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Ramona Rita Morales

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

RAMONA RITA MORALES, on behalf of
herself and all others similarly situated,

Plaintiff-Petitioner,

v.

THE CITY OF INDIO, THE CITY OF
COACHELLA, and SILVER & WRIGHT
LLP, in its official capacity as City Prosecutor
for the City of Indio and City Prosecutor for the
City of Coachella,

Defendants-
Respondents.

Case No. **RIC 1803060**

CLASS ACTION

UNLIMITED JURISDICTION

Related Case No. INM1505735

**VERIFIED CLASS ACTION
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF, AND
PETITION FOR WRIT OF CORAM
NOBIS**

1 NOTICE IS HEREBY GIVEN THAT Plaintiff and Petitioner Ramona Morales, on behalf
2 of herself and of all others similarly situated, for declaratory and injunctive relief against
3 violations of Plaintiff's and others' civil rights guaranteed under the U.S. Constitution and the
4 Constitution of the State of California, and for relief in the form of a writ of coram nobis, avers
5 and alleges as follows:

6 **INTRODUCTION**

7 1. This class action civil rights lawsuit seeks to vindicate the rights of people who
8 have been criminally prosecuted for municipal ordinance violations and then charged thousands
9 of dollars to cover the alleged cost of their own prosecution. Defendants are the cities of Indio
10 and Coachella, as well as a private law firm that acts as their deputy city prosecutor for code
11 enforcement cases. The firm is funded by fees that it collects from the people it prosecutes, none
12 of whom have any idea, when they plead guilty to minor infractions and misdemeanors, that
13 their prosecutor has a personal, financial stake in their case and will later try to collect thousands
14 of dollars in fees. The United States and California Constitutions require that criminal
15 prosecutors be neutral, without a personal, financial stake in the cases they bring. These
16 prosecutions were and continue to be unconstitutional. This lawsuit seeks to (1) vacate all
17 criminal convictions obtained by Silver & Wright in Riverside County, (2) obtain the return of
18 all fines and fees paid in connection with prosecutions by Silver & Wright in Riverside County,
19 and (3) enjoin Silver & Wright from further unconstitutional prosecutions in cases in which the
20 firm has a financial interest.

21 **JURISDICTION AND VENUE**

22 2. This Court has jurisdiction under Civ. Proc. Code § 410.10.

23 3. Venue is proper under Civ. Proc. Code § 394 because the cities of Indio and
24 Coachella are located in Riverside County and Defendant Silver & Wright is being sued in its
25 official capacity as the City Prosecutor for the City of Indio and the City of Coachella.

4. Pursuant to this Court’s Administrative Order “In Re: Order – Where to File Civil Documents,” (Sept. 11, 2017), this case must be filed at the Riverside Historic Courthouse, located at 4050 Main Street, Riverside, 92501, because this case is designated as a class action.

PARTIES

5. Plaintiff-Petitioner Ramona Rita Morales is the Trustee of the Morales Family Trust Dated March 9, 1999. The trust owns a rental property located at 82389 Orange Grove Avenue, Indio, California 92201 (“the Orange Grove Property”). In her capacity as owner of that property, Mrs. Morales was criminally prosecuted for Indio code violations. That prosecution is one of the subjects of this lawsuit.

6. The City of Indio is a municipality in Riverside County, California. This case concerns criminal prosecutions and cost recovery actions instituted by City of Indio deputy prosecutors.

7. The City of Coachella is a municipality in Riverside County, California. This case concerns criminal prosecutions and cost recovery actions instituted by City of Coachella deputy prosecutors.

8. Silver & Wright LLP is a law firm that has been hired by the City of Indio and the City of Coachella to act as deputy city prosecutor in code enforcement cases. This lawsuit concerns the unconstitutionality of Silver & Wright having a financial interest in the cases that it prosecutes. Silver & Wright is named in its official capacity as prosecutor for the Cities of Indio and Coachella.

FACTUAL ALLEGATIONS

Ramona Morales and the Orange Grove Property

9. Mrs. Morales, as the trustee of the Morales Family Trust, owns eight rental properties in the Coachella Valley, six of which are in Indio.

10. Mrs. Morales purchased these properties one-by-one, over the last two decades, with money that she earned cleaning houses and selling Avon makeup door-to-door. Before she

1 bought them, many of the properties had been poorly maintained and were full of garbage. The
2 houses generally cost less than \$60,000 when she bought them.

3 11. Mrs. Morales herself, with the help of friends and family, rehabilitated each
4 property that she purchased, in order to make good homes for her tenants.

5 12. Over the years, she has continued to make significant investments in her
6 properties.

7 13. For instance, at the Orange Grove Property, Mrs. Morales recently replaced an old
8 fence in the backyard with a new brick wall.

9 14. Although the rental properties provide Mrs. Morales with supplemental income,
10 the income is not always reliable because of maintenance costs and because tenants sometimes
11 stop paying rent.

12 15. Mrs. Morales continues to earn a living by cleaning houses and selling Avon
13 makeup door-to-door. She has done both in the Coachella Valley for decades.

14 16. The Orange Grove Property was subjected to several inspections in 2014 and
15 2015, and Mrs. Morales was sent warning notices in connection with these inspections. *See*
16 Exhibit A at 1–2.

17 17. Some of the warnings instructed Mrs. Morales to remove chickens or roosters
18 from the property.

19 18. Mrs. Morales had not been aware that her tenant was keeping chickens or roosters.

20 19. After each warning, Mrs. Morales contacted her tenant and demanded that any
21 chickens or roosters be removed.

22 20. After the second warning, the tenant removed only the rooster, leaving several
23 chickens. The tenant believed that the inspector's concern was noise, and that she would be
24 allowed to keep just chickens because they are relatively quiet.

25 21. Some of the warnings instructed Mrs. Morales to obtain a business license.

1 22. Mrs. Morales did not immediately obtain a business license because when she
2 went to City Hall to obtain one, the staff member she spoke to said that business licenses were
3 not required for rental properties, so she believed the warning was in error.

4 23. At no time did any official from the City of Indio ever speak to Mrs. Morales
5 about any issues with the property or about the need for a business license.

6 24. In June 2015, an Indio code inspector forwarded Mrs. Morales's case to Silver &
7 Wright, a private law firm that the City of Indio had engaged to act as Deputy City Prosecutor in
8 code enforcement cases. *See* Exhibit A at 30.

9 25. Attorneys from Silver & Wright charged Mrs. Morales with two criminal
10 violations of Indio ordinances—renting the property without a business license and failing to
11 prevent her tenant from keeping a chicken at the property—and they applied for a warrant for
12 her arrest. *See* Exhibit A at 5, 9.

13 26. Mrs. Morales was arraigned on September 15, 2015, in Riverside Superior Court.
14 At that court appearance she explained that her tenant had finally gotten rid of the chicken and
15 that she had applied for a business license. *See* Exhibit A at 36.

16 27. She pleaded guilty and was ordered to pay \$225 (\$75 for each violation plus \$75
17 in court fees). *See* Exhibit A at 12–13.

18 28. She paid her fines and fees immediately, *see* Exhibit A at 12, and she believed that
19 the ordeal was over. At no point prior to pleading guilty was she ever informed that as a
20 consequence of her plea, she could be ordered to pay Silver & Wright's attorneys' fees.

21 29. It was not until January of 2016 that Mrs. Morales received a "Notice of Pendency
22 of Nuisance Abatement Action," notifying her that she might be liable for attorneys' fees. *See*
23 Exhibit A at 7.

24 30. At no point was she ever informed that her prosecutors had a personal, financial
25 stake in her case.

1 31. At no point was she ever informed that crucial decisions about her case were
2 made by Silver & Wright, rather than by neutral government attorneys with no financial stake in
3 her case.

4 32. Those crucial decisions included whether to file criminal charges, what to charge,
5 whether to seek fees, and whether to attempt an out-of-court resolution by contacting Mrs.
6 Morales directly.

7 33. Almost one year after Mrs. Morales pleaded guilty (on September 15, 2015),
8 Silver & Wright sent her a “cost recovery invoice” dated August 30, 2016. The invoice
9 demanded that Mrs. Morales pay \$3,030.33 for the cost of “abating public nuisances” on the
10 Orange Grove Property. \$2,407.80 of that sum was designated for “Prosecution Fees,” \$507.53
11 was designated for “Administrative Costs,” and \$115.00 was designated for “Code Enforcement
12 Investigation Costs.” The invoice directed that payment be made “in the form of a **Cashier’s**
13 **Check** made payable to the ‘**Silver & Wright LLP.**’” *See* Exhibit A at 16–17.

14 34. Mrs. Morales did not understand why, almost one year after pleading guilty and
15 paying a \$225 fine, she was being asked for another \$3030.33.

16 35. The letter stated that “[q]uestions regarding this invoice may be directed to James
17 McKinnon, Indio Deputy City Prosecutor, by e-mail at JMcKinnon@SilverWrightLaw.com or
18 by calling 949-385-6431, Ext. 103.” Exhibit A at 17.

19 36. Mrs. Morales called that phone number repeatedly, but it was never answered, nor
20 was she able to leave a message.

21 37. She timely requested a hearing regarding the requested fees.

22 38. The hearing occurred on September 28, 2016, before James Butzbach, an Indio
23 city official.

24 39. At the hearing, Mrs. Morales explained: the history of the property, how she had
25 tried to get her tenant to remove the chickens, how both she and her tenant had been confused
26 about the warnings, how the violations had been addressed, and how she had never been told
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28

1 that she would have to pay thousands of dollars more after she had already paid her fine. *See*
2 Exhibit A at 18.

3 40. The hearing officer asked Mrs. Morales no questions.

4 41. An attorney from Silver & Wright submitted a written memo, partially redacted
5 timesheets justifying the requested fees, a proposed order, and a declaration. The memo also
6 requested an additional \$2,628.69 to pay for Silver & Wright's time preparing for that very
7 hearing. *See* Exhibit A at 20–38.

8 42. The memo by Silver & Wright was mostly boilerplate language identical to
9 memos filed in other cost recovery cases. *See* Exhibit G.

10 43. The hearing officer did not announce his decision at the hearing, but he signed
11 Silver & Wright's proposed order without modification on the same day. *See* Exhibit A at 39–
12 42.

13 44. The decision was sent to Mrs. Morales, and she promptly paid the full \$5,659.02
14 that Silver & Wright demanded.

15 45. Mrs. Morales remained confused about what had happened to her. She did not
16 understand why she was required to pay \$5,659.02 for violations that carried fines of only \$75.

17 46. On November 13, 2017, The Desert Sun newspaper published a story by
18 investigative reporter Brett Kelman, entitled "They confessed to minor crimes. Then City Hall
19 billed them \$122k in 'prosecution fees.'" *See* Exhibit C.

20 47. The Desert Sun story explained:

- 21 a) how the private law firm of Silver & Wright had taken over code enforcement
22 in the Cities of Indio and Coachella;
- 23 b) how the cities had rewritten their ordinances at the request Silver & Wright to
24 facilitate "cost recovery";
- 25 c) how Silver & Wright has been criminally prosecuting people for minor
26 property code violations and then billing them thousands of dollars;
- 27 d) how Silver & Wright threatened to put liens on homes to collect their fees;

- 1 e) how city officials, after hiring Silver & Wright, had no idea how Silver &
2 Wright was actually handling prosecutions; and
3 f) how, after being confronted with what was going on, city officials conceded
4 that Silver & Wright had apparently gone too far in some cases.

5 48. After reading the story, Mrs. Morales finally understood that the reason she had
6 been subjected to a criminal prosecution and billed almost \$6,000 was that the city prosecutor—
7 Silver & Wright—was trying to make money off of her.

8 49. She was so struck by what she had learned that she saved that issue of the
9 newspaper.

10 ***Silver & Wright's Code Enforcement Practice***

11 50. Silver & Wright LLP was founded in 2013 by Matthew Silver and Curtis Wright.

12 51. The law firm's code-enforcement business model is centered on a California
13 statute, Gov. Code § 38773.5(b), which provides that "A city may, by ordinance, provide for the
14 recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to
15 abate a nuisance."

16 52. Silver & Wright has aggressively marketed itself to cities with a promise that, if
17 cities hire Silver & Wright to act as deputy prosecutors in code enforcement cases, Silver &
18 Wright will make code enforcement "cost neutral or even revenue producing." Exhibit D.

19 53. Dozens of cities in California have engaged Silver & Wright to act as Prosecutor
20 in code enforcement cases.

21 54. Although Silver & Wright's contracts with Indio, Coachella, and other cities
22 provide that the cities are technically responsible for paying Silver & Wright's hourly rates, it is
23 understood that this responsibility is largely theoretical in light of Silver & Wright's promise to
24 recover costs and make code enforcement "cost neutral of even revenue producing." Exhibit D.

25 55. For instance, Silver & Wright's contract with the City of Coachella provides that
26 "S&W will endeavor to recover all of the City's costs, expenses, and fees incurred in all code
27 enforcement actions, including all attorneys' fees, litigation costs, and even the City's
28

1 administrative and law enforcement expenses. S&W has extensive experience successfully
2 prosecuting hundreds of code enforcement cases and rehabilitating substantially dangerous
3 nuisance properties, in addition to recovering 100% of cities [sic] costs incurred in those
4 actions.” Exhibit E, at ¶ 2.2.

5 56. The City Attorney for the City of Chowchilla also recommended hiring Silver &
6 Wright on the basis of the full cost recovery promise. *See* Exhibit L, at 1–2.

7 57. At Silver & Wright’s direction, these cities also amended their ordinances to
8 facilitate more aggressive prosecutions and cost recovery, per Gov. Code § 38773.5(b). *See*
9 Exhibit K at 14; Exhibit B at 13–14.

10 58. For example, on December 17, 2014, the Indio City Council adopted Ordinance
11 Number 1668, which provides that the City may institute an administrative action to recover “all
12 costs, expenses, and fees (including attorneys’ fees) expended by the City related to any
13 nuisance abatement or code enforcement action.” Exhibit F at 1. The ordinance provides that
14 liens can be placed on properties to recover costs. Ordinance 1668 also provides that “any
15 violation of any provision of [the Indio] code or any state law enforceable by the City shall be
16 deemed a public nuisance and may be summarily abated as such by the City, and each day such
17 condition continues shall constitute a new and separate offense.” Exhibit F at 5.

18 59. The City of Coachella enacted a similar ordinance on September 9, 2015. *See*
19 Exhibit M.

20 60. Upon information and belief, after cities hire Silver & Wright, the firm proceeds
21 to prosecute code violation cases in substantially the same manner as it prosecuted Mrs.
22 Morales.

23 61. Upon information and belief, Silver & Wright typically makes no effort to resolve
24 cases out of court.

25 62. Silver & Wright prosecutes property owners criminally for minor code violations
26 such as: long grass, a broken garage door, address numbers that are “sun damaged,” decorations
27
28

1 that encroach on public space, broken windows, and, of course, keeping chickens. *See generally*
2 Exhibit G; Exhibit H.

3 63. Because these violations carry small fines, most defendants do not bother to retain
4 an attorney, even if they can afford one. Defendants typically plead guilty.

5 64. Upon information and belief, Silver & Wright does not notify defendants, at the
6 time they plead guilty, that Silver & Wright intends to recovery thousands of dollars in legal
7 fees from them.

8 65. Many months after defendants plead guilty, Silver & Wright sends them a bill for
9 thousands of dollars in legal fees. *See generally* Exhibit G; Exhibit H.

10 66. Defendants are allowed to dispute these fees before a city official in an
11 administrative hearing, but if they do so, Silver & Wright also adds the alleged cost of preparing
12 for that hearing to the cost recovery invoice. *See generally* Exhibit G; Exhibit H.

13 67. Upon information and belief, hearing officers typically approve all of Silver &
14 Wright's fee requests without modification.

15 68. Silver & Wright threatens to obtain a lien on the property at issue if fees are not
16 paid. *See generally* Exhibit G; Exhibit H.

17 69. Upon information and belief, throughout this process, Silver & Wright acts with
18 minimal (or even no) supervision by the client city. Silver & Wright exercises prosecutorial
19 discretion and makes critical decisions, including whether to file criminal charges, what to
20 charge, and whether to attempt an out-of-court resolution by contacting property owners
21 directly.

22 70. Upon information and belief, the decision whether to seek fees in particular cases
23 is also made by Silver & Wright, rather than by neutral government attorneys.

24 71. Defendants are given no opportunity to discuss their cases with neutral
25 government attorneys who have no financial stake in the case.

1 72. If defendants attempt to discuss their cases with Silver & Wright attorneys, Silver
2 & Wright will bill defendants for the time spent discussing the case. In some cases, Silver &
3 Wright even demands a deposit before a settlement negotiation can proceed. *See* Exhibit I.

4 73. Silver & Wright's contracts with client cities do not reserve for the cities any
5 control over the cases that Silver & Wright litigates. To the contrary, the agreements emphasize
6 Silver & Wright's independence. For instance, Silver & Wright's agreement with Indio states
7 that "[n]either the City, nor any of its employees, shall have any control over the manner, mode,
8 or means by which Law Firm, its agents or employees, render the legal services required under
9 this Agreement." Exhibit J at 3.

10 74. The contract between Silver & Wright and the City of Indio also states that the
11 firm will "on a quarterly basis, or more frequently as requested . . . provide a status report on
12 [municipal code prosecutions] to the Chief of Police, City Manager and City Attorney." Exhibit
13 J at 8.

14 75. Silver & Wright's contracts do not provide that the city's own attorneys are
15 required to make all—or even any—settlement decisions.

16 76. Silver & Wright's contracts do not provide that defendants have the right to
17 discuss their cases with the city's own attorneys.

18 77. Silver & Wright's contracts do not provide that city attorneys must be personally
19 involved in overseeing the litigation.

20 78. As of November 2017, Silver & Wright has recovered over \$122,000 in fees in
21 the cities of Indio and Coachella. *See* Exhibit C.

22 **INJURIES TO PLAINTIFF-PETITIONER**

23 79. Mrs. Morales has been injured because she was required to pay \$5,659.02 in fees
24 to pay for the cost of her own, unconstitutional prosecution.

25 80. Mrs. Morales has been injured because she was required to pay \$225 in fines for
26 her unconstitutional conviction.

81. Mrs. Morales has been injured because she has been subjected to the shame and embarrassment of the criminal process, including issuance of an arrest warrant, an arraignment, and a criminal conviction, all of which was the result of an unconstitutional process.

82. Mrs. Morales has the continuing injury of a criminal conviction.

83. Mrs. Morales continues to fear that she will be subjected to further unconstitutional prosecutions because she owns six rental properties in Indio, and she has tenants whose behavior she cannot control.

84. Mrs. Morales continues to fear that if she is subjected to further unconstitutional prosecutions, she will have no opportunity to pursue an out-of-court settlement with a neutral, government attorney.

85. Mrs. Morales continues to fear that if she is subjected to further unconstitutional prosecutions, she will be compelled to pay thousands of dollars to Silver & Wright to pay for the alleged cost of her own prosecution.

86. Mrs. Morales continues to fear that if she is subjected to further unconstitutional prosecutions, any efforts to defend herself, either in court or in a cost recovery hearing, will only lead to Silver & Wright dramatically increasing their fee demands.

CLASS ACTION ALLEGATIONS

87. Mrs. Morales brings this complaint and petition on behalf of herself and for the benefit of all others similarly situated pursuant to Civ. Proc. Code § 382 or, alternatively, as a common law class action.

88. Mrs. Morales proposes to represent the following class: “all individuals who pleaded guilty or no contest in a criminal case where Silver & Wright LLP, or one or more of its agents, acted as prosecuting city attorney(s) for either the City of Indio or the City of Coachella.”

89. **Ascertainability:** This class is ascertainable without individual inquiry because a single inquiry suffices: Were the potential class members prosecuted by Silver & Wright and

1 did they subsequently enter a guilty plea? This information is readily available in court records
2 or Defendants' records.

3 90. **Numerosity:** The proposed class is sufficiently numerous such that joinder of all
4 members is impracticable. Silver & Wright has been employed by Indio since 2014 and by
5 Coachella since 2015, and the proposed class would cover every defendant prosecuted by Silver
6 & Wright since then. In addition, public interest considerations weigh in favor of permitting a
7 class action to proceed where class representatives are represented by pro bono counsel. Finally,
8 judicial economy is better served where a single suit can decide the same constitutional claim.

9 91. There is a well-defined community of interest in the questions of law and fact
10 affecting all members of the proposed class.

11 92. **Commonality:** Common questions of law and fact predominate over any facts
12 pertaining to individual class members. Each member of the proposed class asserts the same
13 constitutional claims against Defendants. And the operative facts—whether Silver & Wright
14 possessed an illicit profit motive when it criminally prosecuted the proposed class members on
15 behalf of city governments—remain the same with respect to each proposed class member.
16 Indeed, Silver & Wright largely uses the same form documents in each prosecution and when
17 billing each individual defendant for prosecution fees.

18 93. **Typicality:** Mrs. Morales's claims are typical of the class she seeks to represent.
19 Mrs. Morales, along with every member of the proposed class, has been prosecuted by Silver &
20 Wright, a law firm that has a profit motive in obtaining their convictions. Mrs. Morales is in the
21 same position as every proposed class member: She has pleaded guilty to a case in which she
22 was prosecuted by Silver & Wright.

23 94. **Adequacy of Representation:** Mrs. Morales will fairly and adequately protect
24 the interests of the proposed class. There are no conflicts of interest between Mrs. Morales and
25 the members of the proposed class. Mrs. Morales will vigorously represent the class's interest.
26 Mrs. Morales and proposed class members will be ably represented, without cost, by the
27 Institute for Justice and by O'Melveny & Myers LLP.

1 95. Founded in 1991, the Institute for Justice is a nonprofit, public-interest law firm
2 that litigates constitutional issues nationwide. The Institute for Justice has particular expertise in
3 protecting the due process and property rights of individuals, including challenging criminal
4 justice programs motivated by the desire to raise revenue. In bringing this action, the Institute
5 for Justice has done extensive work to identify and investigate these claims.

6 96. O'Melveny & Myers LLP is an international law firm founded in Los Angeles in
7 1885. It now has 700 lawyers in 15 offices across North America, Europe, and Asia. Among
8 other practices, it has a large, sophisticated, and effective class action litigation practice.

9 97. **Superiority of Class Action:** Proceeding as a class will confer substantial
10 benefits such that proceeding as a class is superior to the alternatives. Because some individual
11 proposed class members may have paid little in prosecution fees, and therefore may not be able
12 to justify the costs of individual litigation, class certification will allow those class members to
13 litigate their claims efficiently and economically. Likewise, resolution of the same constitutional
14 claims in a single case is efficient for the judicial system and will avoid any potential for
15 inconsistent outcomes arising from other cases simultaneously raising the same issue.

16 98. **Grounds for Class Action:** Defendants are acting or refusing to act on grounds
17 generally applicable to the proposed class, thereby making appropriate final injunctive relief or
18 corresponding declaratory relief with respect to the proposed class as a whole.

19
20 **CAUSES OF ACTION ON BEHALF OF PETITIONER AND THE PROPOSED CLASS**

21
22 **COUNT ONE**

23 **Violations of Due Process Clause of the United States Constitution**

24
25 99. Plaintiff-Petitioner incorporates by reference all previous paragraphs of this
26 pleading.

1 100. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution
2 requires that criminal prosecutors be neutral and objective.

3 101. It is a violation of the Due Process Clause for criminal prosecutors to have a
4 personal, financial stake in the cases they prosecute. *Marshall v. Jerrico, Inc.* (1980) 446 U.S.
5 238, 249–50 (“A scheme injecting a personal interest, financial or otherwise, into the
6 enforcement process may bring irrelevant or impermissible factors into the prosecutorial
7 decision and in some contexts raise serious constitutional questions.”).

8 102. Silver & Wright has a massive financial interest in the cases that it brings. The
9 firm is largely dependent on obtaining substantial fees from the people that the firm prosecutes.

10 103. This financial interest distorts Silver & Wright’s exercise of prosecutorial
11 discretion.

12 104. This financial interest incentivizes Silver & Wright to obtain convictions,
13 regardless of the equities, justice, or facts of a given case.

14 105. This financial interest incentivizes Silver & Wright to obtain convictions without
15 regard to the stringent ethical responsibilities of prosecutors.

16 106. Silver & Wright’s “cost neutral” model of code enforcement also incentivizes
17 cities to exercise minimal (or even no) supervision over outside counsel and to pursue
18 aggressive enforcement strategies without regard to whether there is any reasonable relationship
19 between the cost of the enforcement approach and the severity of the alleged conduct at issue.
20 That too violates the Due Process Clause.

21 107. Although Silver & Wright’s contracts provide that the client cities are technically
22 responsible for fees, Silver & Wright nevertheless promises that they will recover all fees from
23 defendants, so the client cities will not ultimately be responsible for their fees.

24 108. Silver & Wright’s contracts are terminable at will by either party, so if Silver &
25 Wright were unable to live up to its promise of “cost neutral or even revenue producing”
26 prosecution, then the client cities could terminate the agreement.

109. Silver & Wright’s conflict of interest is so severe that considerations of subjective bad faith are irrelevant.

110. Under federal Due Process, because Silver & Wright had an unconstitutional financial interest in Mrs. Morales's case, her prosecution was invalid, and all fines and fees paid by Mrs. Morales in connection with her conviction were illegally collected.

111. Likewise, all fines and fees paid by class members in connection with their convictions were illegally collected.

COUNT TWO

Violations of Due Process Clause of California Constitution

112. Plaintiff-Petitioner incorporates by reference all previous paragraphs of this pleading.

113. The California Constitution, like the U.S. Constitution, prohibits prosecutors from having a personal, financial stake in the cases they prosecute. *Cf. People ex rel. Clancy v. Super. Ct.* (1985) 39 Cal. 3d 740, 745–50 (disqualifying private attorneys from prosecuting a public nuisance case because the attorneys had a personal, financial stake in the case).

114. Silver & Wright’s “cost neutral” model of code enforcement also incentivizes cities to exercise minimal (or even no) supervision over outside counsel and to pursue aggressive enforcement strategies without regard to whether there is any reasonable relationship between the cost of the enforcement approach and the severity of the alleged conduct at issue. That too violates due process.

115. Under California's guarantee of Due Process, because Silver & Wright had an unconstitutional financial interest in Mrs. Morales's case, her prosecution was invalid, and all fines and fees paid by Mrs. Morales in connection with her conviction were illegally collected.

116. Likewise, all fines and fees paid by class members in connection with their convictions were illegally collected.

1
2 **COUNT THREE**

3 **Petition for Writ of Coram Nobis**

4 117. Plaintiff-Petitioner incorporates by reference all previous paragraphs of this
5 pleading.

6 118. This Complaint for Declaratory and Injunctive Relief, and Petition for Writ of
7 *Coram Nobis* hereby constitutes notice that Ramona Morales, defendant in the case of *People v.*
8 *Morales*, INM1505735, hereby petitions for *coram nobis* relief, on behalf of herself and all
9 others similarly situated, to vacate the judgment against her entered on September 15, 2015, and
10 to vacate similar judgments against all those similarly situated, in the Superior Court of the State
11 of California, County of Riverside.

12 119. The writ of *coram nobis* must be granted when petitioner demonstrates an error
13 of fact, which through no fault of her own was unknown to her at the time of her conviction, and
14 which, if known, would have prevented the entry of judgment. *See People v. Shipman*, 62 Cal.
15 2d 226, 230 (1965). That standard is met here. At the time they pleaded guilty, Mrs. Morales
16 and the class members had no way of knowing that the people prosecuting them and making all
17 crucial decisions about their cases had a personal, financial stake in their cases. Had they
18 known, they could have presented a meritorious due process defense that would have resulted in
19 their acquittals.

20 120. This Petition is based upon all papers, files, and pleadings in the criminal case,
21 *People v. Morales*, INM1505735, as well as the attached Memorandum of Points and
22 Authorities in Support of Petition for Writ of *Coram Nobis*, declarations, and any further
23 evidence that may be introduced at the hearing on this Petition. It is being filed within one year
24 of the discovery of misconduct and fraud, and subsequent coercion and mistake, supporting this
25 Petition.

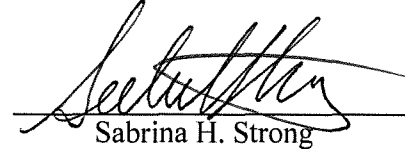
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Dated: February 13, 2018

JEFFREY REDFERN (*pro hac vice*
forthcoming)
JOSHUA HOUSE
INSTITUTE FOR JUSTICE

SABRINA H. STRONG
JASON A. ORR
ROB BARTHELMESS
O'MELVENY & MYERS LLP

By:



Sabrina H. Strong
Attorneys for Plaintiff-Petitioner
Ramona Rita Morales

VERIFICATION

I, Ramona Morales, am a party to this action, and I have read the foregoing VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, AND PETITION FOR WRIT OF CORAM NOBIS and I know its contents. The matters stated in the VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, AND PETITION FOR WRIT OF CORAM NOBIS are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

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


Ramona Morales

EXECUTED at La Quinta, California on this 10 day of February, 2018.