**CASE NO. B209913**

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**SECOND APPELLATE DISTRICT**
**DIVISION THREE**

---

HAROLD P. STURGEON,
Plaintiff and Appellee,

v.

WILLIAM J. BRATTON, *et al.*,
Defendants and Respondents,
and
BREAK THE CYCLE, *et al.*,
Interveners and Appellants.

---

ON APPEAL FROM THE FINAL JUDGMENT OF THE
CALIFORNIA SUPERIOR COURT, COUNTY OF LOS ANGELES
CASE NO. BC 351646
THE HONORABLE ROLF M. TREU

---

# APPELLEE'S ANSWER BRIEF

---

Sterling E. Norris (SBN 040993)
JUDICIAL WATCH, INC.
2540 Huntington Drive, Suite 201
San Marino, CA 91108-2601
Tel: (626) 287-4540
Fax: (626)237-2003

*Counsel for Plaintiff and Appellee*

## CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Counsel hereby discloses, pursuant to Cal. Rule of Court 8.208, that the following entities or persons may have an interest in this case:

Plaintiff-Appellee Harold P. Sturgeon

Defendant William J. Bratton (in his official capacity as Chief of Police of the Los Angeles Police Department)

Defendant John Mack (in his official capacity as a member of the Board of Police Commissioners)

Defendant Shelly Freeman (in her official capacity as a member of the Board of Police Commissioners)

Defendant Alan J. Skobin (in his official capacity as a member of the Board of Police Commissioners)

Defendant Andrea Sheridan Ordin (in her official capacity as a member of the Board of Police Commissioners)

Defendant Anthony Pacheco (in his official capacity as a member of the Board of Police Commissioners)

Defendant/Intervener-Appellant Break the Cycle

Defendant/Intervener-Appellant Los Jornaleros

Defendant/Intervener-Appellant El Comite de Jornaleros

Defendant/Intervener-Appellant Instituto de Educacion Popular del Sur de California

Attorneys for Plaintiffs-Appellees

Attorneys for Defendants

Attorneys for Defendants/Interveners-Appellees

## TABLE OF CONTENTS

**Page**

**Page**

## TABLE OF AUTHORITIES

**Federal Cases** **Page**



**State Cases**

**Page**

**Page**

**Page**



**Federal Constitutional Provisions**



**State Constitutional Provisions**



**Federal Statutes and Regulations**

**State Statutes** **Page**

## I. INTRODUCTION AND STATEMENT OF THE CASE.

On September 20, 2006, in open court, counsel for Interveners voluntarily and unambiguously relinquished any claim for an award of attorneys' fees from Harold P. Sturgeon, a taxpayer and resident of the City of Los Angeles who, in the exercise of his constitutional rights, had initiated a lawsuit against the Chief of Police and the Board of Police Commissioners of the Los Angeles Police Department ("LAPD"). Interveners were seeking to join Sturgeon's lawsuit on the side of the LAPD, but the trial court had not yet ruled on their motion to intervene. Sturgeon objected to the intervention, asserting, among other concerns, that Interveners' presence in the lawsuit and, in particular, a claim for an award of attorneys' fees in their proposed Complaint in Intervention, would enlarge the issues to be litigated. In response, Interveners' ACLU counsel represented to the Court that her clients would withdraw the claim:

> [By Counsel for Interveners] Your Honor, if the attorney's fees is the one issue that plaintiffs (sic) object to as enlarging the issue in this case, as I said, as far as the substantive issue, we're not enlarging any – **if the fees are the contentious issue, we'd be willing to waive fees in this case.**

Reporter's Transcript of Proceedings, September 20, 2006 ("RT"), at 13.[1] After Interveners withdrew the claim from their proposed Complaint in Intervention, the Court overruled Sturgeon's other various objections and allowed Interveners to join the litigation as defendants.

Despite their representations to Sturgeon and the trial court that they would not seek an award of fees, Interveners did just that nearly three years later, after this Court affirmed a judgment entered in favor of the LAPD. The trial court denied Interveners' motion, however, finding that they had waived any claim to seek an award of fees and also finding that, because Interveners had joined Sturgeon's lawsuit on behalf of public entity defendants that were not eligible for an award of fees under section 1021.5 of the Code of Civil Procedure ("section 1021.5"), Interveners stood in the shoes of the public entity defendants and therefore were not eligible for an award either.

Indeed, any other ruling would have been erroneous, as not only had Sturgeon relied on Interveners' representation that they

---

[1] By order filed on April 16, 2010, the Court granted Sturgeon's motion to augment the record on appeal with this transcript.

would not seek an award of fees, but awarding fees to entities that voluntarily join lawsuits on behalf of public entity defendants would turn section 1021.5 on its head. Prospective plaintiffs contemplating litigation against public entity defendants would not risk filing suit out of fear that they could be required to pay potentially enormous awards of attorneys' fees of unknown and unforeseen persons or entities that might seek to intervene on behalf of the government. Holding otherwise would create a substantial disincentive for persons contemplating public interest litigation and would have a tremendous chilling effect on public interest lawsuits. It would make public interest litigation infeasible.

For these and the other compelling reasons set forth below, the trial court's denial of Interveners' fee motion should be affirmed. In the unlikely event that the Court does not affirm the denial, this matter must be remanded to the trial court for consideration of whether Interveners can satisfy the various elements required for an award of attorneys' fees under section 1021.5, and, if so, for a determination of the amount of any award. Sturgeon respectfully

submits, however, that no such remand is necessary, as the trial court's ruling should be affirmed in its entirety.

## II. FACTUAL BACKGROUND.

Sturgeon initiated this action against the LAPD on May 1, 2006. Clerk's Transcript ("CT") at 000007. On August 16, 2006, the LAPD answered Sturgeon's complaint after the trial court denied a motion to dismiss. *Id.* at 000006. On August 22, 2006, Interveners filed a motion to intervene and a proposed complaint in intervention. *Id.* at 000009-65. The prayer for relief of the proposed Complaint in Intervention stated:

> WHEREFORE, Defendant-Interveners pray for judgment as follows:
>
> 1. For dismissal of Plaintiff's Complaint with prejudice;
>
> 2. For attorneys' fees;
>
> 3. For costs of suit; and
>
> 4. For any such relief as the Court deems just.

*Id.* at 000103. On September 20, 2006, the trial court granted the motion to intervene, not as a matter of right, but as a matter of permission, after Interveners disavowed the claim in their prayer for

relief requesting an award of attorneys' fees. *Id.* at 000097-98; RT at 13 and 18.

On June 25, 2008, the trial court granted summary judgment in the LAPD's favor. *Id.* at 000234-43. A final judgment was entered on July 8, 2008. *Id.* at 000003. Sturgeon appealed, but the trial court's ruling was affirmed by this Court on June 17, 2009. *Sturgeon v. Bratton*, 174 Cal. App. 4th 1407 (2009). Approximately two months later, on August 14, 2009, Interveners attempted to file a motion -- in this Court, not in the trial court -- seeking an award of attorneys' fees pursuant to Code Civ. Proc. section 1021.5. *Sturgeon v. Bratton*, Case No. B209913, Order (Cal. Ct. App. Aug. 14, 2009). The Court denied Interveners' motion for filing. *Id.*

On November 9, 2009, Interveners filed their motion in the trial court. CT at 000244-566. The trial court issued a tentative ruling denying Interveners' fee motion on January 7, 2010. *Id.* at 001187-92. In its tentative ruling, which subsequently became the final ruling, the trial court found that Interveners had waived any claim for an award of attorneys' fees more than three years earlier and that Interveners were not eligible for an award in any event because they

had intervened on behalf of public entity defendants that were not eligible for an award under section 1021.5. *Id.* at 001190-92. The trial court expressly declined to rule on the other factual and legal issues raised by Interveners' motion, including whether Interveners could satisfy the requirements of section 1021.5 or what a reasonable award might have been. *Id.* at 001192 ("In light of this ruling, the Court declines to rule on the issues presented by the parties."). Interveners did not seek to challenge the trial court's tentative ruling. *Id.* at 001187. This appeal followed. *Id.* at 001193-95.

## III. ARGUMENT.

### A. Standard of Review.

The standard of review for a decision granting or denying a motion for an award of attorneys' fees is abuse of discretion. *Conservatorship of Whitley*, 50 Cal.4th 1206, 1213 (2010). "However, *de novo* review of such a trial court order is warranted where the determination of whether the criteria for an award of attorney fees and costs in this context have been satisfied amounts to statutory construction and a question of law." *Id.* (quoting, *Connerly v. State Personnel Bd.*, 37 Cal.4th 1169, 1175 (2006)).

### B. Interveners Waived Any Claim for Fees.

Interveners' principal argument is that, when their counsel stated on September 20, 2006 in open court that, "if the fees are the contentious issue, we'd be willing to waive fees in this case," her words were of no effect. According to Interveners, section 3513 of the Civil Code ("section 3513") precludes them from waiving their "statutory right to attorneys' fees." Opening Brief of Appellants/ Interveners ("Op. Brf.") at 4.

Section 3513 states, in its entirety: "Anyone may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement." Civ. Code § 3513. Interveners argue that this means that a party may "waive a statutory right where its public benefit is merely incidental to its primary purpose, but a waiver is unenforceable where it would seriously compromise any public purpose the statute was intended to serve." Op. Brf. at 7 (*citing Azteca Const., Inc. v. ADR Consulting, Inc.*, 121 Cal. App. 4th 1156, 1166 (2004)).

There are multiple errors in Interveners' argument. First and foremost, at the time of the September 20, 2006 hearing, Interveners

had no "statutory right to attorneys' fees" to waive. Section 1021.5 applies to "successful parties" in certain types of litigation, and Interveners were not yet parties to Sturgeon's lawsuit, much less "successful parties." They were complete outsiders. Before Interveners could have a "statutory right to attorneys' fees," the following had to occur: (1) the trial court would have to grant their motion to intervene; (2) they would have to prevail on the merits of the underlying action; (3) they would have to demonstrate to the trial court that they satisfied the stringent requirements of section 1021.5; and (4) they would have to submit competent evidence demonstrating the amount of time spent on the matter and reasonable hourly compensation for each attorney.[2] What Interveners waived at the September 20, 2006 hearing was not any "statutory right to attorneys' fees." Rather, they waived any claim seeking an award of attorneys' fees in the future. A claim seeking an award of fees at some indefinite point of time in the future obviously is materially different

---

[2] As Sturgeon demonstrated in the lower court and as the trial court found, because Interveners aligned themselves with public entity defendants, they could never possess a "right" to seek an award of fees under Code Civ. Proc. section 1021.5.

from a fully vested, present right to fees. According to Interveners' own argument, section 3513 prohibits the waiver of "statutory rights," not mere claims to possible, future rights.

Nor do Interveners cite any authority in which a court has ever applied Civ. Code section 3513 to strike down an express waiver of a "statutory right to attorneys' fees," much less the waiver of a claim for a future award of attorneys' fees. A claim for a possible, future award of attorneys' fees bears no resemblance to any of the unqualified, fully vested rights to which section 3513 generally has been applied. *See generally Arntz Buildlers v. Superior Court*, 122 Cal. App. 4th 1195, 1206-07 (2004) (collecting cases). Interveners completely fail to demonstrate that section 3513 prohibits prospective litigants -- which is all Interveners were before the trial court granted their motion to intervene -- from waiving any claim to seek an award of attorneys' fees in the future.

In addition, while the purpose of section 1021.5 may be to encourage the enforcement of important public policies by persons or entities acting as "private attorney generals" (*see Conservatorship of Whitley*, 50 Cal.4th at 1217-18), the primary and the most direct and

obvious beneficiaries of the provision are the successful litigants themselves. Section 1021.5 rewards successful litigants by providing them with an award of attorneys' fees. When compared to the direct and obvious benefit that the statute provides to successful litigants, any public benefit is merely incidental. Section 3513 does not apply.

Nor would it "seriously compromise any public purpose" if a litigant -- especially a prospective litigant seeking to intervene in on-going litigation -- voluntarily chooses to waive a claim to seek a future award of attorneys' fees. In *Folsum v. Butte County Ass'n of Gov'ts*, 32 Cal.3d 668, 678-79 (1982), the Supreme Court of California impliedly held that awards of attorneys' fees under section 1021.5 could be waived as part of a settlement agreement or stipulated judgment. *See also Washburn v. City of Berkeley*, 195 Cal. App. 3d 578, 583 (1987). Surely, the choice to forego a claim seeking an award of fees will not undermine the enforcement of any important public policy. It will not discourage other actual or prospective litigants from prosecuting or participating in public interest litigation. Nor will it cause other actual or prospective litigants to forego the possibility of seeking future awards of

attorneys' fees. It will not affect the public in any meaningful way, much less "seriously compromise" a "public purpose."

In fact, Interveners completely fail to address, much less demonstrate, how giving effect to an express, unambiguous, and voluntary waiver of a claim to seek a future award of attorneys' fees would compromise any public purpose or otherwise harm the general public. Presumably, a prospective litigant who waives any claim to seek an award of attorneys' fees in a lawsuit makes a calculation that the rewards for prosecuting or participating in the lawsuit are sufficient without the added benefit of a potential award of attorneys' fees. Interveners obviously made such a calculation at the September 20, 2006 hearing. They appear to have decided that waiving any claim to seek a future award of attorneys' fees from Sturgeon might help to convince the trial court to allow them to participate in Sturgeon's lawsuit. Intervenors present no case which a litigant or prospective litigant made an express waiver of a claim attorneys' fees (or any other type of a waiver, for that matter), obtained a benefit from that waiver, then attempted to renege on the waiver, citing section 3513. Interveners made their choice and they should be held

to it. They certainly do not identify any reason why their choice would "seriously compromise any public purpose" behind section 1021.5.

Moreover, nothing in Code Civ. Proc. section 1021.5 indicates that the Legislature intended to limit the discretion of prospective or actual litigants to determine for themselves whether to seek awards of attorneys' fees. The Legislature clearly could have mandated awards of attorneys' fees or forbid waivers of attorneys' fees under section 1021.5, if it so intended. The Legislature has done so in other contexts. *See* Civ. Code §§ 1717(a) and 1780(e). It did not do so in section 1021.5. If a litigant prosecutes a public interest lawsuit successfully but does not file a motion for attorneys' fees, the public policy behind section 1021.5 does not compel the successful litigant to accept an award of attorneys' fees. The decision not to seek an award of attorneys' fees is not materially different from the voluntary waiver of any claim seeking an award of attorneys' fees, yet Interveners do not argue that they would be compelled to accept a fee award if they had not moved for one. Interveners' assertion that not giving effect to its unambiguous, voluntary waiver of any claim

seeking an award of attorneys' fees would "seriously compromise" a "public purpose" does not withstand scrutiny.[3]

Finally, Interveners' argument also fails because there simply was no "agreement," private or otherwise, by which Interveners waived any claim to seek an award of attorneys' fees in Sturgeon's lawsuit. Section 3513 expressly prohibits certain types of waivers by "private agreement," and Sturgeon never agreed, expressly or impliedly, that, if Interveners waived any claim seeking an award of attorneys' fees, then he would not object to their intervention in this lawsuit. Reporter's Transcript of Proceedings ("Tr."), September 20, 2006, at 14-17.[4] Sturgeon continued to object to any proposed intervention. *Id.*

In this regard, Interveners' reliance on *Covina v Governing Bd.*, 76 Cal. App. 3d 314, 322-23 (1997) is misplaced. In *Covina*, a

---

[3] Federal courts have no problem upholding waivers of claims for attorneys' fees under 42 U.S.C. § 1988, an analogous federal statute. *Wakefield v. Mathews*, 852 F.2d 482 (9th Cir. 1988); *see also Evans v. Jeff D.*, 475 U.S. 717 (1986).

[4] By order entered on April 16, 2010, this Court granted Sturgeon's Motion to Augment the Record on Appeal to include a copy of this transcript.

teacher employed by a community college as a full-time temporary employee for a single school year sought to compel the college to rehire him for a succeeding school year even though a provision in the Education Code prohibited the college from rehiring him as anything other than a probationary employee. The college had admitted that the teacher was well qualified and would be acceptable as a temporary employee, but for the legal provision prohibiting his re-employment as anything other than a probationary employee. *Covina*, 76 Cal. App. 3d at 317 & n.3. In open court, the teacher purported to waive his right to be re-employed as a probationary employee. The Court declined to give effect to the purported waiver, citing a separate provision in the Education Code that expressly prohibited "any contract or agreement, express or implied, made by an employee to waive the benefits of this chapter . . . ." *Id.* at 322.

The Court in *Covina* also referenced section 3153 (*id.* at 322-23), but it simply is not possible to draw any meaningful conclusions from *Covina* about its application of section 3513, as the decision fails to distinguish between an Education Code provision and section 3513. In addition, there appeared to be at least an implied agreement

to rehire the teacher if the Court accepted the waiver. By contrast, there was not even a hint of an implied agreement in this case, as Sturgeon continued to object to Interveners' participation in this lawsuit even after they waived any claim seeking an award of attorneys' fees. RT at 14-17. For this and other reasons, *Covina* is inapposite. Interveners' unambiguous and voluntary waiver of any claim seeking an award of attorneys' fees must be upheld.

### C. Interveners Are Not Eligible for an Award of Fees.

Even if Interveners had not waived any claim for an award of attorneys' fees, they are not eligible for an award in any event. It has long been established that, when a person or entity is permitted to intervene in a pending lawsuit, the intervener is to be regarded as a plaintiff or a defendant and "is limited to the same procedure and remedies ***as is such original party***, either for the purpose of defeating the action or resisting the claim of the plaintiff." *Boskowitz v. Thompson*, 144 Cal. 724, 729 (1904) (emphasis added). More recently it has been held that:

> when a party qualifies and enters an action as an intervener, it is vested 'with all of the same procedural

> rights and remedies of the original parties,' including the right to seek attorneys' fees under section 1021.5 in a public interest lawsuit ***on equal terms with the original parties*.**

*City of Santa Monica v. Stewart*, 126 Cal. App. 4th 43, 87 (2005) (emphasis added).

Interveners sought and obtained permission to enter this action on behalf of the LAPD, which undeniably is a public entity.[5] Section 1021.5 expressly exempts public entities from recovering awards of attorneys' fees against private parties: "With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities . . . ." Code Civ. Proc. § 1021.5. Because the LAPD could not recover attorneys' fees from Sturgeon under section 1021.5 and Interveners are "limited to the same procedures and remedies" available to the LAPD, (*Boskowitz*, 144 Cal. at 729), Interveners cannot recover fees from Sturgeon under section 1021.5 either.

---

[5] To be clear, Sturgeon named individual officials of the LAPD as defendants, albeit in their official capacities only. It makes no difference to the outcome, however. *People ex. rel. Cooper v. Mitchell Brothers' Santa Ana Theater*, 165 Cal. App. 3d 378, 386 (1985) (city attorney acting in his official capacity deemed to be a "public entity" for purposes of section 1021.5).

Notably, Interveners do not cite a single case in which a person or entity intervened in a lawsuit on behalf of a governmental defendant and was awarded attorneys' fees from a private party plaintiff pursuant to section 1021.5. Nor has Sturgeon been able to identify such a case. Interveners themselves characterize the circumstances of their request as "undoubtedly rare." Op. Brf. at 1. They are more than rare; they are unprecedented.

Interveners try to ignore the obvious limitations on Interveners set forth in *Boskowitz* and *City of Santa Monica* by making the completely disingenuous claim that an award of attorneys' fees is not a remedy. Of course it is. *See, e.g.*, *Meyer v. Spring Spectrum, L.P.*, 45 Cal.4th 634, 644 (2009) (referring to the "critical attorney fee remedy" in lawsuits under the Consumer Legal Remedies Act"); *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal.4th 83, 103 (2000) (referring to punitive damages and attorney fees "remedies"); *Rubin v. Green*, 4 Cal.4th 1187, 1199 (1993) (noting that "potential remedies include the recovery of attorneys fees"). Interveners even included an award of attorneys' fees among

the various remedies they requested in their prayer for relief. CT at 000103.

As Interveners themselves acknowledge "an Intervener takes a suit as he finds it" and cannot "change the position of the parties." Op. Brf. at 14 (quoting, *Hosp. Council of N. Cal v. Superior Ct.*, 30 Cal. App. 3d 331, 336 (1973)). By seeking an award of attorneys' fees from Sturgeon under section 1021.5 even though the LAPD could not recover attorneys' fees from Sturgeon under this same provision, Interveners are exceeding the procedures and remedies available to the party with which they voluntarily aligned themselves. They are seeking to "change the position of the parties." They are ignoring the requirement that they take Sturgeon's lawsuit as they found it.

Moreover, allowing Interveners who voluntarily join lawsuits on behalf of public entity defendants to seek awards of attorneys fees against private party plaintiffs would turn section 1021.5 on its head. As set forth above, the purpose of section 1021.5 is to encourage the private enforcement of important public policies. *Conservatorship of Whitley*, 50 Cal.4th at 1217-18. Prospective plaintiffs contemplating

litigation against the government would not dare risk filing suit out of fear that they could be required to satisfy the attorneys' fees of unknown and unforeseen persons or entities that might seek to intervene on the government's behalf. The mere possibility of an award would create a substantial disincentive for bringing suit against the government and would have an enormous chilling effect on public interest lawsuits. It would make public interest litigation infeasible and defeat the purpose of section 1021.5.[6] *Id.*

### D. An Award of Fees is Barred by the Doctrine of Equitable Estoppel.

The doctrine of equitable estoppel also bars Interveners' motion for an award of attorneys' fees. Equitable estoppel stands for the general proposition that "if a representation be made to another

---

[6] It also would be particularly anomalous in the context of taxpayer lawsuits such as this one, brought under Code of Civil Procedure Section 526a. It is well-established that the "primary purpose" of section 526a is to "enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement." *Blair v. Pitchess*, 5 Cal.3d 258, 267-68 (1971). Rather than encouraging taxpayers to challenge allegedly unlawful expenditures of public resources, requiring taxpayers to pay the attorneys' fees of private parties who intervene would discourage such suits and undermine the purpose of section 526a.

who deals upon the faith of it, the former must make the representation good if he knew or was bound to know it to be false." *Lentz v. McMahon*, 49 Cal.3d 393, 398-99 (1989). "Generally, speaking, four elements must be present . . .: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury" *Id.* (internal quotations omitted).

When Interveners voluntarily made an unambiguous and unqualified representation in open court on September 20, 2006 that they would not seek an award of attorneys' fees from Sturgeon, he had every right to believe Interveners were being truthful. That representation has been proven to be false. Interveners either had no intention to abide by their representation to Sturgeon and the Court when they made it in September 2006, or they acted with complete disregard for their prior representation when they filed their motion for attorneys' fees three years later. However, no facts or case law identified by Interveners should have put Sturgeon on notice that

Interveners' representation was false. Sturgeon was entirely correct to take Interveners at their word.

In addition, Sturgeon clearly relied on Interveners' false representation by continuing to press his claims against the LAPD. CT at 000672-673. Had Sturgeon known in September 2006 that, after this Court affirmed the trial court's judgment in favor of the LAPD, Interveners would seek to tax Sturgeon with an enormous award of attorneys' fees -- the same attorneys' fees Interveners disclaimed at the September 20, 2006 hearing, Sturgeon may well have chosen a different path. *Id.* at 000673. He certainly would have appealed the order granting Interveners' motion to intervene. *Id.* To require Sturgeon to pay attorneys' fees to Interveners after he reasonably relied on Interveners' unambiguous and unqualified waiver of any claim seeking an award of attorneys' fees would be extraordinarily prejudicial to Sturgeon. *Id.* "Justice and right require" Interveners' motion be denied. *Lentz*, 49 Cal.3d at 399.

### E. An Award of Fees Would Violate Sturgeon's Constitutional Rights.

An award of attorneys' fees also would violate Sturgeon's constitutional rights. The Supreme Court of California has recognized that "the act of filing suit against a governmental entity represents an exercise of the right of petition and thus invokes constitutional protection." *City of Long Beach v. Bozek*, 31 Cal.3d 527, 534 (1982). "The right of petition, like the right of free speech, is 'of the essence of [a person's] guaranteed personal liberty.'" *Id.* at 536 (quoting, *DeJong v. Oregon*, 299 U.S. 353, 366 (1937). It is accorded "a paramount and preferred place in our democratic system." *Id.* at 532 (quoting, *American Civil Liberties Union v. Board of Education*, 55 Cal.2d 167, 178 (1961)). "Like the right of free speech, it should be scrupulously protected." *Id.* at 536; *see also Wolfgram v. Wells Fargo Bank*, 53 Cal. App. 4th 43, 57 (1997) ("[A]ny impairment of the right to petition, including any penalty after the fact, must be narrowly drawn."). Moreover, "[f]ree access to the courts is an important and valuable aspect of an effective system of jurisprudence, and a party possessing a colorable claim must be

allowed to assert it without fear of suffering a penalty more severe than that typically imposed on defeated parties." *Young v. Redman*, 55 Cal. App. 3d 827, 838 (1976).

Sturgeon sued the LAPD. Sturgeon did not sue Interveners or any other private party. "The bringing of suits against the government is absolutely privileged." *City of Long Beach*, 31 Cal.3d at 539. The only possible penalty Sturgeon could have faced as a result of filing suit against the government was the possibility of an award of fees and costs if it was determined that his lawsuit had not been brought in good faith.[7] *Id.* at 537; Code Civ. Proc. 128.5(a). To change this calculation because Interveners were allowed to join Sturgeon's lawsuit as defendants, not even as a matter of right but as a matter of permission (RT at 18), would impermissibly impinge on Sturgeon's right to petition under both the U.S. Constitution and the California Constitution. U.S. Const., amend. I; Cal. Const., art. I, § 3.

[7] There has never been any claim, much less a finding, that Sturgeon's lawsuit was not brought in good faith.

It also would have a substantial chilling effect on other plaintiffs contemplating future lawsuits against the government. *Bozek*, 31 Cal.3d at 535. Rather than the certainty of knowing that the only possible penalty he or she might face for bringing a lawsuit against the government was an award of fees and costs if the lawsuit was determined not to be in good faith, a plaintiff bringing suit against the government would face the possibility that complete strangers might thrust themselves into the suit on the side of the government, then seek an award of attorneys' fees from the plaintiff. The uncertainty of a possibly enormous award of fees -- Interveners claim to have expended more than $350,000 worth of attorney time "defending" Sturgeon's lawsuit against the LAPD -- would likely chill all but the most intrepid of plaintiffs. *See*, *e.g.*, *In re Marriage of Flaherty*, 31 Cal.3d 637, 650 (1982) (noting the special care that must be taken, in the context of defining whether an appeal is frivolous, "to avoid a serious chilling effect on the assertions of litigants' rights on appeal"). This chilling effect is even greater here, where Interveners expressly disavowed any claim for attorneys' fees

when they joined this lawsuit, then attempted to renege on their disavowal after several years of litigation.

Awarding Interveners attorneys' fees also would violate Sturgeon's due process rights. "Due process principles require reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest." *Horn v. County of Ventura*, 24 Cal.3d 605, 612 (1979). Interveners are invoking state law and state process to deprive Sturgeon of a significant property interest; they seek to compel him to pay a substantial award of attorneys' fees despite the fact that, early in this litigation and in open court, they expressly disavowed any claim for an award of attorneys' fees. Sturgeon then proceeded to litigate this case based upon Interveners' representation that they would not seek an award. Simply put, Sturgeon had no reason to suspect that attorneys' fees could be awarded against him. Fundamental fairness and the integrity of the judicial system, as well as the most basic principles of due process, preclude any award of attorneys' fees against Sturgeon under the circumstances presented here. *In re Marriage of Flaherty*, *supra* (overturning fine imposed on an attorney for filing a frivolous appeal

where the attorney had no notice of the possibility of a fine); *Blumenthal v. Superior Court*, 103 Cal. App. 3d 317, 320 (1980) (vacating sanctions award against attorney where attorney had no notice that sanctions were being sought against him personally).

### F. Interveners Are Not Entitled to An Award of Fees Because They Cannot Satisfy the Requirements of Section 1021.5.

Interveners argue that the trial court "erred in denying [their] motion because they satisfy the requirements of Section 1021.5." Op. Brf. at 15. The trial court never reached the issue of whether Interveners could satisfy the requirements of section 1021.5, however. CT at 001192 ("In light of this ruling, the Court declines to rule on the issues presented by the parties."). Interveners' entire argument in this regard is misleading at best.

Nonetheless, section 1021.5 represents one of several exceptions to the general rule that each party must bear its own attorneys' fees. *Bouvia v. County of Los Angeles*, 195 Cal. App. 3d 1075, 1082 (1987). The provision codifies courts' traditional equitable discretion regarding awards of attorneys' fees, and courts

retain considerable discretion within the statute's parameters. *Vasquez v. State of California*, 45 Cal.4th 243, 250 (2008). A court may award attorneys' fees under section 1021.5 only if the statute's requirements are satisfied. *Id.* Thus, a court may award attorneys' fees to "a successful party" only if the action has "resulted in the enforcement of an important right affecting the public interest." *Id.* (quoting, Code Civ. Proc. 1021.5). Three additional elements also must be satisfied: "(a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."[8] *Id.* A court "must realistically assess the litigation and determine, from a practical perspective, whether or not the action served to vindicate an important right so as to justify an attorney fee award under a private attorney general theory." *Id.* (quoting,

---

[8] This third element does not apply here.

*Woodland Hills Residents Assn. v. City Council*, 23 Cal.3d 917, 938 (1979) ("*Woodland Hills*")).

The trial court, not this Court, clearly is in the best position to make any findings regarding the applicability of section 1021.5. Consequently, in the unlikely event this Court determines it is necessary to reach the issue of the applicability of section 1021.5, the best practice would be to remand this matter to the trial court for consideration of this issue. Because Interveners have attempted to demonstrate that they satisfy the stringent requirements of section 1021.5, however, Sturgeon is compelled to respond.

Obviously, Interveners did not initiate this action, but instead voluntarily joined on the side of the LAPD even though the LAPD was well-represented by the City Attorney's office. Thus, the typical justification for an award of attorneys' fees -- to provide an incentive for privately initiated actions that enforce important rights for large numbers of persons -- simply is not present here.

### 1. Interveners Have Not Enforced Any Cognizable Right.

Interveners fail to demonstrate that they have enforced any cognizable right, much less an "important right affecting the public interest." As an initial matter, the trial court rejected Interveners' request to be allowed to join this lawsuit as a matter of right. RT at 18. It allowed permissive intervention not because Interveners claimed to be protecting any particular right, but because it found "[t]he case before the Court . . . is of significant interest to many diverse individuals and organizations." CT at 000234. The trial court declared that it wanted "the legal positions of the widest possible cross-section of the community [to] be presented." *Id.* at 000234-35. Having an interest in a matter clearly is not the same as having a legal right. Likewise, having a legal position on a matter is clearly different from having a legal right. While Interveners may have been interested in Special Order 40 and may have taken a legal position on this particular police policy, section 1021.5 is implicated only when "important rights" are enforced.

Sturgeon's lawsuit challenged a policy choice of the LAPD and various practices implementing that policy. The pertinent provision of the policy, often referred to as Special Order 40, states, "Officers shall not initiate a police action where the objective is to discover the alien status of a person." CT at 000239. The outcome of Sturgeon's lawsuit was that Special Order 40 survived a facial challenge. Only the *text* of the policy, not the practices implementing the policy, was determined not to conflict with two federal statutes, 8 U.S.C. §§ 1373 and 1644, and one California statute, Penal Code § 834b. The trial court did not reach the question of whether the LAPD's practices under Special Order 40, which Sturgeon also had challenged, were consistent or in conflict with federal or state law. CT at 000234-43. Thus, whatever "right" Interveners may claim to have enforced, their alleged success was limited by the fact the trial court did not consider any of the far more significant practices of the LAPD that implement its generic, if not cryptic, written policy.

Moreover, Interveners' claim to have enforced an "important right" is illusory. It is not even clear what "right" Interveners claim to have enforced. In the section of their brief purportedly addressing

this inquiry, Interveners reference "federal preemption," "fundamental principles of our federal system of government," and the concurrent sovereignty of the states "subject only to the limitations imposed by the Supremacy Clause." Op. Brf. at 18. Federal preemption, principles of federalism, and state sovereignty are not "rights," however. They are structural principles underlying the federal system of government in the United States. *Id.* Interveners cite no authority supporting the proposition that there is a "right" to federal preemption, principles of federalism, or state sovereignty. Indeed, the U.S. Supreme Court has held otherwise. *Chapman v. Houston Welfare Rights Org.*, 441 U. S. 600, 613 (1979) (holding that the Supremacy Clause is not a right-securing clause, but a clause requiring federal law to prevail when there is a conflict with a law based on state power).

Elsewhere, Interveners make reference to the "existing right of immigrants to be free of victimization because of their immigration status and to make contact with police officers without fear of detection and deportation." Op. Brf. at 3. Interveners make no effort to identify the source of this allegedly existing right. It is not even

clear if Interveners are referring to one alleged right or two separate, alleged rights. Interveners' generalized reference to a "right to be free of victimization because of immigration status" is too broad to even analyze as a meaningful legal right. Because Interveners do not even attempt to identify this alleged right in any meaningful way, they have not demonstrated how it could qualify as an "important right affecting the public interest" for purposes of an award of attorneys' fee under section 1021.5.

Similarly, Interveners do not identify any constitutional, statutory, or other source of law recognizing the alleged right of aliens who are not lawfully present in the United States to avoid detection or deportation. "Enforcement" of this non-existent right cannot support an award of attorneys' fees.

Nor can Interveners claim to have enforced any equal protection rights. On its face, Special Order 40 does not establish or differentiate between classes of persons. It does not allow officers to initiate police actions where the objective is to discover the alien status of some classifications of persons, but not others. It does not

differentiate between aliens and non-aliens. It expressly applies to all persons. Equal protection is not even implicated.

To the extent that Interveners might claim to have enforced the equal protection rights of aliens who are not lawfully present in the United States, it has long been established that such persons are not a "suspect class." *Plyler v. Doe*, 457 U.S. 202, 223 (1982). Since aliens who are not lawfully present in the United States are not a suspect class, they do not enjoy any special equal protection rights arising from their illegal status.

Nor can Interveners claim to have enforced any alleged right of persons not to be asked about their immigration status. The U.S. Supreme Court has held that local police officers have the discretion to inquire about a person's immigration status without independent, reasonable suspicion. *Muehler v. Mena*, 544 U.S. 93, 101 (2005); *see also Martinez-Medina v. Holder*, 616 F.3d 1011, 1015 (9th Cir. 2010). In any event, Sturgeon never contended that officers could stop persons randomly on the street and inquire about their immigration status solely because of their appearance or language.

*See*, *e.g.*, CT at 000208. Sturgeon maintained that such conduct would likely violate the LAPD's prohibition on racial profiling. *Id.*

Because Interveners have not demonstrated that their voluntary involvement in this lawsuit resulted in the enforcement of any congnizable legal right, they are not entitled to an award of attorneys' fees under section 1021.5.

**2. Interveners Have Not Conferred Any Significant Benefit on the General Public or a Large Class of Persons.**

Since Interveners have not demonstrated that they have enforced any cognizable "right" by intervening in Sturgeon's lawsuit, it is not necessary to consider whether the enforcement of such a right "affected the public interest" or whether Interveners conferred a "significant benefit on the general public or a large class of persons." Regardless, it is clear that Interveners have not affected or conferred any lasting benefit, significant or otherwise, on the general public or anyone else because Special Order 40 is not mandated by any law. It is merely a policy choice. The LAPD could change its policy tomorrow if it were so inclined.

Interveners' claims to have "affected the public interest" and conferred a "substantial benefit on a large number of people in Los Angeles and beyond" do not withstand scrutiny. Op. Brf. at 19-21. Interveners make a generalized claim of having benefitted public safety in Los Angeles. *Id.* They hypothesize that Special Order 40 builds trust and encourages members of the "immigrant community" to come forward to report crimes and to provide information to the police.[9] *Id.* Without any evidentiary support, they speculate, shamefully, that, if Sturgeon had been successful, immigrants who are victims or witnesses would be deterred from contacting the police out of fear of "detection and deportation." *Id.* at 3. Of course, lawful immigrants have no reason to fear "detection or deportation" if they contact the police to report a crime or come forward with information about criminal activity. It is only unlawful immigrants or other aliens not present in the United States legally who may have reason to fear "detection or deportation." Interveners thus conferred no "benefit" on

---

[9] Interveners provide no surveys or statistical evidence demonstrating that members of the "immigrant community" are more likely to come forward because of Special Order 40. Nor do they provide any other evidence, anecdotal or otherwise, demonstrating that this is the case.

lawful immigrants. With respect to unlawful immigrants and other persons not legally present in the United States, Interveners do not even acknowledge, much less try to refute, the obviously compelling public interest in the enforcement of federal immigration laws and the obvious public benefits that result from respecting the rule of law. *Woodland Hills*, 23 Cal.3d 917, 939 ("the public always has a significant interest in seeking that legal strictures are properly enforced and, thus, in a real sense, the public always derives a 'benefit' when illegal private or public conduct is rectified").

Interveners' argument completely ignores various visa programs created by the federal government, such as the S, T, and U visa programs, that assist unlawfully present aliens who are victims of or witnesses to crimes. *See*, *e.g.*, 8 U.S.C. § 1101(a)(15)(S), (T), and (U). In some circumstances, both unlawfully present aliens who qualify for these programs and their family members are able to adjust their status to that of lawful permanent residents. 8 C.F.R. §§ 245.23 and 245.24.

Nonetheless, like the alleged "right" that Interveners claim to have enforced, Interveners' assertion that they have conferred a

substantial benefit on a large number of people in Los Angeles, apparently by allowing illegal aliens to remain undetected and undiscovered, is an illusion. Both the LAPD and Interveners argued to the trial court that it should analyze Special Order 40 on its face and not consider any of the unwritten practices by which the LAPD had implemented its policy. When attempting to recover an award of attorneys' fees, however, Interveners try to ignore the actual language of Special Order 40. Again, Special Order 40 states in pertinent part, "Officers shall not initiate police action where the objective is to discover the alien status of a person."[10] CT at 000239. The trial court ruled that Special Order 40 "neither mentions nor refers" to communications between police officers and federal immigration officials "regarding the immigration status of an individual" and "does not prohibit or restrict such communication." CT at 000241 and 000242. Thus, Special Order 40 does *not* limit the ability of an officer to contact federal immigration officials to inquire about any person's immigration status or to report a suspected illegal alien. If a

---

[10] Sturgeon did not challenge the portion of Special Order 40 that prohibits officers from arresting or booking persons for the crime of illegal entry. CT at 000623.

victim or witness approaches the LAPD to report a crime or provide information about a crime and an officer suspects or learns that the victim or witness is an unlawfully present alien, on its face Special Order 40 does *not* prohibit or restrict that officer from contacting federal immigration officials to inquire about the victim's or witness' immigration status or to report his or her unlawful status.

Nor does Special Order 40 on its face prevent an officer from asking a person about his or her immigration status. In their summary judgment motion, Defendants asserted that officers have the discretion to inquire about any person's immigration status so long as the inquiry is undertaken as part of a criminal investigation. CT at 000681. In support of this assertion, Defendants cited the deposition of Deputy Chief Sergio Diaz, who testified:

> Here's the one instance under which you should not inquire. If this is your only -- your only reason for making this contact, for initiating action is to discover the alien status of an individual, don't do it. If you're doing anything -- anything else that's legitimate -- and we don't even go that far. We stop there. Don't do this. So if, during the course of an investigation -- And, again, the possibilities are endless . . . But if, during the course of an investigation, you feel the need to appropriately ask about a person's immigration status, you can do that.

*Id.* "Special Order 40 only prohibits police action whether the sole objective is to ascertain immigration status." *Id.* In affirming the trial court's grant of summary judgment, this Court found that "all of the LAPD witnesses agreed that [Special Order 40] . . . prohibits *initiating an investigation into an individual solely to determine that person's immigration status.*" *Sturgeon*, 174 Cal. App. 4th at 1415 (emphasis original). Thus, according to this Court and the LAPD, Special Order 40 does not prohibit or restrict an officer from asking a victim, witness, or any other person about his or her immigration status so long as the inquiry is part of a criminal investigation.

In sum, according to this Court, the trial court, and the LAPD, on its face Special Order 40 does not actually do what Interveners claim it does. It does not prevent officers from contacting federal immigration officials to obtain information about a person's immigration status or to report a person who is suspected or known to be an alien unlawfully present in the United States. Nor does it prevent officers from asking victims, witnesses, or any other persons about their immigration status so long as it is part of a criminal investigation. The notion that, because of Special Order 40, an illegal

alien who contacts the police to report a crime or provide information about criminal activity will not have his or her status asked about, discovered, or reported to federal immigration officials is simply false. The "substantial benefit" Interveners claim to have conferred on "a large number of people in Los Angeles" is a false illusion.[11]

Nor can Interveners claim to have conferred a substantial benefit on persons beyond the City of Los Angeles by reason of the alleged precedential value of the Court's ruling. Again, the trial court's ruling was limited to an analysis of Special Order 40 on its face. While it certainly is the case that other cities may have policies like Special Order 40, Interveners have presented no evidence demonstrating that other cities have adopted policies that, on their face, are identical to Special Order 40. It is likely that there are a wide range of such policies and that each has its own unique language. By way of example, the City of San Francisco has a very specific policy, as does the City of Chicago. CT at 001169-1174.

---

[11] Nor can Interveners claim that, without Special Order 40, officers could stop persons based on their appearance or language and inquire about their immigration status. Such conduct would be prohibited by the LAPD's prohibition on racial profiling. CT at 000208.

Obviously, such policies would have to be analyzed based on their unique language. Any precedential effect is limited, if it exists at all.

### 3. No "Private Enforcement" Was Necessary.

Interveners cannot demonstrate that the "necessity and financial burden of private enforcement" in this case makes an award of attorneys' fees appropriate. Code Civ. Proc. § 1021.5. Interveners claim that they "advanced significant theories adopted by the trial court and affirmed by the Court of Appeal, which were not advanced by the governmental entity." Op. Brf. at 21. Interveners' claim is demonstrably false.

First, Interveners claim that the LAPD, "in its briefing and at oral argument, made no mention of facial versus as-applied challenges, let along ma[d]e any attempt to defend the trial court's reliance on or application of this distinction." *Id.* Interveners' assertion that only they argued the "facial versus as-applied" distinction is belied by the trial court's ruling, which found that "all parties have well and diligently briefed the pertinent issues for the Court's consideration" and noted that:

> Defendants and Interveners bring their motions on the same grounds, to wit:
>
> 1. Plaintiff's attack on Special Order 40 is facial, as opposed to an as applied challenge.
>
> 2. Plaintiff cannot show that Special Order 40 conflicts with federal or state law.

CT at 000237; *see also id.* at 000210-21. Nor can Intervenors claim that they "single-handedly" defended this distinction on appeal. Not only did this Court obviously have the trial court's ruling before it when it considered Sturgeon's appeal, but the LAPD's brief on appeal expressly argued that "Special Order 40 policy," which is how it referred to the text or "face" of the policy, did not violate or conflict with federal law.[12] CT at 001146-51. The LAPD's arguments on appeal regarding "Special Order 40 policy" were largely indistinguishable from Intervenors' arguments on appeal regarding a "facial challenge" to the policy.

Interveners make the same erroneous argument about Interveners' and the LAPD's respective appellate argument concerning Penal Code § 834b. Op. Brf. at 22-23. Again, the LAPD

---

[12] It also is not known whether and to what extent Intervenors and the LAPD may have coordinated their filings.

actively and ably defended this Court's ruling with respect to Penal Code § 834b. CT at 001162-65.

In this regard, *Walmart Real Estate Bus. Trust v. City Council*, 132 Cal. App. 4th 614 (2005) ("*Walmart*"), a case cited by Interveners, counsels against an award of attorneys' fees here. At issue in *Walmart* was whether two private parties named as real parties in interest in a mandamus action against a municipality could recover attorneys' fees from the petitioner.[13] The trial court denied the real parties in interests' motion for fees and, in reviewing the denial, the Court of Appeal asked, "Did the private party advance significant factual or legal theories adopted by the court, thereby providing a material non *de minimis* contribution to its judgment, which were nonduplicative of those advanced by the governmental entity?" *Id.* at 623 (quoting, *Committee to Defend Reprod. Rights v. A Free Pregnancy Ctr.*, 229 Cal. App. 3d 633, 642-43 (1991)).

---

[13] Unlike in this case, in which Sturgeon named only public officials, in their official capacities, as defendants and Interveners voluntarily joined this suit on the side the defendants, the petitioner in *Walmart* had sued the private parties as real parties in interest.

The answer to that question is clearly "No." In contrast to this case, the municipality in *Walmart* had not opposed the relief sought by the petitioner. *Walmart*, 132 Cal. App. 4th at 618. In fact, the municipality did not present any arguments to the trial court at all; it simply asked the trial court for guidance. *Id.* By contrast, the real parties in interest in *Walmart* had opposed the issuance of a writ and challenged the merits of the petitioner's arguments. *Id.* at 622. As the Court noted, "public enforcement was ***not*** being effectively pursued." *Id.* at 624 (emphasis added). Unlike the municipality in *Walmart*, the LAPD actively and ably defended its policy in the trial court, then effectively defended the trial court's ruling before this Court by filing a comprehensive, 38-page appellate brief and by appearing and arguing at oral argument. CT at 001117-68.

Second, because the petitioner in *Walmart* did not appeal, there was no question about the necessity of defending the trial court's ruling in the appellate court. Here, Interveners contend that it was necessary for them to defend the trial court's ruling on appeal because, they claim, the LAPD allegedly "made no mention of facial versus as-applied challenges, let alone ma[d]e any attempt to defend

this Court's reliance on or application of this distinction." Op. Brf. at 21. Not only is this a misreading of Defendants' appellate brief (*see* CT at 001146-54), but it also is incorrect as a matter of law. As the LAPD succinctly argued to this Court, "[I]t is the Trial Court's substantive ruling, not judicial reasoning or argument, that is the subject of review." *Id.* at 001146 (citing, *Davey v. Southern Pacific Co.*, 116 Cal. 325, 330 (1897)). Because it was the trial court's decision to grant summary judgment in favor of the LAPD that was on appeal, not the reasoning behind that decision, Interveners cannot satisfy section 1021.5 by claiming their participation in the appeal was "necessary" to defend the Court's reasoning. Finally, and perhaps most tellingly, Interveners filed their appellate brief on March 17, 2008, one day before the LAPD filed its appellate brief on March 18, 2008. *Compare* CT at 001061-116 *with* CT at 001117-67. Interveners cannot claim that their participation in the appeal was "necessary" because they did not even wait to see what arguments the LAPD might make on appeal. Interveners' participation was not "necessary" within the meaning of section 1021.5 -- either for purposes of the underlying action or the appeal -- because the LAPD

actively and ably participated in both the underlying action and the appeal. Rather, Interveners' efforts were largely duplicative of the LAPD's work. Consequently, Interveners are not entitled to an award of attorneys' fees for this, additional reason.

Moreover, Interveners failed to demonstrate that "the cost of [their] legal victory transcends [their] personal interest in the subject of the suit." *Edgerton v. State Pers. Bd.*, 83 Cal. App. 4th 1350, 1362 (2000). This burden lies with Interveners. *Riverwatch v. County of San Diego*, 175 Cal. App. 4th 768, 777 (2009). To try to satisfy this burden, Interveners claimed the "disproporationality requirement" has been met because they allegedly had no pecuniary interest in the outcome of the case. Op. Brf. at 24.

First, it is irrelevant how much time Interveners' attorneys claim to have spent on this matter at the trial court level. Interveners only ask for attorneys' fees for their alleged work on the appeal. *Id.* at 4. Therefore, the relevant question is whether the attorneys' fees allegedly incurred on appeal are proportionally more than the value of Interveners' alleged interests in the outcome. While Interveners seek an award of approximately $75,000, a substantial portion of this

figure is for time allegedly spent preparing Interveners' motion for fees. Sturgeon submits that time spent preparing a motion for fees should not be considered in any "proportionality" analysis because it does not reflect the "cost of the legal victory," but instead reflects the cost of the fee motion. *Woodland Hills*, 23 Cal.3d at 941.

Second, Interveners' claim that they had no pecuniary interest in the outcome of this litigation directly contradicts prior statements Interveners made to the trial court. In seeking to intervene in this action, Interveners represented that "Break the Cycle will be forced to divert resources away from its mission," that Los Jornaleros' members "would not engage in activity publicly indicating their ability for day work," and that El Comite de Jornaleros' members "would not engage in activity publicly indicating their availability for day work." CT at 000016-17. In all three instances, Interveners sought intervention to protect their pecuniary interests, specifically, monetary resources and income.

Similarly, Instituto de Educacion Popular del Sur de California ("IDEPSCA") represented that "[t]he City would have to terminate its contracts with IDEPSCA because managing the job centers and

organizing the street corners would cease to be effective. This would cause significant economic harm to IDEPSCA: the City contracts make up about two-thirds of IDEPSCA's budget." CT at 000039. It also was represented that the undocumented day laborers who are members of Los Jornaleros, "would be unable to look for work as they do now" and that "[i]t would be difficult, if not impossible, for them to make themselves known to potential employers if they could not gather freely in public places." CT at 000032-33.

Likewise, Break the Cycle represented that it "would be forced to divert resources away from our mission. Significant time and effort would be diverted." CT at 000030. While Sturgeon does not concede that any of these claims are well-founded or they would have resulted if the Court had enjoined the expenditure of taxpayer funds on Special Order 40, Interveners' own prior statements contradict their claims that they had no financial interest in the outcome of this litigation. Consequently, Interveners have not satisfied their burden of demonstrating that the attorneys' fees they allegedly incurred on appeal transcended the potential monetary losses of terminated

contracts, lost wages, and diverted resources they claimed they would suffer as a result of an adverse ruling in this litigation.

In sum, Interveners fail to show that it was necessary for them to participate in the appeal of this matter or that the financial burden they allegedly incurred in participating in the appeal outweighed their own financial interests. Consequently, Interveners fail to satisfy this necessary element of any fee recovery as well.

### G. Interveners' Fee Request Is Not Reasonable.

Although Interveners ask this Court to find that they satisfy the requirements for an award of attorneys' fees under section 1021.5, they do not ask the Court to assess an award. Their brief is completely silent about what should happen in the unlikely event that this Court reverses the ruling of the trial court. Because, again, the trial court did not reach any issue beyond Intervenors' waiver of any claim seeking an award of attorneys' fees and their lack of eligibility for any such award because they had aligned themselves with public-entity defendants, this matter must be remanded to the trial court if any further proceedings are necessary. To the extent the Court might see fit to determine the amount of any award -- an issue that

Interveners did not brief to this Court -- Sturgeon respectfully refers the Court to the compelling arguments he submitted to the trial court in this regard. CT at 000686-88.

## IV. CONCLUSION.

For the reasons set forth above, Sturgeon requests that the ruling of the trial court be affirmed in its entirety. In the unlikely event that the ruling of the trial court is reversed, this matter must be remanded to the trial court for consideration of all remaining issues.

Dated: January 10, 2011

Respectfully submitted,

JUDICIAL WATCH, INC.

By:_____
Sterling E. Norris

*Attorneys for Plaintiff-Appellee*

Of Counsel:

Paul J. Orfanedes
James F. Peterson
JUDICIAL WATCH, INC.
Suite 800
425 Third Street, S.W.
Washington, DC 20024
Tel: (202) 646-5172
Fax: (202) 646-5199

**CERTIFICATION OF WORD COUNT**
**(Cal. Rules of Court, Rule 8.204(c)(1))**

I certify that pursuant to Rule 8.204(c)(1), the attached brief is proportionally spaced, has a typeface of 13 points or more and contains ____words

Dated: January 10, 2011

_____
__
Sterling E. Norris

## CERTIFICATE OF SERVICE

DISTRICT OF COLUMBIA, CITY OF WASHINGTON

I am employed in the City of Washington, District of Columbia. I am over the age of 18 and not a party to the within action. My business address is 425 Third Street, S.W., Suite 800, Washington, DC 20024.

On January 10, 2011, I served the foregoing document:

**APPELLEES' ANSWER BRIEF**

on the interested parties in this action by placing a true and correct copy thereof in a sealed envelope addressed as follows:

**SEE ATTACHED SERVICE LIST**

I deposited the sealed envelope, with postage thereupon fully prepaid, into a United States Postal Service mailbox in Washington, DC on the same day as this declaration was executed. I am aware that if the postage cancellation date is more than on day later than the date on this proof of service, service may be deemed invalid.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 10, 2011 at Washington, D.C.

_____

DAVID F. ROTHSTEIN

**SERVICE LIST**

*Sturgeon v. Bratton, et al.*,
Case No. BC 351646

*Counsel for Defendants William J. Bratton, John Mack, Shelley Freeman, Alan J, Skobin, Andrea Ordin, and Anthony Pacheco:*

Carmen Trutanich, City Attorney
City Hall East, 7th Floor
200 North Main Street
Los Angeles, CA 90012
Tel: (213) 978-8100

*Counsel for Interveners/Appellants Break the Cycle, Los Jornaleros, El Comite de Jornaleros, and Instituto de Educacion Popular del Sur de California:*

Hector O. Villagra, Esq.
Belinda Escobosa Helzer, Esq.
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
2140 W. Chapman Avenue, Suite 209
Orange, CA 92868
Tel: (714) 450-3962

*Trial Court Judge:*

The Hon. Ralph M. Treu
c/o Clerk of the Court
Superior Court of the State of California, County of Los Angeles
111 N. Hill Street
Los Angeles, CA 90012-3117

*Supreme Court of California:*

Clerk (Four Copies)
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102