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File No. 93939.0020E

October 12, 2017

**VIA FEDEX**

The Honorable Tani Gorre Cantil-Sakauye, Chief Justice  
and the Honorable Associate Justices  
Supreme Court of the State of California  
350 McAllister Street  
San Francisco, CA 94102-4797

Re: *Sukumar v. City of San Diego, S244509 (D071527), Letter of Amici Curiae League of California Cities and California State Association of Counties in Support of the City of San Diego's Request for Depublication of the Published Opinion of the Court of Appeal (Rule 8.1125(a))*

Dear Honorable Chief Justice and Honorable Associate Justices of the California Supreme Court:

The League of California Cities (League) and California State Association of Counties (CSAC) write in support of the City of San Diego's request for depublication of the Court of Appeal's opinion in the above-referenced case, and request depublication of that opinion in their own right. (Cal. Rules of Court, rule 8.1125 (a)(1).)

Interest of Amicus Curiae League of California Cities

The League is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

Interest of Amicus Curiae California Association of Counties

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview



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Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

Reasons for Ordering Depublication of the Court of Appeal's Opinion

The Court of Appeal's opinion should be ordered depublished first because it is wrong in its interpretation and application of the clear attorney fees provision of the CPRA, Government Code section 6259. It ignores the explicit requirements of that statute to a mandatory award of attorney fees and directs an award of attorney fees to a "successful party" on the "catalyst" theory which has been judicially appropriated from the discretionary attorney fee award statute, Code of Civil Procedure section 1021.5. The appellate court is, like the courts it cites to, legislating and not interpreting a statute. The opinion is also erroneous in failing to look to the reasonableness of the City's search for and disclosure of records both prior to and during the CPRA litigation.

The opinion is not only wrong on the law, it makes bad policy. The strict "but for" liability for attorney fees promised by the opinion encourages premature CPRA litigation, a race to the courthouse. It discourages public agencies from conscientiously working with public records requesters and making good faith searches and disclosures, both before and during litigation. Additionally, it unnecessarily burdens public agencies in carefully weighing the "public interest" and individual privacy interests in non-disclosure as permitted and authorized by the CPRA (see, Government Code sections 6254, 6255). The nearly standardless test applied by the court below distorts the process by ignoring even reasonable searches and disclosure by public agencies. And, it puts a gun to the head of public agencies to race to discover and surrender records before litigation is initiated and the prospect of an attorney fee award becomes a reality.

*Amici curiae* have written in support of the City's Petition for Review and encourage the Court to grant review. However, the Court should take the additional step of ordering depublication of the Court of Appeal opinion because, as the Court is aware, even the grant of review leaves the appellate opinion "on the books" citable as persuasive, if not controlling, authority on the lower courts until such time as this Court might explicitly overturn and overrule that decision. (Cal. Rules of Court, rule 8.1105 (e)(1)(B).)



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Conclusion

Accordingly *amici curiae* the League and CSAC support the City of San Diego's request that the Court order the opinion of the Court of Appeal to be depublished and make that request in their own right.

Respectfully submitted,

A handwritten signature in blue ink that reads "Gary W. Schons".

Gary W. Schons  
Of Counsel  
for BEST BEST & KRIEGER LLP

On behalf of the League of California Cities  
and California State /Association of Counties, *Amici Curiae*

LAW OFFICES OF  
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**PROOF OF SERVICE BY OVERNIGHT DELIVERY & U.S. MAIL**

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 655 West Broadway, 15th Floor, San Diego, California 92101. On October 11, 2017, I deposited with Federal Express and U.S. Mail, a true and correct copy of the within documents:

Sukumar v. City of San Diego, S244509 (D071527), Letter of Amici Curiae League of California Cities and California State Association of Counties in Support of the City of San Diego's Request for Depublication of the Published Opinion of the Court of Appeal (Rule 8.1125(a))

in a sealed envelope, addressed as follows:

The Honorable Tani Gorre Cantil-Sakauye, Chief Justice and the Honorable Associate Justices c/o Jorge E. Navarrette, Clerk Administrator Supreme Court of the State of California 350 McAllister Street San Francisco, CA 94102-4797 (Via FedEx)

Catherine Richardson, Deputy City Attorney City of San Diego 1200 Third Ave., Suite 11100 San Diego, CA 92101 (Via U.S. Mail)

Clerk, California Court of Appeal Fourth Appellate District, Division One 750 "B" Street, Suite 300 San Diego, CA 92101 (Via U.S. Mail)

James E. Friedhofer, Esq. Friedhofer PC 11410 Bracken Fern Court San Diego, CA 92131 (Via U.S. Mail)

Clerk of the San Diego Superior Court Honorable John S. Meyer, Judge 330 West Broadway, D-61 San Diego, CA 92101 (Via U.S. Mail)

Following ordinary business practices, the envelope was sealed and placed for collection by Federal Express and U.S. Mail on this date, and would, in the ordinary course of business, be retrieved by Federal Express and U.S. Mail for overnight delivery on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on October 12, 2017, at San Diego, California.

  
Kathleen K. McCracken