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July 14, 2015

The Honorable Chief Justice Tani Cantil-Sakauye and  
the Honorable Associate Justices of the California Supreme Court  
350 McAllister Street  
San Francisco, CA. 94102

**Re: American Civil Liberties Union Foundation of Southern California v. Superior Court (County Of Los Angeles) (County of Los Angeles, the Los Angeles County Sheriff's Department, the City Of Los Angeles, and the Los Angeles Police Department, Real Parties In Interest.) S227106**

Dear Chief Justice Cantil-Sakauye and Associate Justices:

This letter is submitted on behalf of *Amici* Sacramento Valley Mirror, Lake County News, People's Vanguard of Davis, Woodland Record, Rio Dell Times, Ferndale Enterprise, LION Publishing Group and Michael Robertson. For the reasons set forth below, *Amici* respectfully urge the Court to grant review on the grounds that review is necessary to settle an important question of law.

## **I. Interest of *Amici Curiae*:**

*Amicus* Sacramento Valley Mirror, Lake County News, Ferndale Enterprise, People's Vanguard of Davis, Woodland Record, and Rio Dell Times are all small newspapers or Internet news media outlets that regularly depends on the California Public Records Act (CPRA) to conduct investigative journalism in order to further the public interest in examining and monitoring concerns regarding law enforcement.

*Amicus* LION Publishing Group is a nonprofit national educational group, whose members include a number of California publishers of local websites featuring public interest journalism. LION was founded to uphold high professional standards in local news reporting, and to advance the case for strong local independent online journalism. As such, both LION as an organization and its members have strong interests in maintaining the right

of all citizens, including the news media, to have broad access to records of government actions in order to scrutinize law enforcement activities.

*Amicus* Michael Robertson was the petitioner *Robertson v. the San Diego Regional Planning Agency* (SANDAG), San Diego County Superior Court Case No. Case No. 37-2013-00051297-CU-WM-CTL, wherein Mr. Robertson requested, pursuant to the Public Records Act and the Information Practices Act, access to information personal only to himself collected and maintained by San Diego area law enforcement through automobile license plate scans and maintained by SANDAG. The trial court denied Mr. Robertson's petition by applying the CPRA's "Investigative Information Exemption" to Mr. Robertson's personal information.

Mr. Robertson urges this Court to grant the ACLU's Petition for Review because the Court of Appeal's decision prevents individual citizens from accessing their personal information for the purpose of checking the accuracy of government-held information in order to correct mistakes, if any, that could result in wrongful arrest.

## **II. This Court Should Grant Review Because Court of Appeal's Interpretation of the California Public Records Act Needlessly Authorizes Intrusive Law Enforcement Activities at the Expense of Individual Citizens to Access Their Personal Information.**

### **A. The Court of Appeal's Decision Failed to Resolve Statutory Ambiguity in Favor of Disclosure:**

The California Constitution (Article I, section 3(b)(2)) and the California Public Records Act (Government Code Section 6250) expressly recognize that the public has a fundamental right to access government-held records and information. No party to this action disputes that license plate scanning data, collected and stored by and on behalf of law enforcement, is government-held information, and is therefore presumptively public record.

In *Sierra Club v. Superior Court (Sierra Club)* (2013) 57 Cal. 4<sup>th</sup> 157 this Court analyzed California Constitution, Article I, section 3(b)(2) to create a rule of statutory construction that resolves ambiguities that could be resolved to justify either disclosure or continued secrecy - in favor of disclosure. (*Id.* at 166, 167). If the California Public Records Act does not expressly apply to a given factual situation, then trial and appellate courts are required to resolve that ambiguity in favor of the public's fundamental right to access government-held records and information.

By applying the “Investigative Record Exemption” to the novel facts of this dispute, the Second District Court of Appeal’s decision essentially resolved ambiguities within the CPRA to keep license plate scan data forever secret from the public, thus violating *Sierra Club*’s instruction that requires a different result.

**A. The Public’s Right to Access Information and Law Enforcement Interest are Easily Harmonized.**

Rather than compromise the public’s fundamental right to access government-held information in favor of law enforcement interests, the lower Court of Appeal could have and should have, at the very least, balanced the public’s interest in accessing license plate scan data with law enforcement interests in apprehending criminals.

A mechanism for harmonizing both competing interests can be found in the Information Practices Act (IPA). The IPA recognizes that citizens have an interest in accessing their personal information for the purposes of checking its accuracy.<sup>1</sup> The IPA balances a citizen’s interest in accessing personal information with law enforcement’s interest in enforcing the law.<sup>2</sup>

**CONCLUSION**

There is no indication in the record that Real Parties in Interest engaged with

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<sup>1</sup> Civil Code § 1798.3(a) defines “personal information” as: “...any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual.” License plate scan information is personal information per this definition.

<sup>2</sup> Civil Code §1798.40 states: “This chapter shall not be construed to require an agency to disclose personal information to the individual to whom the information pertains, if the information meets any of the following criteria:

(c) Is contained in any record which could identify an individual and which is compiled at any stage of the process of enforcement of the criminal laws, from the arrest or indictment stage through release from supervision and including the process of extradition or the exercise of executive clemency.”

Petitioners in the interactive process that Government Code § 6253.1 mandates to assist those requesting records to obtain the information they are seeking. Implicit in this process is an attempt to balance an agency's interests with the citizen's interests and – in the case of requests made by individuals for the opportunity to examine their personal information – Section 6253.1's interactive process should be available to allow the IPA's balancing of interests.

However, the Court of Appeal's decision that resolves all ambiguities in favor of automatic secrecy in license plate data obtained via digital scans precludes individuals from utilizing the CPRA to access and examine their government-held personal information in the form of license plate scan data. This cannot be the result the legislature intended or this Court desired when this Court decided *Sierra Club v. Superior Court* (2013) 57 Cal. 4<sup>th</sup> 157.

*Amici* agree with Petitioners that the Court of Appeal's decision stretches the CPRA's Investigative Records Exemption to the point where it violates both the public's right to legitimately examine information necessary to hold law enforcement accountable and to correct abuses of police powers. However, *Amici* urge this Court to grant the petition for review if for no other reason than to protect an individual citizen's right and opportunity to access their own government-held personal information.

Respectfully submitted,

Paul Nicholas Boylan (SBN 140098)  
Counsel for *Amici Curiae*

### **PROOF OF SERVICE**

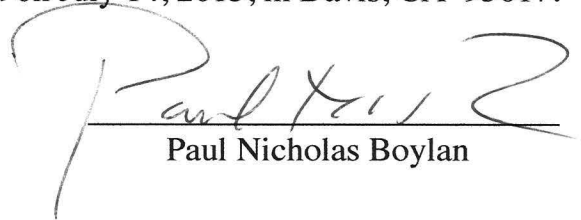
I am over the age of 18 and not a party to the within action. My business address is POB 719 Davis CA 95617. On July 14, 2015, I served via US Mail the foregoing Amicus Letter Supporting Petition for Review on the following interested parties in this action:

Peter Bibring Catherine A. Wagner 1313 West 8th Street Los Angeles, CA 90017	Attorney for Petitioner ACLU FOUNDATION OF SOUTHERN CALIFORNIA
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Jennifer Lynch 815 Eddy Street San Francisco, CA 94109	Attorney for Petitioner ELECTRONIC FRONTIER FOUNDATION
Tomas A. Guterres Collins, Collins, Muir & Stewart LLP 1100 El Centro Street South Pasadena, CA 91030	Attorneys for Real Party in Interest COUNTY OF LOS ANGELES
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and that this proof of service was executed on July 14, 2015, in Davis, CA 95617.



Paul Nicholas Boylan