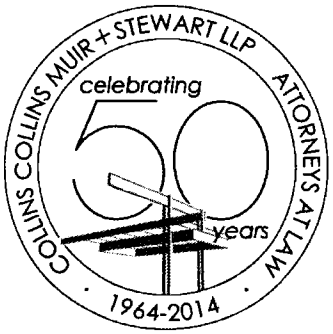

JAMES C. JARDIN
jjardin@ccmslaw.com
Also Admitted in Arizona

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LOS ANGELES COUNTY OFFICE
1100 EL CENTRO STREET
SOUTH PASADENA, CA 91030
(626) 243-1100 | FAX (626) 243-1111

*ORANGE COUNTY OFFICE
750 THE CITY DRIVE
SUITE 400
ORANGE, CA 92868
(714) 823-4100 | FAX (714) 823-4101

SAN DIEGO COUNTY OFFICE
2011 PALOMAR AIRPORT ROAD
SUITE 207
CARLSBAD, CA 92011
(760) 274-2110 | FAX (760) 274-2111

NORTHERN CALIFORNIA OFFICE
1999 HARRISON STREET
SUITE 1700
OAKLAND, CA 94612
(510) 844-5100 | FAX (510) 844-5101

INLAND EMPIRE OFFICE
10681 FOOTHILL BOULEVARD
SUITE 260
RANCHO CUCAMONGA, CA 91730
(909) 581-6100 | FAX (909) 581-6101

WWW.CCMSLAW.COM
*Please respond to this office

VIA OVERNIGHT DELIVERY

April 17, 2017

Chief Justice and Associate Justices of the
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *American Civil Liberties Union Foundation of Southern California, et al., v. Superior Court of Los Angeles County*, Case No. S227106
Our File Number: 18623

Honorable Justices of the Supreme Court of California:

Real Party in Interest County of Los Angeles submits the following reply to Petitioners Electronic Frontier Foundation and American Civil Liberties Union Foundation of Southern California's supplemental brief regarding the application of the catchall exemption under Government Code section 6255.

Introduction

Petitioners offer no evidence that the disclosure of ALPR data will provide any meaningful information that is intrinsic to ALPR data. Instead, they argue that law enforcement's dual concerns for the integrity of police investigations and the privacy considerations of private citizens are outweighed by the public interest in disclosure of the "uses" of ALPR technology. This argument is unsupported by the record, which concerns only Petitioners' request for ALPR data itself. The County and City already have disclosed documents regarding their policies, procedures and use of ALPR technology, and Petitioners did not challenge the relief they obtained at the trial level in that regard. Instead, Petitioners focus on ALPR data itself, which law enforcement agencies are prohibited from disclosing to the public as a matter of law. (Civil Code § 1798.90.55(b).) However, Petitioners identify no unique information to be gleaned from this data once it is suitably redacted, which is not already available from other less intrusive sources that do not implicate the privacy rights of individual citizens. Petitioners cannot meet their burden under the balancing test.

Substantial Evidence Supports the Trial Court's Findings

While the trial court's weighing of the public policy interests for and against disclosure are subject to de novo review, the factual findings and inferences it draws based on substantial evidence are not. Instead, reviewing courts "view the evidence in

the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court." (*Jessup Farms v. Baldwin*(1983) 33 Cal.3d 639, 660 (citations omitted).)Where different inferences may reasonably be drawn from the undisputed evidence, the "fact that it is possible to draw some inference other than that drawn by the trier of fact is of no consequence." (*Jessup Farms, supra,* 33 Cal. 3d at 660.) Deference to the trial court embraces both express and implied factual findings. (*People ex rel. Dept. of Corrections v. Speedee Oil Change Systems, Inc.*(1999)20 Cal.4th 1135, 1143.)

Both parties have submitted admissible evidence regarding the content of ALPR data, which consists of visual and infrared spectrum photographs of license plates, an OCR "plate scan" generated from the infrared photograph, and time, date and location information specifying where and when the record was generated. Real Parties in Interest also provided admissible evidence regarding the manner in which ALPR data is gathered, either from patrol-car mounted units or fixed position cameras, along with the policies and procedures governing their use, including training information. Finally, Petitioners themselves provided admissible evidence that disclosure of ALPR data permits a requesting party to plot law enforcement patrol patterns over time, in literally minute detail. It is beyond dispute that there was substantial evidence supporting the trial court's findings. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal. 3d 1325, 1336.)

Redacted Data Will Provide No More Information than is Currently Available

The undisputed legal and factual record confirms that disclosure of ALPR data itself would subject private citizens to an unwarranted intrusion into their personal location information, while disclosing no more information than may be obtained through other means, such as requests for records regarding the acquisition, purchase and deployment of ALPR technology. Petitioners in fact already requested and received this type of information from the County, as documented in the moving papers they submitted in the trial court. They nowhere argue that the information obtained from these records was inadequate, nor do they cite evidence to support any such inference. Instead, they argue for disclosure of the ALPR data itself without reference to other potential sources of this information, and subject to redactions so extensive that they would entirely frustrate any potential benefit of disclosure. There is no basis to order Real Parties to engage in such a fruitless endeavor.

Petitioners first acknowledge that the underlying photographs need not be produced, and agree that license plate information identifying specific vehicles must be redacted to address privacy concerns. Real Parties agree, but with that admission, Petitioners have conceded that disclosure cannot further a public interest in determining whether any specific individuals are being unduly targeted on the basis of race, national origin or religious freedom. Petitioners' fallback position – that license plate numbers could be assigned random, unique identifiers pursuant to an algorithm – goes far beyond

the effort required even for redaction, and moreover calls for the generation of a record that does not currently exist. It also is unsupported by any evidence establishing how this might be accomplished. There is simply no evidentiary record for the Court to consider in this regard, beyond Petitioners' admission that unredacted disclosure is impermissible.

Petitioners next argue that the County could simply disclose the time, date and location of each plate scan, while separately disclosing how many times any particular license plate had been scanned. Once again, this suggestion calls for the generation of a record that does not currently exist, and is not based on any evidence. However, the bare time, date and location information for each plate scan does nothing more than confirm the communities in which ALPR technology is being deployed, information which can be obtained by requests seeking records regarding the acquisition, purchase and deployment of ALPR technology. Real Parties already have produced such information.

Finally, Petitioners suggest that the public's "unsupported" interest in concealing law enforcement "patrol patterns" can be addressed by redacting the time and date information, leaving instead a "heat map" of all ALPR activity within a given time period. First and foremost, the suggestion that courts are not permitted to draw obvious inferences from undisputed admissible evidence is not well taken. The implications of a data trove confirming the precise location of ALPR units over time would be of obvious utility to criminal elements, and it requires no leap of faith to arrive at that obvious conclusion. More to the point, however, Petitioners once again fail to explain how this

information would be of any greater utility than records disclosing the acquisition, purchase and deployment of ALPR technology.

Conclusion

Once necessary redaction is applied, even within the parameters suggested by Petitioners, it is obvious that the disclosure of ALPR data provides no meaningful information to the public that is not otherwise available, while at the same time setting a dangerous precedent regarding the circumstances under which public agencies may be required to disclose information that the Legislature has determined is confidential, personal information. (Sen. Rules Com., Off. Of Sen. Floor Analysis, final reading analysis of Sen. Bill No. 34 (2015-2016 Reg. Sess.) September 3, 2015, p. 4.) The balancing test under Government Code section 6255 does not support Petitioners' position.

Respectfully submitted,

COLLINS COLLINS MUIR + STEWART LLP

JAMES C. JARDIN

Attorneys for Real Party in Interest
County of Los Angeles

PROOF OF SERVICE
(CCP §§ 1013(a) and 2015.5; FRCP 5)

State of California,)
) ss.
County of Orange .)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 750 The City Drive South, Suite 450, Orange, CA 92868.

On this date, I served the foregoing document described as REPLY TO PETITIONER'S SUPPLEMENTAL LETTER BRIEF – CATCHALL EXEMPTION on the interested parties in this action by placing same in a sealed envelope, addressed as follows:

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Chief Justice and Associate Justices of the
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Executed on April 17, 2017at Orange, California.

☒ **(STATE)** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Patrice Porter

Patrice Porter
pporter@ccmslaw.com

SERVICE LIST
ACLU v. Superior Court
Los Angeles Superior Court Case No. BS143004
2nd Civ. Case No. B259392

Peter Bibring, Esq. — *1 Copy*
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
1313 W. Eighth Street
Los Angeles, CA 90017
(213) 977-9500 – FAX: (213) 977-5299
pbibring@aclu-sc.org
Attorneys for Petitioners, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA and ELECTRONIC FRONTIER FOUNDATION

Jennifer Lynch, Esq. — *1 Copy*
ELECTRONIC FRONTIER FOUNDATION
815 Eddy Street
San Francisco, CA 94109
(415) 436-9333 – FAX: (415) 436-9993
jlynch@eff.org
Attorneys for Petitioners, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA and ELECTRONIC FRONTIER FOUNDATION

Michael Feuer, City Attorney — *1 Copy*
Carlos De La Guerra, Managing Assistant City Attorney
Debra L. Gonzales, Supervising Assistant City Attorney
Heather L. Aubry, Deputy City Attorney
200 North Main Street
City Hall East, Room 800
Los Angeles, CA 90012
(213) 978-8393 – FAX: (213) 978-8787
Attorneys for Respondents, CITY OF LOS ANGELES and LOS ANGELES POLICE DEPARTMENT

Clerk of the Los Angeles County Superior Court — *1 Copy*
111 North Hill St.
Los Angeles, CA 90012

Hon. James C. Chalfant — *1 Copy*
Los Angeles County Superior Court
111 North Hill St., Dept. 85
Los Angeles, CA 90012

Clerk of the Court of Appeal — *1 copy*
2nd Appellant District
300 South Spring Street
Floor 2, North Tower
Los Angeles, CA 90013-1213

Martin J. Mayer, Esq. — *1 Copy*
Jones & Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92835
Attorneys for Amicus Curiae
California State Sheriff's Association, et al.

James R. Wheaton — *1 Copy*
Cherokee D.M. Melton
FIRST AMENDMENT PROJECT
1736 Franklin St. 9th Floor
Oakland, CA 94612
Attorneys for Amicus Curiae
Northern California Chapter of Society of Professional Journalists

Katielynn Boyd Townsend — *1 Copy*
Reporters Committee for Freedom of the Press
1156 15th Street NW, Suite 1250
Washington, DC 20005
Attorneys for Amici Curiae
Reporters Committee for Freedom of the Press, et al.

Michael G. Colantuono — *1 copy*
Michael R. Cobden
Colantuono, Highsmight & Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091
Attorneys for Amici Curiae
League of California Cities et al.

Alan Butler — *1 copy*
Electronic Privacy Information Center
1718 Connecticut Avenue, NW, Suite 200
Washington, DC 20009
Attorneys for Amici Curiae
Electronic Privacy Information Center