permissive Intervention

Section 387(d)(2) also authorizes the Court to permit intervention in appropriate circumstances. Section 387(d)(2) states, in relevant part that "The court may, upon timely application, permit a nonparty to intervene in the action or proceeding if the person has an interest in the matter in litigation, or in the success of either of the parties." (Code Civ. Proc. § 387(d)(2).) Courts have held that "[a] third party may intervene [by permission] (1) where the proposed intervenor has a direct interest, (2) intervention will not enlarge the issues in the litigation, and (3) the reasons for the intervention outweigh any opposition by the present parties." (*Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499, 1504 [citations omitted].) "The purpose of allowing intervention is to promote fairness by involving all parties potentially affected by a judgment." (*Simpson Redwood, supra,* 196 Cal.App.3d at p. 1199 [citations omitted]; see also *City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1036 [section 387 "balances the interests of others who will be affected by the judgment against the interests of the original parties

in pursuing their litigation unburdened by others" [citations omitted]].) As with mandatory intervention, permissive intervention should likewise be liberally construed in favor of intervention. (*Simpson Redwood*, 196 Cal.App.3d at 1200.)

As demonstrated above, Intervenors have a direct interest in the outcome of this action, and their request for intervention is timely. Intervenors also satisfy all of the requirements for permissive intervention because their presence in this action will not enlarge the issues in the litigation and the reasons for intervention outweigh any opposition by the present parties. Accordingly, should the Court determine that Intervenors are not entitled to intervene as of right, Intervenors respectfully request in the alternative that they be allowed to intervene permissively pursuant to section 387(d)(2).

1. Intervenors' Inclusion Will Not Enlarge the Scope of This Action

Courts grant permissive intervention if the intervenor does not seek to unduly delay the litigation or inject new factual issues. (See *Simpson Redwood*, *supra*, 196 Cal.App.3d at p. 1202–03 ["Resolution of [intervenor's] issue will center upon essentially the same facts as those involved in the State's claims . . . [W]e perceive no danger that the [intervenor's] issue will prolong, confuse or disrupt the present lawsuit."] [citations omitted]; *People ex rel. Rominger v. County of Trinity* (1983) 147

Cal.App.3d 655, 664-65 (*Rominger*) [finding Sierra Club's intervention would not impermissibly broaden the scope of the litigation].)

Here, Intervenors seek to intervene for the purpose of opposing SEBA's interpretation of SB 1421. The issues that will directly impact Intervenors' rights—Intervenors' right to access government records created prior to January 1, 2019—are already directly at the heart of this dispute. Intervenors' opposition is based primarily on the same legislative history of SB 1421 that is referred to by Petitioner, and addresses the same issues raised by the Petition. Thus, the inclusion of Intervenors in this action would not unduly delay the litigation or inject new factual issues.

2. The Reasons for the Intervention Outweigh Any Opposition by the Present Parties

Given the magnitude of the rights at issue, the widespread impact of this Court's decision interpreting SB 1421, and the potential harm that SEBA's Petition may cause to the right of access to public records, the reasons for intervention far outweigh any potential opposition.

The separate interests involved in this case are analogous to those in *Rominger*, where the Sierra Club was allowed to intervene in a lawsuit against Trinity County in order to invalidate county pesticide ordinances. In that case, the court found that the county's main institutional interest was that of defending its jurisdiction to enact ordinances, whereas Sierra Club members, as direct beneficiaries of the ordinances, had unique interests in

upholding the ordinances stemming from their concern for their own health and well-being. (*Rominger*, *supra*, 147 Cal.App.3d at p. 665.) Here, as in *Rominger,* Intervenors' "interest is compelling enough that they should be permitted to intervene." (*Ibid.*) Like Trinity County in *Rominger,* the County's primary interest is in the institutional concerns of responding to requests under the CPRA. Intervenors, as Public Records Act requestors and news media responsible for conveying information on matters of public concern to the public, are direct beneficiaries of the amendments to the CPRA enacted in SB 1421 and thus have a profound interest in protecting the public's and the press's right of access to government records.

IV. CONCLUSION

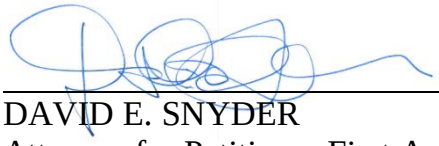
For the foregoing reasons, Intervenors' intervention in the present action is appropriate under California Code of Civil Procedure section 387(d)(1) and, at the very least, section 387(d)(2). Accordingly, Intervenors respectfully request that the Court grant their Motion for Leave to Intervene.

December 28, 2018

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
Including Professional Corporations

By: _____
JAMES M. CHADWICK
TENAYA RODEWALD
Attorneys for Proposed Intervenors

December 28, 2018 FIRST AMENDMENT COALITION

By 

DAVID E. SNYDER
Attorney for Petitioner First Amendment Coalition

December 28, 2018 LOS ANGELES TIMES COMMUNICATIONS LLC

By 

JEFF GLASSER
Attorney for Petitioner Los Angeles Times Communications LLC

PROOF OF SERVICE

I am employed in the State of California. I am over the age of 18 and not a party to the within action. On December 28, 2018, I served the foregoing document(s) described as:

PROPOSED INTERVENORS' NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE;

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE;

EXHIBITS A & B

on the interested parties below, using the following means:

Timothy K. Talbot Rains Lucia Stern St. Phalle & Silver, PC 2300 Contra Costa Blvd., Suite 500 Pleasant Hill, CA 94523	*Attorneys for Petitioner San Bernardino County Sheriff's Employees' Benefit Association* **Served Via TrueFiling**: TTalbot@RLSlawyers.com
County of San Bernardino c/o Laura Welch Clerk of the Board 385 N. Arrowhead Avenue San Bernardino, CA 92415	*Respondent County of San Bernardino* **Served via FedEx**

☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling), I provided the document(s) listed above electronically on the TRUE FILING Website to the parties on the Service List maintained on the TRUE FILING Website for this case, or on the Service List. TRUE FILING is the on-line e-service provider designated in this case. Participants in the case who are not registered TRUE FILING users will be served by mail or by other means permitted by the court rules.

☒ **BY FEDEX:** I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

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

Executed on December 28, 2018, at Palo Alto, California.

Robin P. Regnier

Exhibit A

S253115

In the Supreme Court of the State of California

SAN BERNARDINO COUNTY SHERIFF'S EMPLOYEES' BENEFIT ASSOCIATION
Petitioner,

v.

COUNTY OF SAN BERNARDINO
Respondent.

COMPLAINT IN INTERVENTION

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Attorneys for Proposed Intervenor First Amendment Coalition, Los Angeles Times Communications, LLC, KQED Inc., and California News Publishers Association

Proposed Intervenors First Amendment Coalition ("FAC"), Los Angeles Times Communications, LLC ("LAT"), KQED Inc. ("KQED"), and California News Publishers Association ("CNPA," and together with FAC, LAT, and KQED the "Intervenors") file this Complaint in Intervention and hereby intervene in this action, alleging as follows:

INTRODUCTION

1. In 2018, the California Legislature passed and Governor Jerry Brown subsequently signed into law California Senate Bill 1421 ("SB 1421"), enacted as Chapter 988 of the 2017-2018 Regular Session. SB 1421, which becomes effective January 1, 2019, and amends two sections of the Penal Code concerning law enforcement personnel records (Sections 832.7 and 832.8). The new law makes the following four categories of information subject to public disclosure through the California Public Records Act (the "CPRA"):

> (1) Incidents involving the discharge of a firearm at a person by a peace officer;
>
> (2) Incidents involving the use of force by a peace officer against a person, resulting in death or great bodily injury;
>
> (3) Incidents in which a sustained finding was made by a law enforcement agency or oversight agency that a peace officer or custodial officer engaged in the sexual assault of a member of the public; and
>
> (4) Incidents in which a sustained finding was made by a law enforcement agency or oversight agency of dishonesty by a peace officer or custodial

> officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, and the destruction, falsifying, or concealing of evidence.

2. For many years prior to the enactment of SB 1421, such information was available only through discovery in civil or criminal litigation, pursuant to a motion made in accordance with Penal Code section 1043.

3. On December 18, 2018, more than two and a half months after SB 1421 was enacted but just two weeks before the bill was scheduled to go into effect, Petitioner San Bernardino County Sheriff's Employees' Benefit Association ("Petitioner" or "SEBA") filed a Verified Petition for Writ of Mandamus and Request for Stay (the "Petition") in this Court. In its Petition, SEBA contended that SB 1421 is prospective only, and that it does not apply to pre-2019 records. Accordingly, SEBA sought a writ of mandamus directing Respondent County of San Bernardino ("Respondent" or the "County") to refrain from "retroactively" enforcing SB 1421 by releasing any pre-2019 records that would otherwise be subject to public disclosure under the CPRA. SEBA also asked the Court to issue an alternative writ of mandate and an immediate order staying or enjoining any "retroactive" enforcement of SB 1421 by Respondent and by any other

public agency that employs peace officers (as defined in Penal Code section 830.1) during the pendency of these proceedings.

4. SEBA's interpretation of SB 1421 is incorrect. First, SB 1421 does not implicate vested rights and therefore can and should be applied retroactively. Second, the legislative history of the bill makes clear the California Legislature's understanding and intent that SB 1421 would apply retroactively.

5. Intervenors have a direct interest in these proceedings and their outcome. FAC has an interest as a result of its support for the passage of SB 1421 and its mission to promote government accountability, prevent unnecessary governmental secrecy, and ensure enforcement of open records laws for the benefit of the public. CNPA has a similar interest, as a principal advocate for passage of SB 1421 and as an organization created to champion the ideals of a free press in our democratic society and to promote the quality and economic health of California news publishers. The public has a particularly strong interest in enforcing its right to access to the records covered by SB 1421 because they concern the conduct of law enforcement officers. (See *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 74 *(LBPOA)* [explaining that in cases concerning officer-involved shootings, "the public's interest in the conduct of its peace officers is particularly great because such shootings often lead to severe injury or death" and the balance of interests therefore "tips

strongly in favor of identity disclosure and against the personal privacy interests of the officers involved"].) KQED and LAT, as news and media organizations committed to reporting on matters of great public interest, have an interest in their ability to access this information so that they may accurately report on instances of police-involved shootings, use of force, and misconduct, and thereby serve the public interest in ensuring public oversight and accountability of law enforcement.

6. Intervenors propose to intervene in order to oppose the Petition, and to request that government agencies be directed to preserve records covered by SB 1421.

THE PARTIES

7. FAC is a nonprofit public benefit corporation organized under the laws of California. Since FAC was established in April 1988, and at all times relevant to this Complaint in Intervention, one of FAC's primary purposes has been the advancement of the public's right to participate in government and to have access to information regarding the conduct of the people's business. FAC has advanced this purpose by working to improve governmental compliance with state and federal open government laws. The public has a particularly strong interest in disclosure of the type of records that SB 1421 addresses—records concerning serious misconduct by law enforcement officers. (See *LBPOA*, *supra*, 59 Cal.4th at p. 74.) FAC is beneficially interested in ensuring that public agencies throughout the

state faithfully comply with their legal duties to disclose such records under the new SB 1421, as well as under Section 3 of Article I of the California Constitution and California common law.

8. CNPA is a California industry trade association serving the common interests of its news media members and promoting the general welfare of the California newspaper and news media industry. CNPA has more than 500 daily, weekly, and campus newspaper members. Founded in 1888, the California News Publishers Association has served, promoted, and protected the interests of the news media throughout the state, and the public interest in ensuring access to information and public accountability, for 130 years.

9. KQED is a nonprofit public benefit corporation organized under the laws of California and engaged in dissemination of news and information since its founding as a public broadcasting station in 1953. At all times relevant to this Complaint in Intervention, KQED's core mission has been the pursuit and publication/broadcast of information in the public's interest. KQED has advanced this purpose not only through its consistent San Francisco Bay Area and statewide news reporting, which relies heavily on the use of the California Public Records Act, but also as a champion of public access to some of the most serious information maintained by government: law enforcement use of deadly force, police misconduct and the broader operations of our state's criminal justice

system. (See, e.g., *Houchins, Sheriff of the County of Alameda, California v. KQED Inc., et al.* (1978) 438 U.S. 1.) KQED is beneficially interested in ensuring that public agencies throughout the state faithfully comply with their legal duties to disclose information that SB 1421 addresses—records concerning serious misconduct and/or use of deadly force by law enforcement officers—under the new law as well as under Section 3, Article I of the California Constitution and California common law.

10. LAT is the largest daily newspaper based in California. LAT's popular news and information website, www.latimes.com, attracts a national audience. In order to ensure its ability to effectively report on matters of vital public interest, LAT regularly joins litigation defending the public's rights of access to government records and meetings. Before this Court, LAT vindicated the public's rights of access to the names of police officers (*Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278 *(POST)*) and the names of most officers involved in shootings in California (*LBPOA, supra,* 59 Cal.4th 59). In recent years, LAT also ensured public access to a consultant's report on the shooting by Pasadena police of an unarmed teenager (*Pasadena Police Officers Assn. v. City of Pasadena* (2015) 240 Cal.App.4th 268) and the names of officers who pepper sprayed student protesters at the University of California, Davis (*Federated University Police Officers Assn. v. Superior Court* (2013) 218

Cal.App.4th 18). As part of these cases, this Court has recognized that the "public's interest in the qualifications and conduct of peace officers is substantial" (*POST, supra,* 42 Cal.4th at p. 297-299) and that "officers hold one of the most powerful positions in our society; our dependence on them is high and the potential for abuse of power is far from insignificant" (*LBPOA, supra,* 59 Cal.4th at p. 73-74) (internal citation omitted)). These statements have particular resonance in this litigation concerning access to police disciplinary records in the possession of San Bernardino County. Because LAT reports on San Bernardino County, LAT has a concrete interest in ensuring public access to all disclosable San Bernardino disciplinary records, including those created before the law's enactment.

11. SEBA alleges in the Petition that it is an employee organization as defined in Government Code section 3500 et seq., recognized by Respondent County as the exclusive representative of Deputy Sheriffs, Sheriff Corporals, Sheriff Detectives, Sheriff Sergeants, Sheriff Lieutenants, District Attorney Investigators, Senior Investigators, Supervising Investigators, other peace officer classifications employed by the County with regard to all matters relating to employment conditions and employer-employee relations. SEBA further alleges that many of its sworn members are peace officers as defined in Penal Code sections 830.1, 830.35, and 830.5.

12. The County is organized and existing under the laws of the

State of California. SEBA alleges in the Petition that the County was, at all relevant times, a local employing agency within the meaning of Penal Code section 832.5 et seq. maintaining peace officer personnel information, as well as a local agency within the meaning of the CPRA, Government Code section 6252.

JURISDICTION

13. This Court has original jurisdiction over this matter pursuant to the California Constitution article VI, section 10; California Code of Civil Procedure sections 387 and 1085; and California Rules of Court 8.485 and 8.487.

FACTUAL ALLEGATIONS

14. Recognizing the public's right to information about serious police misconduct, officer-involved shootings, and other serious uses of force by law enforcement officers, in 2018 the California Legislature passed and Governor Jerry Brown signed into law SB 1421. The new law makes certain previously confidential records subject to public disclosure through the California Public Records Act (the "CPRA"), specifically the four following categories of records:

(1) Incidents involving the discharge of a firearm at a person by a peace officer;

(2) Incidents involving the use of force by a peace officer against a person, resulting in death or great bodily injury;

(3) Incidents in which a sustained finding was made by a law enforcement agency or oversight agency that a peace officer or custodial officer engaged in the sexual assault of a member of the public; and

(4) Incidents in which a sustained finding was made by a law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, and the destruction, falsifying, or concealing of evidence.

15. The declaration of intent in SB 1421 reflects the Legislature's findings that the public has a particularly strong interest in disclosure of records concerning police misconduct and officer-involved shootings:

(a) Peace officers help to provide one of our state's most fundamental government services. To empower peace officers to fulfill their mission, the people of California vest them with extraordinary authority — the powers to detain, search, arrest, and use deadly force. Our society depends on peace officers' faithful exercise of that authority. Misuse of that authority can lead to grave constitutional violations, harms to liberty and the inherent sanctity of human life, as well as significant public unrest.

(b) The public has a right to know all about serious police misconduct, as well as about officer-involved shootings and other serious uses of force. Concealing crucial public safety matters such as officer violations of civilians' rights, or inquiries into deadly use of force incidents, undercuts the public's faith in the legitimacy of law enforcement, makes it harder for tens of thousands

> of hardworking peace officers to do their jobs, and endangers public safety.

(SB 1421, § 1.)

16. SB 1421 also provides limited exceptions to public disclosure. It excepts from disclosure certain personal data including home addresses, telephone numbers, and allows government agencies to redact the identities of officers' family members. Government agencies may also withhold records when disclosure would pose a significant danger to the officer in question or hinder an ongoing investigation.

17. SB 1421 was passed on August 31, 2018, signed by Governor Brown on September 30, 2018, and enacted as Chapter 988 of the 2017-2018 Regular Session. It amends Penal Code, sections 832.7 and 832.8. It will become effective on January 1, 2019.

18. On December 18, 2019, SEBA filed a petition with this Court (the "Petition") seeking a writ of mandamus and a request for a stay or injunction against the County to prevent it from retroactively enforcing or applying SB 1421 to records regarding conduct occurring before January 1, 2019. In its Petition, SEBA alleged that the County of San Bernardino had stated that the San Bernardino Sheriff's Department would comply with SB 1421 by making the following types of records available by public records request beginning on January 1, 2019: records regarding officer-involved shootings, records regarding officers' use of force resulting in

death or great bodily injury, and sustained findings of sexual assault or dishonesty committed by peace officers. The Petition further alleges that the County has taken the position that it will apply this policy equally to records regarding incidents occurring before and after January 1, 2019.

19. SEBA's Petition contends that officers' privacy rights in information in their personnel files and agency records regarding pre-2019 incidents outweighs the public's interest in the disclosure of such information. SEBA further contends that SB 1421 is not retroactive and that information pertaining to pre-2019 incidents and conduct must remain confidential and may not be disclosed under the CPRA.

20. Intervenors have strong and direct interests in intervening in this proceeding to prevent SEBA from obtaining the relief it seeks, and to ensure that the County and other government agencies appropriately enforce and comply with SB 1421. FAC is a nonprofit public benefit corporation dedicated to advancing the public's right to participate in government and access information regarding the conduct of the people's business. The public has a particularly strong interest in accessing public records concerning serious misconduct and uses of force by law enforcement officers, and FAC is interested in promoting laws and policies that increase public access to such information.

21. FAC was active in supporting SB 1421. On April 9, 2018, FAC sent an open letter to Senator Nancy Skinner, the bill's author,

expressing its strong support of SB 1421. That same day, FAC posted the letter on its website, urging others to also support of the bill. FAC is listed in the official legislative analyses among the organizations that publicly supported SB 1421. FAC's support of SB 1421 reflects its mission to advance transparency and accountability of government and government employees, including law enforcement officers, and to prevent government secrecy and censorship.

22. CNPA was a co-sponsor of SB 1421 from its inception. CNPA's arguments in support of SB 1421 are expressly referenced and quoted in the legislative history of the bill. SB 1421 provides public access to information vital to the mission of CNPA's members in providing information that is, as the Court has recognized, necessary to inform the public on matters intense and legitimate public concern.

23. As a nonprofit public benefit corporation dedicated to the dissemination and publication of information and news in the public's interest, KQED has a strong interest in obtaining access to the information and records addressed under SB 1421 regarding serious police misconduct and use of deadly force by peace officers. KQED has a direct interest in ensuring its access to these records so that it can publicly report on these matters of public interest.

24. LAT, as a major news organization in California, also has a direct interest in ensuring public access to the information and reports

address by SB 1421, so that it may report on matters of public interest in San Bernardino and throughout the State of California regarding police misconduct and use of deadly force.

THE INTERVENORS' RIGHT TO INTERVENE

25. Intervenors incorporate by reference paragraphs 1 through 24 above.

26. Intervenors should be permitted to intervene, pursuant to Code of Civil Procedure section 387, subdivision (d), because they have direct and significant interests in this action, their inclusion will not enlarge the scope of this lawsuit, their need to intervene outweighs the current parties' right to litigate on their own terms, and they have made timely application to intervene.

27. Intervenors have an interest ensuring that government agencies faithfully enforce SB 1421 by making all public records described in SB 1421 available for review by the public through the CPRA. One of FAC's missions is advancing the public's right to participate in government and access information regarding the conduct of the people's business, including information regarding serious misconduct and uses of force by law enforcement officers. FAC also has a particular interest in ensuring that government agencies enforce and comply with SB 1421 because FAC actively supported SB 1421 when the bill was in the California Legislature. As a co-sponsor of SB 1421 and as the principal association serving

newspapers throughout the State of California, CNPA has a direct interest in ensuring appropriate and meaningful application and enforcement of SB 1421.

28. KQED and LAT have an interest in ensuring their ability to fully and accurately report on matters of public interest and concern throughout California by having access to the information and reports that SB 1421 addresses. KQED and LAT both have a demonstrated interest in SB 1421 given their involvement in several cases involving the public's right to access information regarding police misconduct and use of deadly force.

SEBA'S PETITION AND REQUEST FOR A STAY SHOULD BE DENIED BECAUSE SB 1421 CAN AND WAS INTENDED TO APPLY RETROACTIVELY

29. Intervenors incorporate by reference paragraphs 1 through 28 above.

30. SEBA contends that SB 1421 cannot and should not apply retroactively to records and conduct pre-dating January 1, 2019 because it alleges that peace officers hold a vested right to privacy and confidentiality in this information. SB 1421, however, does not affect any vested rights because peace officers have never had a right to maintain the confidentiality of the information regarding use of force or serious misconduct or contained in personnel files. Rather than creating an unconditional right of privacy or confidentiality to this information, Penal Code sections 832.7

and 832.8, which SB 1421 amends, have merely provided procedural protections governing the disclosure of personnel records. Such information has always been subject to disclosure in criminal and civil litigation by way of Evidence Code sections 1043 and 1045. SB 1421's amendments to Penal Code sections 832.7 and 832.8 simply expand procedures that can be utilized to obtain and disclose certain categories of information by allowing disclosure through CPRA requests in addition to litigation discovery requests and orders.

31. In addition, the Legislature intended SB 1421 to apply broadly to records and files regarding peace officer conduct regardless of when the conduct occurred or when the records were created. First, the Legislature did not impose any temporal restrictions to the records to which SB 1421 applies despite its understanding, as shown in the legislative history, that the CPRA defines records broadly as either subject to access or exempt from disclosure. Second, the legislative history shows that the Legislature recognized from the outset that SB 1421 was retroactive in nature and passed it with that understanding. Third, the Legislature passed SB 1421 in the context of public debate regarding access to information on police misconduct and use of force, and the legislative history specifically refers to incidents in which members of the public were thwarted from obtaining meaningful information regarding past incidents and investigations of use of force by police—information that would not be

available if the Legislation is not retroactive in application. Finally, the SB 1421 is remedial in nature, as it responds to and addresses prior restrictions on public scrutiny of the use of force and misconduct by law enforcement officials. Remedial statutes must be construed liberally to further their purpose, and the purpose of SB 1421 would be substantially eroded if it applied only to conduct occurring after its effective date.

32. Preventing the retroactive applicability of the SB 1421 would undermine its purpose and the public's right to know all about serious police misconduct, officer-involved shootings, and other serious uses of force by police, in contravention of the plain intent of the Legislature. Thus, SEBA's Petition is without merit and should be denied.

THE COURT SHOULD REQUIRE THE PRESERVATION OF ALL RECORDS THAT ARE OR MAY BE SUBJECT TO DISCLOSURE UNDER SB 1421

33. Intervenors incorporate by reference paragraphs 1 through 32 above.

34. If the Court does not deny SEBA's Petition or grants any of the relief sought by SEBA, the Court should also issue an immediate order enjoining public agencies from destroying records containing information that is or may be subject to disclosure under SB 1421, in order to maintain the status quo until a final determination on the matters addressed in SEBA's Petition and this Complaint in Intervention. The City of Inglewood's police department, and potentially other government agencies

in California, have already begun destroying records containing information the Intervenors believe is subject to disclosure under SB 1421. Agencies may use the time during the pendency of these proceedings to destroy records that are or may be subject to disclosure under SB 1421. To preserve the status quo, Intervenors request that this Court issue an order preventing public agencies from destroying records containing information that is or may be subject to disclosure under the CPRA and SB 1421.

FIRST CAUSE OF ACTION
(Declaratory Relief, Against Petitioner)

35. Intervenors incorporate by reference paragraphs 1 through 34 above.

36. An actual controversy has arisen and now exists relating to the rights and the duties of the parties in that the SEBA contends that SB 1421 is not retroactive and that pre-2019 records in peace officer personnel files and agency records relating to officer-involved shootings, use of force by a peace officer resulting in death or great bodily harm, and sustained findings of sexual assault or dishonesty committed by a peace officer must remain confidential and may not be disclosed pursuant to the CPRA. Intervenors dispute this contention. Intervenors contend that SB 1421 is retroactive in application and that government agencies must make available under the CPRA all pre-2019 records in peace officer personnel files and agency records relating to officer-involved shootings,

use of force by a peace officer resulting in death or great bodily harm, and sustained findings of sexual assault or dishonesty committed by a peace officer.

37. Intervenors seek a judicial determination of their rights and a declaration that SB 1421 is retroactive in its application to information contained in files prior to January 1, 2019 and that government agencies must make available under the CPRA all pre-2019 records in peace officer personnel files and agency records relating to officer-involved shootings, use of force by a peace officer resulting in death or great bodily harm, and sustained findings of sexual assault or dishonesty committed by a peace officer.

38. A judicial declaration is necessary and appropriate at this time to ensure that the County, and other government agencies, comply with the requirements of SB 1421 when it takes effect on January 1, 2019.

SECOND CAUSE OF ACTION
(Injunctive Relief, Against Petitioner)

39. Intervenors incorporate by reference paragraphs 1 through 38 above.

40. If SEBA's request for a stay and injunction is granted, Intervenors and the public will suffer irreparable injury in that they will be prevented from accessing important information relating to police misconduct and use of force, which the California Legislature has

determined must be made available for public disclosure under the CPRA. Intervenors therefore seek to enjoin SEBA from blocking public access to information contained in peace officer personnel files and agency records, as defined in SB 1421.

41. Intervenors have no adequate or speedy remedy at law, as monetary damages are not the primarily relief sought or necessary to secure their rights and the rights of the public, and it will would be impossible for them to determine the nature and amount of damages that would result from the denial of the public right to access information in the records described in SB 1421.

THIRD CAUSE OF ACTION
(Writ of Mandate or Injunctive Relief As to Respondent and Third Party Public Agencies)

42. Intervenors incorporate by reference paragraphs 1 through 41 above.

43. If the Court does not deny the Petition or grants any of the relief sought by Petitioner, public agencies may take advantage of any time necessary for this Court to decide the application of SB 1421 to destroy records containing information that is or may be subject to disclosure under the bill. If that occurs, Intervenors and the public will suffer irreparable harm in that they will be permanently prevented from obtaining important information relating to police misconduct and use of force, which the Legislature has determined must be made available for public disclosure

under the CPRA. Therefore, if the Petition is not denied or if any relief is granted to Petitioner, Respondent and other public agencies should be prevented from destroying records containing information that is or may be subject to disclosure under SB 1421 pending the final resolution of this action.

44. Intervenors have no adequate or speedy remedy at law, as monetary damages are not the primarily relief sought or necessary to secure their rights and the rights of the public, and it will would be impossible for them to determine the nature and amount of damages that would result from the denial of the public right to access information in the records described in SB 1421.

RELIEF SOUGHT

WHEREFORE, FAC prays for judgment as follows:

1. For an Order GRANTING Intervenors' Motion for Leave to Intervene;

2. For an Order DENYING SEBA's Petition and Request for a Stay;

3. For two declarations: (1) that SB 1421 is retroactive and that government agencies must make available under the CPRA all pre-2019 records in peace officer personnel files and agency records relating to officer-involved shootings, use of force by a peace officer resulting in death or great bodily harm, and sustained findings of sexual assault or dishonesty

committed by a peace officer and (2) that government agencies in California must preserve all records covered by SB 1421;

4. For injunctive relief (1) restraining and enjoining SEBA from blocking public access to information contained in peace officer personnel files and agency records, as described in SB 1421 and (2) directing government agencies in California to preserve all records covered by SB 1421;

5. For costs and attorneys' fees as permitted by Code of Civil Procedure, section 1021.5 or as otherwise provided for by law; and

6. For such other relief as the Court deems just.

December 28, 2018

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
Including Professional Corporations

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December 28, 2018

FIRST AMENDMENT COALITION

By _____
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December 28, 2018 LOS ANGELES TIMES COMMUNICATIONS LLC

By 

JEFF GLASSER
Attorney for Petitioner Los Angeles Times Communications LLC

Exhibit B

S253115

In the Supreme Court of the State of California

SAN BERNARDINO COUNTY SHERIFF'S EMPLOYEES' BENEFIT ASSOCIATION
Petitioner,

v.

COUNTY OF SAN BERNARDINO
Respondent.

PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDAMUS OR OTHER EXTRAORDINARY RELIEF

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Proposed Intervenors First Amendment Coalition ("FAC"), Los Angeles Times Communications LLC ("LAT"), KQED Inc. ("KQED"), and California News Publishers Association ("CNPA," and together with FAC, LAT, and KQED the "Intervenors") submit the following preliminary opposition to the Verified Petition for Writ of Mandamus and Request for Stay (the "Petition") of Petitioner San Bernardino County Sheriff's Employees' Benefit Association ("Petitioner" or "SEBA"):

INTRODUCTION

State Senator Nancy Skinner introduced SB 1421 less than two weeks after Sacramento police shot and killed an unarmed man, Stephon Clark.[1] Protests engulfed Sacramento after an independent autopsy revealed Clark had been shot eight times, including seven times in the back. As critics pointed out that California's restrictive laws would keep the disciplinary records of the officers confidential, Senator Skinner stated that SB 1421 would "build trust" between law enforcement and communities by opening up key records reflecting police misconduct and discipline to the public. It was thus in the context of providing the public with access to

[1] See Liam Dillon, *Lawmakers again take aim at Callifornia's tight lid on police shooting investigations*, L.A. TIMES, Mar. 30, 2018, https://www.latimes.com/politics/la-pol-ca-new-police-transparency-legislation-20180330-story.html; Melody Gutierrez, *Stephon Clark killing prompts bid to open police disciplinary records*, S.F. CHRON., Apr. 9, 2018, https://www.sfchronicle.com/politics/article/Stephon-Clark-killing-prompts-bid-to-open-police-12816652.php.

records about past incidents that Sen. Skinner introduced SB 1421. And yet, the San Bernardino County Sheriff's Employees' Benefits Association ("Petitioner") has filed a petition seeking to have this Court declare that the records from the Clark incident – and all other records generated before SB 1421's enactment – remain off limits to the public. Granting such a petition would frustrate the intent of the law, which aims to promote government accountability and restore the public's faith in the legitimacy of law enforcement by increasing public access to records of serious police misconduct, officer-involved shootings, and other serious uses of force.

Petitioner's claim that SB 1421 cannot apply retroactively fails for two main reasons. First, SB 1421 does not implicate vested rights of peace officers. Contrary to Petitioner's argument, information from peace officer personnel records has never been subject to absolute confidentiality, but rather has always been subject to disclosure pursuant to the procedures specified in Evidence Code section 1042. SB 1421 therefore can and should be applied retroactively. Second, the legislative history of the bill makes clear the California Legislature's understanding and intent that SB 1421 would apply retroactively. Therefore, SB 1421 could and should be applied retroactively even if it did implicate vested rights. The Petition and the relief it seeks should be denied.

FACTUAL BACKGROUND

The Enactment of SB 1421

In recognition of the public's need for information about serious police misconduct, officer-involved shootings, and other uses of force by law enforcement officers, the California Legislature passed and Governor Jerry Brown signed into law SB 1421, which becomes effective January 1, 2019. (Complaint in Intervention, Ex. A, ¶¶ 1, 14.) The new law makes certain categories of information subject to public disclosure through the California Public Records Act (the "CPRA"), specifically the following:

> (1) Incidents involving the discharge of a firearm at a person by a peace officer;
>
> (2) Incidents involving the use of force by a peace officer against a person, resulting in death or great bodily injury;
>
> (3) Incidents in which a sustained finding was made by a law enforcement agency or oversight agency that a peace officer or custodial officer engaged in the sexual assault of a member of the public; and
>
> (4) Incidents in which a sustained finding was made by a law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, and the destruction, falsifying, or concealing of evidence.

(*Ibid.*; See Pen. Code § 832.7, subd (b) [as amended].) For many years prior to the enactment of SB 1421, such information was available only through discovery in civil or criminal litigation, pursuant to a motion made in accordance with Penal Code section 1043. (Ex. A, ¶ 2.)

The declaration of intent in SB 1421 reflects the Legislature's findings that the public has a particularly strong interest in disclosure of records concerning police misconduct and officer-involved shootings:

> (a) Peace officers help to provide one of our state's most fundamental government services. To empower peace officers to fulfill their mission, the people of California vest them with extraordinary authority — the powers to detain, search, arrest, and use deadly force. Our society depends on peace officers' faithful exercise of that authority. Misuse of that authority can lead to grave constitutional violations, harms to liberty and the inherent sanctity of human life, as well as significant public unrest.
>
> (b) The public has a right to know all about serious police misconduct, as well as about officer-involved shootings and other serious uses of force. Concealing crucial public safety matters such as officer violations of civilians' rights, or inquiries into deadly use of force incidents, undercuts the public's faith in the legitimacy of law enforcement, makes it harder for tens of thousands of hardworking peace officers to do their jobs, and endangers public safety.

(Ex. A, ¶ 15; SB 1421, § 1.)

SB 1421 was passed on August 31, 2018, signed by Governor Brown on September 30, 2018, and enacted as Chapter 988 of the 2017-

2018 Regular Session. It amends Penal Code sections 832.7 and 832.8, and becomes effective January 1, 2019. (Ex. A, ¶ 17.)

SEBA's Petition

On December 18, 2018, more than two and a half months after SB1421 was enacted but just two weeks before the bill was scheduled to go into effect, SEBA filed this Petition contending that SB 1421 is prospective only, and that it does not apply to records regarding conduct occurring before January 1, 2019. (Ex. A, ¶¶ 3, 18.) Accordingly, Petitioner sought a writ of mandamus directing Respondent County of San Bernardino ("Respondent" or the "County") to refrain from "retroactively" enforcing SB 1421 by releasing any pre-2019 records that would otherwise be subject to public disclosure under the CPRA. (*Ibid.*) Petitioner also asked the Court to issue an alternative writ of mandate and an immediate order staying or enjoining any retroactive enforcement of SB 1421 by Respondent and by any other public agency that employs peace officers (as defined in Penal Code section 830.1) during the pendency of these proceedings. (*Ibid.*)

The Intervenors

Intervenors each have a strong interest in accessing government records concerning serious misconduct and uses of force by law enforcement officers, and in promoting laws and policies that increase public access to such information. (Ex.A, ¶ 5.)

FAC is a nonprofit public benefit corporation dedicated to advancing the public's right to participate in government and access information regarding the conduct of the people's business. The public has a particularly strong interest in accessing government records concerning serious misconduct by law enforcement officers, and FAC is interested in promoting laws and policies that increase public access to such information. (Ex.A, ¶ 7.)

FAC was active in supporting SB 1421. On April 9, 2018, FAC sent an open letter to Senator Nancy Skinner, the bill's author, expressing its strong support of SB 1421. That same day, FAC posted the letter on its website, urging others to also support of the bill. FAC is listed in the official legislative analyses among the organizations that publicly supported SB 1421. FAC's support of SB 1421 reflects its mission to advance transparency and accountability of government and government employees, including law enforcement officers, and to prevent government secrecy and censorship. (Ex.A, ¶ 21.)

Los Angeles Times Communications LLC ("LAT") is the largest daily newspaper based in California. LAT's popular news and information website, www.latimes.com, attracts a national audience. LAT regularly joins litigation defending the public's rights of access to government records and meetings. Before this Court, LAT vindicated the public's rights of access to the names of police officers (*Commission on Peace*

Officer Standards & Training v. Superior Court (2007) 42 Cal.4th 278 *(POST)*) and the names of most officers involved in shootings in California (*Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59 *(LBPOA)*). In recent years, LAT also ensured public access to a consultant's report on the shooting by Pasadena police of an unarmed teenager (*Pasadena Police Officers Association v. City of Pasadena* (2015) 240 Cal.App.4th 268) and the names of officers who pepper sprayed student protesters at the University of California, Davis (*Federated University Police Officers Assoc. v. Superior Court* (2013) 218 Cal.App.4th 18). As part of these cases, this Court has recognized that the "public's interest in the qualifications and conduct of peace officers is substantial" (*POST*, *supra*, 42 Cal.4th at p. 297-299) and that "officers hold one of the most powerful positions in our society; our dependence on them is high and the potential for abuse of power is far from insignificant" (*LBPOA*, *supra*, 59 Cal.4th at pp. 73-74) (internal citation omitted)). Because LAT reports on San Bernardino County and maintains a strong interest in inspecting records concerning misconduct of San Bernardino peace officers, LAT has a concrete interest in ensuring public access to all disclosable San Bernardino disciplinary records, including those created before the law's enactment. (Ex.A, ¶ 10.)

KQED Inc. is a nonprofit public benefit corporation organized under the laws of California and engaged in dissemination of news and

information since its founding as a public broadcasting station in 1953. At all times relevant to the Complaint in Intervention, KQED's core mission has been the pursuit and publication/broadcast of information in the public's interest. KQED has advanced this purpose not only through its consistent San Francisco Bay Area- and statewide news reporting, which relies heavily on the use of the California Public Records Act, but also as a champion of public access to some of the most serious information maintained by government: law enforcement use of deadly force, police misconduct and the broader operations of our state's criminal justice system. (See, e.g., *Houchins, Sheriff of the County of Alameda, California v. KQED Inc., et al.* (1978) 438 U.S. 1.) KQED is beneficially interested in ensuring that public agencies throughout the state faithfully comply with their legal duties to disclose information that SB 1421 addresses—records concerning serious misconduct and/or use of deadly force by law enforcement officers—under the new law as well as under Section 3, Article I of the California Constitution and California common law. (Ex.A, ¶ 9.)

CNPA is a California industry trade association serving the common interests of its news media members and promoting the general welfare of the California newspaper and news media industry. CNPA has more than 500 daily, weekly and campus newspaper members. Founded in 1888, the California News Publishers Association has served and promoted protected

the interests of the news media throughout the state, and the public interest in ensuring access to information and public accountability, for 130 years. CNPA was a co-sponsor of SB 1421, and its arguments in support of the bill are quoted in the legislative history. SB 1421 provides public access to information vital to the mission of CNPA's members in providing information that is, as the Court has recognized, necessary to inform the public on matters intense and legitimate public concern. (Ex.A, ¶ 8.)

THE PETITION IS WITHOUT MERIT AND SHOULD BE DENIED

I. SB 1421 DOES NOT IMPLICATE VESTED RIGHTS AND THEREFORE CAN AND SHOULD BE APPLIED RETROACTIVELY

Under California law, courts distinguish between laws that are "retroactive or retrospective" and laws that are "prospective." (See, e.g. *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 839-840 (*Myers*); *Quarry v. Doe I* (2012) 53 Cal.4th 945, 955-956 (*Quarry*).) Laws that are deemed "prospective" in nature will be applied both prospectively and retrospectively, even if they involve events or circumstances that occurred before the enactment of the law. (See, e.g., *Quarry*, *supra*, 53 Cal.4th at p. 956 ["Changes to the law, however, are not necessarily considered retroactive even if their application 'involve[s] the evaluation of civil or criminal conduct occurring before enactment.'"]. Accord *Elsner v. Uveges* (2004) 34 Cal.4th 915, 936; *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 230-231.) If a law is found to be

"retrospective" in nature, it will be applied to events or conduct occurring prior to its enactment only if (1) there is clear legislative intent that the law be so applied, and (2) applying it retroactively will not violate constitutional rights. (See *Quarry*, *supra*, 53 Cal.4th at p. 955; *Strauss v. Horton* (2009) 46 Cal.4th 364, 473; *In re Marriage of Buol* (1985) 39 Cal.3d 751, 756.)

"[A] retroactive or retrospective law 'is one which affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute.'" (*Myers*, *supra*, 28 Cal.4th at p. 839, quoting *Aetna Cas. & Surety Co. v. Ind. Acc. Com.* (1947) 30 Cal.2d 388, 391. Accord, *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1206 (*Evangelatos*)) "In general, a law has a retroactive effect when it functions to 'change[] the legal consequences of past conduct by imposing new or different liabilities based upon such conduct,' that is, when it 'substantially affect[s] existing rights and obligations.' (*Quarry*, *supra*, 53 Cal.4th at p. 956, quoting *Mervyn's*, 39 Cal.4th at p. 231.) In other words, as this Court has explained, a law is retroactive if it "takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past . . . ." (*Strauss*, *supra*, 46 Cal.4th at pp. 471-472.)

Petitioner asserts that SB 1421 cannot be applied retroactively (in the absence of evidence that the Legislature intended it to be applied in that fashion) because doing so would "affect[] rights… which exist[ed] prior to the adoption of the statute" in that it "would violate the right to privacy of . . . information already acquired under existing law." (Petition, p. 36.) This assertion is based on the premise that "[p]rior to the effective operation of SB 1421's amendments, peace officers were afforded the right to confidentiality in all of their personnel file information . . . ." (Petition, p. 35.)

But peace officers have never had the right of privacy Petitioner describes. They have never had a "right to confidentiality in all of their personnel file information," or indeed to any of that information. Rather, under Penal Code sections 832.7 and 832.8 and Evidence Code sections 1043 and 1045, peace officers have been provided with *procedural* protections governing the disclosure of personnel records. Such information has always been subject to disclosure in criminal or civil litigation, subject to the procedural requirements imposed by Evidence Code sections 1043 and 1045. (Pen. Code § 832.7, subd. (f) ("Nothing in this section shall affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code."]; Evid. Code § 1043 [providing for discovery of "peace or custodial officer personnel records or records" upon notice and a

motion complying with the requirements of the statute].) Thus, contrary to Petitioner's contention, neither peace officer personnel records nor information obtained therefrom have ever been sacrosanct under either California constitutional or statutory law. None of the decisions cited by Petitioner holds to the contrary.

Thus, SB 1421 does not affect the vested rights of peace officers. (See *Strauss, supra*, 46 Cal.4th at pp. 471-472.) It does not take away a right peace officers previously enjoyed, because information governed by Penal Code sections 832.7 and 832.8 has always been subject to disclosure. SB 1421 merely changes the procedure by which certain categories of this information can be obtained, providing for disclosure not only pursuant to a discovery motion in litigation, but also in response to a request by a member of the public pursuant to the California Public Records Act (the "CPRA"). (Pen. Code § 832.7, subd. (b) [as amended]; Petition, Exhibit A.)

While it does not appear that any published California authority addresses the retrospective or prospective nature of statutory amendments affecting the disclosure of records under the CPRA, cases that have addressed statutory revisions to the required disclosure of sensitive information have held that they are applicable to pre-existing records. Thus, for example, amendments to Welfare and Institutions Code section 6603, providing for the disclosure of communications to mental health professionals by prisoners being evaluated for potential commitment as

sexually violent predators, were properly applied to records of such communications created prior to the effective date of the legislation that enacted the amendments. (See *People v. Superior Court* (2018) 2018 Cal. LEXIS 9501, at *10-12, 2018 WL 6564828; *People v. McClinton* (2018) 2018 Cal. App. LEXIS 1100, at *11-12, 2018 WL 6259227.) Similarly, a statutory enactment providing for expungement of records relating to the prosecution of certain persons found to be innocent was held to be retroactively applicable. (*People v. White* (1978) 77 Cal.App.3d Supp. 17, 21-22.)[2]

Therefore, there is no need to examine the legislative history of SB 1421 to find that it can and should be applied retroactively. For this reason alone, the Petition is without merit and should be denied. However, to the extent the Court deems it necessary to consider evidence of the Legislature's intent in enacting SB 1421, that evidence demonstrates that the Legislature understood and intended that the amendments would be applied retroactively.

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[2] Furthermore, as discussed in greater detail below, SB 1421 is a remedial statute. Such statutes are to be construed to achieve their remedial purpose. (See, e.g., *Continental Cas. Co. v. Phoenix Constr. Co*. (1956) 46 Cal.2d 423, 434-35 (*Continental Cas. Co.*))

II. THE LEGISLATIVE HISTORY OF SB 1421 PROVIDES UNMISTAKABLE EVIDENCE OF THE LEGISLATURE'S UNDERSTANDING AND INTENT THAT IT WOULD APPLY RETROACTIVELY

"[A] statute that interferes with antecedent rights will not operate retroactively unless such retroactivity be 'the unequivocal and inflexible import of the terms, and the manifest intention of the legislature.'" [Thus,] 'a statute may be applied retroactively only if it contains express language of retroactivity *or* if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application." (*McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 475 [internal quotations and citations omitted, emphasis original].). This Court has counseled that "[a]lthough we usually presume that new statutes are intended to operate prospectively, that presumption 'is not a straitjacket.'" (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 301, *citing In re Estrada*, 63 Cal.2d 740, 746 (1965) ("Where the Legislature has not set forth in so many words what it intended, the rule of construction should not be followed blindly in complete disregard of factors that may give a clue to the legislative intent.").

First, SB 1421 must be read, understood, and interpreted in the context of the language of the statute and its apparent purpose. (See, e.g., *People v. Valencia* (2017) 3 Cal.5th 347, 357 ["[T]he words of the statute must be construed in context, keeping in mind the statutory

purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible."]; *Evangelatos*, supra, 44 Cal.3d at p. 1210 ["[T]he legislative history or the context of the enactment provided a sufficiently clear indication that the Legislature intended the statute to operate retrospectively that we found it appropriate to accord the statute a retroactive application."].) In essence, SB 1421 provides that certain records of police misconduct are subject to disclosure under the California Public Records Act. Under the CPRA, public records are defined broadly, and they are either subject to access or exempt from disclosure, under the express provisions of the CPRA itself. (Gov. Code §§ 6252, 6254, 6255.) There is no temporal component or limitation on the definition of public records. (See Gov. Code § 6252.) The Legislature enacted SB 1421 in the context of this existing statutory framework. This alone demonstrates that SB 1421 was intended to apply to all records, not just records related to conduct occurring after it takes effect. That the Legislature recognized that the law would apply to all responsive records in possession of the public agency is shown by the legislative history. (Assem. Comm. on Public Safety, July 26, 2018, pp. 4-5; Declaration of Timothy K. Talbot in Support of Petition for Writ of Mandamus or Other Extraordinary Relief ("Talbot Decl."), Ex. E.)

In addition, the Legislature was aware from the outset that SB1421 would be retroactive. This understanding is expressed in the summary of the argument in opposition to the legislation in the original committee report on the bill: "Moreover, our reading of Senate Bill 1421 is that making the records of an officer's lawful and in policy conduct is retroactive in its impact." (Sen. Comm. on Public Safety, April 17, 2018, p. 16, quoting the position of the Los Angeles County Professional Peace Officer Association; Talbot Decl, Ex. A.) By enacting SB 1421 without restricting its application to future conduct, the Legislature therefore manifestly expressed its intent that the legislation would have retroactive application.

Furthermore, SB 1421 was enacted in the context of a pitched public debate about the inability of the public generally and the families of those involved in incidents regarding the use of force, in particular, to obtain any meaningful information about such incidents or their investigation by law enforcement agencies. (See, e.g., Liam Dillon, *Lawmakers again take aim at California's tight lid on police shooting investigations*, L.A. TIMES (Mar. 30, 2018), http://www.latimes.com/politics/la-pol-ca-new-police-transparency-legislation-20180330-story.html; Liam Dillon, *Here's how California became the most secretive state on police misconduct,* L.A. TIMES (Aug. 15, 2018), http://www.latimes.com/politics/la-me-california-police-discipline-secret-20180815-story.html; *Want more reasons for*

police reform in California? How about 172 civilian deaths, SACRAMENTO BEE (July 12, 2018), https://www.sacbee.com/opinion/editorials/article214773010.html.) Such incidents are specifically referred to in the legislative history as providing an impetus for the legislation. (Assem. Comm. on Public Safety, July 26, 2018, p. 8; Talbot Decl., Ex. E.) Petitioner's interpretation would mean that no information about these incidents would ever become public, in obvious contradiction of the intent of the Legislature.

Finally, SB 1421 is a remedial statute, designed to respond to the restrictions on public scrutiny of law enforcement records and underlying use of force and serious, confirmed misconduct by law enforcement officials resulting from the Supreme Court's decision in *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272. (Sen. Comm. on Public Safety, April 17, 2018, pp. 10-13; Assem. Comm. on Public Safety, July 26, 2018, pp. 5-7.) Such enactments must be construed in a manner that forwards rather than retards their purpose. (See, e.g., *Continental Cas. Co.*, *supra*, 46 Cal.2d at pp. 434-435 ["The rule of law in the construction of remedial statutes requires great liberality, and wherever the meaning is doubtful, it must be so construed as to extend the remedy."]; *People v. White*, *supra*, 77 Cal.App.3d Supp. at pp. 20-21 ["A remedial statute of this type should be liberally construed to promote the underlying public policy. If the meaning is doubtful, the statute must be construed as to extend the remedy."];

Hooper v. Deukmejian (1981) 122 Cal.App.3d 987, 1003.) The remedial nature of a statute is not sufficient in and of itself to support retroactive application. (*Di Genova v. State Board of Education* (1962) 57 Cal.2d 167, 174.) However, it provides additional support for the conclusion that SB 1421 can and should be applied retroactively. (See, e.g., *Nelson v. Flintkote Co*. (1985) 172 Cal.App.3d 727, 732.)

The fundamental purpose of SB1421 is to "promote public scrutiny of, and accountability for, law enforcement." (Assem. Comm. on Public Safety, July 26, 2018, p. 7.) It promotes this purpose both by allowing access to information about particular law enforcement officials (Pen. Code § 832.7, subd. (b) [as amended]), and by ensuring that the public can monitor how law enforcement agencies are addressing misconduct by their employees (Sen. Comm. on Public Safety, April 17, 2018, pp. 14, 15-16; Talbot Decl., Ex. A). By denying access to records of past misconduct that would be essential for these purposes, Petitioner's interpretation would defeat or severely constrain the purpose of the legislation, by preventing disclosure of the information necessary to determine whether particular officials have a pattern or practice of misconduct, and whether the agencies that employ them are permitting such patterns to continue.

In sum, to the extent consideration of legislative intent is required, it manifests an unmistakable understanding and intent that SB 1421 would be

applied retroactively. Therefore, the Petition should be denied for this reason as well.

III. IF THE COURT DOES NOT DENY THE PETITION OUTRIGHT, IT SHOULD REQUIRE THE PRESERVATION OF ALL RECORDS THAT ARE OR MAY BE SUBJECT TO DISCLOSURE UNDER SB 1421

If the Court does not deny the Petition or grants any of the relief sought by Petitioner, Intervenors request that the Court also issue an immediate order prohibiting the destruction of any records containing information that is or may be subject to disclosure under SB 1421.

Petitioner seeks an immediate order enjoining Respondent and all other similarly-situated public agencies to refrain from publicly releasing records pertaining to specified police misconduct during the pendency of proceedings on whether or SB 1421 is retroactive. (Petition, p. 40.) But release of information is not the only potential threat to the status quo. There is also a very real danger that agencies will use any additional time to shred old records of investigations into police use of force and findings of dishonesty and sexual assault, rather than be forced to disclose them.

Indeed, at least one police agency has already begun to shred records containing information that Intervenors believe is subject to disclosure under SB 1421. The City of Inglewood, on December 11, 2018, changed its policy requiring retention of records related to police shootings for 25

years, authorizing the destruction of police records dating from 1991 to as recent as December 31, 2016. (See Police Department Report re Resolution Authorizing Destruction of Specific Internal Affairs Records, City of Inglewood, Dec. 11, 2018, available at https://www.cityofinglewood.org/AgendaCenter/ViewFile/Item/5743?fileID=3091; Howard Blume, *Inglewood mayor defends destruction of police records as routine; activists continue to voice concerns*, L.A. TIMES (Dec. 23, 2018), https://www.latimes.com/local/lanow/la-me-ln-inglewood-protest-20181223-story.html.) Indeed, the statute modified by SB 1421 was itself part of a bill originally intended in part to address law enforcement agencies' destruction of records. (See *City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 96 (Panelli, J., dissenting) [noting legislative history of SB 1436, which enacted Penal Cade 832.7, had observed that "This bill is an attempt to cope with alleged law enforcement reaction (of shredding records to prevent discovery) to the California Supreme Court holding in *Pitchess* . . . ."].).

"[T]he legitimate function and purpose of a preliminary injunction is to preserve the status quo until, upon final hearing, the court may grant full relief." (*Tulare Irr. Dist. v. Superior Court of California in and for Tulare County* (1925) 197 Cal. 649, 671; see also *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528 ["The general purpose of such an [preliminary] injunction is the preservation of the status quo until a final determination of

the merits of the action."].). Status quo is defined as "the last actual peaceable, uncontested status which preceded the pending controversy." (*United Railroads of San Francisco v. Superior Court in and for City and County of San Francisco* (1916) 172 Cal. 80, 87; see also *Voorhies v. Greene* (1983) 139 Cal.App.3d 989, 995 ["Status quo" has been defined to mean 'the last actual peaceable, uncontested status which preceded the pending controversy.'"].)

If this Court does not deny the Petition, or if it grants any preliminary relief pending a final determination of the merits in this case, prohibiting application of SB 1421 to records created before January 1, 2019, it should also prohibit those agencies from destroying any documents that might fall within the categories made public by SB 1421 until this Court has determined the merits of this writ and those agencies have been able to respond to public records requests received in the meantime.

CONCLUSION

The Petition is without merit, and the sweeping relief it seeks is unwarranted. Retroactive application of SB 1421 does not affect any vested rights, and is consistent with the legislative intent and the purpose of SB 1421. The Petition should be denied.

December 28, 2018 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
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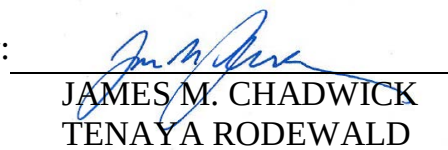
By: 
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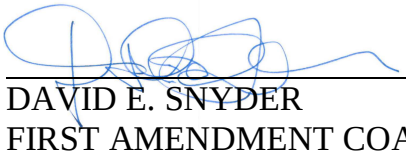
By 
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