LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION
500 West Temple Street
Hall of Administration, Room 374
Los Angeles, CA 90012-2718
ERCOMfilings@bos.lacounty.gov
213-974-2417

CHARGE ALLEGING UNFAIR EMPLOYEE RELATIONS PRACTICE AGAINST MANAGEMENT

INSTRUCTIONS:

A. This charge may be filed pursuant of the Employee Relations Ordinance No. 9646, Section 5.04.240 (a)(b).
B. Complete this form and submit an electronic .pdf copy to ERCOMfilings@bos.lacounty.gov.
C. Charging Party is responsible for the notification to Respondent within (3) calendar days of filing and shall provide proof of service to ERCOM via ERCOMfilings@bos.lacounty.gov.

DO NOT WRITE IN THIS SPACE
CASE NO. 029-25
DATE FILED 6/16/25

Charge Against:

Name: County of Los Angeles Address: 500 W. Temple Street

The above named County of Los Angeles (employer) has engaged in and/or is engaging in unfair employee relations practices within the meaning of Section 5.04 subsection(s) 240(A)(1);(3) of the Employee Relations Ordinance or Section ____ subsection(s) _____ of the Commission Rules and Regulations.

Basis of Charge: (Be specific as to facts/actions, names, addresses, dates, etc. Attach additional pages if required)
[SEE ATTACHED]

Requested Remedy (if applicable):

1. Finding that by COC serving the February 27, 2025 subpoenas without first negotiating with PPOA, the County breached its obligation to negotiate with PPOA in violation of Section 5.04.240 of the County Code.
2. Finding that by COC serving the February 27, 2025 subpoenas without completing meet and confer efforts required by ERCOM UFC Nos. 017-20 and 012-23, the County violated ERCOM's Decision and Orders for UFC Nos. 017-20 and 012-23.
3. Finding that by COC serving the February 27, 2025 subpoenas, the County violated two separate injunctions granted by the Los Angeles Superior Court (Sup. Ct. Case Nos. 23STCP01745 and 24STCP00232).
4. Requiring the County to rescind the COC subpoenas served to Sheriff Robert Luna on February 27, 2025.
5. Requiring the County to meet and confer over the effects of the COC subpoenas served to Sheriff Robert Luna on February 27, 2025.
6. Requiring the County to make whole any adversely impacted PPOA members as a result of the County's actions in this case.
7. Requiring the County to pay PPOA's attorneys fees for any legal efforts associated with the February 27, 2025 COC subpoenas.
8. An order for such further relief as the Commission determines may be appropriate under the circumstances.

Charging Party:

Full Name of Party(ies) filing charge: (If Employee Organization give full name, including local and and/or number)

Professional Peace Officers Association

Contact Person: James Cunningham Email: jjc@jimcunninghamlaw.com

Cell Phone: (619) 871-9116 Office Phone: (619) 819-9288

Mailing Address (include zip code): 10405 San Diego Mission Road Ste 200, San Diego, CA 92108

Additional Relevant Information:

The County is bound by two separate injunctions granted by the Los Angeles Superior Court (Sup. Ct. Case Nos. 23STCP01745 and 24STCP00232) each intended to preserve the status quo while PPOA/ALADS and the County are engaged in good faith meet and confer negotiations regarding utilization of the County's investigative subpoena power.

ALADS is also expected to file a UFC regarding the aforementioned conduct. Upon this filing, a motion to consolidate charges will be submitted by PPOA.

Declaration

I declare that I have read the above charge(s) and verify under penalty of perjury that the statements therein are true to the best of my knowledge and belief.

Signature Jim Cunningham

Printed Name James Cunningham

Title: Attorney

For: Professional Peace Officers Association

Date: June 16, 2025

Basis of Charge:

On February 27, 2025, the County of Los Angeles Civilian Oversight Commission ("COC") issued three investigative subpoenas to the County of Los Angeles Sheriff's Department ("Department") seeking confidential personnel records of various peace officers. [See Exhibit A: February 27, 2025 COC Subpoenas]. These subpoenas sought, amongst other things, confidential disciplinary investigative materials, including: "The complete, unredacted Use of Force Package including all statements of deputies, witness interviews, summaries, exhibits, body camera footage, text messages and/or photographs or video recordings…" relating to three separate use of force Department investigations. [Exhibit A, P. 2]. It is well understood that use of force reports are routinely used in connection with performance appraisals and the advancement or discipline of Department peace officers.

California Penal Code section 832.7 provides that "the personnel records of peace officers and custodial officers and records maintained by a state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential." (Pen. Code § 832.7, subdiv. (a).). The California Supreme Court has made clear that this provision does not merely restrict disclosure in criminal and civil procedures; it creates a generally applicable condition of confidentiality…" *Ass'n for Los Angeles Deputy Sheriffs v. Superior Court* (2019) 8 Cal.5th 28, 44. Courts have recognized that one of the purposes of Section 832.7(a) is to protect officers' privacy interests "to the fullest extent possible." *People v. Mooc* (2001) 26 Cal.4th 1216, 1227.

In addition, COC issued the February 27, 2025 investigative subpoenas without completing appropriate meet and confer as is required by the MMBA and which multiple ERCOM Decisions and Orders have explained to this County. For background, ERCOM has already provided two separate Decisions and Orders (UFC Nos. 017-20 and 012-23) instructing the County to "…meet and confer with the Charging Parties with respect to the negotiable effects of the Oversight Legislation…" and ordering that "…members of the employee representation units represented by ALADS and PPOA **shall not be required to respond to subpoenas issued pursuant to the Oversight Legislation until the conclusion of the meet-and-confer process described above**…" (emphasis added) [Exhibit B: ERCOM UFC 017-20 Decision and Order dated November 30, 2022, P. 4; *See Also* Exhibit C: ERCOM UFC 012-23 Decision and Order dated

December 2, 2024, P. 5: “The Respondent will cease and desist from implementing any bargainable effects of the Oversight Legislation until bargaining, including any applicable impasse procedures, over the effects of the Oversight Legislation concludes.”].

ERCOM’s UFC No. 017-20 Decision and Order indicates that “the Oversight Legislation” explicitly encompasses subpoena power exercised by the COC: “On March 3, 2020, County voters adopted ballot proposition Measure R, which added Chapter 3.79.190 to the County Code to grant COC ‘[c]onsistent with state law, including, but not limited to the Peace Officers Bill of Rights…the power to subpoena and require the attendance of witnesses and the production of books and papers pertinent to investigations and oversight’…Collectively, Ordinance 20-0520 and Measure R are referred to herein as ‘Oversight Legislation.’” [Exhibit B, P. 1]. As such, ERCOM’s Decision and Order requiring meet and confer over negotiable effects of the Oversight Legislation necessarily includes completion of meet and confer over COC’s utilization of subpoena power.

Furthermore, two separate preliminary injunctions were issued by the Los Angeles Superior Court (Sup. Ct. Case Nos. 23STCP01745 and 24STCP00232) enjoining certain investigative subpoenas pending either the adjudication of PPOA/ALADS’ claims with ERCOM or the completion of the meet-and-confer process. [See Exhibit D: Injunctions granted in Case Nos. 23STCP01745 and 24STCP00232]. The Court’s injunctions were intended to preserve the status quo while PPOA/ALADS and the County are supposed to be engaged in good faith meet and confer regarding the utilization of the County's investigative subpoena power. However, despite ERCOM’s orders and the Court’s specific injunctions, no meet and confer efforts were concluded or even attempted regarding the COC’s February 27, 2025 subpoenas. In addition, the record reflects that PPOA/ALADS and the County are still engaged in good faith meet and confer regarding negotiable effects of the Oversight Legislation as was ordered by ERCOM’s previous Decisions. As such, by authorizing the February 27, 2025 investigative subpoenas in question, the County, through the COC, violated ERCOM’s Decisions and Orders for UFC Nos. 017-20 and 012-23.

In the Decision and Order for UFC No. 012-23, ERCOM recognized that the investigative subpoenas authorized by the OIG as ongoing meet and confer efforts were being pursued

pursuant to ERCOM's November 30, 2022 Decision and Order for UFC No. 017-20, was an express attempt to circumvent ERCOM's authority. ERCOM explained:

> "It is undoubtedly within our purview, however, to determine whether the Respondent violated our November 30, 2022 D&O. We find unequivocally that it did. The Respondent argues that our Order only explicitly prohibited the issuance of subpoenas until the meet and confer process had concluded. But this argument clearly ignores our finding that Respondent had 'violated Sections 5.04.240(A)(1) and (A)(3) of the ERO by implementing the Oversight Legislation without first negotiating the effects of the Oversight Legislation with ALADS and PPOA.' In light of this finding, it cannot be seriously argued that the Respondent was free to implement the effects of the Oversight Legislation without first completing the bargaining process." [See Exhibit C, P. 4]

In relation to this present Charge, without first completing the bargaining process, the County authorized investigative subpoenas through the COC in a manner which implicates negotiable effects of the Oversight Legislation. In addition, all evidence indicates that COC investigative subpoenas are functionally equivalent to OIG investigative subpoenas, which ERCOM specifically addressed in UFC No. 012-23. The County, **again**, seeks to circumvent their duties under the MMBA, and, **again**, ignores ERCOM's legitimate authority regarding the County's bargaining obligations as it relates to negotiable effects of the Oversight Legislation.

As has already been recognized by ERCOM and the Los Angeles Superior Court, the County's utilization of investigative oversight authority directly influences the employment relationship as it impacts the existing disciplinary process. The COC's investigative authority, as an internal County employer-agency, explicitly impacts the terms and conditions of employment and implicitly affects the careers of all those investigated. The record reflects that for many years, the County has been offering the same misinterpretation of the MMBA to escape their bargaining obligations. This argument has been specifically rejected by the following authorities from 2021 – 2024:

- [**December 22, 2020**] PPOA files first UFC re Oversight Legislation
- [**February 15, 2021**] ERCOM D&O granting request for hearing for UFCs Nos. 006-20 and 017-20: "As we have stated repeatedly, the duty to negotiate over matters within the scope of bargaining includes disciplinary standards and procedures. We have been less than impressed with the almost routine view of several County departments, including the Respondent, that this duty can be ignored or distinguished away."
- [**August 18, 2022**] Arbitrator Prihar Decision for consolidated UFCs Nos. 006-20 and 017-20: "The County violated Sections 5.04.240(A)(1) and (A)(3) of the ERO when it failed to negotiate over the effects of adopting the Oversight Legislation. The County

shall cease and desist from implementing the Oversight Legislation with respect to the Charging Parties until fulfilling its duty to bargain pursuant to the ERO and MMBA. As to the issuance by the OIG or COC of any subpoenas issued since adoption of the Oversight legislation, the County shall cease enforcing compliance with those subpoenas until fulfilling its duty to bargain pursuant to the ERO and MMBA."

- [**November 30, 2022**] ERCOM D&O adopting Arbitrator Prihar's Decision: The County is ordered to "…meet and confer with the Charging Parties with respect to the negotiable effects of the Oversight Legislation…" and "…members of the employee representation units represented by ALADS and PPOA shall not be required to respond to subpoenas issued pursuant to the Oversight Legislation until the conclusion of the meet-and-confer process described above…"
- **OIG ISSUES MAY 12, 2023 INVESTIGATIVE SUBPOENA LETTERS DESPITE ERCOM D&O ORDERING COMPLETION OF MEET AND CONFER**
- [**May 19, 2023**] PPOA/ALADS files second UFC re OIG May 12, 2023 letters
- [**May 22, 2023**] ERCOM public meeting: ERCOM Commissioner Cameron explains to IG Huntsman that "…THE OBLIGATION TO MEET AND CONFER OVER THE EFFECTS OF WHATEVER THE STATE LAW IS YOU'RE TALKING ABOUT …CONTINUES UNLESS THE LEGISLATURE HAS SAID OTHERWISE, WHICH THEY HAVE NOT TO MY KNOWLEDGE."
- [**July 10, 2023**] Injunction 1 re OIG's May 12, 2023 letters, Superior Court Judge James Chalfant: "ALADS and the Affected Deputies will suffer irreparable harm from the County's failure to effects bargain…A preliminary injunction shall issue that will enjoin the OIG's interviews of Affected Deputies until the County completes its effects bargaining or – since effects bargaining is the sole basis for injunctive relief – until ERCOM decides the UFC, whichever occurs first." [Exhibit D, P. 41-42]
    - In addition, when granting the request for preliminary injunction, the Court in Case No. 23STCP01745 identified IG Huntsman's problematic reading of the MMBA: "During the ERCOM hearing on May 22, 2023, OIG Huntsman claimed that he was not required to meet and confer regarding the effects of Penal Code section 13670…**He is plainly mistaken as was reiterated several times by ERCOM.**" (emphasis added) [Exhibit D, P. 31]
    - The County appealed this decision and lost [California Court of Appeal Case No. B331881]
- **OIG ISSUES DECEMBER 19, 2023 INVESTIGATIVE SUBPOENA DESPITE ERCOM D&O, INJUNCTION 1 RULING, AND FAILURE TO COMPLETE MEET AND CONFER**
- [**February 13, 2024**] PPOA files third UFC re OIG's December 19, 2023 subpoena
- [**March 18, 2024**] Injunction 2 re OIG's December 19, 2023 subpoena, Superior Court Judge Mitchell Beckloff: "PPOA shows irreparable harm if the preliminary injunction is not issued. As discussed, PPOA submits evidence that Respondents have failed to complete the bargaining process with respect to implementation of the Oversight Legislation and Penal Code section 13670. A 'failure to bargain in good faith, has long been understood as likely causing an irreparable injury to union representation.'…Having considered PPOA's likelihood of success on the merits and the balance of harms, the court grants PPOA's request for a preliminary injunction." [Exhibit D, P. 55]

    - "...a meet-and-confer obligation is not onerous and provides an available remedy to Respondents if the parties reach impasse…nothing precludes the OIG from taking other actions to investigate, and under the terms of this order may proceed with enforcement of the Subpoena after satisfying a meet-and-confer obligation." [Exhibit D, P. 51]
        - THE COUNTY *WITHDREW* THEIR FILED APPEAL OF THIS INJUNCTION
- [**July 24, 2024**] Hearing Officer Ross Decision re UFC No. 012-23: the County violated and continues to violate the ERO by: (1) "failing to meet and confer with Charging Parties regarding its May 12, 2023 order to employees to participate in an interview that could result in discipline, criminal prosecution, or loss of law enforcement certification;" (2) "exhibiting contempt for the judicial system in issuing the May 12, 2023 letter to employees with an order equivalent in all respects to a subpoena after the ERCOM November 30, 2022 Decision and Order which was not appealed, and Superior Court Judge Chalfant's July 10, 2023 preliminary injunction, by continuing to maintain that it has no obligation to bargain;" and (3) "engaging in direct dealing with individual bargaining unit members through the May 12, 2023 letter to individual bargaining unit members."
- [**November 20, 2024**] California Court of Appeal Case No. B331881: "We conclude the trial court committed no error in determining ALADS showed a probability of prevailing on its claim that the interview directive triggered the duty to meet and confer (or bargain) with ALADS under the MMBA and we find the trial court acted within its discretion in balancing of the interim harm. Accordingly, we affirm."
- [**December 2, 2024**] ERCOM D&O re UFC No. 012-23: "This UFC deals with the same oversight legislation ('Oversight Legislation') that was addressed in our prior Decision and Order UFC Nos. 006-20 and 017-20 ('Prior D&O')…In our Prior D&O, which was issued November 30, 2022, we made clear that the County did not have to bargain over the decision to implement the Oversight Legislation but it ***did*** have to bargain over its effects. Recognizing the importance of implementing the Oversight Legislation in a timely fashion, we ordered the parties to conduct effects bargaining in an expedited manner. Our Prior D&O specifically stated that the County 'violated Sections 5.04.240(A)(1) and (A)(3) of the ERO by implementing the Oversight Legislation without first negotiating the effects of the Oversight Legislation with ALADS and PPOA,' and ordered that '[m]embers of the employee representation units represented by ALADS and PPOA shall not be required to respond to subpoenas issued pursuant to the Oversight Legislation until the conclusion of the meet-and-confer process.' But on May 12, 2023, while the meet and confer process over effects bargaining was still ongoing, the OIG sent letters to certain deputies and requested their participation in interviews as part of investigations into law enforcement gangs and police misconduct." [Exhibit C, P. 2]
    - "We agree with the Hearing Officer that the May 12, 2023 and May 18, 2023 communications effectively served as subpoenas, and that the Respondent violated our November 30, 2022 Order by issuing these communications before concluding the meet and confer process over effects bargaining." [Exhibit C, P. 3]
- **COC ISSUES FEBRUARY 27, 2025 INVESTIGATIVE SUBPOENAS DESPITE TWO ERCOM D&Os, INJUNCTION 1 & 2 RULING, AND FAILURE TO COMPLETE MEET AND CONFER**

By unilaterally authorizing the above-described February 27, 2025 investigative subpoenas without first completing active meet and confer with PPOA, the County breached its obligation to negotiate with PPOA in violation of Section 5.04.240 of the County Code and all relevant ERCOM/Court precedent. As held by the California Supreme Court in *Boling v. Public Employment Relations Board, et al* (2018) 5 Cal.5th 898, the obligation to meet and confer does not depend on the means that a City or County chooses to reach policy objectives, only whether those chosen means alters the terms and conditions of employment.

Ultimately, the COC's subpoena power is provided through the Oversight Legislation, which contemplates negotiable effects subject to meet and confer according to ERCOM UFC Nos. 017-20 and 012-23. The County's failure to follow relevant MMBA requirements continues to unreasonably burden ERCOM and PPOA resources. Any remedy in this case should reflect the years of County defiance demonstrated towards ERCOM's authority on this matter as this will be the **fourth** UFC filed by PPOA against the County (in addition to requiring separate costly litigation actions to enforce ERCOM's orders) regarding this specific bargaining duty. Based on the foregoing, ERCOM must grant all requested remedies, including potential attorney's fees sanctions, for the County's failure to complete meet and confer over the effects of these COC subpoenas and their continued repudiation of ERCOM's Decisions and Orders as it relates to bargaining over effects of the Oversight Legislation.

SHERIFF CIVILIAN OVERSIGHT COMMISSION Address: 350 S. Figueroa St., Suite 288 Los Angeles, CA 90071 Phone: (213) 253-5678	**SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND ELECTRONICALLY STORED INFORMATION**

BEFORE THE LOS ANGELES COUNTY SHERIFF CIVILIAN OVERSIGHT COMMISSION

THE LOS ANGELES COUNTY SHERIFF CIVILIAN OVERSIGHT COMMISSION, TO:
Custodian of Records
Los Angeles County Sheriff's Department, Hall of Justice
211 West Temple Street
Los Angeles, CA 90012

1. **YOU ARE ORDERED, PURSUANT TO GOVERNMENT CODE SECTION 25303.7 AND LOS ANGELES COUNTY CODE SECTION 3.79.190 (Measure R) TO PERSONALLY APPEAR AS A WITNESS before the Los Angeles County Sheriff Civilian Oversight Commission at the date, time, and place shown below and produce the following documents: See Exhibit A hereto.**

   a. **Date: March 20, 2025** **Time: 9:00 a.m.**

   b. **Address: St. Anne's Conference Center, 155 N. Occidental Blvd., Los Angeles, CA 90026**

   Note: Your oath or affirmation will be taken by a person authorized to administer oaths in the State of California. .Your testimony will be taken on oral examination and video recorded.

2. **YOU ARE**:
   a. ☒ Ordered to appear in person and to produce the records described and attached as Exhibit A. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
   b. ☐ Not required to appear in person if you produce (i) the records described in the declaration on page two or the attached declaration or affidavit and (ii) a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose the original declaration of the custodian of records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope or write on the envelope your name, and the date, time, and place from item 1 in the box above. (3) Place this first envelope in the outer envelope, seal it, and mail it to the Office of Inspector General at the address in item 1.

3. **IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE YOU ARE TO APPEAR CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:**
   a. Name of subpoenaing attorneys: **Chair of the Sheriff Civilian Oversight Commission, Robert Bonner**
   b. Telephone numbers: **213-253-5678 and 213-974-6100**

4. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 3.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY A COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: February 27, 2025

Robert C. Bonner
Chair of the Sheriff Civilian Oversight Commission
County of Los Angeles, State of California

EXHIBIT A

DOCUMENTS TO PRODUCE

You are required to produce the following DOCUMENTS and ELECTRONIC DATA:

The complete, unredacted Use of Force Package including all statements of deputies, witness interviews, summaries, exhibits, body camera footage, text messages and/or photographs or video recordings relating to the use of force involving **Joseph Andrew Perez** on or about July 27, 2020 which occurred within the jurisdiction of the LASD Industry Sheriff's Station. Include any documents related to the review of this use of force and its reporting, including any reasoning for the final disposition as to its being deemed within or outside of the LASD Use of Force Policy that was in effect on the date of occurrence and/or any recommendations.

In addition, any or all documents pertaining to any complaint from **Vanessa Perez** regarding this use of force incident and the handling and processing of her complaint by the LASD.

DECLARATION OF ROBERT C. BONNER REGARDING SUBPOENA DUCES TECUM

1. I, Robert C. Bonner, declare that I am Chair of the Los Angeles County Sheriff Civilian Oversight Commission (Commission or COC) and have served on the Commission since its inception in December 2016. Prior to serving on the Commission, I headed three different federal law enforcement agencies; the Drug Enforcement Administration, the United States Customs Service, and U.S. Customs and Border Protection. I also served as the United States Attorney and as a U.S. District Judge for the Central District of California. I am a retired partner of Gibson, Dunn & Crutcher.

2. The witness has possession or custody or is in control of the documents, electronically stored information, or other things listed in the subpoena duces tecum as **Exhibit A**, and shall produce them on March 20, 2025 at 9:00 a.m., as specified in box 1 of the Subpoena Duces Tecum for Personal Appearance and the Production of Documents and Electronically Stored Information.

3. Good cause exists for the production of the documents, electronically stored information, communications, or other things described in **Exhibit A** for reasons including, but not limited to the following:

   a. <u>The COC has broad subpoena power to investigate, *inter alia*, Uses of Force by Sheriff Department deputies as part of its duties to oversee the Sheriff's Department, to determine whether systemic issues exist regarding use of excessive or unnecessary force and make recommendations to the Sheriff and the Sheriff's Department to correct them.</u>

   The Board of Supervisors created the COC in 2016 to provide for civilian oversight of the Sheriff and Sheriff's Department. *See* L.A. Cty. Code § 3.79.010; *see also League of Women Voters v. Countywide Crim. Justice Coordination Com.*, 203 Cal.App.3d 529, 551 (1988) (ruling that the Board "may . . . create commissions or committees to which it delegates authority"); Gov't Code § 31000.1. Indeed, the Sheriff Civilian Oversight Commission's very purpose is to provide "oversight" of the Sheriff and Sheriff's Department. L.A. Cty. Code § 3.79.010. Its mission is:

   > [T]o improve public transparency and accountability with respect to the Los Angeles County Sheriff's Department, by providing . . . ongoing analysis and oversight of the Department's policies, practices, procedures, and advice to the Board of Supervisors, the Sheriff's Department, and the public.

   Id. § 3.79.020.

   The COC is authorized, *inter alia*, to "make recommendations to the LASD and the Board of Supervisors . . . on the Sheriff's Department's operational policies and procedures

that affect the community" and to "[i]nvestigate . . . and make recommendations to the Board of Supervisors . . . on systemic Sheriff-related issues or complaints affecting the community." *Id.* § 3.79.030.A.–B. The COC also "[f]unction[s] as a bridge between the Sheriff's Department and the community by . . . bringing an additional perspective to the Sheriff's Department decision-making to ensure an ongoing balance between the sometimes competing factors of ensuring public safety and [protecting] constitutional, civil and human rights." *Id.* § 3.79.030.H.

To perform these important functions, the COC "shall . . . obtain[] answers from the Sheriff to community concerns about the Sheriff's Department's operations, practices and activities." *Id.*; *see also id.* § 3.79.030.A. The Sheriff's Department is required to attend and participate in COC meetings. L.A. Cty. Code § 3.79.070 ("The Sheriff, or a senior ranking member of the Sheriff's Department . . . shall attend and participate in all the meetings of the Commission but shall not have voting rights.").

The COC has two separate and independent sources of broad subpoena power: Measure R, codified in Section 3.79.190 of the Los Angeles County Code, and Government Code Section 25303.7.

Measure R: The COC's first source of subpoena power is Measure R, which 72.85% of the County's voters approved in March 2020. Measure R amended Los Angeles County Code Section 3.79.190 to provide that "[c]onsistent with state law, including, but not limited to the Peace Officer's Bill of Rights, the Commission [*i.e.*, the COC] has the power to subpoena and require attendance of witnesses and the production of books and papers pertinent to its investigations and oversight, and to administer oaths." This authority is derived from a voter initiative and is not derived from nor delegated by the Board of Supervisors.

Government Code section 25303.7: Government Code section 25303.7 is a second, separate source of the Commission's subpoena power. Section 25303.7, which provides for the creation of civilian law enforcement oversight commissions, explicitly provides that those civilian oversight commissions possess subpoena power. Further, the statute provides that inquiries or investigations conducted by oversight commissions or boards "shall not be considered to obstruct the investigative functions of the sheriff." Gov't Code § 25303.7(d). The COC may "examine . . . [a]ny officer of the county in relation to the discharge of their official duties on behalf of the sheriff's department [or] [a]ny books, papers, or documents in the possession of or under the control of a person or officer relating to the affairs of the sheriff's department" when the COC "deems it necessary or important." Gov't Code § 25303.7(b)(1)(B) & (C). Similar to Measure R, this authority is derived from state statute and is not delegated to it by the Board of Supervisors.

Effective oversight requires that the Commission have access to LASD documents. Regarding LASD documents that are protected as confidential and may not be disclosed under state law, the Commission intends to go into closed session to receive them and maintain confidentiality. The COC will not publicly disclose any document received under this subpoena that is protected as confidential under state law. Moreover, LASD providing

confidential documents under this subpoena is an intra-County sharing that does not implicate *Pitchess* rules. *See, e.g., Johnson v. Fontana County F.P. Dist.*, 15 Cal.2d 380, 391 (1940) (explaining "generally a political subdivision and the officers, boards, commissions, agents and representatives thereof form but a single entity"); *Ass'n for Los Angeles Deputy Sheriffs v. Superior Ct.*, 8 Cal.5th 28, 50 (2019) (differentiating between "insiders" and "outsiders" and sanctioning "shar[ing]" of Section 832.7 information with the former); *Parrott v. Rogers*, 103 Cal.App.3d 377, 383 (1980) (holding "disclosure by one [government] official or department to another is not a 'public disclosure'"); *Michael v. Gates*, 38 Cal.App.4th 737, 743 (1995) (holding a law enforcement agency may share Section 832.7 records with its attorneys because there is no "discovery or disclosure"); *Michael P. v. Superior Ct.*, 92 Cal.App.4th 1036, 1048 (2001) (holding that a local police department did not waive privilege over official information by allowing "social workers to review various reports and summarize their contents for inclusion in their reports," and recognizing that "[i]nteragency information sharing should not automatically constitute a waiver of the official information privilege . . . so long as sufficient safeguards are in place to prevent disclosure to persons with no 'official interest' in the information").

b. <u>The ability to review the Force Review Package, relating to the use of force on Joseph Perez will assist the Commission in understanding this use of force and whether it represents a need to improve LASD's use of force policy, reporting, and how citizen complaints are handled. The documents relating to the handling of the complaint of Mr. Perez's mother will assist the Commission in determining what policies and procedures of the LASD need to be changed so that it is responsive to citizen complaints.</u>

As part of its oversight role, the COC has followed uses of force, particularly uses of force by Sheriff Deputies that appear to be excessive, unnecessary, and out-of-policy. Review of Force Review packages, particularly problematic uses of force, allows the Commission to evaluate whether there are systemic issues regarding the use of excessive, unnecessary, out-of-policy, and unconstitutional uses of force by Sheriff Deputies against members of the public.

Reviewing the initial Force Review Package involving Joseph Perez is of particular interest to the Commission as the mother of Mr. Perez, Vanessa Perez, has appeared before the Commission at its public hearings and complained that her son was badly beaten by one or more Sheriff Deputies after his arrest on or about July 27, 2020. She produced a photograph of her son showing the signs of a severe beating. She indicated that she had complained to the LASD through its complaint channels but was dissatisfied with the LASD's response to her citizen's complaint. Insofar as the Commission is aware, no internal investigation was ever initiated by the LASD, and no discipline was imposed on any deputy in connection with the use of force involving Joseph Perez.

The Sheriff's Department documents set forth in Exhibit A are needed for the Civilian Oversight Commission to carry out its oversight responsibilities and secure answers to its on-going concerns regarding this incident, among others, and the amount of force used. The Commission has regularly heard many members of the public complain, beginning with its first public hearing in January 2017, about Sheriff Department deputies allegedly using excessive or wholly unnecessary force. Issues in question regarding the Perez incident specifically and more broadly regarding other questionable use of force incidents, include

whether the force was commensurate with any resistance and the veracity of the reporting by involved LASD personnel. Additionally, there are concerns regarding the conclusions drawn by personnel who were responsible for the review of the use of force based on their views of its efficacy and proportionality and their reasoning behind those conclusions.

In addition to the use of force involving Joseph Perez, we are also interested in and have a need to know how the LASD handled his mother Vanessa Perez's complaint to the LASD about the treatment of her son. The Commission's review of documents related to Ms. Perez's complaint regarding her son is necessary for the Commission to understand how external citizen complaints made to the LASD are handled and processed and assess ways to improve the policies and procedures for handling citizen complaints. One of the Commission's priority goals for 2025 is to improve the LASD's and Commission's handling of citizen complaints.

In sum, the COC seeks the documents, electronically stored information, communications, and other things in **Exhibit A** in furtherance of the COC's obligations to provide meaningful oversight of the Sheriff and the Sheriff's Department, to identify potentially systemic issues relating to the use of out-of-policy force and the handling of citizen complaints, to consider whether and what recommendations are appropriate to assure that unconstitutional and out-of-policy uses of force are spotted during the initial Force incident review, and that citizen complaints about the use of potentially excessive force are appropriately handled by and responded to by the LASD. The subpoena does not seek any documents relating to any ongoing or active investigations of the LASD.

If the initial 2023 Force Review Report on Joseph Perez involved the use of force causing "serious bodily injury," it is not confidential. It is disclosable under state law. *See* Cal. Penal Code § 832.7(b)(1)(A)(ii). Similarly, LASD documents relating to a citizen complaint (filed, handled and processed) by Mr. Perez's mother, Vanessa Perez, would not be confidential. If there is a claim of confidentiality to any of the subpoenaed documents, the Commission intends to go into closed session to receive such documents and maintain confidentiality.

4. The documents, electronically stored information, or other things described in **Exhibit A** are material to the issues involved in this matter for the reasons set forth in Paragraph 3, above.

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

Dated this **27th** day of **February, 2025**

Robert C. Bonner, Chair
Los Angeles County Sheriff Civilian Oversight Commission

PROOF OF SERVICE OF SUBPOENA
SUBPOENA DUCES TECUM FOR PERSONAL APPEARANCE AND THE PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND THINGS

1. I served this Subpoena for Personal Appearance by personally delivering a copy to the person served as follows:
   a. Person served (name):
   b. Address where served:
   c. Date of delivery:
   d. Time of delivery:
   e. Witness fees (check one):
      (1) ☐ were offered or demanded and paid. Amount …….$ _____
      (2) ☐ were not demanded or paid
   f. Fee for service ……..$_____
2. I received this subpoena for service on (date): _____
3. Person serving:
   a. ☐Not a registered California process server.
   b. ☐California sheriff or marshal.
   c. ☐Registered California process server.
   d. ☐Employee of independent contractor of a registered California process server.
   e. ☐Exempt from registration under Business and Professions Code section 22350(b).
   f. ☐Registered professional photocopier.
   g. ☐Exempt from registration under Business and Professions Code section 22451.
   h. Name, address, telephone number and, if applicable, county of registration and number.

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

Date: _____

▶_____
(Signature)

SHERIFF CIVILIAN OVERSIGHT COMMISSION Address: 350 S. Figueroa St., Suite 288 Los Angeles, CA 90071 Phone: (213) 253-5678	**SUBPOENA FOR PERSONAL APPEARANCE AND FOR PRODUCTION OF DOCUMENTS AND ELECTRONICALLY STORED INFORMATION**

BEFORE THE LOS ANGELES COUNTY SHERIFF CIVILIAN OVERSIGHT COMMISSION

THE LOS ANGELES COUNTY SHERIFF CIVILIAN OVERSIGHT COMMISSION, TO:
Custodian of Records
Los Angeles County Sheriff's Department, Hall of Justice
211 West Temple Street
Los Angeles, CA 90012

1. **YOU ARE ORDERED, PURSUANT TO GOVERNMENT CODE SECTION 25303.7 AND LOS ANGELES COUNTY CODE SECTION 3.79.190 (Measure R) TO PERSONALLY APPEAR AS A WITNESS before the Los Angeles County Sheriff Civilian Oversight Commission at the date, time, and place shown below and produce the following documents: See Exhibit A hereto.**

   a. **Date: March 20, 2025** **Time: 9:00 a.m.**

   b. **Address: St. Anne's Conference Center, 155 N. Occidental Blvd., Los Angeles, CA 90026**

   Note: Your oath or affirmation will be taken by a person authorized to administer oaths in the State of California. Your testimony will be taken on oral examination and video recorded.

2. **YOU ARE**:
   a. ☒ Ordered to appear in person and to produce the records described and attached as Exhibit A. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.

   b. ☐ Not required to appear in person if you produce (i) the records described in the declaration on page two or the attached declaration or affidavit and (ii) a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose the original declaration of the custodian of records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope or write on the envelope your name, and the date, time, and place from item 1 in the box above. (3) Place this first envelope in the outer envelope, seal it, and mail it to the Office of Inspector General at the address in item 1.

3. **IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE YOU ARE TO APPEAR, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:**

   a. Name of subpoenaing attorneys: **Chair of the Sheriff Civilian Oversight Commission, Robert Bonner**

   b. Telephone numbers: **213-253-5678 and 213-974-6100**

4. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 3.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY A COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: February 27, 2025

Robert C. Bonner
Chair of the Sheriff Civilian Oversight Commission
County of Los Angeles, State of California

EXHIBIT A

DOCUMENTS TO PRODUCE

You are required to produce the following DOCUMENTS and ELECTRONIC DATA:

The initial Force Review Package prepared in 2023, including the Supervisors Report of Use of Force, the Watch Commander's Use of Force Review and Incident Analysis, all witness statements, medical reports, exhibits and body worn and third-party video recordings related to former Deputy Sheriff Joseph Benza III's use of force involving civilian **Emmett Brock** on or about February 10, 2023, including without limitation Sheriff Deputy Benza's use of force statement and any statement of Emmett Brock that was included in the initial Force Review Package. *This document subpoena excludes any and all active or ongoing internal investigations of this use of force incident.*

DECLARATION OF ROBERT C. BONNER REGARDING SUBPOENA DUCES TECUM

1. I, Robert C. Bonner, declare that I am Chair of the Los Angeles County Sheriff Civilian Oversight Commission (Commission or COC) and have served on the Commission since its inception in December 2016. Prior to serving on the Commission, I headed three different federal law enforcement agencies; the Drug Enforcement Administration, the United States Customs Service, and U.S. Customs and Border Protection. I also served as the United States Attorney and as a U.S. District Judge for the Central District of California. I am a retired partner of Gibson, Dunn & Crutcher.

2. The witness has possession or custody or is in control of the documents, electronically stored information, or other things listed in the subpoena duces tecum as **Exhibit A**, and shall produce them on March 20, 2025 at 9:00 a.m., as specified in box 1 of the Subpoena Duces Tecum for Personal Appearance and the Production of Documents and Electronically Stored Information.

3. Good cause exists for the production of the documents, electronically stored information, communications, or other things described in **Exhibit A** for reasons including but not limited to the following:

   a. The COC has broad subpoena power to investigate, *inter alia*, uses of force by Sheriff's Department deputies as part of its duties to oversee the Sheriff's Department, to determine whether systemic issues exist regarding use of excessive or unnecessary force and make recommendations to the Sheriff and the Sheriff's Department to correct them.

The Board of Supervisors created the COC in 2016 to provide for civilian oversight of the Sheriff and Sheriff's Department. *See* L.A. Cty. Code § 3.79.010; *see also League of Women Voters v. Countywide Crim. Justice Coordination Com.*, 203 Cal.App.3d 529, 551 (1988) (ruling that the Board "may . . . create commissions or committees to which it delegates authority"); Gov't Code § 31000.1. Indeed, the Sheriff Civilian Oversight Commission's very purpose is to provide "oversight" of the Sheriff and Sheriff's Department. L.A. Cty. Code § 3.79.010. Its mission is:

> [T]o improve public transparency and accountability with respect to the Los Angeles County Sheriff's Department, by providing . . . ongoing analysis and oversight of the Department's policies, practices, procedures, and advice to the Board of Supervisors, the Sheriff's Department, and the public.

Id. § 3.79.020.

The COC is authorized, *inter alia*, to "make recommendations to the LASD and the Board of Supervisors . . . on the Sheriff's Department's operational policies and procedures

that affect the community" and to "[i]nvestigate . . . and make recommendations to the Board of Supervisors . . . on systemic Sheriff-related issues or complaints affecting the community." *Id.* § 3.79.030.A.–B. The COC also "[f]unction[s] as a bridge between the Sheriff's Department and the community by . . . bringing an additional perspective to the Sheriff's Department decision-making to ensure an ongoing balance between the sometimes competing factors of ensuring public safety and [protecting] constitutional, civil and human rights." *Id.* § 3.79.030.H.

To perform these important functions, the COC "shall . . . obtain[] answers from the Sheriff to community concerns about the Sheriff's Department's operations, practices and activities." *Id.*; *see also id.* § 3.79.030.A. The Sheriff's Department is required to attend and participate in COC meetings. L.A. Cty. Code § 3.79.070 ("The Sheriff, or a senior ranking member of the Sheriff's Department . . . shall attend and participate in all the meetings of the Commission but shall not have voting rights.").

The COC has two separate and independent sources of broad subpoena power: Measure R, codified in Section 3.79.190 of the Los Angeles County Code and Government Code Section 25303.7.

Measure R: The COC's first source of subpoena power is Measure R, which 72.85% of the County's voters approved in March 2020. Measure R amended Los Angeles County Code Section 3.79.190 to provide that "[c]onsistent with state law, including, but not limited to the Peace Officer's Bill of Rights, the Commission [*i.e.*, the COC] has the power to subpoena and require attendance of witnesses and the production of books and papers pertinent to its investigations and oversight, and to administer oaths." This authority is derived from a voter initiative and is not derived from nor delegated by the Board of Supervisors.

Government Code section 25303.7: Government Code section 25303.7 is a second, separate source of the Commission's subpoena power. Section 25303.7, which provides for the creation of civilian law enforcement oversight commissions, explicitly provides that those civilian oversight commissions possess subpoena power. Further, the statute provides that inquiries or investigations conducted by oversight commissions or boards "shall not be considered to obstruct the investigative functions of the sheriff." Gov't Code § 25303.7(d). The COC may "examine . . . [a]ny officer of the county in relation to the discharge of their official duties on behalf of the sheriff's department [or] [a]ny books, papers, or documents in the possession of or under the control of a person or officer relating to the affairs of the sheriff's department" when the COC "deems it necessary or important." Gov't Code § 25303.7(b)(1)(B) & (C). Similar to Measure R, this authority of the Commission is based upon a state statute and is not delegated to it by the Board of Supervisors.

Effective oversight requires that the Commission have access to LASD documents. Regarding LASD documents that are protected as confidential and may not be disclosed under state law, the Commission intends to go into closed session to receive them and maintain confidentiality. The COC will not publicly disclose any document received under this subpoena that is protected as confidential under state law. Moreover, LASD providing

confidential documents under this subpoena is an intra-County sharing that does not implicate *Pitchess* rules. *See, e.g., Johnson v. Fontana County F.P. Dist.*, 15 Cal.2d 380, 391 (1940) (explaining "generally a political subdivision and the officers, boards, commissions, agents and representatives thereof form but a single entity"); *Ass'n for Los Angeles Deputy Sheriffs v. Superior Ct.*, 8 Cal.5th 28, 50 (2019) (differentiating between "insiders" and "outsiders" and sanctioning "shar[ing]" of Section 832.7 information with the former); *Parrott v. Rogers*, 103 Cal.App.3d 377, 383 (1980) (holding "disclosure by one [government] official or department to another is not a 'public disclosure'"); *Michael v. Gates*, 38 Cal.App.4th 737, 743 (1995) (holding a law enforcement agency may share Section 832.7 records with its attorneys because there is no "discovery or disclosure"); *Michael P. v. Superior Ct.*, 92 Cal.App.4th 1036, 1048 (2001) (holding that a local police department did not waive privilege over official information by allowing "social workers to review various reports and summarize their contents for inclusion in their reports," and recognizing that "[i]nteragency information sharing should not automatically constitute a waiver of the official information privilege . . . so long as sufficient safeguards are in place to prevent disclosure to persons with no 'official interest' in the information").

b. <u>The ability to review the investigation reports relating to the Force Review Packages of force on Emmett Brock will assist the Commission in understanding the motivations and proffered justifications for the beating of Brock and why the initial Force Review Package was closed without initiating an internal investigation, much less disciplinary action against the deputy involved.</u>

As part of its oversight role, the COC has followed uses of force, particularly uses of force by Sheriff Deputies that appear to be excessive, unnecessary and out-of-policy. Review of Force Review packages, particularly problematic uses of force, allows the Commission to evaluate whether there are systemic issues regarding the use of excessive, unnecessary, out-of-policy, and unconstitutional uses of force by Sheriff Deputies against members of the public.

Reviewing the initial Force Review Package involving Brock is of particular interest to the Commission as the deputy involved in using force against Brock was exonerated based on this review. No internal investigation was initiated, nor any discipline imposed based on it. However, recently, on January 17, 2025, the deputy involved, now former Deputy Sheriff Joseph Benza III pleaded guilty in U.S. District Court for the Central District of California to federal felony charges of using unconstitutional force against Brock on the date in question, in violation of Title 18, United States Code, section 1983. *United States v. Joseph Benza II*, Case No. 2:24-cr-00751. The Commission needs to examine the initial Force Review Package, including Deputy Benza's statement of what happened, to understand why the initial Force Review Report in 2023 failed to discover the unconstitutional use of force by Deputy Benza. This would include answering questions of how force reviews could be improved and how and why Deputy Benza's apparent lying in his statement went unchallenged.

At some point, the use of force against Deputy Benza was subject to an FBI/U.S. Attorney federal grand jury investigation. The LASD no doubt cooperated in the investigation. There may well be ongoing internal investigations by the Sheriff's Department,

not into Deputy Benza who is no longer a Deputy Sheriff, but other deputies who may have counseled Deputy Benza to lie in his initial report as part of the initial Force Review Report. We strongly acknowledge that this subpoena expressly excludes any follow up internal investigations of the LASD, whether active or closed. It has been reported in the media that Sheriff Robert Luna has indicated that not only has Deputy Benza been terminated, but seven other deputies have likewise been terminated for either counseling Deputy Benza to make false statements in his initial statement on why he used force against Brock and/or covering up and obstructing justice.

In sum, the COC seeks the documents, electronically stored information, communications, and other things in **Exhibit A** in furtherance of the COC's obligations to provide meaningful oversight of the Sheriff and the Sheriff's Department, to identify potentially systemic issues relating to the use of out-of-policy force and potential false reporting regarding the same, and to consider whether and what recommendations are appropriate to assure that unconstitutional and out-of-policy uses of force are spotted during the initial Force incident review. The subpoena does not seek any documents relating to any ongoing or active or even closed investigations of the LASD or any other law enforcement agency.

If the initial 2023 Force Review Report involving Emmett Brock involved the use of force causing "serious bodily injury," it is not confidential. It is disclosable under state law. *See* Cal. Penal Code § 832.7(b)(1)(A)(ii). If, however, there is a claim of confidentiality as to any of the subpoena documents, the Commission intends to go into closed session to receive such documents and maintain confidentiality.

4. The documents, electronically stored information, or other things described in **Exhibit A** are material to the issues involved in this matter for the reasons set forth in Paragraph 3, above.

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

Dated this **27th** day of **February, 2025**

Robert C. Bonner, Chair
Los Angeles County Sheriff Civilian Oversight Commission

PROOF OF SERVICE OF SUBPOENA
SUBPOENA DUCES TECUM FOR PERSONAL APPEARANCE AND THE PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND THINGS

1. I served this Subpoena for Personal Appearance by personally delivering a copy to the person served as follows:
   a. Person served (name):
   b. Address where served:
   c. Date of delivery:
   d. Time of delivery:
   e. Witness fees (check one):
      (1) ☐ were offered or demanded and paid. Amount …….$ _____
      (2) ☐ were not demanded or paid
   f. Fee for service ……..$_____
2. I received this subpoena for service on (date): _____
3. Person serving:
   a. ☐Not a registered California process server.
   b. ☐California sheriff or marshal.
   c. ☐Registered California process server.
   d. ☐Employee of independent contractor of a registered California process server.
   e. ☐Exempt from registration under Business and Professions Code section 22350(b).
   f. ☐Registered professional photocopier.
   g. ☐Exempt from registration under Business and Professions Code section 22451.
   h. Name, address, telephone number and, if applicable, county of registration and number.

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

Date: _____

▶_____
(Signature)

SHERIFF CIVILIAN OVERSIGHT COMMISSION Address: 350 S. Figueroa St., Suite 288 Los Angeles, CA 90071 Phone: (213) 253-5678	**SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND ELECTRONICALLY STORED INFORMATION**

BEFORE THE LOS ANGELES COUNTY SHERIFF CIVILIAN OVERSIGHT COMMISSION

THE LOS ANGELES COUNTY SHERIFF CIVILIAN OVERSIGHT COMMISSION, TO:
Custodian of Records
Los Angeles County Sheriff's Department, Hall of Justice
211 West Temple Street
Los Angeles, CA 90012

1. **YOU ARE ORDERED, PURSUANT TO GOVERNMENT CODE SECTION 25303.7 AND LOS ANGELES COUNTY CODE SECTION 3.79.190 (Measure R) TO PERSONALLY APPEAR AS A WITNESS before the Los Angeles County Sheriff Civilian Oversight Commission at the date, time, and place shown below and produce the following documents: See Exhibit A hereto.**

   a. **Date: March 20, 2025** **Time: 9:00 a.m.**

   b. **Address: St. Anne's Conference Center, 155 N. Occidental Blvd., Los Angeles, CA 90026**

   Note: Your oath or affirmation will be taken by a person authorized to administer oaths in the State of California. Your Your testimony will be taken on oral examination and video recorded.

2. **YOU ARE**:
   a. ☒ Ordered to appear in person and to produce the records described in Exhibit A attached. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.

   b. ☐ Not required to appear in person if you produce (i) the records described in the declaration on page two or the attached declaration or affidavit and (ii) a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose the original declaration of the custodian of records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope or write on the envelope your name, and the date, time, and place from item 1 in the box above. (3) Place this first envelope in the outer envelope, seal it, and mail it to the Office of Inspector General at the address in item 1.

3. **IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE YOU ARE TO APPEAR, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:**

   a. Name of subpoenaing attorneys: **Chair of the Sheriff Civilian Oversight Commission, Robert Bonner**

   b. Telephone numbers: **213-253-5678 and 213-974-6100**

4. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 3.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY A COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: February 27, 2025

Robert C. Bonner
Chair of the Sheriff Civilian Oversight Commission
County of Los Angeles, State of California

EXHIBIT A

DOCUMENTS TO PRODUCE

You are required to produce the following DOCUMENTS and ELECTRONIC DATA:

The complete investigation, including all reports, witness interviews, summaries, and exhibits of the LASD's Homicide Bureau relating to the use of lethal force involving **Andres Guardado** on or about June 18, 2020, including without limitation, the investigative reports submitted by the Sheriff's Department to the Los Angeles County District Attorney's Office and any such investigative reports, including witness interviews, summaries and exhibits not submitted to the District Attorney's Office as part of any internal administrative investigation.

DECLARATION OF ROBERT C. BONNER REGARDING SUBPOENA DUCES TECUM

1. I, Robert C. Bonner, declare that I am Chair of the Los Angeles County Sheriff Civilian Oversight Commission (Commission or COC) and have served on the Commission since its inception in December 2016. Prior to serving on the Commission, I headed three different federal law enforcement agencies; the Drug Enforcement Administration, the United States Customs Service, and U.S. Customs and Border Protection. I also served as the United States Attorney and as a U.S. District Judge for the Central District of California. I am a retired partner of Gibson, Dunn & Crutcher.

2. The witness has possession or custody or is in control of the documents, electronically stored information, or other things listed in the subpoena duces tecum as **Exhibit A**, and shall produce them on March 20, 2025 at 9:00 a.m., as specified in box 1 of the Subpoena Duces Tecum for Personal Appearance and the Production of Documents and Electronically Stored Information.

3. Good cause exists for the production of the documents, electronically stored information, communications, or other things described in **Exhibit A** for reasons including but not limited to the following:

   a. <u>The COC has broad subpoena power to investigate, inter alia, Uses of Lethal Force and Impact of Deputy Cliques and Deputy Gangs as part of its duties to oversee the Sheriff's Department, to determine whether systemic issues exist, and make recommendations to the Sheriff and the Sheriff's Department to correct them.</u>

The Board of Supervisors created the COC in 2016 to provide for civilian oversight of the Sheriff and Sheriff's Department. *See* L.A. Cty. Code § 3.79.010; *see also League of Women Voters v. Countywide Crim. Justice Coordination Com.*, 203 Cal.App.3d 529, 551 (1988) (ruling that the Board "may . . . create commissions or committees to which it delegates authority"); Gov't Code § 31000.1. Indeed, the Sheriff Civilian Oversight Commission's very purpose is to provide "oversight" of the Sheriff and Sheriff's Department. L.A. Cty. Code § 3.79.010. Its mission is:

> [T]o improve public transparency and accountability with respect to the Los Angeles County Sheriff's Department, by providing . . . ongoing analysis and oversight of the Department's policies, practices, procedures, and advice to the Board of Supervisors, the Sheriff's Department, and the public.

Id. § 3.79.020.

The COC is authorized, *inter alia*, to "make recommendations to the LASD and the Board of Supervisors . . . on the Sheriff's Department's operational policies and procedures

that affect the community" and to "[i]nvestigate . . . and make recommendations to the Board of Supervisors . . . on systemic Sheriff-related issues or complaints affecting the community." *Id.* § 3.79.030.A.–B. The COC also "[f]unction[s] as a bridge between the Sheriff's Department and the community by . . . bringing an additional perspective to the Sheriff's Department decision-making to ensure an ongoing balance between the sometimes competing factors of ensuring public safety and [protecting] constitutional, civil and human rights." *Id.* § 3.79.030.H.

To perform these important functions, the COC "shall . . . obtain[] answers from the Sheriff to community concerns about the Sheriff's Department's operations, practices and activities." *Id.*; *see also id.* § 3.79.030.A. The Sheriff's Department is required to attend and participate in COC meetings. L.A. Cty. Code § 3.79.070 ("The Sheriff, or a senior ranking member of the Sheriff's Department . . . shall attend and participate in all the meetings of the Commission but shall not have voting rights.").

The COC has two separate and independent sources of broad subpoena power: Measure R, codified in Section 3.79.190 of the Los Angeles County Code and Government Code Section 25303.7.

Measure R. The COC's first source of subpoena power is Measure R, which 72.85% of the County's voters approved in March 2020. Measure R amended Los Angeles County Code Section 3.79.190 to provide that "[c]onsistent with state law, including, but not limited to the Peace Officer's Bill of Rights, the Commission [*i.e.*, the COC] has the power to subpoena and require attendance of witnesses and the production of books and papers pertinent to its investigations and oversight, and to administer oaths." This authority is derived from a voter initiative and is not derived from nor delegated by the Board of Supervisors.

Government Code section 25303.7. Government Code section 25303.7 explicitly provides for the creation of civilian oversight commissions, explicitly provides for them to possess subpoena power, and explicitly provides that inquiries or investigations conducted by oversight boards "shall not be considered to obstruct the investigative functions of the sheriff." Gov't Code § 25303.7(d). The COC may "examine . . . [a]ny officer of the county in relation to the discharge of their official duties on behalf of the sheriff's department [or] [a]ny books, papers, or documents in the possession of or under the control of a person or officer relating to the affairs of the sheriff's department" when the COC "deems it necessary or important." Gov't Code § 25303.7(b)(1)(B) & (C). Similar to Measure R, this authority of the Commission is based upon a state statute and is not authority delegated to it by the Board of Supervisors.

Effective oversight requires that the Commission have access to LASD documents. Regarding LASD documents that are protected as confidential and may not be disclosed under state law, the Commission intends to go into closed session to receive them and maintain their confidentiality. The COC will not publicly disclose any document received under this subpoena that is protected as confidential under state law. Moreover, LASD

providing confidential documents under this subpoena is an intra-County sharing that does not implicate *Pitchess* rules. *See, e.g., Johnson v. Fontana County F.P. Dist.*, 15 Cal.2d 380, 391 (1940) (explaining "generally a political subdivision and the officers, boards, commissions, agents and representatives thereof form but a single entity"); *Ass'n for Los Angeles Deputy Sheriffs v. Superior Ct.*, 8 Cal.5th 28, 50 (2019) (differentiating between "insiders" and "outsiders" and sanctioning "shar[ing]" of Section 832.7 information with the former); *Parrott v. Rogers*, 103 Cal.App.3d 377, 383 (1980) (holding "disclosure by one [government] official or department to another is not a 'public disclosure'"); *Michael v. Gates*, 38 Cal.App.4th 737, 743 (1995) (holding a law enforcement agency may share Section 832.7 records with its attorneys because there is no "discovery or disclosure"); *Michael P. v. Superior Ct.*, 92 Cal.App.4th 1036, 1048 (2001) (holding that a local police department did not waive privilege over official information by allowing "social workers to review various reports and summarize their contents for inclusion in their reports," and recognizing that "[i]nteragency information sharing should not automatically constitute a waiver of the official information privilege . . . so long as sufficient safeguards are in place to prevent disclosure to persons with no 'official interest' in the information").

b. <u>The ability to review the investigative reports relating to the use of lethal force against Andres Guardado will assist the Commission in understanding the circumstances surrounding the killing of Andres Guardado by a Sheriff Deputy, including whether there was a potential connection with a Deputy Gang called the Executioners, whether and why no body worn camera was activated, and whether the investigation was adequate.</u>

As part of its oversight role, the COC, to the extent possible, is concerned about and has tracked nearly all uses of lethal force by Sheriff's Deputies. In particular, it has tracked and expressed interest and concern about the use of lethal force against Andres Guardado, a 23-year-old, killed by a Sheriff Deputy in June 2020, and on multiple occasions has requested that the Sheriff's Department voluntarily provide the investigative report to the Commission, or an ad hoc committee of the Commission for review. The COC's interest in the fatal shooting and the internal investigative report continued after the District Attorney's Office, in 2023, declined prosecution of the deputy involved. I am informed and believe that this deputy is no longer a Deputy Sheriff as a result of his unrelated conviction in federal district court of a civil rights offense, in violation of 18 USC sec 1983.

Based on what the COC knows, much of which is based on media reporting, Guardado was encountered by two Sheriff Deputies in a driveway to a car repair shop in an unincorporated area of Los Angeles County. Upon spotting the deputies, it appears that Guardado fled by foot. At the end of a chase, Guardado was on the ground, face down. Media reports indicated the deputy who shot Guardado stated that Guardado tried to reach for a gun while on the ground, whereupon the deputy discharged five rounds into Guardado's back, causing his death. Evidently, the deputy's partner did not witness the shooting. There is evidently no body worn camera footage. To be clear, I cannot say that any of this is true or not, nor that it is contained in the Homicide Bureau's investigative report as neither I, nor anyone else on the Civilian Oversight Commission, has ever been allowed to review the reports.

The COC conducted and is continuing to investigate the critically important topic of the existence and operation of Deputy Cliques and Deputy Gangs within patrol stations and units of the Sheriff's Department. Among the issues the COC examined was the existence of the "Executioners," a deputy clique within the Department's Compton station whose members sport a matching tattoo on their calves.

During its investigation of Deputy Gangs and Deputy Cliques, the COC learned that one such clique or subgroup is known as the Executioners. Members of the Executioners have matching tattoos, featuring a helmeted skull typically on their inner calves. To become a clique member, a deputy must be selected by the clique or shot callers within the clique. A deputy who aspires or wants to be a member of such a Deputy Clique often is led to believe that it necessary to take certain actions, which may not be consistent with LASD use of force policy, to become a clique member. Such deputies are said to be "chasing ink."

In 2023-24, the COC informed the LASD of information it received that the deputy who shot and killed Guardado and his partner were believed to be "chasing ink."

One reason that the COC wishes to review the Guardado investigative reports is to determine whether a possible motive related to being or wanting to become an Executioner may have motivated the deputy who killed Guardado, and whether a possible deputy clique connection was investigated. If this potential motive was not investigated, the COC, to provide effective oversight, wants to know, why not. This is relevant to the COC's broader, multi-year inquiry into the impact of Deputy Gangs and Deputy Cliques within the LASD.

Another issue of concern to the COC is the failure to use Body Worn Cameras (BWCs). There is no BWC footage of the shooting. The COC, having promoted and supported the usage of BWCs by all Patrol Deputies of the LASD, wants to understand why no BWCs were activated and what recommendations it may need to make to correct this failure.

Third, the COC has an abiding interest in understanding every use of lethal force, whether the use of force was constitutional and within policy or not and, further, to assess whether there were policies, procedures, or training which should be implemented that could prevent the application of deadly force. Only by reviewing investigative reports, such as the Guardado report, can the Commission gain an understanding whether such fatal uses of force are systemic and capable of being reduced by policy changes or training.

In sum, the COC seeks the documents, electronically stored information, communications, and other things in **Exhibit A** in furtherance of the COC's obligations to provide meaningful oversight of the Sheriff and the Sheriff's Department, to identify potentially systemic issues leading to the use of deadly force, and to consider whether and what recommendations are appropriate to reduce the use of deadly force, particularly out-of-policy and unconstitutional uses of force against residents of Los Angeles County.

The Homicide Bureau's investigation of the use of lethal force against Andres Guardado is not confidential. It is disclosable under state law. *See* Cal. Penal Code § 832.7(b)(1)(A)(i) and 832.7(b)(1)(A)(ii).

4. The documents, electronically stored information, or other things described in **Exhibit A** are material to the issues involved in this matter for the reasons set forth in Paragraph 3, above.

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

Dated this **27th** day of **February, 2025**

_____

Robert C. Bonner, Chair
Los Angeles County Sheriff Civilian Oversight Commission

PROOF OF SERVICE OF SUBPOENA
SUBPOENA DUCES TECUM FOR PERSONAL APPEARANCE AND THE PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND THINGS

1. I served this Subpoena for Personal Appearance by personally delivering a copy to the person served as follows:
   a. Person served (name):
   b. Address where served:
   c. Date of delivery:
   d. Time of delivery:
   e. Witness fees (check one):
      (1) ☐ were offered or demanded and paid. Amount …….$ _____
      (2) ☐ were not demanded or paid
   f. Fee for service ……..$_____
2. I received this subpoena for service on (date): _____
3. Person serving:
   a. ☐Not a registered California process server.
   b. ☐California sheriff or marshal.
   c. ☐Registered California process server.
   d. ☐Employee of independent contractor of a registered California process server.
   e. ☐Exempt from registration under Business and Professions Code section 22350(b).
   f. ☐Registered professional photocopier.
   g. ☐Exempt from registration under Business and Professions Code section 22451.
   h. Name, address, telephone number and, if applicable, county of registration and number.

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

Date: _____

▶_____
(Signature)

LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matters of ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS and PROFESSIONAL PEACE OFFICERS ASSOCIATION, Charging Parties, vs. COUNTY OF LOS ANGELES, Respondent.	)	UFC Nos. 006-20 and 017-20 (Consolidated)

DECISION AND ORDER

Background

Effective February 27, 2020, Los Angeles County Board of Supervisors adopted Ordinance 20-0520 (the "Ordinance"), which amended Chapter 3.79.030 of the County Code to permit the Civilian Oversight Commission ("COC") to "[a]ccess information, documents, and testimony necessary to the Commission's oversight function" and, "in compliance with all laws and confidentiality protections . . . compel the production of such information by directing the [Office of the Inspector General ("OIG")] to issue a subpoena on the Commission's behalf when deemed necessary by action of the Commission."

On March 3, 2020, County voters adopted ballot proposition Measure R, which added Chapter 3.79.190 to the County Code to grant COC "[c]onsistent with state law, including, but not limited to the Peace Officers Bill of Rights . . . the power to subpoena and require the attendance of witnesses and the production of books and papers pertinent to investigations and oversight," and amended Chapter 3.79.130 of the County Code to permit the COC to use its own members and staff to "undertake investigations, inquiries, audits and monitoring" and to "review and evaluate the Office of Inspector General's handling and resolution of any or all citizen's or inmate's complaint."

Collectively, Ordinance 20-0520 and Measure R are referred to herein as "Oversight Legislation."

On July 28, 2020, the Association of Los Angeles Deputy Sheriffs ("ALADS") filed unfair practice charge ("UFC") No. 006-20 alleging that the County of Los Angeles ("Respondent") violated Section 5.04.240 of the County Employee Relation Ordinance ("ERO") by, without meeting and conferring with ALADS, making the changes implemented by the Oversight Legislation, not responding to information requests from ALADS, and issuing a subpoena in relation to disciplinary investigation concerning a January 26, 2020 incident involving Sheriff's Department personnel.

On December 28, 2020, the Professional Peace Officers Association ("PPOA") filed UFC No. 017-20 alleging that Respondent violated Section 5.04.240 of the ERO by, without meeting and conferring with PPOA, making the changes implemented by the Oversight Legislation.

Collectively, ALADS and PPOA are referred to herein as "Charging Parties."

Respondent denied the allegations by the Charging Parties and requested that the Commission dismiss the charges.

On February 15, 2021, the Commission issued an order finding that Respondent did not violate the ERO "when it failed or refused to negotiate over the decisions to adopt" the Oversight Legislation, and sent the UFCs to hearing as to whether Respondent violated the ERO by not negotiating "the effects of adopting" the Oversight Legislation.

Pursuant to the Commission's February 15, 2021, order, on May 17, 2022, our hearing officer ("HO") held a hearing at which relevant evidence and testimony were taken and argument was submitted. On August 18, 2022, the HO issued a Report and Recommendation ("Report").

Thereafter, at regularly scheduled meetings held on October 24 and November 28, 2022, the Commission heard oral argument on whether to adopt the Report.

Findings of Fact and Conclusions of Law

Having considered the HO's Report, the exceptions and responses to those exceptions filed as to the Report, and oral argument, the Commission hereby makes the following Findings of Fact and Conclusions of Law:

First, the Respondent violated Sections 5.04.240(A)(1) and (A)(3) of the ERO by implementing the Oversight Legislation without first negotiating the effects of the Oversight Legislation with PPOA and ALADS.

We pause here to address one of Respondent's main arguments, which is that it has no duty to bargain the effects of changes to terms and conditions of employment which flow from state legislation and/or voter initiatives. To this end, the Respondent challenges the scope of this Commission's authority by asserting that we cannot order the County to engage in effects

bargaining prior to implementation of the Oversight Legislation. Both arguments are without merit, and if adopted, would upend the Commission's long-established power to remedy UFCs related to the basic duty to meet and confer.

The duty to meet and confer over effects to the terms and conditions of employment remains essential to public sector labor relations even when state legislation and/or a voter initiative negates the obligation to engage in decisional bargaining. As the California Supreme Court has stated, the Meyers-Milias-Brown Act ("MMBA") provides that:

> The meet-and-confer requirement of section 3505 [of the MMBA] is an important feature of state public employee labor relations law, and one that places a relatively 'minimal' burden on a local agency's governing functions. . . . Further, the MMBA aims to foster full communication between public employers and employees and improve employer-employee relations. These purposes require compliance with section 3505, even when an agency decides to take a proposal directly to the voters.

(*Boling v. PERB*, 5 Cal. 5th 898, 915 (2018).)

Furthermore, PERB has held that effects bargaining is required to address the impact of expanding certain subpoena powers over employees of law enforcement agencies for civilian oversight commissions (*see County of Sonoma*, PERB Dec. No. 2772-M (2021)). On appeal, the California Court of Appeal has agreed (*see County of Sonoma v. PERB* , 80 Cal. App. 5th 167, 186-87 (1st Dist. 2022)). A more recent PERB decision involving the unilateral implementation of Covid-19 vaccination rules in San Francisco seems to be in accord (*cf. City & County of San Francisco*, PERB Dec. No. 2846-M (Nov. 17, 2022), slip op. at p. 21 n.17 ("even when a rule is primarily about public safety . . . disciplinary issues are still subject to effects bargaining")).

Second, the Respondent violated Sections 5.04.240(A)(1) and (A)(3) of the ERO by failing or refusing to respond to February 7 and May 19, 2020 information requests from ALADS. The HO's Report should have addressed and reached this conclusion; we are doing so here.

Order

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Report is adopted as amended herein.

2. The Respondent violated Sections 5.04.240(A)(1) and (A)(3) of the ERO by implementing the Oversight Legislation without first negotiating the effects of the Oversight Legislation with ALADS and PPOA, and by not responding to the ALADS information requests of February 7 and May 19, 2020.

3. The Respondent shall respond to ALADS' information request of February 7 and

May 19, 2020, no later than fourteen (14) days after the issuance of this Decision and Order.

4. The Respondent shall meet and confer with the Charging Parties with respect to the negotiable effects of the Oversight Legislation as follows:

a. The parties shall immediately meet and confer on the schedule for negotiations and shall, no later than seven (7) days after the issuance of this Decision and Order, report to the Commission on any agreement as to the schedule for negotiations.

b. If the parties are unable to reach an agreement as to the schedule for negotiations, then the Commission will consider an application by any party to issue a supplemental Decision and Order establishing the negotiations schedule.

c. It is the Commission's hope and expectation that negotiations will be completed no later than sixty (60) days from the commencement of negotiations, and that the parties will take all actions necessary to facilitate such a schedule, including the pre-selection of a mediator. The parties shall have the discretion to reach a mutual agreement pursuant to a lengthier schedule.

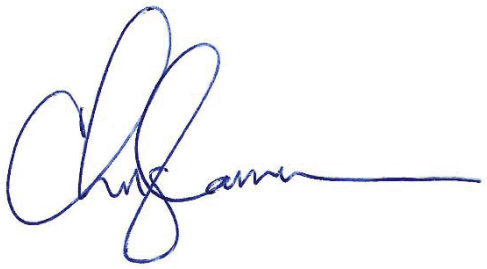
d. The meet-and-confer process outlined in this Paragraphs 4 shall be without prejudice to the exhaustion of the impasse procedure otherwise required by law.

5. Members of the employee representation units represented by ALADS and PPOA shall not be required to respond to subpoenas issued pursuant to the Oversight Legislation until the conclusion of the meet-and-confer process described above in Paragraph 4.

6. The Respondent shall post appropriate notices – including but not necessarily limited to email notice to affected members of the employee representation units represented by ALADS and PPOA – regarding this Decision and Order.

IT IS SO ORDERED.

Dated at Los Angeles, California, on November 30, 2022.



Christopher David Ruiz Cameron, Chair

Anthony Miller, Commissioner

Najeeb Khoury, Commissioner

LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS and PROFESSIONAL PEACE OFFICERS ASSOCIATION, Charging Parties, vs. COUNTY OF LOS ANGELES, Respondent.	)	UFC No. 012-23

DECISION AND ORDER

Background

This Decision and Order ("D&O") pertains to an Unfair Practice Charge ("UFC") filed on May 19, 2023 with the Los Angeles County Employee Relations Commission ("Commission" or "ERCOM") by the Association for Los Angeles Deputy Sheriffs ("ALADS") and the Los Angeles County Professional Peace Officers Association ("PPOA"). This matter was heard before the Employee Relations Commission at their regularly scheduled meeting on November 18, 2024.

This UFC deals with the same oversight legislation ("Oversight Legislation") that was addressed in our prior Decision and Order UFC Nos. 006-20 and 017-20 ("Prior D&O"). The Oversight Legislation governs personnel who are represented by the Charging Parties and employed by the Los Angeles County Sheriff's Department ("Department"), and is meant, at least in part, to investigate the existence of deputy gangs in the Department.

The Oversight Legislation consists of multiple parts: effective February 27, 2020, the Los Angeles County Board of Supervisors adopted Ordinance 20-0520 (the "Ordinance"), which amended Chapter 3.79.030 of the County Code to permit the Civilian Oversight Commission ("COC") to "[a]ccess information, documents, and testimony necessary to the Commission's oversight function" and, "in compliance with all laws and confidentiality protections . . . compel the production of such information by directing the [Office of the Inspector General ("OIG")] to

issue a subpoena on the Commission's behalf when deemed necessary by action of the Commission." On March 3, 2020, County voters adopted ballot proposition Measure R, which added Chapter 3.79.190 to the County Code to grant COC "[c]onsistent with state law, including, but not limited to the Peace Officers Bill of Rights . . . the power to subpoena and require the attendance of witnesses and the production of books and papers pertinent to investigations and oversight," and amended Chapter 3.79.130 of the County Code to permit the COC to use its own members and staff to "undertake investigations, inquiries, audits and monitoring" and to "review and evaluate the Office of Inspector General's handling and resolution of any or all citizen's or inmate's complaint."

In our Prior D&O, which was issued November 30, 2022, we made clear that the County did not have to bargain over the decision to implement the Oversight Legislation but it ***did*** have to bargain over its effects. Recognizing the importance of implementing the Oversight Legislation in a timely fashion, we ordered the parties to conduct effects bargaining in an expedited manner.

Our Prior D&O specifically stated that the County "violated Sections 5.04.240(A)(1) and (A)(3) of the ERO[1] by implementing the Oversight Legislation without first negotiating the effects of the Oversight Legislation with ALADS and PPOA," and ordered that "[m]embers of the employee representation units represented by ALADS and PPOA shall not be required to respond to subpoenas issued pursuant to the Oversight Legislation until the conclusion of the meet-and-confer process."

But on May 12, 2023, while the meet and confer process over effects bargaining was still ongoing, the OIG sent letters to certain deputies and requested their participation in interviews as part of investigations into law enforcement gangs and police misconduct. The OIG letters instructed deputies that they must appear but that the deputies could invoke their Fifth Amendment rights to remain silent. The letters additionally stated that the OIG would provide the interview statements to the Department, the California Commission on Peace Officer Standards and Training (P.O.S.T.), and other governmental entities. Deputies were also asked to bring photographs of gang related tattoos and were informed that they would be asked to disclose who else might have similar tattoos along with any other information related to deputies being in gangs.

On May 18, 2023, Sheriff Robert Luna sent a corresponding email that ordered the deputies to cooperate with the OIG interviews and reminded the deputies of a Department policy that stated no employee can take any action that could interfere with an investigation and warned that failure to cooperate could lead to termination. The deputies were not informed whether they would receive *Lybarger*[2] or *Garrity*[3] protections during the interviews.

In response to these letters, the Charging Parties filed the current UFC, and ALADS

1 Los Angeles County Employee Relations Ordinance.
2 *See Lybarger v City of Los Angeles*, 40 Cal. 3d 822 (1985).
3 *See Garrity v. New Jersey*, 385 U.S. 493 (1967).

sought a preliminary injunction from the Superior Court. On July 10, 2023, the Superior Court granted the request for preliminary injunction. For our part, we sent the current UFC to hearing and received the Hearing Officer's Report on July 23, 2024.

We adopt much of the Hearing Officer's Report but also reject certain portions.

We agree with the Hearing Officer that the May 12, 2023 and May 18, 2023 communications effectively served as subpoenas, and that the Respondent violated our November 30, 2022 Order by issuing these communications before concluding the meet and confer process over effects bargaining.

We also adopt the Hearing Officer's finding that the Respondent engaged in direct dealing when it issued the May 12, 2023 and May 18, 2023 communications to the deputies while the parties were engaged in the meet and confer process.

We also agree with the Superior Court's analysis as to why effects bargaining was required under our previous Order and continues to be required until such bargaining concludes:

> When a non-negotiable decision has foreseeable effects on discipline, such as creating a new type of evidence that may be used to support discipline or a new ground for discipline, these effects are negotiable. American Federation of State, County and Municipal Employees v. Regents of University of California, ("American Federation") (2021) PERB Decision No. 2783H, pg. 34 (bargaining required for influenza vaccine mandate discipline). Even after a firm non-negotiable decision is made, the employer must provide notice and a meaningful opportunity to bargain over the reasonably foreseeable effects of its decision before implementation, just as it is required to do before making a decision on a mandatory subject of bargaining.
>
> Like PERB's decisions, ERCOM's decisions establish that the County must negotiate matters that concern discipline. See ALADS v. County of Los Angeles Sheriff's Department, (2018) UFC 043-13; UFC 014-15 (effects bargaining required for suspension without pay for deputies charged with misdemeanor pursuant to Civil Service Rule 18.01(A)); Coalition of County Unions, et al v. County of LA Chief Administrative Office (1991) UFC 60.23 & 6.253, P. 6-8 (negotiation not required for decision to drug test for sensitive positions, the identification of such sensitive positions, and test methodology, but was required for the disciplinary effects of positive test).

Chalfant Order in *ALADS v. County of Los Angeles, Robert Luna, Office of the Inspector General of the County of Los Angeles & Max Huntsman*, 23STCPOIT4S, p. 30.

But we decline to adopt certain other recommendations by the Hearing Officer.

The Hearing Officer asks the Commission to reconsider whether decisional bargaining should also be required in this case. She notes that PERB found the need for decisional bargaining in a similar case. *See Sonoma County Deputy Sheriff's Association v. Public Employment Relations Board* (2023) PERB Decision No. 277a-M. We decline to follow the Hearing Officer's suggestion. In this respect, we addressed the matter when we issued our Prior D&O regarding the Oversight Legislation on November 30, 2022. If a party wished to challenge our finding on that issue, then it needed to file a timely writ in Superior Court.

The Hearing Officer also recommends that we find that the Respondent violated the Superior Court's preliminary Injunction. But such an argument is better left to the court whose order has allegedly been violated.

The Hearing Officer also asserts that the May 12 and 18, 2023 directives did not implicate *Miranda* rights but did implicate the rights of sworn officers under POBRA.[4] The Commission declines to adopt this assertion and takes no position on it. Our jurisdiction is limited to enforcing the MMBA and the ERO; therefore, it is outside our jurisdiction to weigh in on the requirements of *Miranda* and POBRA, although these are certainly subjects that can be discussed by the parties during effects bargaining.

It is undoubtedly within our purview, however, to determine whether the Respondent violated our November 30, 2022 D&O. We find unequivocally that it did. The Respondent argues that our Order only explicitly prohibited the issuance of subpoenas until the meet and confer process had concluded. But this argument clearly ignores our finding that Respondent had "violated Sections 5.04.240(A)(1) and (A)(3) of the ERO by implementing the Oversight Legislation without first negotiating the effects of the Oversight Legislation with ALADS and PPOA." In light of this finding, it cannot be seriously argued that the Respondent was free to implement the effects of the Oversight Legislation without first completing the bargaining process. Certainly, this Commission need not list all effects that might be bargainable in order to craft a decision regarding effects bargaining to be effective. And as the Superior Court correctly summarized in its preliminary injunction, disciplinary procedures resulting from the Oversight Legislation are clearly subject to effects bargaining.

To avoid any future gamesmanship, we explicitly find that the Respondent violated Sections 5.04.240(A)(1) and (A)(3) of the ERO when it directed deputies to respond to the OIG's May 12, 2023 letter and when Sheriff Luna issued the corresponding May 18, 2023 email. We also make clear that the Respondent is prohibited from implementing any and all bargainable effects of the Oversight Legislation until the bargaining process, including impasse procedures, has concluded.

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4 "POBRA" (sometimes "POBAR") is the common acronym used to refer to the California Public Safety Officers Procedural Bill of Rights, Cal. Gov't Code §§ 3300-3313.

Order

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Hearing Officer's Report is adopted as amended in the above Decision.

2. The Respondent violated Sections 5.04.240(A)(1) and (A)(3) of the ERO when it directed deputies to respond to the OIG's May 12, 2023 letter and when Sheriff Luna issued the corresponding May 18, 2023 email.

3. The Respondent will cease and desist from direct dealing in violation of Section 5.04.240.

4. The Respondent will cease and desist from implementing any bargainable effects of the Oversight Legislation until bargaining, including any applicable impasse procedures, over the effects of the Oversight Legislation concludes.

5. The Respondent will post appropriate notices – including but not necessarily limited to email notice to members of the employee representation units represented by ALADS and PPOA – regarding this Decision and Order. Such notice shall include an explanation that the May 12, 2023 directive and May 18, 2023 email have been withdrawn and that the communications violated this Commission's November 30, 2022 Decision and Order.

6. The Respondent shall formally notify all addressees of the May 12, 2023 directive and the May 18, 2023 email from Sheriff Luna that the communications have been withdrawn and no actions will be taken against addressees for failure to comply with those communications.

7. The parties shall brief the issue of whether sanctions against Respondent are warranted for violating of this Commission's November 30, 2022 Decision and Order.

IT IS SO ORDERED.

Dated at Los Angeles, California, on December 2, 2024.

Christopher David Ruiz Cameron, Chair

Najeeb Khoury, Commissioner

Patti Paniccia, Commissioner

Association for Los Angeles Deputy Sheriffs v. County of Los Angeles, Robert Luna, Office of the Inspector General of the County of Los Angeles, and Max Huntsman, 23STCP01745

Decision on preliminary injunction

Petitioner Association for Los Angeles Deputy Sheriffs ("ALADS") applies for a preliminary injunction enjoining Respondents County of Los Angeles ("County"), Robert Luna ("Luna") in his official capacity as Sheriff of the Los Angeles Sheriff's Department ("LASD"), the County's Office of the Inspector General ("OIG"), and Max Huntsman ("Huntsman") in his official capacity as the Inspector General (collectively, "County"), from compelling ALADS-represented deputies ("Affected Deputies") to (1) attend interviews regarding an investigation of law enforcement gangs and misconduct at LASD and (2) produce photographs of tattoos on any part of their bodies and/or be subject to inspections of their bare legs for tattoos.

The court has read and considered the moving papers, *ex parte* opposition and merits opposition, reply, the argument portion of the amicus brief filed by the American Civil Liberties Union of Southern California ("ACLU")[1] and ALADS' response, heard argument on June 29, 2023, and renders the following decision.

A. Statement of the Case

1. Petition

On May 22, 2023, ALADS filed the verified Complaint and Petition (hereinafter, "Petition") against Respondents alleging causes of action for (1) declaratory and injunctive relief with respect to the Affected Deputies' constitutional rights under the Fourth and Fifth Amendments of the United States Constitution, as well as violation of their right to privacy under the California Constitution and the Pitchess statutes, and (2) traditional mandamus based on violations of the Meyers-Milias-Brown Act ("MMBA") and the County Employee Relations Ordinance ("ERO"). The Petition alleges in pertinent part as follows.

On May 12, 2023, the OIG sent a letter to the Affected Deputies. The letter ordered the deputy to appear for an interview concerning the presence of law enforcement gangs in LASD. The letter stated that the OIG was investigating two groups: the Banditos and the Executioners. LASD was unable to provide the OIG with a list of members and the OIG is conducting a series of witness interviews to establish the membership of the Banditos and the Executioners.

The May 12, 2023 letter advised the Affected Deputy that he[2] must appear to answer questions but could invoke the Fifth Amendment of the United States Constitution and not answer a question if he believed the response might incriminate him. The OIG reserved the right to compel a response at a later date. Any other failure to answer may affect the deputy's LASD employment or status as a peace officer. The OIG is not part of the disciplinary and certification processes, but the deputy's statements would be provided to LASD, the Commission on Peace

07.11.2023

[1] ACLU applied *ex parte* on June 27, 2023 to file an amicus brief. The court has granted the application with respect to the argument portion and gave ALADS leave to file a five-page response.

[2] The court uses the male gender because the evidence suggests that the Affected Deputies are all male.

Officer Standards and Training ("POST"), and other governmental entities as legally appropriate.

The May 12, 2023 letter set forth the core questions the OIG would ask, including if the deputy has the tattoo shown on an attached image. The deputy was requested to bring a picture of any tattoo on each leg below the knee and of any other tattoos with the symbol or image of the Banditos and the Executioners. The OIG would photograph each leg below the knee if the deputy did not bring a sufficient photograph.

On May 18, 2023, the Sheriff emailed the Affected Deputies to order their participation in the interviews described in the May 12, 2023 letter. The Sheriff's email invoked Civil Service Rule ("CSR") 18.031 and the County's Department of Human Resources Policy Procedures and Guidelines ("Guidelines") No. 910, which precludes an employee from taking any action that could interfere with an investigation. The email stated that a failure to cooperate could lead to discharge.

The Sheriff's May 18, 2023 email did not say whether the Affected Deputies would receive an admonition or otherwise receive protection under Lybarger v. City of Los Angeles ("Lybarger") (1985) 40 Cal.3d 822, 829 and Garrity v. New Jersey, ("Garrity") (1967) 385 U.S. 493, such that any statements made by the deputy during his interview could not be used in a criminal action against him.

LASD Manual of Policies and Procedures ("MPP") Section 3-01/050.80 prohibits tattoos that can be seen by another person and requires that they be covered with LASD-approved material. The MPP does not prohibit deputies from having a tattoo.

California Constitution ("Cal. Const.") art. I, section 1 provides a right to privacy broader than the federal constitutional right of privacy. Under National Treasury Employees Union v. Von Raab ("NTEU") (1989) 489 U.S. 656, 665, the Fourth Amendment protects individuals from unreasonable government searches even when the government is an employer. Under the Fourth Amendment, a search of a police officer requires a reasonable suspicion that evidence will be uncovered.

The Office of County Counsel ("County Counsel") has recognized that deputies have an expectation of privacy in areas of their bodies that are generally covered by clothing. A federal case has previously restricted photographs taken during a search to the head, face, neck, arms, and hands because they are regularly exposed and do not invoke an intimate privacy interest. At the same time, the court held that the fact that someone may at times remove a shirt or wear a tanktop does not waive their privacy interests in areas that a shirt would otherwise cover.

Under the Pitchess statutes, personnel records are confidential and shall not be disclosed in any criminal or civil proceedings except by discovery under Evidence Code ("Evid. Code") sections 1043 and 1046. This protection extends outside of criminal and civil proceedings. Copley Press Inc. v. Superior Court ("Copley") (2006) 39 Cal.4th 1272, 1286.

Los Angeles County Code ("LACC") section 6.44.190.J requires the OIG to safeguard and maintain any peace officer's records received in connection to the discharge of the OIG's duties. However, it also states that the sharing of non-juvenile information with staff of the Civilian Oversight Commission ("COC") and the Probation Oversight Commission ("POC"), ad hoc committees of these commissions, or the County Board of Supervisors does not constitute a disclosure. That means the OIG sharing information with these entities is not subject to the protections of Pitchess.

The COC is covered by the Brown Act and therefore must have proceedings open to the public. Under LACC section 3.79.035, the COC may not receive records if any law applies that protects the confidentiality of records.

Respondents' actions involve significant and adverse changes to the terms and conditions of employment for ALADS members. The MMBA, Government Code ("Govt. Code") section 3505, therefore required the County to meet and confer in good faith with ALADS before any course of action. The County failed to do so before the OIG sent the May 12, 2023 letter. Based on this violation, ALADS filed an Unfair Employee Relations Practice Charge ("UFC") with the County Employee Relations Commission ("ERCOM") on May 19, 2023. The requested relief in this Petition is beyond the scope of ERCOM's responsibilities.

ALADS seeks a judicial declaration and injunctive relief that (1) the OIG's intended investigatory actions would violate the Fourth and Fifth Amendment rights of the Affected Deputies, as well as their California constitutional right to privacy, (2) there are less intrusive means to obtain the information sought, (3) the Affected Deputies will be immunized under Lybarger for any statements made, (4) the OIG cannot transmit any statements to POST without violating Govt. Code section 3303(f)'s prohibition against using compelled statements in subsequent civil proceedings, (5) the OIG cannot include the Affected Deputies' statements in any report to the District Attorney for construction of a Brady List, and (6) any photographs or records received or taken by the OIG must remain confidential and not be disclosed to any governmental agency or the public as required by the Pitchess statutes.

ALADS also seeks a writ of mandate enjoining Respondents from implementing the investigatory actions in the May 12, 2023 letter or taking any punitive or disciplinary action against the Affected Deputies who do not fully comply with the OIG's investigation pending ERCOM's resolution of the UFC charge. ALADS also seeks attorney's fees and costs.

2. Course of Proceedings

On May 26, 2023, ALADS served the County, OIG, and Huntsman with the Petition and Summons by substitute service, effective June 5, 2023.

On May 30, 2023, ALADS served Sheriff Luna with the Petition and Summons by substitute service, effective June 9, 2023.

On June 2, 2023, the court granted ALADS' *ex parte* application for a temporary restraining order ("TRO") and Order to Show Cause re: a preliminary injunction ("OSC") enjoining Respondents from compelling the Affected Deputies to (1) attend an upcoming interview regarding the OIG's investigation of law enforcement gangs and police misconduct and (2) produce photographs of certain tattoos on their bodies or subject their legs to inspections for those tattoos. The court clarified that it was granting the TRO/OSC on search and seizure/privacy, Pitchess, and labor grounds, but not the Fifth Amendment. The OSC hearing was set for June 29, 2023.

B. Applicable Law

1. Preliminary Injunction

An injunction is a writ or order requiring a person to refrain from a particular act; it may be granted by the court in which the action is brought, or by a judge thereof; and when granted by a judge, it may be enforced as an order of the court. Code of Civil Procedure ("CCP") §525. An injunction may be more completely defined as a writ or order commanding a person either to perform or to refrain from performing a particular act. *See* Comfort v. Comfort, (1941) 17 Cal.2d 736, 741. McDowell v. Watson, (1997) 59 Cal.App.4th 1155, 1160.[3] It is an equitable

[3] The courts look to the substance of an injunction to determine whether it is prohibitory

remedy available generally in the protection or to prevent the invasion of a legal right. Meridian, Ltd. v. City and County of San Francisco, et al., (1939) 13 Cal.2d 424.

The purpose of a preliminary injunction is to preserve the *status quo* pending final resolution upon a trial. *See* Scaringe v. J.C.C. Enterprises, Inc., (1988) 205 Cal.App.3d 1536. Grothe v. Cortlandt Corp., (1992) 11 Cal.App.4th 1313, 1316; Major v. Miraverde Homeowners Assn., (1992) 7 Cal.App.4th 618, 623. The *status quo* has been defined to mean the last actual peaceable, uncontested status which preceded the pending controversy. Voorhies v. Greene (1983) 139 Cal.App.3d 989, 995 (*quoting* United Railroads v. Superior Court, (1916) 172 Cal. 80, 87); 14859 Moorpark Homeowner's Assn. v. VRT Corp., (1998) 63 Cal.App.4th 1396. 1402.

A preliminary injunction is issued after hearing on an OSC or a noticed motion. The complaint normally must plead for injunctive relief. CCP §526(a)(1)-(2).[4] A preliminary injunction requires the use of competent evidence to create a sufficient factual showing on the grounds for relief. *See e.g.* Ancora-Citronelle Corp. v. Green, (1974) 41 Cal.App.3d 146, 150. Injunctive relief may be granted based on a verified complaint only if it contains sufficient evidentiary, not ultimate, facts. *See* CCP §527(a). For this reason, a pleading alone rarely suffices. Weil & Brown, California Procedure Before Trial, (The Rutter Group 2007) 9:579, 9(ll)-21. The burden of proof is on the plaintiff as moving party. O'Connell v. Superior Court, (2006) 141 Cal.App.4th 1452, 1481.

A plaintiff seeking injunctive relief must show the absence of an adequate damages remedy at law. CCP §526(4); Thayer Plymouth Center, Inc. v. Chrysler Motors, (1967) 255 Cal.App.2d 300, 307; Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist., (1992) 8 Cal.App.4th 1554, 1565. The concept of "inadequacy of the legal remedy" or "inadequacy of damages" dates from the time of the early courts of chancery, the idea being that an injunction is an unusual or extraordinary equitable remedy which will not be granted if the remedy at law (usually damages) will adequately compensate the injured plaintiff. Id. at 1565.

In determining whether to issue a preliminary injunction, the trial court considers two factors: (1) the reasonable probability that the plaintiff will prevail on the merits at trial (CCP §526(a)(1)), and (2) a balancing of the "irreparable harm" that the plaintiff is likely to sustain if the injunction is denied as compared to the harm that the defendant is likely to suffer if the court grants a preliminary injunction. CCP §526(a)(2); Pillsbury, Madison & Sutro v. Schectman, (1997) 55 Cal.App.4th 1279, 1283; Davenport v. Blue Cross of California, (1997) 52 Cal.App.4th 435, 446; Abrams v. St. Johns Hospital, (1994) 25 Cal.App.4th 628, 636. Thus, a preliminary injunction may not issue without some showing of potential entitlement to such relief. Doe v. Wilson, (1997) 57 Cal.App.4th 296, 304. The decision to grant a preliminary injunction generally lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. Thornton v. Carlson, (1992) 4 Cal.App.4th 1249, 1255.

A preliminary injunction ordinarily cannot take effect unless and until the plaintiff provides an undertaking for damages which the enjoined defendant may sustain by reason of the

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or mandatory. Agricultural Labor Relations Bd. v. Superior Court, (1983) 149 Cal.App.3d 709, 713. A mandatory injunction — one that mandates a party to affirmatively act, carries a heavy burden: "[t]he granting of a mandatory injunction pending trial is not permitted except in extreme cases where the right thereto is clearly established." Teachers Ins. & Annuity Assoc. v. Furlotti, (1999) 70 Cal.App.4th 187, 1493.

[4] However, a court may issue an injunction to maintain the *status quo* without a cause of action in the complaint. CCP §526(a)(3).

injunction if the court finally decides that the plaintiff was not entitled to the injunction. *See* CCP §529(a); City of South San Francisco v. Cypress Lawn Cemetery Assn., (1992) 11 Cal.App.4th 916, 920.

2. Penal Code Section 13670

Effective January 1, 2022, Penal Code section 13670(b) requires law enforcement agencies to maintain a policy prohibiting participation in "a law enforcement gang" and directed law enforcement agencies to "cooperate" with investigations into gangs by inspectors general, the Attorney General, or any other authorized agency. A "law enforcement gang" is defined in part as a "group of peace officers... who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing." Penal Code §13670(a)(2).

3. The OIG

Within the scope of its authority, the OIG provides independent and comprehensive oversight, monitoring of, and reporting about the County departments. LACC §6.44.190(B) (RJN Ex. C). It also serves as the investigative arm of the COC and POC.[5] LACC §6.44.190(B). The COC shall supervise and evaluate all work performed by the OIG at their respective requests. LACC §6.44.190(D).

The OIG's functions include regularly communicating with the public, the Board of Supervisors, the COC, and County departments regarding the OIG's findings. LACC §6.44.190(F)(4). With the complainant's permission, complaints about specific conduct shall be referred to the appropriate department for action consistent with Penal Code section 832.5 and other applicable laws. LACC §6.44.190(F)(4).

The confidentiality of peace officer personnel records, juvenile records, medical and mental health records, protected health information, and all other privileged or confidential information received by the OIG in connection with the discharge of its duties shall be safeguarded and maintained by the OIG as required by law and as necessary to maintain any applicable privileges or the confidentiality of the information. LACC §6.44.190(J). The OIG shall not disclose any confidential records -- including peace officer personnel records, juvenile records, medical and mental health records, or protected health information -- unless the disclosure is permitted by law. LACC §6.44.190(J). However, the OIG's sharing of information, including confidential information, with COC staff, the COC's *ad hoc* committees, or the Board of Supervisors does not constitute a disclosure except in the case of juvenile records. LACC §6.44.190(J).[6]

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[5] As the POC has no relevance to this case, the court will refer to the COC only and sometimes as the "Commission".

[6] Any personnel records, complaints against LASD personnel, and information from the records that comes into the COC's possession shall be treated as confidential and shall not be disclosed to any member of the public, except in accordance with applicable laws. LACC §3.779.035 (RJN Ex. D). Because the COC is a Brown Act body that cannot conduct closed sessions, it cannot receive records protected by any law protecting the confidentiality of records. LACC §3.779.035. As permitted by law and LACC section 6.44.190(J), material received by the OIG in response to a subpoena issued at the direction of the COC may be shared with the COC by the OIG. LACC §3.779.035.

4. Employee Discipline

The failure of a County employee to perform assigned duties so as to meet fully explicitly stated or implied standards of performance may constitute adequate grounds for discharge, reduction or suspension. CSR 18.031 (Brown Decl., ¶4, Ex. V). Where appropriate, such grounds may include, but are not limited to, qualitative as well as quantitative elements of performance, such as failure to exercise sound judgment, failure to report information accurately and completely, failure to deal effectively with the public, and failure to make productive use of human, financial and other assigned resources. CSR 18.031.

Grounds for discharge, reduction or suspension may also include any behavior or pattern of behavior which negatively affects an employee's productivity, or which is unbecoming a county employee, or any behavior or condition which impairs an employee's qualifications for his or her position or for continued county employment. CSR 18.031.

Per County Policy 910, all County employees shall fully cooperate in, and not take any action that could interfere with, delay, obstruct, distort, or influence, any administrative investigation process conducted by the County or any authorized agency. Guidelines No. 910 (Brown Decl., ¶4, Ex. W). Pursuant to CSR 18.031, a failure to cooperate when ordered to do so and when properly advised of their rights, as applicable, may subject an employee to disciplinary action, up to and including discharge. Id.

LASD personnel shall not willfully violate any federal statute, state law, or local ordinance. MPP 3-01/030.10(a) (Brown Decl., ¶5, Ex. X). They must also conform to and abide by the County Charter, the LACC, and the Rules of the Department of Human Resources. MPP 3-01/030.10(b). Members who violate any rules, regulations, or policies of the Department or the County shall be subject to disciplinary action. MPP 3-01/030.10(e). The commission or omission of any other act contrary to good order and discipline shall also be subject to disciplinary action. MPP 3-01/030.10(e).

C. Statement of Facts[7]

1. ALADS's Evidence

a. Background

ALADS is a recognized employee organization per Govt. Code section 3501(b). Pippin Decl., ¶3. It represents LASD deputies in all matters concerning member wages, hours and working conditions. Pippin Decl., ¶3.

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[7] ALADS requests judicial notice of (1) the County's ERO (LACC sections 5.04.010 *et. seq.*) (Ex. A), (2) United States v. Anthony, ("Anthony") (W.D. Va. 2019) 2019 U.S. Dist. LEXIS 15589 (Ex. B), (3) LACC sections 6.44.190 *et seq.* (Ex. C), (4) LACC sections 3.79.010 *et seq.* (Ex. D), (5) City of Sacramento, ("Sacramento") (2013) PERB Decision No. 2351M (Ex. E), (6) American Federation of State, County and Municipal Employees v. Regents of University of California, ("American Federation") (2021) PERB Decision No. 2783H (Ex. F), (7) County of Ventura, ("Ventura") (2021) PERB Decision No. 2758M (Ex. G), (8) Rhea v. Washington Dept of Corrections, ("Rhea") (W.D. Wash 2010) 2010 U.S. Dist. LEXIS 97705 (Ex. H), and (9) In re Karp Metal Prods. Co. ("Karp") (1943) 51 N.L.R.B. 621 (Ex. I).

The requests for judicial notice of Exhibits A and C-D are granted under Evid. Code section 452(b). The requests for Exhibits B and H are granted under Evid. Code section 452(d). The requests for Exhibits E-G and I are granted under Evid. Code section 452(c).

b. The 2020 UFC

In 2020, ALADS filed a UFC with ERCOM asserting that the County should have met and conferred with ALADS over the effects of the County's oversight legislation and Ballot Measure R (collectively, "Oversight Legislation"), which conferred a new subpoena power to the COC and the OIG. Pippin Decl., ¶7.

On November 30, 2022, ERCOM issued a Decision and Order finding that the County violated the ERO when it implemented the oversight legislation without meeting and conferring with ALADS as to its effects. Pippin Decl., ¶8, Ex. 3. ERCOM stated that the duty to meet and confer over effects on the terms and conditions of employment is essential to public sector labor relations even when state legislation or a voter initiative negates the obligation to engage in decisional bargaining. Ex. 3, p. 3. The Public Employee Relations Board ("PERB") has held that effects bargaining is required to address the impact of expanding subpoena powers over employees of law enforcement agencies for civilian oversight commissions and the appellate court agreed. *See* County of Sonoma v. PERB, (2022) 800 Cal.App.5th 167, 186-87. Id. A recent PERB decision indicates that, even when a rule is primarily about public safety (COVID vaccinations), disciplinary issues are still subject to effects bargaining. Id. (citation omitted). Until the County meets and confers over the effects of the oversight legislation, ALADS-represented deputies do not need to respond to subpoenas issued pursuant to the Oversight Legislation. Pippin Decl., ¶8, Ex. 3.

c. The 2014 County Counsel Opinion

In 2014, County Counsel issued a legal opinion about LASD's tattoo policy in place at that time, which required that all tattoos be covered while on duty, prohibited employees from getting matching tattoos, prohibited certain lewd, extremist and other tattoos, and required the employee to comply with an order to display a private area where a tattoo is located. Pippin Decl., ¶12, Ex. 5, p. 2.

The opinion indicated that there was nothing wrong with requiring employees to cover their tattoos (Ex. 5, pp. 2-3) but warned that there are First Amendment and equal protection concerns about content-based prohibitions on tattoos. Id., pp. 5-13. The opinion also warned that any prohibition on types of tattoos on private areas of a body may violate the Fourth Amendment. Id., pp. 13-15. LASD's proposed policy would allow a Division Chief to authorize a medical professional to order a deputy to display a private area if someone alleges that the deputy has a prohibited tattoo. Id., p. 14. Although this is not as intrusive as a strip search, it still exposes areas covered by undergarments and deputies have an expectation of privacy in those areas. Id. The intrusiveness of the search would be disproportionate to the alleged misconduct, which only would be a policy violation and not criminal conduct. Id. The public interest at issue is maintaining LASD's integrity, and a court may not find that a search of deputies' private areas for purportedly offensive tattoos advances that interest. Id.

d. LASD's Tattoo Policy

The current LASD tattoo policy, MPP section 3-01/050.80, prohibits tattoos that can be seen by another person and requires deputies to cover them with LASD-approved material. Pippin Decl., ¶11, Ex. 4. The MPP does not prohibit deputies from sharing the same tattoo. Pippin Decl., ¶11.

e. The OIG's May 12, 2023 Letter

On May 12, 2023, the OIG sent the Affected Deputies a letter requesting their participation in an interview as part of an investigation into law enforcement gangs and police misconduct under Penal Code sections 13670(b) and 13510.8(b)(7)-(8). Pippin Decl., ¶4, Ex. 1, p. 1. The investigation focused on two target groups: the Banditos and the Executioners. Id. LASD was unable to provide a list of the group members and the OIG stated that it is conducting a series of witness interviews to establish the membership of the two groups. Id., p. 2.

The May 12, 2023 letter advised the Affected Deputies that, although they must appear to answer questions, they could invoke the Fifth Amendment of the United States Constitution and not answer a question if the response could incriminate them. Id. The OIG reserved the right to recall the deputy and compel a response at a later date if the deputy invoked a Fifth Amendment objection. Id. Any other failure to answer could affect the deputy's employment because, while the OIG is not part of the disciplinary or certification process, it would provide the interview statements to LASD, POST, and other governmental entities as legally appropriate. Pippin Decl., ¶4, Ex. 1.

The deputy was asked to bring photos of any tattoo on his leg from the ankle to the knee, and a photo of any tattoo on his body if it matched the attached symbol or image. Ex. 1, p. 2. The OIG would photograph each leg below the knee if the deputy did not bring a photo or the photo was insufficient. Ex. 1, p. 3.

The May 12, 2023 letter included the core questions that the OIG would ask. Ex. 1, p. 3. The first question was whether the deputy has a tattoo with the symbols or images attached. Id. For any past or present tattoo matching the attached symbol or image, the deputy would be asked to explain if he was invited to join a group, by whom, the name and a description of the group, if anyone was present when he got the tattoo, and who else knows about it. Id. He would also be asked to disclose who else might be in the group based on similar tattoos, what other deputies have revealed to them, and any other suspicion the deputy might have. Id.

f. The Sheriff's May 18, 2023 Email

On May 18, 2023, the Sheriff emailed the Affected Deputies and ordered that they cooperate with the interviews described in the OIG's May 12, 2023 letter. Pippin Decl., ¶6, Ex. 2. The Sheriff directed all Affected Deputies to make full, complete, and truthful statements in response to the interview questions. Id. The May 18, 2023 email invoked CSR 18.031 and Guidelines No. 910, pursuant to which no employee can take any action that could interfere with an investigation. Id. The Sheriff warned that a failure to cooperate could lead to discharge. Id.

g. The Potential for Discipline

Neither the OIG nor LASD has said that they will immunize the Affected Deputies. Pippin Decl., ¶9. In past administrative investigations, LASD's investigators have issued a pre-interview admonition under Lybarger, *supra*, 40 Cal.3d at 829 that any statements during the interview cannot be used in a potential criminal action against the deputy. Pippin Decl., ¶9.

LACC section 6.44.190(1) mandates that LASD employees cooperate with the OIG and promptly provide any information or records that it requests. Pippin Decl., ¶10. Penal Code section 13670(b) requires law enforcement to cooperate in any inspector general's investigation into law enforcement gangs. Pippin Decl., ¶10. The Affected Deputies who refuse to cooperate with the OIG may be violating both local ordinance and state law, subjecting them to LASD disciplinary charges for insubordination. Pippin Decl., ¶10.

h. The UFC

The OIG's impending interviews involve significant and adverse changes to the terms and conditions of employment for the Affected Deputies. Pippin Decl., ¶13. In LACC section 5.04.090(B), the ERO requires the County to meet and confer with ALADS before it implements the effects of the interrogations and demands for physical inspection of the Affected Deputies' bodies. Pippin Decl., ¶14. The County has failed to do so. Pippin Decl., ¶14.

Other significant procedural effects arising from the OIG's letter and ordered interviews include: (a) whether any statements can be transmitted by the OIG to POST without violating POBRA (Govt. Code §3033(f)) and its prohibition on using compelled statements in subsequent civil proceedings; (b) whether any statements can be transmitted to the District Attorney for inclusion of the deputy on the Brady list; and (c) whether Pitchess protections apply to the interview such that no information from them can be publicly disclosed to the Commissions, the Board of Supervisors, or the public. Pippin Decl., ¶15.

On May 19, 2023, ALADS filed a UFC with ERCOM concerning the interviews. Pippin Decl., ¶16, Ex. 6. The UFC alleges that the County violated the ERO (LACC §5.04.240(A)) when it unilaterally undertook the changes in the May 12, 2023 letter without negotiating with ALADS. Pippin Decl., ¶16, Ex. 6.

At an ERCOM public meeting on May 22, 2023 concerning the earlier 2020 UFC, the Commissioners, ALADS, the County, and Huntsman discussed (1) the May 12, 2023 letter's demand for the Affected Deputies to appear for interviews and physical inspection without a subpoena, (2) whether the OIG must administer a Lybarger admonition before it questions the Affected Deputies, and (3) whether ERCOM has authority to issue a TRO or preliminary injunction during the pendency of the UFC. Kalinski Decl., ¶5. ERCOM clarified that it would not go to court over these issues and had neither the authority nor resources to do so. Kalinski Decl., ¶7, Ex. 3; Kalinski Reply Decl., ¶5, Ex. 1.[8] It also confirmed that it did not have the authority to enforce cease and desist orders or to issue and enforce TROs or preliminary injunctions. Kalinski Decl., ¶7, Ex. 3; Kalinski Reply Decl., ¶5, Ex. 1.

i. Communications Post-May 22, 2023

On May 24, 2023, ALADS emailed Huntsman to ask that the OIG not act in furtherance of the May 12, 2023 letter's directions to the Affected Deputies until the court had heard a noticed motion for a preliminary injunction. Kalinski Decl., ¶8, Ex. 4. The email asserted that the OIG's actions violated the Affected Deputies' rights under the Fourth and Fifth Amendments to the United States Constitution and their privacy rights under the California Constitution. Kalinski Decl., ¶8, Ex. 4. The email also noted that the OIG had not clarified whether statements during the interviews would be protected under Lybarger such that any statements cannot be used in a potential criminal action against the Affected Deputies. Kalinski Decl., ¶8, Ex. 4. ALADS reasserted that the County and OIG failed to meet and confer with ALADS in good faith as required by the MMBA and the ERO (LACC §5.04.010) regarding Penal Code section 136670(b) and it was unlawful for the OIG to proceed with the investigation as a result. Kalinski Decl., ¶8, Ex. 4.

[8] ALADS states that the sole purpose of its reply declaration is to provide a transcript of the May 22, 2023 ERCOM meeting, which was not ready at the time of the *ex parte* application. Kalinski Reply Decl., ¶5, Ex. 1.

On May 24, 2023, the OIG informed ALADS it would proceed with the interviews. Kalinski Decl., ¶9, Ex. 5. The OIG asserted that Lybarger did not apply. Id. Anything the Affected Deputies said during the interviews could be used in criminal prosecutions because the OIG was not compelling answers. Id. This is not an internal investigation by an employing law enforcement agency and an Affected Deputy is free to assert a Fifth Amendment privilege. Id. If he or she did, the OIG, LASD, and the District Attorney would confer about whether the OIG should seek to compel answers. Id. The OIG believed that state law requires peace officers asserting a Fifth Amendment objection to answer if compelled, and that the Attorney General could immediately compel answers under Penal Code sections 13670 and 13510.8. Id. However, Govt. Code section 25303 prohibits the OIG from interfering with the criminal functions of LASD and the OIG would consult with the District Attorney before directing an Affected Deputy to testify. Id. This means that any compulsion over a Fifth Amendment objection would not happen immediately. Id. If a deputy invoked the Fifth Amendment as the reason for declining to answer questions, the OIG also would not require a tattoo photo until and unless it decided to compel a statement. Id. As a result, the OIG did not see any immediate harm to the Affected Deputies that could justify a TRO. Id.

On May 26, 2023, ALADS's law firm sent the OIG letters on behalf of 13 Affected Deputies. Kalinski Decl., ¶10, Ex. 6.

On May 31, 2023, the OIG sent an email requesting available dates and times for the interviews of the Affected Deputies. Kalinski Decl., ¶11, Ex. 7.

2. Respondents' Evidence[9]

a. The Controversy

The Legislature cited law-enforcement gangs within LASD in the legislative findings for Penal Code section 13670. Huntsman Decl., ¶5. Penal Code section 13670(b) requires law enforcement agencies to maintain a policy that prohibits participation in a law enforcement gang and makes violation of that policy grounds for termination. Huntsman Decl., ¶¶ 5, 19. The Senate Rules Committee's July 8, 2021 analysis of the underlying AB 958 clarified that, while LASD was not the only law enforcement agency with a law enforcement gang problem, it had the most prolific problem. Huntsman Decl., ¶6, Ex. A.

The Banditos in the East Los Angeles Sheriff's Station and the Executioners in the Compton Sheriff's station have unique identifying tattoos. Huntsman Decl., ¶¶ 7-8. The secret societies of LASD in general, and the Banditos and the Executioners in particular, are not mere social organizations but rather are surrounded by public controversy and allegations of violence. Huntsman Decl., ¶9.

b. The Banditos

In 2019, eight LASD deputies filed a complaint against the County alleging that Banditos

[9] The court has ruled on ALADS' written objections to the County's evidence, sometimes with a comment. Some objections were overruled pursuant to Fibreboard Paper Products Corp. v. East Bay Union of Machinists, Local 1304, Steelworkers of America, AFL-CIO, (1964) 227 Cal.App.2d 675, 712 (court may overruled objection if any portion of objected to material is admissible). Additionally, a number of objections were overruled because the hearsay evidence was received for notice and to explain the OIG's motive for investigation, and not for the truth of the hearsay content. The clerk is directed to scan and electronically file the court's rulings.

members pressured younger deputies to work excessive hours and pay "taxes" to Banditos members. Huntsman Decl., ¶10, Ex. B. The complaint also alleged that Banditos members assaulted new arrivals to East Los Angeles Sheriff's Station, particularly in a 2018 incident at Kennedy Hall. Ex. B.

In October 2020, after analyzing LASD's criminal investigation of the Kennedy Hall incident, the OIG published a report which concluded that there was substantial evidence that the influence of the gang-like Banditos has resulted in favoritism, sexism, racism, and violence. Huntsman Decl., ¶11, Ex. H.

On May 24, 2022, a deputy stationed at the East Los Angeles Sheriff's Station testified before the COC but remained anonymous for fear of Banditos retaliation. Huntsman Decl., ¶10, Ex. C. This deputy testified that the station had 12-15 Banditos. Ex. C. Some were "shot callers" who could influence the schedule for the most coveted shifts. Ex. C. In these more desirable shifts, deputies rode in two-man patrol cars and not a one-man patrol car. Ex. C.

If the Banditos identified a deputy as "BO," that deputy would be shunned or have his reputation destroyed. Ex. C. Other deputies would not respond to a disfavored deputy's call for backup. Ex. C. One deputy was even transferred because that deputy felt endangered and harassed by this conduct. Ex. C.

On August 19, 2022, another anonymous witness testified about their two years of experience at the East Los Angeles Sheriff's Station. Huntsman Decl., ¶10, Ex. D. The Banditos would withhold backup from deputies they did not like, send threats to thwart cooperation in investigations of wrongdoing, and assign disfavored deputies numerous shifts to burn them out. Huntsman Decl., ¶10, Ex. E. The anonymous deputy even received a dead rat as a threat. Ex. E.

On October 14, 2022, Lieutenant Eric Strong ("Strong") testified before the COC that the Banditos' behavior was dangerous to non-Banditos deputies, including the absence of backup. Huntsman Decl., ¶10, Ex. D.

c. The Executioners

Like the Banditos, the Executioners ignore calls for backup from non-members and assign them to single-man cars for patrol. Huntsman Decl., ¶16. Some people allege that deputies at the Compton Sheriff's Station who seek to join the Executioners have used violent and aggressive tactics. Huntsman Decl., ¶14.

On August 31, 2020, the successors-in-interest to Andres Guardado ("Guadardo") filed a complaint against LASD and two of its deputies. Huntsman Decl., ¶14, Ex. K. It alleged that the officers who responded to a call lied that Guadardo had a gun, intentionally escalated the situation, and shot him. Ex. K.

Like the Banditos, the Executioners have generated significant public controversy. Huntsman Decl., ¶15, Ex. I. On July 21, 2021, Congressmember Maxine Waters ("Waters") sent a letter to the Department of Justice that requested action against the Executioners, a "rogue, violent gang of law enforcement officials." Huntsman Decl., ¶15, Ex. M. The Executioners' conduct continues to raise concerns to date. Huntsman Decl., ¶16. *See also* Huntsman Decl., ¶18, Ex. P.

d. The OIG Investigation and Interviews

The OIG maintains a webpage with the limited information it has on 19 alleged deputy gangs in the County. Huntsman Decl., ¶18, Ex. N. This webpage links to a list of the 59 legal claims filed based on the actions of these gangs, which has cost the County over $54 million in

settlement costs. Huntsman Decl., ¶18, Exs. N-O.

Penal Code section 13670(b) became effective in January 2022. Huntsman Decl., ¶19. On January 19, 2022, the OIG asked the Sheriff to comply with the statute and enact a policy that makes participation in a law enforcement gang grounds for termination. Huntsman Decl., ¶19. Because the Sheriff has not done so and has not identified the members of any law enforcement gangs to date, the OIG launched its own investigation. Huntsman Decl., ¶19.

The OIG reviewed LASD Internal Affairs records for incidents with alleged members of the Banditos and Executioners, as well as transcripts from relevant civil proceedings. Huntsman Decl., ¶20. The OIG found specific, articulable reasons to suspect 35 deputies of membership in the Banditos and the Executioners, and therefore reason to interview these deputies. Huntsman Decl., ¶20, Ex. Q. While a deputy may be suggested to be a member in the materials reviewed by the OIG, interviews and direct evidence of any tattoos are important for the OIG to distinguish between those who are law enforcement gang members and those who are not. Huntsman Decl., ¶21.

The interviews described in the OIG's May 12, 2023 letter are intended to identify the members of the Banditos and the Executioners and allow governmental agencies to comply with their legal duties. Huntsman Decl., ¶22. As part of this duty, the OIG must determine whether the Banditos and the Executioners discriminate in membership based on race and gender, a factor relevant to whether they are law enforcement gangs under Penal Code section 13670. Huntsman Decl., ¶22.

The Sheriff's May 18, 2023 email states that all LASD personnel who receive a request to participate in an interview via the May 12, 2023 letter must appear, cooperate, and provide full, complete, and truthful statements as answers. Huntsman Decl., ¶23; Brown Decl., ¶3. This order is consistent with the requirements of Penal Code section 13670(b) whereby an officer must cooperate in any investigation into these gangs by an inspector general. Huntsman Decl., ¶23.

The Sheriff's May 18, 2023 email notes that under CSR 18.031 and Guidelines No. 910, no LASD employee can take any action that could interfere with an investigation and a failure to cooperate could lead to discharge. Brown Decl., ¶4. This statement does nothing more than cite the existing rules. Under CSR 18.031, a failure to perform an employee's assigned duties so as to meet fully explicitly stated or implied standards of performance may constitute adequate grounds for discharge. Brown Decl., ¶4, Ex. V. Guidelines No. 910 requires all County employees to fully cooperate in, and not take any action that could interfere with, delay, obstruct, distort, or influence, any administrative investigation process conducted by the County or an authorized agency. Brown Decl., ¶4, Ex. W. Guidelines No. 910 cites CSR 18.031 to assert that failure to cooperate when ordered to do so and when properly advised of their rights, as applicable, may subject employees to disciplinary action, up to and including discharge. Id.

On May 24, 2023, James Cunningham, Esq. ("Cunningham") sent the OIG a letter on behalf of an Affected Deputy. Huntsman Decl., ¶24, Ex. R. Cunningham asked for all information that led the OIG to believe that the deputy could provide information about the Banditos and the Executioners and their potential status as a law enforcement gang. Ex. R. The Cunningham letter asserted that the OIG's and Sheriff's mandate that the deputy appear for interview and answer questions invokes the protections of the Peace Officers Bill of Rights Act ("POBRA") and Lybarger as to how the OIG may use and share this information. Id. Cunningham requested confirmation that the OIG would respect those protections and not use the deputy's statements for any purposes other than the investigation. Id. He also requested that

the OIG disclose with whom it intended to share the deputy's answers and the photographs of the deputy's legs. Id. Finally, Cunningham asked for any authority that the OIG could ask a deputy to pull up his pant leg for a photo or answer questions about conversations with third parties without first making a finding of a prohibited law enforcement gang. Ex. R.

The OIG replied that the investigation into law enforcement gangs is authorized by Penal Code sections 13670 and 13510.8, which require Cunningham's client to cooperate. Huntsman Decl., ¶25, Ex. T. The OIG stated that it was not conducting an LASD internal disciplinary investigation, and the Affected Deputies will not be interrogated by commanding officers or any other member of LASD. Id. They Affected Deputies are free to assert their Fifth Amendment privilege and the invocation of the Fifth Amendment would qualify as cooperation with the OIG investigation. Id. If that happened, the OIG would consult with the District Attorney and Sheriff before questioning the deputy further or asking for evidence of tattoos. Id. If the OIG ultimately directed a deputy to answer despite assertion of the Fifth Amendment, the statements provided would be protected by use immunity as a matter of law. Id. *See also* Huntsman Decl., ¶25, Ex. U.

The OIG's investigation is still in its early stages. Huntsman Decl., ¶26. To date, the OIG has only sent January and March 2022 letters to the former Sheriff and has not shared any findings with any other agency. Huntsman Decl., ¶26. Only after the interviews of the Affected Deputies can the OIG make a finding as to whether particular groups are law enforcement gangs. Huntsman Decl., ¶26. Any determination about to whom the OIG might disclose the investigation would be premature, other than that it will disclose the findings as Penal Code section 13510.9 requires. Huntsman Decl., ¶26.

D. Analysis

Petitioner ALADS applies for a preliminary injunction enjoining the County from compelling the Affected Deputies to (1) attend an interview regarding the OIG's investigation of law enforcement gangs and misconduct at LASD and (2) produce photographs of tattoos on any part of their bodies and/or be subject to inspections of their bare legs for tattoos.

The Petition's first cause of action for declaratory relief alleges that the OIG's investigatory actions would violate the Affected Deputies' constitutional rights under the Fourth and Fifth Amendments[10], as well as their right to privacy under the California Constitution and the Pitchess statutes. Penal Code §§ 832.7 and 832.8; Evid. Code §§ 1043 and 1045.

The Petition's second cause of action for mandamus alleges that Respondents have violated the MMBA and the ERO by unilaterally imposing changes to the terms and conditions of employment of ALADS' represented employees without affording ALADS the opportunity to meet and confer on the "effects" of the implementation of the OIG's recent investigative power regarding law enforcement gangs.

[10] The court excluded the Fifth Amendment claim from the TRO/OSC on the basis that membership in a law enforcement gang is not a crime; it is only grounds for termination. *See* Penal Code §13670(b). On the other hand, the Fifth Amendment properly may be invoked where the answer to a question is a link in a chain to self-incrimination. If, as the County's opposition alleges, the Banditos and Exterminators are law enforcement gangs whose members commit crimes – which has not been shown by the evidence – then the Fifth Amendment could be properly invoked by a deputy when asked about membership. This remains an issue for trial.

1. The Parties

Petitioner ALADS is a recognized employee organization as defined in Govt. Code section 3501(b) representing, *inter alia*, sworn non-management peace officers employed by LASD -- including the Affected Deputies -- with regard to all matters concerning its members' wages, hours and working conditions. Pippen Decl., ¶3.

The County is a "public agency" as defined by Govt. Code section 3501(c).

The OIG was established by the Board of Supervisors in 2014 to promote constitutional policing and the fair and impartial administration of justice, and to facilitate the Board of Supervisors' responsibility without obstructing LASD's criminal investigative function. LACC §6.44.190(A) (RJN Ex. C).

2. Reasonable Probability of Success

The court has limited the OSC to theories concerning search and seizure under the Fourth Amendment, privacy, Pitchess, and effects bargaining.[11]

a. Fourth Amendment

To determine whether a Fourth Amendment violation occurred, there are two primary questions: (1) whether the government conduct amounted to a search within the meaning of the Fourth Amendment and (2) whether that search was reasonable. United States v. Dixon, (9th Cir. 2020) 984 F.3d 814, 819. "A 'search' for purposes of the Fourth Amendment occurs when a reasonable expectation of privacy is infringed." Segura v. United States, (1984) 468 U.S. 796, 820. The Fourth Amendment protects individuals from unreasonable searches conducted by the government, even when the government acts as an employer. National Treasury Employees Union v. Von Raab, (1989) 489 U.S. 656, 665.

(1). Reasonable Expectation of Privacy

To determine a reasonable expectation of privacy, a court asks two questions: "First, did the defendant exhibit a subjective expectation of privacy? Second, is such an expectation objectively reasonable, that is, is the expectation one society is willing to recognize as

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[11] The parties make two arguments about injunctive relief that may be addressed briefly. The County notes that Civil Code section 3423(d) and CCP section 526(b)(4) provide that an injunction cannot be granted "[t]o prevent the execution of a public statute by officers of the law for the public benefit." Fin. Indem. Co. v. Sup. Ct., (1955) 45 Cal.2d 395, 402. As the County admits and ALADS notes, however, "[t]hese sections do not bar judicial action where the invalidity of the statute under which he is acting is shown, or when the officer exceeds his powers." Id. Opp. at 18; Reply at 9.

In reply, ALADS notes that injunctive relief is appropriate in unfair labor practice cases brought by PERB where: (1) there is reasonable cause to believe that an unfair practice has been committed, and (2) the injunctive relief sought is "just and proper." Public Employment Relations Bd v. Modesto City Schools Distr., ("Modesto") (1982) 136 Cal.App.3d 881, 895; San Ramon Valley Unified School District, (1984) PERB Order No. IR-46. "[T]he *reasonable cause* aspect of the two-pronged test is met if... the theory" for the unfair practice "is neither *insubstantial* nor *frivolous*." Modesto, *supra*, 136 Cal.App.3d at 896-97 (emphasis in original). Reply at 6. As the court discussed with counsel at trial, the instant case is not brought by PERB for injunctive relief and this lower standard for a preliminary injunction does not apply.

reasonable?" People v. Camacho, (2000) 23 Cal.4th 824, 830-31. This is a standing issue and ALADS has the burden of establishing that the Affected Deputies have a legitimate expectation of privacy in the area searched. *See* In re Rudy F., (2004) 117 Cal.App.4th 1124, 1131.

ALADS notes that the OIG's May 12, 2023 letter directs the Affected Deputies to appear for an interview by an OIG investigator and to bring photographs of certain tattoos located "anywhere on [their] body", as well as to submit to physical inspection of their bare legs. Pippen Decl., Ex. 1 (emphasis added). ALADS notes that it is well-settled that investigative strip searches of police officers must be supported by a reasonable suspicion, despite the government's interest in police integrity. Kirkpatrick v. Los Angeles, (9th Cir. 1986) 803 F.2d 485, 489 (strip search of officers accused of theft). Requests for photographs of tattoos on body parts that require removal of clothing also violates the Fourth Amendment. App. at 11.

ACLU correctly argues that the OIG's May 12 letter did not suggest any intent to "strip search" the Affected Deputies or otherwise search their "private areas" for tattoos at the interviews. Whether a legitimate privacy interest exists is a factual determination, and ALADS's conjecture that it might require a search of deputies' "private areas" is insufficient to find that any privacy interest is implicated. ACLU Opp. at 38.

ALADS relies on the unpublished district court case of United States v. Anthony, ("Anthony") (W.D. Va. 2019) 2019 U.S. Dist. LEXIS 15589 at *2, where the government asked the court to compel the criminal defendants to permit the government to photograph their tattoos as evidence of gang affiliation. The court only agreed to allow pictures of defendants' openly visible tattoos on their heads, faces, necks, arms, and hands. Id. at *6. Since these parts of the body are exposed on a day-to-day basis and invoke no intimate privacy interests, such photographs represent no invasion of personal rights or violation of the Fourth Amendment. Id. at *7.

The Anthony court acknowledged that it was theoretically possible for an individual to reveal himself from the waist up on such a casual and consistent basis that any reasonable expectation of privacy regarding his chest is waived. Id. However, the government failed to show that the defendants treated any part of their body other than the heads, faces, necks, arms, and hands as openly visible. Id. The mere fact that the government submitted photos of several defendant shirtless or in tank tops on occasion was insufficient. Id. A conclusion otherwise would create the untenable result that every individual who had ever visited a public pool waived Fourth Amendment protections to his or her body. Id. at *8-9. Based on the evidence the government presented, the Fourth Amendment barred photographs of the defendants' body areas beyond the heads, faces, necks, arms, and hands. Id.

ALADS also relies on the 2014 County Counsel legal opinion which recognized the privacy interests of ALADS's deputies stating: "Sheriff's Deputies unquestionably have an expectation of privacy in areas of their bodies that are generally covered by clothing, particularly in areas covered by undergarments." Pippen Decl., Ex. 5, p. 14. County Counsel added that, "while maintaining the integrity of the Department may very well be a legitimate government interest, we think it is unlikely that a court would find that searching the private areas of Deputies for purportedly offensive tattoos advances such an interest." Id. App. at 11.

The County contends that the Affected Deputies have no reasonable expectation of privacy because (1) statutory authority makes clear that there is no reasonable expectation of privacy in gang tattoos and (2) the tattoos at issue are displayed publicly.[12] Opp. at 13.

[12] The County implicitly concedes that the OIG's May 12, 2023 direction to the Affected

On the first point, the County argues that deputy sheriffs do not have a reasonable expectation of privacy in tattoos that may reveal participation in a law enforcement gang because such participation is inimical to their duties. The Legislature enacted Penal Code section 13670 to combat law enforcement gangs, and it requires (1) LASD to "maintain a policy that prohibits participation in a law enforcement gang and that makes violation of that policy grounds for termination" and (2) its deputies to cooperate with the OIG's investigation. Penal Code §13670(b).[13] *See* Lockyer v. City & Cty. of San Francisco, (2004) 33 Cal.4th 1055, 1101 (public official cannot "disregard presumptively valid statutes"). Opp. at 13-14.

The County notes that police officers generally have a diminished expectation of privacy compared to other government employees. Carroll v. City of Westminster, (4th Cir. 2000) 233 F.3d 208, 212 (workplace drug testing of police officer's urine). The court in Biehunik v. Felicetta, (1971) 441 F.2d 228 stated:

> "[I] is a correlative of the public's right to minimize the chance of police misconduct that policemen, who voluntarily accept the unique states of watchman of the social order, may not reasonably expect the same freedom from government restraints which are designed to ensure his fitness for office as from similar governmental actions not so designed." 441 F.2d at 230-31 (emphasis added) (balancing the government's interest against interest of 62 police officers and concluding that police commissioners order to appear in a lineup was not unreasonable seizure).

The County argues that coupled, with law enforcement officers' reduced expectation of privacy, Penal Code section 13670 means that the Affected Deputies lack a reasonable expectation of privacy in gang-related tattoos. The deputies cannot have a reasonable expectation of privacy in a Nazi helmet tattoo (Executioners) or a tattoo of a skeleton wearing a sombrero, bandolier, and pistol (the Banditos), while holding a position of public trust. *See, e.g.*, United States v. Jacobsen, ("Jacobsen") (1984) 466 U.S. 109, 123 (no Fourth Amendment violation in warrantless test of a substance from a package where "Congress has decided—and there is no question about its power to do so—to treat the interest in 'privately' possessing cocaine as illegitimate"); Illinois v. Caballes, ("Caballes") (2005) 543 U.S. 405, 408–09 (governmental conduct like drug sniffing dog that only reveals possession of contraband compromises no legitimate interest -- "the expectation that certain facts will not come to the attention of the authorities is not the same as an interest in privacy that society is prepared to consider reasonable"). Opp. at 14.

The County adds that there is no expectation of privacy in publicly displayed tattoos. "What a person knowingly exposes to the public, even in his own home or office, is not subject to Fourth Amendment protection." Katz v. United States, (1967) 389 U.S. 347, 351. Thus, there is no reasonable expectation of privacy in "physical characteristics" that are "constantly exposed to the public." United States v. Dionisio, (1973) 410 U.S. 1, 14 (person's voice not protected).

Deputies constitutes a search.

[13] Actually, Penal Code section 13670 only requires LASD to cooperate with investigations and does not refer to cooperation by its deputies. However, LACC section 6.44.190(1) mandates that LASD employees cooperate with the OIG and promptly provide any information or records that the OIG requests. *See* Pippin Decl., ¶10.

This includes "heads, faces, necks, arms, and hands." Anthony, *supra,* 2019 U.S. Dist. LEXIS 15589 at *8-9. A tattoo knowingly exposed to the public is not protected by the Fourth Amendment. United States v. Escalante-Melgar, (D.N.J. Feb. 28, 2020) 2020 U.S. Dist. LEXIS 34850 at *52. Opp. at 14.

The County argues that the fact that LASD requires deputies to cover all tattoos while on duty does not change the conclusion that the requested tattoos are publicly displayed. ALADS does not explain why something that is public becomes private simply because it is covered while on duty. ALADS also ignores that deputies change in a locker room, where their tattoos are visible to anyone in the locker room. Tattoos on display in a locker room are not private. *See* Devittorio v. Hall, (S.D.N.Y. 2008) 589 F. Supp. 2d 247, 256 (no reasonable expectation of privacy in locker room generally, but plaintiffs did have reasonable expectation of privacy from covert surveillance cameras in locker room). Opp. at 15.

ALADS correctly responds that Jacobsen and Cabales concerned drugs and searches for contraband and there is no evidence that the Affected Deputies have participated in a law enforcement gang as defined in Penal Code section 13670(a)(2). The County admits that the OIG "may or may not eventually make a finding that particular secret societies are law enforcement gangs as defined in Penal Code section 13670. As no finding has been made, the County cannot rely on that alleged membership to strip deputies of their constitutional rights. Reply at 12-13.

Furthermore, there is no evidence of public display of tattoos in the locker room or otherwise. In the workplace, LASD has a policy that tattoos are permitted as long as they remain covered. As such, this policy establishes an expectation of privacy regarding tattoos in the workplace. There is no evidence that any of the Affected Deputies changes in the locker room or exposes their tattoos to anyone on duty. Reply at 13.

At the June 29, 2023 hearing, the County's counsel clarified that the County has modified the OIG's request. Although the OIG's May 12, 2023 letter directs the Affected Deputies to bring photographs of certain tattoos located "anywhere on [their] body", as well as to submit to physical inspection of their bare legs, the County now is only requiring the Affected Deputies to display or provide photographs only of tattoos on their arms and legs from the knee down, which are exposed to the public and in which there is no reasonable expectation of privacy. Huntsman Decl., ¶26. Opp. at 14-15. As discussed at the hearing, the County is entitled to modify the OIG's request and ALADS does not object to it doing so.[14]

Anthony held that "parts of the body exposed on a day-to-day basis invoke no intimate privacy interests, [and] such photographs represent no invasion of personal rights." 2019 U.S. Dist. LEXIS 15589 at *7. ACLU argues that ALADS deputies can claim no reasonable expectation of privacy in the portion of the OIG's request for photographs of "all tattoos" on their legs from the ankle to the knee because these parts of the body are often exposed on a day-to-day basis and as part of LASD's official clothing. *See* LASD Policy 3-03/500.00 (authorizing deputies to wear "uniform shorts" and specifying that "the legs shall not be longer than four inches as measured from the crotch seam."). ACLU Opp. at 38-39.

[14] This modification moots ALADS's argument that the County's opposition and Huntsman declaration both contain misstatements about the May 12 letter. Reply at 3. It also moots ACLU's arguments that ALADS failed to demonstrate that any of the Affected Deputies actually has a gang tattoo "anywhere on [their] body" and that the correct remedy if they do is to limit the scope of the OIG investigation consistent with that showing. ACLU Opp. at 39.

Anthony disposed of this argument, noting that the government failed to show that the defendants treated any part of their body other than the heads, faces, necks, arms, and hands as openly visible. 2019 U.S. Dist. LEXIS 15589 at *7-8. A conclusion otherwise would create the untenable result that every individual who had ever visited a public pool waived Fourth Amendment protections to his or her body. Id., at *8-9. Similarly, the fact that LASD Policy authorizes deputies to wear shorts does not waive their expectation of privacy. The existence of a LASD Policy on shorts does not mean that the Affected Deputies actually wear shorts. Nor would the occasional wearing of shorts negate their privacy interest in their legs. There is a distinction between "the daily revelations" of one's face, neck, and hands that are "an inevitable part of living in an interactive world" and the occasional wearing of shorts. *See* Id. at *8 (citation omitted).[15]

The Affected Deputies have no reasonable expectation of privacy for tattoos on their head, neck, and hands, but they have a reasonable, albeit reduced, expectation of privacy for tattoos on their arms and legs from the knee down.

(2). Reasonableness of the Search

The Fourth Amendment prohibits only unreasonable searches; the ultimate standard is reasonableness. People v. Camacho, *supra,* 23 Cal.4th at 830-31. To determine reasonableness, a court must balance the "intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." Kirkpatrick v. Los Angeles, (9th Cir. 1986) 803 F.2d 485, 488 (although government interest in integrity of police must be considered in evaluating reasonableness, strip searches are highly intrusive and must be supported by reasonable suspicion). "Official conduct that does not compromise any legitimate interest in privacy is not a search subject to the Fourth Amendment." Caballes, *supra,* 543 U.S. at 408 (interest in contraband is not legitimate and governmental conduct like drug sniffing dog that only reveals possession of contraband compromises no legitimate interest); Gwynn v. City of Phila., (3d Cir. 2013) 719 F.3d 295, 303-04 (Internal Affairs work-related search of police officers' outer clothing, wallets, pockets, socks, pant cuffs, and lockers for money stolen from drug dealer was not overly intrusive or unreasonable).

Apart from areas where the Affected Deputies have no reasonable expectation of privacy, the OIG seeks to conduct a limited search for tattoos below the knee or on the arm. "The government has an interest in the integrity of its police force which may justify some intrusions on the privacy of police officers which the Fourth Amendment would not otherwise tolerate." Kirpatrick, *supra,* 803 F.2d at 489 (declining to permit strip searches without reasonable suspicion); Los Angeles Police Protective League v. Gates, (C.D. Cal. 1984) 579 F. Supp. 36, 45-46 (balancing the government's interest in blacklighting officer's hands, wallet, and uniform for chemically dusted money against officer's interest and concluding search was reasonable). Opp. at 15.

The County argues that its strong interest in police integrity outweighs the deputies' interest in hiding their tattoos. "[S]ociety has an . . . important interest in ensuring the highest integrity by those entrusted with discharging the duties of a peace officer." Aguilera v. Baca, (9th Cir. 2007) 510 F.3d 1161, 1168 (direction from superior officer to remain on duty and answer questions was not an unlawful seizure); Myers v. Baca, (C.D. Cal. 2004) 325 F. Supp. 2d

[15] Nor does the LASD Policy say anything about short-sleeved shirts exposing the Affected Deputies' arms.

1095, 1109 ("It is without question that the Department has a significant interest in investigating misconduct by prospective law enforcement officials with the aim of achieving a moral, ethical, and law-abiding body of peace officers."). Opp. at 16.

The County relies on the unpublished district court case of Brambrinck v. City of Philadelphia, ("Brambrinck") (E.D. Pa. Nov. 14, 1994) U.S. Dist. LEXIS 16538 at *42, where the court held that the public interest in maintaining police integrity justified a warrantless search by a chief inspector of 350 police lockers for drugs after a police officer discovered illegal drugs in two areas of a police locker room and a local radio station broadcast the incident. Id. at *16-17, *42. The district court held that the search of the lockers was reasonable and thus not a violation of the Fourth Amendment. Id. at *42. The court explained that the chief inspector had a reasonable basis for the search because the local radio broadcast called into question the police department's integrity, and the search of all 350 lockers was therefore necessary to regain the public's trust. Id. Opp. at 15-16.

The County argues that the purpose of the OIG's investigation into deputy secret societies, like the investigation in Brambrinck, is to ensure police integrity and public trust in the police force. Huntsman Decl. ¶¶ 18-19. The Banditos and the Executioners have generated significant public controversy. Huntsman Decl., ¶15, Ex. I. To remedy these problems, the Legislature created Penal Code section 13670 permitting investigation into suspected deputy gangs. The County contends that the OIG's inspection of the Affected Deputies constitutes only a limited intrusion seeking inspection of tattoos on a single occasion in a private setting, and a photograph of the tattoo to record its content (or alternatively a picture of the tattoo provided by the deputy) and to be held by the OIG without any concrete plan for further disclosure. Opp. at 16.

ALADS distinguishes Brambrinck, *supra,* U.S. Dist. LEXIS 16538 at *42, as a nearly 30 year-old federal district court decision in which the chief inspector sought evidence of a crime, which is not yet at issue here. Additionally, Brambrinck concerned the search of lockers which the department's policies mandated be periodically inspected, thereby lessening the privacy interest in the lockers even if they maintained an expectation of privacy in the personal effects stored in those lockers. Id. at *12. Here, there is no policy permitting an inspection of covered tattoos, which is why the OIG is seeking to compel the searches. Reply at 14.[16]

The court agrees that Brambrinck is distinguishable for these reasons. Nevertheless, the court finds that the search of the Affected Deputies' arms and legs below the knee is not unreasonable. The Affected Deputies have a reduced expectation of privacy as law enforcement officers and their arms and legs are not private areas. In contrast, the County has a strong interest in police integrity. This governmental interest outweighs the deputies' interest in hiding

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[16] ALADS also replies that the court must not only balance the reasonableness of the search, but also the harms. The harm would be irreparable, as the privacy and constitutional rights of the Affected Deputies would have been violated. *See* Rhea, *supra,* 2010 U.S. Dist. LEXIS 97705 at *9; Elrod v. Burns, (1976) 427 U.S. 347, 373 (loss of First Amendment freedoms is irreparable injury); Zepeda v. United States Immigration & Naturalization Service, (9th Cir. 1983) 753 F.2d 719, 727 (affirming preliminary injunction based on potential violations of the Fourth Amendment). Reply at 13-14. ALADS's argument concerns the second preliminary injunction element of irreparable harm, not reasonable probability of success. *See post.*

their tattoos on body areas that are frequently exposed to the public anyway. Additionally, the circumstances of the search are modest. The purpose of the investigation is administrative in nature and the OIG's inspection will occur in a private setting with a photograph of the tattoo or alternatively a picture provided by the deputy. This modest intrusion is reasonable.

ALADS has not shown a reasonable probability that the proposed inspection as modified violates the Fourth Amendment.

b. The Right to Privacy

Article I, section 1 of the California Constitution ("art. I, section 1") provides: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." (emphasis added). "The right of privacy is expressly guaranteed in art. I, section 1, and its scope "is broader and more protective of privacy than the federal constitutional right of privacy as interpreted by the federal courts." Am. Acad. of Pediatrics v. Lungren, (1997) 16 Cal.4th 307, 326.

California courts apply a two-part inquiry to determine whether the right to privacy under art. I, section 1 has been violated. Lewis v. Sup. Ct. (Medical Bd. of California, (2017) 3 Cal.5th 561, 571. First, a plaintiff must establish three threshold elements used to screen out claims that do not involve a significant intrusion on a privacy interest. Id. at 571. The plaintiff must show (1) a legally protected privacy interest, (2) a reasonable expectation of privacy in the circumstances, and (3) conduct by defendant constituting a serious invasion of privacy. Id. (*citing* Hill v. Nat'l Collegiate Athletic Ass'n, ("Hill") (1994) 7 Cal.4th 1, 35-37). If the plaintiff satisfies these threshold elements, the court applies a balancing test to determine whether the alleged invasion of privacy is justified by a competing government interest. Pioneer Elecs. (USA), Inc. v. Sup. Ct., (2007) 40 Cal.4th 360, 371. Opp. at 17.

ALADS argues that the OIG's May 12 letter also violates the privacy protections of art. I, section 1. App. at 11.

As the County notes, ALADS cites no authority that the Affected Deputies have a privacy interest in tattoos on their arms and legs below the knee any greater than under the Fourth Amendment. Opp. at 17. To demonstrate an invasion of privacy, ALADS must demonstrate "an egregious breach of the social norms...." Hill, *supra,* 7 Cal. 4th at 37. The OIG's direction that the Affected Deputies show a tattoo on their arms and legs is not an egregious breach of social norms, especially for law enforcement officers with a reduced expectation of privacy. ALADS has not shown a probability of success that the proposed inspection as modified violates the Affected Deputies' privacy rights.

c. The Pitchess Statutes

A peace officer's "personnel record" is defined as any file maintained under an officer's name by his or her employing agency and containing records relating to any of the following: "(a) Personal data, including marital status, family members, educational and employment history, home addresses, or similar information. (b) Medical history. (c) Election of employee benefits. (d) Employee advancement, appraisal, or discipline. (e) Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties. (f) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy." Penal Code §832.8. *See* Davis v. City of San Diego, (2003) 106 Cal.App.4th

893, 900-01 (records of complaints, investigations, internal affairs reports, and shooting review board reports are protected).

The category of "personal data" in Penal Code section 832.8 includes the type of information normally supplied by an employee to his or her employer, and does not include information, such as salary arising from the officer's employment with the police department. International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court, ("International Federation") (2007) 42 Cal.4th 319, 342-43.

Police personnel records are customarily maintained in either a general personnel file or a separate file containing complaints and reports or findings relating to complaints maintained for five years. Penal Code §832.5. Despite Penal Code section 832.8's literal language in referring to a personnel file, it is the content of the document, not its location, that is determinative. Commission on Peace Officer Standards and Training v. Superior Court, ("POST") (2007) 42 Cal.4th 278, 290-91. Otherwise, a clearly public document such as a newspaper article could be deemed confidential if placed in an otherwise protected personnel file. Id. Only the types of information enumerated in Penal Code section 832.8 constitute protected peace officer personnel records. Id. at 293.

Penal Code section 832.7(a) provides that peace officer personnel records, and information obtained from these records, are privileged and confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Evid. Code section 1043. In Copley Press Inc. v. Superior Court, ("Copley Press") (2006) 39 Cal.4th 1272, 1286, the California Supreme Court held that the privacy protection afforded peace officers under Penal Code section 832.7 applies beyond "criminal and civil proceedings." Id. at 1284-86 (Pitchess protections apply to peace officer's disciplinary appeal).

Penal Code section 832.7 establishes a general condition of confidentiality for the records covered by it regardless of the context in which those records are sought. International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court, (2007) 42 Cal.4th 319, 341 (peace officer personnel records and information obtained from such records are exempt from disclosure under the CPRA); City of Hemet v. Superior Court, (1995) 37 Cal.App.4th 1411, 1425-30 (same). "The confidentiality privilege is possessed both by the agency and subject officer." Id. at 1430. The exclusive means for obtaining these confidential peace officer personnel records is through a Pitchess motion pursuant to Evid. Code sections 1043 and1046. County of Los Angeles v. Superior Court, (1990) 219 Cal. App. 3d 1605, 1611.

ALADS argues that the Affected Deputies' Pitchess rights may be violated by the process set forth by the OIG. The Pitchess process and protections clearly apply to the investigation conducted by the OIG, and to any information gained from its interviews. App. at 13-14.

ALADS notes that LACC section 6.44.190 (RJN Ex. C), which governs the OIG's authority, contains no express provision regarding the OIG's compliance with the Pitchess statutes. The ordinance states that "the confidentiality of peace officer personnel records shall be safeguarded and maintained by the OIG as required by law and as necessary to maintain any applicable privileges or the confidentiality of the information." LACC §6.44.190(J). The OIG shall not disclose any confidential records, including peace officer personnel records, unless the disclosure is permitted by law. LACC §6.44.190(J). However, the OIG's sharing of information, including confidential information, with COC staff, the COC's *ad hoc* committees, or the Board of Supervisors does not constitute a disclosure for which Pitchess compliance would be required. *See* LACC §6.44.190(J). App. at 14.

Additionally, the disclosures required by LACC sections 6.44.190.D (the COC shall supervise OIG's work performed at the COC's request), 6.44.190.F(4) (the OIG shall regularly communicate with the Board of Supervisors, the COC, County departments, and the public regarding OIG findings), and 3.79.035 (records provided to the COC shall not be disclosed except in accordance with law) themselves trigger Pitchess protections. Disclosure to the COC is further complicated by the fact that the COC is covered by the Brown Act and its proceedings must be open to the public. See RJN Ex. D (LACC §3.79.035). App. at 14.

(1). Ripeness

Pitchess is triggered by disclosure. Penal Code §832.7(b) ("the personnel records of peace officers ... and records maintained by a state or local agency pursuant to Section 832.5... are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery....").

The County presents evidence that the OIG's investigation is in its early stages. Huntsman Decl., ¶26. To date, the OIG has only sent January and March 2022 letters to the former Sheriff and has not shared any findings with any other agency. Huntsman Decl., ¶26. Only after the interviews of the Affected Deputies can the OIG make a finding as to whether particular groups are law enforcement gangs. Huntsman Decl., ¶26. Any determination as to whom the OIG might disclose the investigation is premature, other than it will disclose the findings as Penal Code section 13510.9 requires. Huntsman Decl., ¶26.

The County and ACLU contend that ALADS's Pitchess argument fails as a factual matter because there has been no transmission of OIG interviews of Affected Deputies from OIG to the COC; the OIG has not even determined when or how it might disclose its investigation. Huntsman Decl., ¶26. Opp. at 11; ACLU Opp. at 36.

ALADS is not required to wait for the OIG to transfer its interviews of the Affected Deputies to another entity for its Pitchess argument to be ripe. The OIG's May 12, 2023 letter advised the Affected Deputies that any failure to answer other than assertion of Fifth Amendment rights could affect the deputy's employment because, while the OIG is not part of the disciplinary or certification process, it would provide the interview statements to LASD, POST, and other governmental entities as legally appropriate. Pippin Decl., ¶4, Ex. 1. ALADS also correctly responds (Reply at 10-11) that the purpose of the OIG investigation is to remove "the secrecy that has allowed the secret societies to continue" and that the OIG will disclose any findings required by Penal Code section 13510.9.

Thus, the OIG contemplates disclosure, including to the independent COC, and there is no notice required to be given to ALADS before the OIG does so. The threat of disclosure is sufficient to make ALADS's Pitchess argument ripe for the court's review.

(2). Personnel Records

The County argues that Pitchess does not apply to the OIG interviews because there is no personnel record at issue. The information sought by the OIG—tattoos related to potential membership in a law enforcement gang—does not fall within any of the enumerated categories of personnel records in Penal Code section 832.8(a). *See* International Federation, *supra,* 42 Cal.4th at 340-46 (salary information is not a "personnel record" because it is not within any of Penal Code section 832.8(a)'s enumerated categories; a statutory interpretation to include information "related to" the enumerated categories would be too broad). The Sheriff's direction

to deputies to cooperate does not affect this conclusion because Penal Code section 13670(b) already requires such cooperation. Opp. at 12.

The California Supreme Court has held that the definition of "personnel records" in Penal Code section 832.8 cannot be read "so broadly as to include every record that might be considered for purposes of an officer's appraisal or discipline." Long Beach Police Officers Assn. v. City of Long Beach, (2014) 59 Cal.4th 59, 72 (emphasis in original). "[O]nly the records generated in connection with that appraisal or discipline would come within the statutory definition of personnel records." Id. at 71 (emphasis in original). As a result, information generated in an initial incident report of an off-duty shooting is typically not a personnel record under Penal Code section 832.8. While such shootings are routinely investigated by the employing agency and they may result in an officer appraisal or discipline, only the records generated in connection with that appraisal or discipline comes within the definition of Penal Code section 832.8(d). Id. (names of officers involved in shootings not protected by Pitchess). *See* POST v. Superior Court, (2007) 42 Cal.4th 278, 289 (while Pitchess applies to POST, and its confidentiality extends to enumerated types of information "'obtained from' personnel records maintained by the employing agency", the names, employing departments, and date of employment of peace officers are not protected and must be disclosed absent showing of need for individual peace officer safety). ACLU Opp. at 36.

ALADS argues that any information gained by the OIG's investigation would relate to the Penal Code section 832.8(a) personnel record categories of "(4) Employee advancement, appraisal, or discipline" or (5) an "investigation[] of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties". Reply at 12. This argument is foreclosed by the California Supreme Court's decision that information merely "related to" a protected category is not a personnel record. International Federation, *supra,* 42 Cal.4th at 345-46. The information must be included in the enumerated category to be a personnel record or otherwise be obtained from a personnel record. Id.

In Pasadena Police Officers Assn. v. Super. Ct., ("Pasadena Police Officers") (2015) 240 Cal.App.4th 268, 292, the court addressed a report prepared for Pasadena by an independent third party to evaluate a shooting incident for the benefit of its police department. Id. at 276. The police officers association and two officers filed a reverse-CPRA action to limit public disclosure of the report. Id. at 274-75. The court concluded that the shooting was the catalyst, but the report looked beyond the conduct of the individual officers by presenting an overview of the department's criminal and administrative investigations, evaluated the manner in which the department's procedures may have fallen short, and recommended departmental improvements. Id. at 289. The police department declared that it would not use the report to appraise, advance, or discipline the officers involved. Id. at 276.

The court found that portions of the report that were obtained from an officer's personnel record – meaning the department's administrative discipline investigation -- were exempt from disclosure. Id. However, the other portions of the report, including the department's criminal investigation, were not. Id. "Records related to the criminal investigation are not personnel records, and do not reveal information regarding 'advancement, appraisal, or discipline' of a particular officer." Id. at 292.

ALADS distinguishes Pasadena Police Officers, *supra,* 240 Cal.App.4th at 292, as a case in which the appellate court affirmed that the trial court "correctly determined that portions of the Report contain confidential personnel information exempt from disclosure under the PRA."

Id. at 275. Further, the report was not intended to be used in connection with performance appraisals, or the advancement or discipline of the officers. Id. at 289. Here, the OIG has indicated that it is investigating misconduct, and the County's opposition acknowledges that it may need to make disclosures to POST about the results of the investigation. ALADS Resp. at 4-5.

The OIG's investigation into law enforcement gangs is authorized by Penal Code sections 13670 and 13510.8. Huntsman Decl., ¶25, Ex. T. The OIG's interviews are intended to identify the members of the Banditos and the Executioners and determine whether they discriminate in membership based on race and gender, a factor relevant to whether they are law enforcement gangs under Penal Code section 13670. Huntsman Decl., ¶22. The OIG's investigation is not an internal LASD disciplinary investigation, and the Affected Deputies will not be interrogated by commanding officers or any other member of LASD. Id. Unlike the third-party report in Pasadena Police Officers, the OIG's interviews may be used for the purpose of discipline. To do so, however, the OIG would have to transfer information to LASD as the OIG has no disciplinary authority.

These facts show that the OIG's investigation is akin to an outside investigation -- such as a criminal investigation -- which is not a protected personnel record (Pasadena Police Officers). That the OIT may transmit this information to LASD for disciplinary purposes, or to POST for revocation of an Affected Deputy's certification (Penal Code §13510.9(a)(3), (b)(7)) does not affect this conclusion. Pursuant to International Federation, the fact that information generated in a separate investigation merely relates to a protected category of employee discipline (Penal Code §832.8(a)(4)) is insufficient to be a Pitchess record.

ALADS makes a policy argument that, if the OIG interviews are not subject to Pitchess, that could eviscerate the privacy protections adopted by the legislature. LASD could outsource its disciplinary investigations to the OIG or other third party, and the results would be fully disclosable to the public. Yet, Pasadena Police Officers stated: "[I]t is now established that 'disciplinary records of peace officers are protected by privilege under the Pitchess statutes no matter where those records are generated.'" Id. at 288. ALADS Resp. at 5.

There are several answers to ALADS's argument. First, there is no evidence that LASD would outsource disciplinary investigations to a third party. The historical relationship between the Sheriff and OIG, and the fact that the Legislature felt the need to promulgate Penal Code section 13670, which requires the Sheriff to cooperate with the OIG, suggests otherwise.

Second, the OIG does have confidentiality duties. The OIG ordinance does not refer to the Pitchess statutes – apparently, deliberately so – yet it expressly requires the OIG to maintain the confidentiality of peace officer personnel records "as required by law and as necessary to maintain any applicable privileges or the confidentiality of the information." LACC §6.44.190(J) (RJN Ex. C). The OIG shall not disclose any confidential records, including peace officer personnel records, unless the disclosure is permitted by law. LACC §6.44.190(J). Pursuant to the OIG ordinance, the OIG may only provide peace officer information to COC staff, the COC's *ad hoc* committees, and the Board of Supervisors, and may not disclose juvenile records at all. LACC §6.44.190(J). The OIG may not make peace officer records, or information obtained from an officer's personnel record, available to the public without Pitchess compliance. The County does not disagree that the OIG is obligated to maintain the confidentiality of the Affected Deputies interviews except as permitted within the County by the OIG ordinance.

Third, the court does not make law. ALADS must take this argument to the Legislature if it wants protection from LASD outsourcing investigations to make disciplinary records public.

(3). Autonomous Entities

The Pitchess statutes define the personnel records entitled to confidentiality as "file[s] maintained under that individual's name by his or her employing agency." Penal Code §§ 832.8(a); 832.7(a). Both the County and ACLU contend that the term "employing agency" is limited to the employing agency or other municipal body responsible for personnel matters, such as an administrative board that hears officers' disciplinary appeals. *See* Copley Press, *supra,* 39 Cal.4th at 1272 (civil service commission which provides the employee's appeal from punitive action is a department of the county and functions as part of the employing agency). They argue that the County is the employing agency of the Affected Deputies and that the Board of Supervisors, the OIG, and the COC are all part of the County. *See* Opp. at 11; ACLU Opp. at 36.

ALADS acknowledges existing case law that disclosure within a public entity is not a disclosure under the Pitchess statutes. *See, e.g.*, Johnson v. Fontana County F.P. District, ("Johnson") (1940) 15 Cal.2d 380, 391 (generally, a political subdivision and its officers, boards, commissions, agents, and representatives are but a single entity); Parrott v. Rogers, (1980), 103 Cal.App.3d 377, 383 (disclosure by one official or department to another is not a public disclosure). ALADS argues, however, that the courts have long drawn a distinction between a public entity and the autonomy of various elements of the entity's governmental structure. Department of Health Services of Los Angeles County v. Kennedy, (1984) 163 Cal.App.3d 799, 802 (county department could file administrative mandamus action against civil service commission); Sacramento v. Hickman, (1967) 66 Cal.2d 841, 846, n. 3 (board of supervisors is autonomous legislative body entitled to join the county in a mandamus proceeding against county assessor); County of Los Angeles v. Tax Appeals Bd. No. 2, (1968) 267 Cal.App.2d 830, 834 (county may petition for judicial review of quasi-judicial decisions by property tax appeals boards). App. at 14-15. *See also* Board of Supervisors v. Archer, (1971) 18 Cal.App.3d 717, 720-21 (board of supervisors may sue county tax assessor to compel compliance with its decision, sitting as board of equalization to reduce property assessment).

ALADS argues that the OIG, the COC, and the Board of Supervisors are autonomous entities, and therefore disclosure of any information or records to or by the OIG would implicate Pitchess. The situation is comparable to the disclosure of peace officer information to prosecutors who must comply with the Pitchess statutes when they seek information from confidential peace officer records. People v. Superior Court, (2015) 61 Cal.4th 696, 714. Further, Penal Code section 832.7(a) provides an exception for disclosure of peace officer records to grand juries, district attorneys, and the Attorney General investigating the conduct of police officers/ County agencies—including the OIG—are absent from that list, which must be construed narrowly. Thus, Pitchess protections apply to the OIG, and no information gained from interviews of the Affected Deputies can be disclosed to the COC, the Board of Supervisors, or the public without violating Pitchess. App. at 15.

ALADS argues that the COC is akin to the district attorney who must comply with Pitchess procedure to obtain access. *See* Johnson, *supra*, 61 Cal.4th at 714 (access to personnel file would give prosecutor access to many irrelevant documents and would not protect the officer's privacy to the fullest extent possible as required by Pitchess protections). The California Supreme Court in Johnson distinguished Michael v. Gates, (1995) 38 Cal.App.4th 737, which found no disclosure where a governmental agency allows its own attorney to review

personnel records in its possession without complying with the Pitchess procedures. Id. The court stated that Michael v. Gates "does not stand for the proposition that the prosecution, which does not represent the agency, may routinely review those records." Id. at 714. ALADS contends that the same is true here. The COC and the OIG do not represent LASD or the Affected Deputies, and in fact are adverse to them. Reply at 11.

The County argues that the OIG, COC, and Board of Supervisors are not autonomous entities. The OIG is, by law, an agent of the Board of Supervisors. "The Inspector General shall serve as an agent of the Board of Supervisors...." LACC §6.44.190.H. *See also* Govt. Code §25303.7 ("A county ... may establish an office of the inspector general, appointed by the board of supervisors, to assist the board of supervisors with its duties required pursuant to Section 25303 that relate to the sheriff."). The COC also is the County's agent, to be supervised by the Board of Supervisors and Sheriff. LACC §3.79.030.J (the COC shall "[s]erve only in an advisory capacity to the Board of Supervisors and the Sheriff...."). Further, LACC section 6.44.190.J provides that the OIG's sharing of information with the COC or the Board of Supervisors, including the sharing of confidential peace officer personnel records, does not constitute a disclosure. Thus, Pitchess does not apply to the OIG's intra-county sharing of information with the COC or Board of Supervisors. Opp. at 11-12.[17]

On this last point, the OIG ordinance cannot merely declare that the transmission of evidence would not constitute a disclosure if it would violate Pitchess to do so. The Pitchess protections represent a strong state interest, and the Legislature did not create Pitchess exemptions for OIG investigations in amending the Pitchess statutes to permit certain disclosures of peace officer records and in promulgating Penal Code section 13670. LACC section 6.44.190.J may permit the OIG to share peace officer personnel records with the COC or the Board of Supervisors only if it is consistent with the Pitchess statutes.

The County contends that ALADS ignores the Legislature's recent mandate for the OIG to make certain disclosures to POST. The OIG has an obligation to transmit to POST a finding that a peace officer engaged in conduct that could render him or her subject to suspension or revocation of their certification (Penal Code §13510.9(a)(3)), and such conduct includes participation in a law enforcement gang (Penal Code §13510.9(b)(7)). In enacting this statute, the Legislature did not mention Pitchess. The County concludes that this more specific disclosure statute controls over the Pitchess statutes. *See* Cross v. Superior Court of Los Angeles County, (2017) 11 Cal.App.5th 305, 322 ("a statute enacted later in time controls over an earlier-enacted statute, and it is equally well-established that a specific statute prevails over a statute that is more general.") Opp. at 12-13.

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[17] The County contends that the cases relied upon by ALADS are inapposite. Opp. at 12, n. 2. Although the County does not expressly articulate why, apparently it contends that each case involved an entity with a distinct quasi-judicial status or otherwise serves autonomously within a county's governmental structure. *Cf.* Dep't of Health Servs. v. Kennedy, *supra,* 163 Cal.App.3d at 802 (county's charter expressly gave the civil service commission a distinct identity from the county's corporate identity); Sacramento v. Hickman, *supra,* 66 Cal.2d at 846, n. 3 (county and board of supervisors could jointly seek mandamus against county assessor); Bd. of Supervisors v. Archer, *supra,* 18 Cal.App.3d at 720 (board of supervisors can bring an action against county assessor); County of Los Angeles v. Tax Appeals Bd. No. 2, *supra,* 267 Cal.App.2d at 830 (property tax appeals board is distinct from the county because it sits as a quasi-judicial body).

ALADS correctly replies (Reply at 12) that nothing Penal Code section 13510.9 indicates that POST would not maintain the confidentiality of such records. In fact, Pitchess applies to POST, and its confidentiality extends to enumerated types of information "'obtained from' personnel records maintained by the employing agency". *See* POST v. Superior Court, *supra,* 42 Cal.4th at 289.[18]

At the June 29 hearing, ALADS's counsel apparently conceded that the OIG is the agent of the Board of Supervisors and therefore part of the employing agency. ALADS distinguished any disclosure to the Board of Supervisors on the ground that it has no decision-making power for the discipline of LASD deputies. Implicit in ALADS's argument is that the Board of Supervisors and the OIG are both part of the employing agency (the County). Thus, Pitchess protections do not attach to personnel records or information transferred by the OIG to the Board of Supervisors. ALADS maintained its position that the COC is not the type of intra-county entity to which disclosure has been approved by the courts. ALADS argued that disclosure by the OIG to the COC would violate Pitchess, as the latter is an independent and adverse body.

ACLU argues that, if the OIG is an autonomous entity as ALADS argues, then the OIG's investigation into deputy gang activity is not being conducted by the deputies' employing agency and the OIG's interviews and photos are not part of the Affected Deputies' personnel files. Either the OIG, the COC, and the Board of Supervisors are part of the employing agency and any exchange of information between them would not be a disclosure under Pitchess, or the OIG, the COC, and the Board of Supervisors are autonomous entities not part of the employing agency and the records they create are not peace officer personnel files under Pitchess. ACLU Opp. at 37.

ACLU is mixing the separate issues of personnel records and their disclosure. The court has found that the OIG interviews are not peace officer personnel records. If, *arguendo*, they are personnel records, ALADS admits that the OIG is an agent of the Board of Supervisors and part of the employing agency. *See* LACC §6.44.190.H. ALADS disputes, however, that the COC enjoys the same status. Therefore, the OIG's interviews could not be transmitted to the COC without violating Pitchess. ALADS adds that the County never argues that Pitchess would not apply to the OIG's investigation and the OIG ordinance makes clear that confidentiality protections do apply except for intra-County transfers. ALADS Resp. at 4.

The OIG has full access to the Affected Deputies' personnel files, including material that may be irrelevant to a criminal prosecution or to its investigation. ALADS's argument is that the COC is in a similar position as a prosecutor as adverse to LASD deputies and should not have full access to the peace officer personnel files in the OIG's possession without Pitchess compliance. *See* Johnson, *supra*, 61 Cal.4th at 714 (access to personnel file would give prosecutor access to many irrelevant documents and would not protect the officer's privacy to the fullest extent possible as required by Pitchess protections). While it is not clear that the COC is necessarily adverse to LASD deputies, the court accepts ALADS position that a civilian watchdog agency may be implicitly adverse to the entity and the personnel it watches for purposes of Pitchess.

In sum, if the OIG interviews of Affected Deputies were protected peace officer

[18] LASD also has an obligation under Penal Code section 13670(c) to disclose to another law enforcement agency the termination of an officer for membership in a "law enforcement gang." This obligation to disclose a termination for a specific reason appears to be a carve-out of Pitchess protected employee discipline records under Penal Code section 832.8(d). Reply at 12.

personnel records (they are not), the intra-county transfer of them to LASD or the Board of Supervisors would not violate Pitchess, but transfer to the COC might.

d. The MMBA

The National Labor Relations Act (29 U.S.C. §151 *et seq.*) governs collective bargaining in private sector employment, but it leaves states free to regulate labor relationships with their public employees. City of Los Angeles v. City of Los Angeles Employee Relations Board, ("City of Los Angeles") (2016) 7 Cal.App.5th 153, 159. "Public employees in California do not have the right to bargain collectively absent enabling legislation." Id. (citation omitted).

The National Labor Relations Board ("NLRB") has noted that employees join unions to secure collective bargaining. In re Karp Metal Prods. Co., ("Karp") (1943) 51 N.L.R.B. 621, 624 (RJN Ex. I). Whether or not the employer bargains with a union chosen by its employees is normally decisive of the union's ability to secure and retain its members. Id. Consequently, the result of an unremedied refusal to bargain with a union, standing alone, is to discredit the organization in the eyes of the employees, to drive them to a second choice, or to persuade them to abandon collective bargaining altogether. Id.

California has enacted enabling legislation for public employee collective bargaining in the MMBA, which governs labor relations between local government employers and employees in cities and counties. Under the MMBA, a public employer and a recognized employee representative organization (union) have a mutual obligation to meet and confer upon either party's request and endeavor to reach agreement about matters that fall within the scope of representation. Govt. Code §3505. The "scope of representation" includes "all matters relating to employment conditions and employer-employee relations, including but not limited to, wages, hours, and other terms and conditions of employment". Govt. Code §3504. Except, however, the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order." Id.

The California Supreme Court has noted that the phrase "wages, hours, and other terms and conditions of employment" in the MMBA's definition of scope of representation was taken from the NLRA (29 U.S.C. §158(d)), and the exception's phrase "merits, necessity, or organization of any service" was intended to incorporate the "general managerial policy" exception developed by federal courts to determine the scope of representation under the NLRA. International Assn. of Fire Fighters, etc. v. Public Employment Relations Board, ("International Fire Fighters") (2011) 51 Cal.4th 259, 272. "For an action by an employer to fall within the scope of representation, and thus be subject to the mandatory bargaining requirements of the MMBA, it must have a significant effect on the 'wages, hours, and other terms and conditions of employment' of the bargaining-unit employees." Building Material & Construction Teamsters' Union v. Farrell, ("Building Material") (1986) 41 Cal.3d 651, 659. The MMBA does not require the parties to reach agreement; it only requires good faith bargaining. International Fire Fighters, *supra*, 51 Cal.4th at 271. *See* Vernon Fire Fighters v. City of Vernon, (1980) 107 Cal.App.3d 802, 811, 824 (city's resolution eliminating employee rights to wash private vehicles on city premises void for failure to meet and confer).

Under the MMBA, a public employer's duty to bargain arises under two circumstances: "(1) when the decision itself is subject to bargaining, and (2) when the effects of the decision are subject to bargaining, even if the decision, itself, is nonnegotiable." El Dorado County Deputy Sheriff's Assn, ("El Dorado") (2016) 244 Cal.App.4th 950, 956.

The California Supreme Court has developed its own three-part test (the Claremont test)

to determine whether an employer's action is subject to the meet and confer requirements for effects bargaining under the MMBA: (1) whether management action has a significant and adverse effect on the wages, hours, or working conditions of the bargaining unit employees. If not, there is no duty to bargain; (2) whether that significant and adverse effect arises from the implementation of a fundamental managerial or policy decision. If not, then there is a duty to meet and confer; (3) if both factors are present, then a balancing test is applied and the action "is within the scope of representation only if the employer's need for unencumbered decision making in managing its operations is outweighed by the benefit to employer-employee relations of bargaining about the action in question. Claremont Police Officers Assn. v. City of Claremont, ("Claremont") (2006) 39 Cal.4th 623, 638.

a. The ERO

The MMBA allows public agencies to adopt reasonable rules and regulations of the administration of employer-employee relations. Govt. Code §3507. The County promulgated the ERO in 1971. City of Los Angeles, *supra*, 7 Cal.App.5th at 159. ERCOM, not PERB, has jurisdiction to decide charges of unfair labor practices arising during County employment. Govt. Code §3509; Coachella Valley Mosquito & Vector Control Dist. v. PERB, (2005) 35 Cal.4th 1072, 1077, n. 1.

The County's ERO is intended to promote the improvement of personnel management and relations between the County and its employees, and to protect the public by assuring the orderly and uninterrupted operations and services of county government. LACC §5.04.020 (RJN Ex. A). Pursuant to the ERO, all matters that affect employee relations, including those that are not subject to negotiation, are subject to consultation between management representatives and the duly authorized representatives of affected employee organizations. LACC §5.04.090(A). Every reasonable effort shall be made to have such consultation prior to effecting basic changes in any rule or procedure affecting employee relations. LACC §5.04.090(A). The scope of such negotiation includes wages, hours, and other terms and conditions of employment within the employee representation unit. LACC §5.04.090(B).

It shall be an unfair employee relations practice for the County to (1) interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in the ERO, (2) dominate or interfere with the formation of any employee organizations or contribute financial support to it, or (3) refuse to negotiate with representatives of certified employee organizations on negotiable matters. LACC §5.04.090(A).

The ERO created ERCOM to take actions on all unfair practices and issue determinations and orders, so long as they are consistent with the policies of the MMBA. LAAC §4.800 *et seq;* City of Los Angeles, *supra*, 7 Cal.App.5th at 159. Allegations of a County unfair labor practice must be brought before ERCOM, which is an independent agency. Id; LAAC §4.810; 5.04.020(C). ERCOM has investigative authority, including the power to subpoena documents and compel testimony. *See* LAAC §5.04.160(G), (H). ERCOM is required to "adhere to the guiding principles of the MMBA when enforcing the ERO". County of Los Angeles v. Los Angeles County Employees Relations Committee, (2013) 56 Cal.4th 905, 917.[19]

b. Effects Bargaining

[19] ERCOM's rules do not provide a method for the Commission to provide for an TRO or preliminary injunction. Kalinski Decl., ¶¶5-8.

PERB has held that the MMBA generally requires a public employer to provide notice and a meaningful opportunity to bargain over the reasonably foreseeable effects of its managerial decisions before implementation. Sacramento, *supra*, PERB Decision No. 2351-M at 28 (RJN Ex. E).[20] *See* County of Ventura, ("Ventura") (2021) PERB Decision No. 2758-M) at 56-57 (RJN Ex. G) (public employer's decision to report and withhold taxes on constructively received income for unused and accrued annual leave pursuant to an IRS regulation was subject to effects bargaining, even though the employer's failure to do so could subject it to statutory fines and penalties).

PERB also has held that implementation of policies that include the potential for disciplinary action may have a direct impact on wages, health and welfare benefits, and other terms and conditions of employment since such action may reduce or eliminate entitlement to those items. American Federation of State, County and Municipal Employees v. Regents of University of California, ("American Federation") (2021) PERB Decision No. 2783H, p. *34 (RJN Ex. F) (bargaining required for influenza vaccine mandate discipline). Accordingly, when a non-negotiable decision has foreseeable effects on discipline, such as creating a new type of evidence that may be used to support discipline or a new ground for discipline, these effects are negotiable. Id. Even after a firm non-negotiable decision is made, the employer must provide notice and a meaningful opportunity to bargain over the reasonably foreseeable effects of its decision before implementation, just as it is required to do before making a decision on a mandatory subject of bargaining. Id., p. *31. *See also* Rio Hondo, *supra,* PERB Decision No. 2313E, p. 7-8 (use of surveillance camera video for disciplinary purposes was negotiable effect of non-negotiable decision).

Like PERB's decisions, ERCOM's decisions establish that the County must negotiate matters that concern discipline. *See* ALADS v. County of Los Angeles Sheriff's Department, (2018) UFC 043-13; UFC 014-15 (effects bargaining required for suspension without pay for deputies charged with misdemeanor pursuant to Civil Service Rule 18.01(A)); Coalition of County Unions, et al v. County of LA Chief Administrative Office (1991) UFC 60.23 & 6.253, p. 6-8 (negotiation not required for decision to drug test for sensitive positions, the identification of such sensitive positions, and test methodology, but was required for the disciplinary effects of positive test).

c. Ripeness

The County contends that ALADS seeks to bargain over a decision the County has yet to make, and therefore the demand for effects bargaining is premature. *See* E.I. Du Pont De Nemours & Co. & Paper, Allied-Indus., Chem. & Energy Workers, Int'l Union, & Its Loc. 1-6992, ("Du Pont") (2006) 346 N.L.R.B. 553, 579-80 (management's obligation to request and engage in effects bargaining for a plant's closing triggered only by a clear announcement that a firm decision has been made which affects the employees' terms and conditions of employment). While PERB ruled in Ventura that a public employer has a duty to bargain under the MMBA as to the effects of its managerial decisions to implement an IRS regulation even in the face of statutory fines and penalties, PERB's conclusion was based on the employer's failure to provide

[20] PERB decisions interpreting the MMBA are highly persuasive when interpreting the County's ERO, and federal administrative decisions interpreting analogous provisions of the NLRA are also persuasive authority. County of Los Angeles v. Los Angeles County Employee Relation Commission, *supra,* 56 Cal.4th at 916-17.

adequate notice of the change prior to implementation. PERB Decision No. 2758-M at 56. The County has made no clear decision to effectuate any change in the terms and conditions of the Affected Deputies' employment and no potential effects bargaining obligation has been triggered. Opp. at 19.

ALADS demand to meet and confer is not premature. The OIG's May 12, 2023 letter reflects the OIG's decision to investigate two alleged law enforcement gangs under Penal Code section 13670, and the Sheriff's subsequent email requires the Affected Deputies to cooperate with the OIG investigation. Assuming that the Du Pont test for plant closings applies, the May 12 letter is a "clear announcement that a firm decision has been made" to investigate. The fact that the County has made no decision to discipline any deputy has no bearing on the ripeness of effects bargaining. The effects from management's decision to conduct an investigation based on a new statute are at issue, not a decision to discipline. The effects bargaining issue is ripe.

d. Merits

ALADS argues that the OIG's May 12, 2023 letter directing the Affected Deputies to submit to searches and interviews pursuant to Penal Code section 13670(b) involves significant and adverse changes to the terms and conditions of employment of ALADS-represented deputies. Never before has the OIG sought to enforce such a mandate or subject members to interview and search, and never before has discipline been threatened for violating such a request. The process, scope, and procedural safeguards pertaining to the OIG's interviews and physical searches of the Affected Deputies to discover evidence of participation in law enforcement gangs constitute mandatory subjects of bargaining pursuant to the MMBA and the ERO. The implementation of those changes must be preceded by the required meet and confer and the exhaustion of any and all applicable impasse procedures. App. at 15; Reply at 7.

ALADS contends that the statutory obligation under the MMBA requiring public employers to meet and confer applies irrespective whether the employer's decision is solely to comply with applicable law. The OIG's actions implementing significant and adverse changes to the terms and conditions of employment of ALADS-represented deputies qualify as mandatory subjects of bargaining, both as to the decision to implement the changes and regarding the effects of the implementation of Penal Code section 13670(b) under the MMBA and ERO section 5.04.090(B). App. at 17.

In addition, the OIG's deliberate decision not to subpoena any of the Affected Deputies and instead direct them to "appear and answer questions" evades ERCOM's November 30, 2022 decision directing the County not to issue subpoenas to ALADS members without completion of the bargaining process. App. at 15-17. As set forth in ALADS' UPC, the County failed to meet and confer with ALADS regarding the effects of Penal Code section 13670, and the OIG cannot implement its authority under that section without doing so. During the ERCOM hearing on May 22, 2023, OIG Huntsman claimed that he was not required to meet and confer regarding the effects of Penal Code section 13670. Kalinski Decl., Ex. 3. He is plainly mistaken as was reiterated several times by ERCOM. App. at 17-18.

(1). Duty to Bargain Over State Law

The County defends by arguing that it is not required to bargain over the effects of laws it did not adopt. Unlike the cases ALADS cites where local public entities passed the laws or ordinances giving rise to a duty to bargain over the decision or the effects of those laws on represented employees, Penal Code section 13670 was passed by the Legislature and signed by

the governor. *See* American Federation, PERB Decision No. 2783H (RJN Ex. F) (university violated Higher Education Employer-Employee Relations Act by issuing an executive order requiring all students, faculty, and staff to receive an influenza vaccination without bargaining). Only labor challenges regarding County legislative enactments may be brought before ERCOM. County of Los Angeles v. ERCOM, (2013) 56 Cal.4th 905, 916 ("[a]llegations of unfair labor practices by the County must be brought to ERCOM"). To hold otherwise would require the County to bargain over every change in a state law or regulation affecting its employees before complying with those new laws, an undertaking so unworkable the MMBA cannot possibly require it. Opp. at 18.

As ALADS responds (Reply at 10), the County's argument ignores Ventura in which PERB held that the county violated the MMBA by deciding to report and withhold taxes on constructively received income for unused and accrued annual leave in compliance with an IRS regulation, even though the employer's failure to do so could subject it to statutory fines and penalties. PERB Decision No. 2758-M at 56-57 (RJN Ex. G). Both Ventura and this case arose out of the public employer's implementation of a federal or state statute. In Ventura, it was U.S. Treasury Department Regulation 1.451-2 (26 C.F.R. § 1.451-2) and in this case it is Penal Code section 13670(b).

The County's argument also ignores ERCOM's 2020 decision that the County should have met and conferred with ALADS over the effects of the County's Oversight Legislation which collectively conferred a new subpoena power on the COC through the OIG. Pippin Decl., ¶7, Ex. 3. In ruling that the County was required to address the impact of expanding COC's powers over law enforcement employees, ERCOM stated that the duty to meet and confer over effects on the terms and conditions of employment is essential to public sector labor relations even when state legislation or a voter initiative negates the obligation to engage in decisional bargaining. Id. p. 3.

At the June 29 hearing, the County's counsel correctly described ERCOM's statement about effects bargaining from new state law as dictum. ERCOM's decision held that effects bargaining is required for the impact of expanding the COC's subpoena powers pursuant to the local Oversight Legislation, not state law. *See* Ex. 3. Nonetheless, ERCOM undoubtedly possesses expertise in interpreting the MMBA and ERO, and its statement at least has some persuasive value.

In contrast, the County provides no authority that it need not bargain over the significant and adverse effects of complying with a new state law setting forth a ground for discipline. Nor does it provide any rationale that would excuse such effects bargaining. In contrast to the County's argument, effects bargaining over the implementation of a new ground for employee discipline would not require the County to bargain over every change in a state law or regulation affecting its employees.

(2). Fundamental Management Decision

The County argues that ALADS' request is essentially a demand for decisional bargaining; it seeks to halt OIG's legislative mandate to embark on an investigation of potential deputy gang members. Courts have limited bargaining to two categories of management decisions: (a) "decisions directly defining the employment relationship, such as wages, workplace rules, and the order of succession of layoffs and recalls"; and (b) "decisions that directly affect employment, such as eliminating jobs," that "raise an issue that is 'amenable to resolution through the bargaining process.'" International Fire Fighters, *supra*, 51 Cal.4th at

272-73. Issues outside the agency's control are not "amenable to resolution through the bargaining process". Id. (citation omitted). *See* In re Long Island Day Care Servs., Inc., (1991) 303 N.L.R.B. 112, 117 (refusing to find failure to bargain where employer lacked discretion over implementation of a salary enhancement and there was nothing of substance to bargain). Opp. at 20.

The County adds that requiring it to meet and confer for the OIG-directed interviews would not fulfill the fundamental purpose of bargaining to resolve disputes. *See* Govt. Code §3500(a). To conclude otherwise would frustrate the OIG's purpose of conducting investigations pursuant to a legislative enactment and upend the OIG's core operational function of assisting the Board of Supervisors in overseeing the Sheriff. *See* Govt. Code §25313. The County concludes that the OIG's investigation falls well outside any permissible scope of bargaining under the MMBA or ERO. Opp. at 20.

ACLU adds that the OIG's decision to investigate deputy gangs pursuant to Penal Code section 13670(b) is a fundamental managerial decision outside of the scope of collective bargaining under the Claremont test. In enacting Penal Code section 13670, the Legislature found that law enforcement gangs, specifically including LASD deputy gangs, have been "damaging to the trust and reputation of law enforcement throughout California," and thus investigating and eradicating deputy gangs is necessary to "foster greater public trust." The OIG's investigation addresses primarily a matter of public safety and has no significant and adverse effect on "working conditions".[21] Under the MMBA, "fundamental managerial or policy decisions" are excepted from the scope of representation. Govt. Code §3504; Building Material, *supra,* 41 Cal.3d at 660. ACLU Opp. at 33-34.

Decisions concerning public safety, the public's trust in law enforcement, and the manner in which law enforcement protects the public are fundamentally managerial and outside of the scope of permissible bargaining activity. *See* ALADS v. County of Los Angeles, (2008) 166 Cal.App.4th 1625, 1644 (LASD's decision to implement "anti-huddling provision" between personnel before interview where there is an officer-involved shooting was management decision not subject to bargaining). *Compare* Long Beach Police Officer Assn. v. City of Long Beach, (1984) 156 Cal.App.3d 996, 1011 (city's unilateral abrogation past practice allowing officers to consult with representative or attorney after officer-related shooting violated MMBA's meet and confer requirement). *See also* Assn. of Orange County Deputy Sheriffs v. County of Orange, ("Orange County Deputy Sheriffs") (2013) 217 Cal.App.4th 29, 45 (denying deputies access to their internal affairs files prior to investigative interview constituted a fundamental managerial decision because it was designed "to ensure the integrity and reliability of future internal affairs investigations" and "to bring the Department in line with what is considered to be the 'best practice' in conducting internal affairs investigations"). ACLU Opp. at 33-34.

The court agrees with the County and ACLU to the extent that ALADS seeks to prevent the OIG from conducting an investigation pursuant to Penal Code section 13760. *See* App. at 17. The decision to implement Penal Code section 13670(b) and conduct an investigation is a managerial decision not subject to bargaining under the MMBA and ERO section 5.04.090(B). This is not an issue that can be bargained.

(3). Effects Bargaining for New Discipline

[21] ACLU notes that the term "working conditions" is a shorthand that appears in the case law. *See, e.g.,* Claremont, *supra*, 39 Cal.4th at 638. ACLU Opp. at 75.

While the OIG's decision to investigate law enforcement gang activity pursuant to Penal Code section 13670(b) is a non-negotiable management decision, the County has an obligation under the MMBA to bargain with ALADS for the significant and adverse effects from the implementation of Penal Code section 13670(b). *See* El Dorado, *supra*, 244 Cal.App.4th at 956.

There is a difference between fundamental management decision bargaining and effects bargaining. "There is a long-standing distinction under the National Labor Relations Act (NLRA) between an employer's unilateral management decision and the *effects* of that decision (29 U.S.C. § 158(d)), the latter of which are subject to mandatory bargaining." Claremont, *supra,* 39 Cal.4th at 633-34 (citations omitted). This distinction has also been long recognized by PERB. Rio Hondo, *supra,* PERB Decision No. 2313 at 5-6.

According to PERB:

> "When approaching effects bargaining, parties must anticipate changes yet to flow from the employer's decision. Union and employer may disagree over what effects are possible and within the scope of representation. Thus, clarification is essential. Upon receiving an effects bargaining demand, and before refusing to negotiate, an employer must attempt to clarify through discussions with the union any uncertainty as to what is proposed for bargaining and whether it falls within the scope of representation." Id. at 5 (citation omitted).

"Refusing an effects bargaining demand without first attempting to clarify ambiguities and or whether matters proposed for bargaining fall within the scope of representation, violates the duty to bargain in good faith." Id. at 5.

There is a difference between meeting and conferring over the adoption of Penal Code section 13670 and the OIG's decision to conduct an investigation – which is clearly a managerial decision -- and the effects of a policy directing the Affected Deputies to an interview pursuant to that statute. The OIG's decision to implement Penal Code section 13670 is not subject to bargaining, but the effects of that decision and the manner in which the County implements that decision are. In other words, ALADS is entitled to bargain over the significant and adverse effects of the County's implementation of Penal Code section 13670 and to prevent the OIG from doing so until the County has satisfied the bargaining process.[22]

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[22] ACLU relies on San Jose Peace Officer's Assn. v. City of San Jose, ("San Jose") (1978) 78 Cal.App.3d 935, 948, where the California Supreme Court held that a revision of the city's use of force policy related to discharge of firearms "clearly constitute[d] a managerial decision" outside the scope of representation. Even though the use of force policy had some effect on the safety of the officer and impinged indirectly on condition of employment, it was "primarily a matter of public safety" and "few decisions could be more 'managerial' in nature than the one which involves the conditions under which an entity of the state will permit a human life to be taken." Id. at 946-47. This managerial balancing of interests was no place for "the bargaining table with its postures, strategies, trade-offs, modifications and compromises;" rather this "delicate judgement [was] best exercised by the appropriate legislative and executive officers." Ibid.

San Jose is inapt because it concerns a city's decision to change the police department's use of force policy, which was clearly managerial and not properly within the scope of union representation and collective bargaining. Id. at 941, 948. The San Jose court did not hold that a managerial decision to investigate an officer's violation of that use of force policy would not be

(4). Significant and Adverse Effects

The County notes that a matter is subject to effects bargaining under the Claremont test only if, *inter alia*, the management action has "a significant and adverse effect on the wages, hours, or working conditions of the bargaining-unit employees". Claremont, *supra,* 39 Cal.4th at 638 (emphasis added). ALADS has provided no evidence of any likely adverse effect, let alone any significant adverse effect, from the contemplated Affected Deputies interviews. Opp. at 20.

ACLU argues that ALADS concedes that the OIG lacks the authority to impose discipline upon deputies, and this concession is fatal to any significant and adverse effect on working conditions. POBRA does not curb the OIG's authority to investigate deputy gangs (*see* Govt. Code §3303) and Penal Code section 13670 requires officers to cooperate with the OIG investigation. Where no legal authority or public policy creates or protects any right, there is no working condition and no duty to bargain, even where the change affects an informally established practice. *See* Orange County Deputy Sheriffs, *supra,* 217 Cal.App.4th at 32, 40-44 (parties' longstanding past practice of pre-investigative access to file does not create a working condition subject to negotiation under the MMBA). ACLU Opp. at 34.

The court has found that there are no Fourth Amendment/privacy or Pitchess issues for effects bargaining from the OIG's interviews, but significant and adverse effects of the interviews nonetheless remain to be bargained.

The OIG is investigating two specific alleged deputy gangs. MPP section 3-01/050.80 requires deputies to cover tattoos with LASD-approved material, but it does not prohibit tattoos. It also does not prohibit deputies from sharing the same tattoo. Pippin Decl., ¶11, Ex 4. The OIG's interviews seek to obtain information from the Affected Deputies about their tattoos and their knowledge of other deputies' law enforcement gang tattoos. The OIG's May 12 directive warned the Affected Deputies that "failure to cooperate in an investigation... is grounds for decertification of a police officer" and that "failure to answer may adversely affect your employment with Los Angeles County or your status as a certified peace officer." Pippen Decl., Ex. A. The OIG's letter expressly acknowledged that the investigation is an "investigation into police misconduct." Id.

Penal Code section 13670, effective January 1, 2022, requires law enforcement agencies to have a policy prohibiting participation in a law enforcement gang and makes violation of this policy grounds for termination. Penal Code §113670(b). The statute mandates that LASD cooperate with the OIG's investigation and also requires the law enforcement agency to disclose to a prospective law enforcement employer the termination of a peace officer for participating in a law enforcement gang. Id. Penal Code section 113670 does not require individual deputies to cooperate with the OIG or say that individual deputies can be directed to an OIG interview on pain of discipline and referral to POST for possible decertification if they do not comply. But the OIG's May 12 letter and the Sheriffs email do so. and collectively they constitute a change in working conditions because of the potential new discipline for law enforcement gang membership, the effects of which must be bargained.

Thus, while the Legislature's adoption of Penal Code section 13670 is not subject to bargaining, the manner in which the County decides to effectuate its obligation to cooperate is subject to bargaining. The OIG's letter acknowledges the potential for discipline under Penal Code section 13670 and matters affected discipline squarely fall within the scope of bargaining.

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subject to effects bargaining.

The fact that the OIG has no authority to discipline is of no moment because it can transfer information to LASD which does have that authority, and all parties agree that the OIG and LASD are part of the same public entity (the County). *See* American Federation, *supra,* PERB Decision No. 2783H at *31 (RJN Ex. F). The County is obligated to anticipate these issues. "When approaching effects bargaining, parties must anticipate changes yet to flow from the employer's decision. Rio Hondo, *supra,* PERB Decision No. 2313, p. 5-6. Moreover, "[r]efusing an effects bargaining demand without first attempting to clarify ambiguities and or whether matters proposed for bargaining fall within the scope of representation, violates the duty to bargain in good faith." Id., p. 5.

Apart from a new discipline for participation in a law enforcement gang, the significant and adverse effects of the OIG's interviews include whether the statements can be transmitted to POST without violating POBRA's prohibition on using compelled statements in subsequent civil proceedings (Govt. Code §3303(f)) and whether any statements can be transmitted in a report to the District Attorney for inclusion on the Brady List.

(5). Balancing

Under the Claremont test, if a management action taken to implement a fundamental managerial or policy decision has a significant and adverse effect on the working conditions of bargaining unit employees, then a balancing test is applied and the action "is within the scope of representation only if the employer's need for unencumbered decision-making in managing its operations is outweighed by the benefit to employer-employee relations of bargaining about the action in question. Claremont, *supra*, 39 Cal.4th at 638. In balancing these interests, the court may consider whether the "transactional cost of the bargaining process outweighs its value." Id.

The County does not address the balancing test. ACLU argues that the need for the OIG's unincumbered decision-making in investigating deputy gangs pursuant to Penal Code section 13670 clearly outweighs any benefit to the bargaining relationship. While ALADS's interest in preventing an investigation in which deputies retain their constitutional right to plead the Fifth Amendment is weak to nonexistent, the County's objectives of ensuring the very safety of its residents and the effective enforcement of the laws are among the weightiest possible. Pasadena Police Officers Assn. v. City of Pasadena, (1990) 51 Cal.3d 564, 568 ("Nothing can more swiftly destroy the community's confidence in its police force than its perception that concerns raised about an officer's honesty or integrity will go unheeded or will lead only to a superficial investigation."). For this reason, ACLU concludes that the County's interest in public safety is significantly greater than ALADS's interest in bargaining and the transactional cost of the bargaining process outweighs its value.

Not so. The manner of the Affected Deputies' interviews can be a management decision not subject to bargaining if it concerns the interviews' integrity and reliability. *See* ALADS v. County of Los Angeles, (2008) 166 Cal.App.4th 1625, 1644 (LASD's decision to implement "anti-huddling provision" was management decision not subject to bargaining); Orange County Deputy Sheriffs, *supra*, 217 Cal.App.4th at 45 (denying access to internal affairs files prior to investigative interview constituted a fundamental managerial decision designed "to ensure the integrity and reliability of future internal affairs investigations"). On the other hand, other aspects of the interviews may not affect their integrity and be subject to bargaining.

Whether the manner of the Affected Deputies' interviews is a matter subject to bargaining, the consequences of those interviews include the duty to cooperate on pain of discipline, the discretionary application of discipline and its range, and the referral to POST for

possible decertification, all of which are easily the subject of bargaining. The County does not have a need for unencumbered decision-making with respect to these consequences and its interest managing its operations is outweighed by the benefit to employer-employee relations of bargaining them. Nor does the transactional cost of the bargaining process outweigh its value. According to ALADS's counsel at the June 29 hearing, the effects bargaining from the interviews can be performed expediently. There is no evidence to the contrary.[23]

(6). The 2022 ERCOM Decision and Its May 23, 2023 Meeting

The court's conclusion is supported by ERCOM's 2020 decision and the comments of its commissioners on May 23, 2023.

ERCOM's November 30, 2022 decision noted that PERB has held that effects bargaining is required to address the impact of expanding subpoena powers over employees of law enforcement agencies for civilian oversight commissions and the appellate court agreed. *See* County of Sonoma v. PERB, (2022) 80 Cal.App.5th 167, 186-87 (county's decision to place on the ballot measure that would allow OIG to place body camera footage on its website and to contact witnesses and supervisor of employee subject to investigation or audit violated MMBA). A recent PERB decision indicates that, even when a rule is primarily about public safety (COVID vaccinations), disciplinary issues are still subject to effects bargaining. Id. (citation omitted). Until the County meets and confers over the effects of the oversight legislation, ALADS-represented deputies do not need to respond to subpoenas issued pursuant to the Oversight Legislation. Pippin Decl., ¶8, Ex. 3.

The County argues that the 2022 ERCOM decision does not establish an affirmative obligation to bargain over the potential effects of the OIG's interviews. The ERCOM decision merely halted the issuance of subpoenas pursuant to the Oversight Legislation that gave the COC subpoena power pertinent to its oversight and investigative activities. The ERCOM decision -- which failed to offer more than a subpoena's speculative negotiable effects on employee discipline -- differs from the present situation which does not involve any threatened use of subpoena power. Opp. at 21.

It is true that the 2022 ERCOM decision is not controlling. The decision is, however, evidence that ERCOM has applied its expertise to conclude that the County must bargain for the effects of the OIG's exercise of new authority in investigating law enforcement gangs. It is not hard to expand this conclusion to the effects of the OIG's decision to compel the Affected Deputies to submit to an interview and show their arms and legs pursuant to Penal Code section 13670, LACC section 6.44.190(1), County Policy 910, and the Sheriff's order.

Additionally, at an ERCOM meeting on May 22, 2023 concerning the 2020 UFC, the Commissioners discussed with ALADS, the County, and Huntsman discussed the May 12, 2023 letter's demand for the Affected Deputies to appear for interviews and physical inspection.

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[23] The Memorandum of Understanding ("MOU") between the County and ALADS includes a caveat that its terms are subject to current and future applicable laws, rules, and regulations. Brown Decl., ¶7, Ex. Y, p. 118 (Art. 32). LASD and Bureau policy forbids all members from willfully violating any law or ordinance. Ex. Y, (Art. 28 §3(B)). ACLU contends that the MOU supports the deputies' obligation to comply with the OIG's investigation. Opp. at 34. True, but the MOU obligation of the Affected Deputies to comply with the law has no bearing on the County's the MMBA obligation to meet and confer regarding the effects of proposed changes within the scope of representation.

Kalinski Reply Decl., ¶5, Ex. 1. All three commissioners expressed dismay that the County had not bargained the effects of this decision, describing the OIG's May 12 letter as an "end around" ERCOM's 2022 decision (pp. 50-15), stating that the issues of Lybarger rights should be discussed (id., p. 52), and further stating that ERCOM is not trying to delay an important investigation but to encourage expeditious effects bargaining (id., p. 53).

As the court discussed with counsel at the June 29 hearing, the ERCOM commissioners were "shooting from the hip" and the value of these comments must be discounted. Nonetheless, the comments by experts on the MMBA and ERO have some minimal value.

e. Conclusion

The County and the OIG violated their statutory obligations under the MMBA and ERO because they sought to implement their proposed changes without bargaining regarding the effects of that implementation pursuant to collective bargaining law.

2. Balance of Hardships

The second factor which a trial court examines is the interim harm that plaintiff is likely to sustain if the injunction is denied as compared to the harm that the defendant is likely to suffer if the court grants a preliminary injunction. Donahue Schriber Realty Group, Inc. v. Nu Creation Outreach, (2014) 232 Cal.App.4th 1171, 1177. This factor involves consideration of the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo. Id.

a. Harm to ALADS Members for Constitutional, Privacy, and Pitchess Issues

(1). Constitutional and Privacy Harm

ALADS argues that without injunctive relief the Affected Deputies will be irreparably harmed from the deprivation of their Fourth Amendment rights against search and California Constitutional right of privacy as the result of the orders that they must bring photographs of certain tattoos located "anywhere" on [their] body" as well as to submit to a physical inspection of their bare legs. When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary. Rhea, *supra*, 2010 U.S. Dist. LEXIS 97705 at *9;[24] Elrod v. Burns, *supra,* 427 U.S. at 373 (loss of First Amendment freedoms is irreparable injury). App. at 18.

The County and ACLU respond that ALADS has not shown irreparable harm because the Affected Deputies are entitled to invoke the Fifth Amendment and refuse to provide information or allow inspection of the tattoos and the OIG will not attempt to compel their compliance at the interview. Huntsman Decl., ¶¶ 25-26. There can be no harm from appearing at an interview and objecting. As the Affected Deputies remain free to exercise their Fifth Amendment rights,

[24] In Rhea, *supra,* 2010 U.S. Dist. LEXIS 97705, the plaintiff prison inmate asked for a preliminary injunction compelling the Washington Department of Corrections to follow the recommendations of physicians who had examined her and proposed treatment of a painful nerve growth at the site where her right leg was amputated. Id. at *1. The plaintiff only asserted the denial of her Eighth Amendment right to be free of cruel and unusual punishment as an irreparable harm. Id. at *9. The court stated that most courts have held that when an alleged deprivation of a constitutional right is involved, no further showing of irreparable injury is necessary. Id.

ALADS's claim that they will suffer constitutional harm without an injunction is unfounded. "An injunction cannot [be] issue[d] in a vacuum based on the proponents' fears about something that may happen in the future. It must be supported by actual evidence that there is a realistic prospect that the party enjoined intends to engage in the prohibited activity." Korean Philadelphia Presbyterian Church v. California Presbytery, (2000) 77 Cal.App.4th 1069, 1084. Opp. at 10; ACLU Opp. at 30.

The County distinguishes Elrod v. Burns, *supra,* 427 U.S. at 373 as holding that a violation of First Amendment rights is irreparable harm, but the case did not hold that a violation of any constitutional right is. Elrod v. Burns did not "suggest that constitutional violations other than those offending the First Amendment automatically amount to irreparable injury." Loder v. City of Glendale, (1989) 216 Cal.App.3d 777, 784. Opp. at 10. However, the County fails to distinguish Rhea, *supra*, 2010 U.S. Dist. LEXIS 97705 at *9, which did conclude that no further showing of irreparable harm is required when a deprivation of a constitutional right is involved.

In any event, ALADS is correct that the opportunity to plead the Fifth Amendment does not remove the harm of a search violating the Fourth Amendment or constitutional privacy rights. ALADS argues that it appears the OIG places value—whether publicity or otherwise—in forcing the Affected Deputies to attend an interview merely to assert Fifth Amendment rights. But the Affected Deputies should not be required to invoke these rights merely to be free from a search that violates their Fourth Amendment rights. Reply at 14. Thus, ALADS and its members would suffer irreparable harm from a Fourth Amendment/privacy violation.

However, the court has concluded that ALADS has not shown a probability of success on these constitutional claims. The County has modified the OIG's May 12, 2023 direction for the Affected Deputies to display or provide photographs only of tattoos on their arms and legs from the knee down. Huntsman Decl., ¶26. Opp. at 14-15. The court found this search of the Affected Deputies' arms and legs below the knee to be modest and reasonable, and not a breach of social norms for privacy purposes. A preliminary injunction cannot issue without at least some showing of probability of success and ALADS's Fourth Amendment/privacy claims do not provide a basis for preliminary injunction.[25]

(2). Pitchess Harm

The County and ACLU argue that there is no Pitchess harm because there has been no transfer of information from the OIG to other entities. The OIG has not even determined what, when, how, or with whom it will share information in the future. Huntsman Decl., ¶¶ 25-26. *See* San Francisco v. Market Street Ry. Co., (1950) 95 Cal.App.2d, 648, 655 ("...[i]njunction is not the proper remedy to prevent a person from doing an act which he has never undertaken or threatened to undertake....") (citation omitted). "It is well established that courts 'may not speculate on the future intention of a public agency'...and '[a]ll presumptions of law are in favor

[25] ACLU argues that ALADS presents no evidence of any immediate threat that the OIG will violate Lybarger. No criminal case has been filed or even threatened. While participation in deputy gangs is against the law under Penal Code section 13670, the only penalty is administrative, not criminal. Penal Code section 13670(b). ALADS has not produced any evidence to prove that disclosure of a tattoo that indicates membership in a law enforcement gang, which is not a crime, places a deputy at imminent risk of criminal prosecution. ACLU Opp. at 31. This is true, which is why the court eliminated Fifth Amendment issues from the OSC.

of the good faith of public officials.'" Bus Riders Union v. Los Angeles County Metro. Trans. Agency, (2009) 179 Cal.App.4th 101, 108 (internal citations omitted). Even if the OIG had made this decision, the potential for disclosure is no reason to stop the interviews and investigation from proceeding entirely. Opp. at 10; ACLU Opp. at 31.

ALADS correctly replies that the prospect that the OIG could share the interviews with LASD, the Board of Supervisors, and the COC is sufficient for irreparable harm. The court has found that the OIG contemplates disclosure, including to the independent COC, and the OIG has no obligation to notify ALADS before doing so. Once the information has been released, it will be impossible to return it to its correct private status. Furthermore, the Affected Deputies will lack a remedy because a peace officer whose information is improperly released lacks a private right of action for a violation of Pitchess. *See* Rosales v. City of Los Angeles, (2000) 82 Cal.App.4th 419, 427-28 (while city attorney disclosed Rosales' personnel records in civil lawsuit by a female Explorer Scout alleging sexual impropriety by a police officer without requiring a Pitchess motion, the Pitchess statutes do not contain a remedy and the officer could not state a claim for violation of Pitchess procedure). The Affected Deputies should not have to assert Fifth Amendment protections to preserve their Pitchess rights. App. at 20; Reply at 10.

Although ALADS and its members would suffer irreparable harm from a Pitchess violation, the court has found that ALADS does not have a probability of success on its Pitchess claim. The OIG interviews of Affected Deputies are not protected peace officer personnel records and the intra-county transfer of the interviews to LASD or the Board of Supervisors would not violate Pitchess (but transfer to the COC might). A preliminary injunction cannot issue without at least some showing of probability of success. ALADS's Pitchess claim does not provide a basis for preliminary injunction.

b. Harm to ALADS Members for Effects Bargaining Issues

ALADS argues that, because the OIG unilaterally implemented the investigative process in the May 12, 2023 directive without an opportunity for effects bargaining, it has been precluded from engaging in the collective bargaining process to clarify, object, resolve and/or memorialize the procedural process to be implemented in the interviews. Apart from the Lybarger and Pitchess issues, the bargaining issues include: (a) whether any statements made to the OIG can be transmitted to POST without violating POBRA's prohibition on using compelled statements in subsequent civil proceedings (Govt. Code §3303(f)); and (b) whether any statements made to the OIG can be transmitted in a report to the District Attorney for inclusion on the Brady List. App. at 18-19.

The County's failure to satisfy its statutory obligation to meet and confer with ALADS prior to implementing the OIG's decision will result in immediate and irreparable harm. It is imperative for ALADS and its represented employees to obtain reliable and uniform clarification regarding these issues so that the Affected Deputies may govern their conduct without uncertainty as to their rights. App. at 17, 19. Unless a preliminary injunction is issued pending the disposition of ALADS' pending UFC, ERCOM will not be able to fully adjudicate the claim before the interviews are held. Reply at 8.

The loss of a job constitutes irreparable harm. Costa Mesa City Employees Assn. v. City of Costa Mesa, (2012) 209 Cal.App.4th 298, 308 (citing White v. Davis, (2003) 30 Cal.4th 528, 559). The "failure to bargain in good faith[ ] has long been understood as likely causing an irreparable injury to union representation." Frankl ex rel. NLRB v. HTH Corp., ("Frankl") (9th Cir.2011) 650 F.3d 1334, 1362; Karp, *supra,* 51 N.L.R.B. at 624 (RJN Ex. I). The failure to

bargain in good faith threatens industrial peace, deprives employees of a wide range of economic and non-economic benefits brought about by labor unions, and also weakens support for a union in a way that cannot be remedied by subsequent relief. Small v. Avanti Health Systems, LLC, (9th Cir. 2011) 661 F.3d 1180, 1192. App. at 19; Reply at 8.

The County argues that ALADS is merely speculating about the harm from a failure to perform effects bargaining. ALADS submits no evidence to demonstrate why ERCOM's remedial powers are insufficient to remedy any alleged harm such that court intervention is necessary. San Ysidro School District, ("San Ysidro") (1978) PERB Order No. IR-4 (injunctive relief denied where the charging party failed to provide factual support for its claimed irreparable harm); Compton Community College, ("Compton") (1978) PERB Order No. IR-7 (same). The court should refuse to stop the OIG's investigation over a hypothetical injury. Opp. at 10-11.

ALADS correctly distinguishes San Ysidro and Compton. In San Ysidro, PERB affirmed its general counsel's denial of a teacher's union's request for injunctive relief, *inter alia*, because PERB had adequate remedies available under its broad remedial powers for the alleged unfair practices concerning the members of the union's negotiating team. PERB Order No. IR-4 at *2-3. The County does not allege that ERCOM has remedial power to cure any statutory or constitutional violations by the OIG.

In Compton, PERB denied the union's request for injunctive relief for the termination of a single employee because the union failed to show irreparable harm from an increased workload of other employees and inadequate staffing. PERB Order No. IR-7 at 5-6. In contrast, the OIG's actions affect the constitutional and statutory rights of all ALADS-represented employees. Reply at 8-9.

ALADS and the Affected Deputies will suffer irreparable harm from the County's failure to effects bargain. *See* Frankl, *supra,* 650 F.3d at 1362. Unless a preliminary injunction is issued, ERCOM will not be able to fully adjudicate the claim before the interviews are held.

c. Harm to the County and Public

The court must consider the harm associated with delaying the performance of a public officer's duty to protect the public when a petitioner seeks to enjoin the public officer in the performance of his or her duty. Tahoe Keys Property Owners' Assn. v. State Water Resources Control Board, (1994) 23 Cal.App.4th 1459, 1472–73 (citation omitted); Teamsters Agric. Workers Union v. Internal Brotherhood of Teamsters, (1983) 140 Cal.App.3d 547, 555 ("[W]hen injunctive relief is sought, consideration of public policy is not only permissible but mandatory."). ACLU Opp. at 27.

ALADS contends that any delay in the interviews of the Affected Deputies resulting from a preliminary injunction is not significant. The County will face little to no harm from a preliminary injunctive relief because the tattoos are permanent and will be available for inspection after a trial on the merits. Additionally, the OIG intends to permit the Affected Deputies to assert their Fifth Amendment rights, after which it will consult with the District Attorney and the Sheriff. Huntsman Decl., ¶25. The County cannot contend that there is an immediate need for information when the OIG is pursuing a cumbersome process that will slow the acquisition of the information. App. at 20; Reply at 14.

ACLU argues that the OIG is performing its official duty of addressing illegal deputy gangs—a serious and persistent problem that inflicts grievous harm to County communities where the most vulnerable populations reside. LASD deputy gangs cause significant public harm through acts of violence, intimidation, false charges, and illegal search and seizures. The

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harms to the public from gang activities are substantial and weigh heavily in balancing the interests affected by a preliminary injunction; the Affected Deputies have no protected interest in maintaining their employment if they are participants in deputy gangs. *Cf.* People ex rel. Reisig v. Acuna, ("Reisig") (2010) 182 Cal.App.4th 866, 882 (a party cannot claim harm from restrictions on participating in gang activities for purposes of balancing harms related to a preliminary injunction). LASD deputy gangs also cause harm to the County by eroding public trust in law enforcement, undermine the chain of command, promote racism, sexism, violence, intimidate other deputies, and are a significant liability to the County. ACLU Opp. at 28-30.

As ALADS points out, ACLU improperly assumes that the Affected Deputies are members of a law enforcement gang. This places the cart before the horse, as the County has not determined that the Banditos and Executioners are law enforcement gangs as defined in Penal Code section 13670. ALADS also properly distinguishes Reisig, *supra*, 182 Cal.App.4th at 882, where the court "issued a preliminary injunction prohibiting various activities within the Safety Zone by the Broderick Boys and its 'active members,' including the named defendants." Id. at 872. There is a difference between an injunction against a street gang that, by definition, commits crimes and an injunction against the OIG's investigative interviews to ascertain whether the Affected Deputies have a tattoo reflecting membership in a law enforcement gang, which may be grounds for termination but is not defined as a crime. ALADS also is not seeking to enjoin the County from prohibiting the Affected Deputies from engaging in the unlawful activities set forth in Penal Code section 13670(b). ALADS Resp. at 6.

d. Balancing of Harms

While ALADS has not shown a constitutional or Pitchess harm, it has shown irreparable harm from the Count's failure to meet and confer prior to the implementation of its policies regarding compliance with OIG investigations.

The harm to the public and County is the OIG's need to investigate the Banditos and Executioners, which is significant. This harm is tempered by the slow course of that investigation; the OIG's desire to investigate LASD law enforcement gangs has existed for some time. At the hearing, the County's attorney stated that the issue has existed since 2018. While the OIG surely is impatient at the delay, there is no compelling need for immediate investigation either.

The balancing of harms works in favor of a preliminary injunction that will maintain the status quo.

E. Conclusion

The application for a preliminary injunction is granted. A preliminary injunction shall issue that will enjoin the OIG's interviews of Affected Deputies until the County completes its effects bargaining or -- since effects bargaining is the sole basis for injunctive relief -- until ERCOM decides the UFC, whichever occurs first.

The court is required to impose a bond. Neither side addresses this issue. As neither party briefed the issue, a nominal bond of $500 is required. ALADS must post the bond within five court days and provide evidence to the County's counsel that it has done so. The trial setting conference is rescheduled for September 19, 2023 at 1:30 p.m.

PROFESSIONAL PEACE OFFICERS ASSOCIATION v. COUNTY OF LOS ANGELES
Case Number: 24STCP00232
Hearing Date: March 13, 2024

ORDER ON APPLICATION FOR PRELIMINARY INJUNCTION

Petitioner, Professional Peace Officers Association (PPOA), moves for a preliminary injunction enjoining Respondents, the County of Los Angeles, the County of Los Angeles Sheriff's Department (Department), Sheriff Robert Luna, the County of Los Angeles Office of Inspector General (OIG), and the County OIG Inspector General Max Huntsman from "[p]roviding any documents, materials, information, or otherwise to the OIG as it relates to any PPOA represented Department employee ('Affected PPOA members') in response to the OIG's subpoena dated December 19, 2023." (Proposed Order 2.)

The preliminary injunction is granted.

BACKGROUND

Penal Code Section 13670 and Law Enforcement Gangs

Enacted in 2021, Penal Code section 13670 provides:

> Each law enforcement agency shall maintain a policy that prohibits participation in a law enforcement gang and that makes violation of that policy grounds for termination. A law enforcement agency shall cooperate in any investigation into these gangs by an inspector general, the Attorney General, or any other authorized agency. Notwithstanding any other law, local agencies may impose greater restrictions on membership and participation in law enforcement gangs, including for discipline and termination purposes. (Pen. Code, § 13670, subd. (b).)

The statute defines "law enforcement gang" as:

> a group of peace officers within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol, including, but not limited to, matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing. . . . (*Id.* at subd. (a)(2).)

In enacting Penal Code section 13670, the Legislature made the following findings:

> (a) Law enforcement gangs have been identified within California law enforcement agencies, undermining California's movement to enhance

> professional standards of policing throughout the state. Law enforcement gangs have been recognized by the Los Angeles Sheriff's Department as damaging to the trust and reputation of law enforcement throughout California.
>
> . . . .
>
> (c) Building and preserving trust between California communities and law enforcement agencies, and protecting the integrity of law enforcement as an institution will require agencies to proactively root out "bad apples" including those who participate, formally or informally, in this type of behavior.
>
> . . . .

(2021 Cal. Legis. Serv. Ch. 408 (A.B. 958) (WEST); see also Huntsman Decl. ¶¶ 5-6.)

The Meyers-Milias-Brown Act (MMBA) and the County's Employment Relations Ordinance (ERO)

Employment relations between the County and PPOA are governed by the MMBA, Government Code section 3500 *et seq*. The MMBA provides that recognized employee organizations such as PPOA "shall have the right to represent [its members] in their employment relations with public agencies." (Gov. Code, § 3503.)

The MMBA mandates:

> [e]xcept in cases of emergency as provided in this section, the governing body of a public agency . . . shall give reasonable written notice to each recognized employee organization affected of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the governing body or the designated boards and commissions and shall give the recognized employee organization the opportunity to meet with the governing body or the boards and commissions. (Gov. Code, § 3504.5, subd. (a).)

The MMBA provides the County:

> shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations . . . and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action. (Gov. Code, § 3505.)

In addition, the County adopted the ERO, Los Angeles County Code[1] section 5.04.010, which provides rules and regulations governing the administration of labor relations in the County. The ERO provides, "it shall be an unfair employee relations practice for the county . . . to refuse

[1] The Los Angeles County Code (County Code) is a codification of the general ordinances of the County.

to negotiate with representatives of certified employee organizations on negotiable matters." (County Code, section 5.04.240, subd. (A)(3).) (See Pet. ¶¶ 14, 72.)

As discussed below, "a public employer's 'duty to bargain arises under two circumstances: (1) when the decision itself is subject to bargaining, and (2) when the effects of the decision are subject to bargaining, even if the decision, itself, is nonnegotiable.' " (*County of Sonoma v. Public Employment Relations Board* (2022) 80 Cal.App.5th 167, 179.)

The November 2022 Decision of the County's Employee Relations Commission (ERCOM)

"On November 30, 2022, [ERCOM] provided a Decision and Order directing Respondents to meet and confer over the negotiable effects of the County of Los Angeles' implementation of Measure R and Ordinance 20-0520 (collectively the 'Oversight Legislation'), which together added Chapter 3.79.190 and amended Chapters 3.79.030 and 3.79.130 of the County Code to permit the Civilian Oversight Commission ('COC') and the Office of the Inspector General ('OIG') to access information, documents, and testimony through subpoena power, 'in compliance with all laws and confidentiality protections,' in order to conduct oversight over the County of Los Angeles Sheriff's Department . . . . Pursuant to ERCOM's Decision and Order, ERCOM confirmed that: 'Members of the employee representation units represented by [the Association for Los Angeles Deputy Sheriffs] and PPOA shall not be required to respond to subpoenas issued pursuant to the Oversight Legislation until the conclusion of the meet-and-confer process. . . .' " (Johnson Decl. ¶ 5; see also Ex Parte App. Exh. B.)[2]

OIG's Request to Interview Deputies and the *ALADS* Litigation

In January 2022, OIG sent a letter to then Sheriff Alex Villanueva referencing Penal Code section 13670 and requesting the sheriff "direct all county employees under [his] supervision to cooperate with the Office of Inspector General." (Huntsman Decl. ¶ 41, Exh. Z.)[3]

On May 12, 2023, OIG sent a letter to 35 sheriff's deputies directing them to "appear in person to participate in an interview to be conducted by the Office of Inspector General concerning the presence of law enforcement gangs in the Los Angeles County Sheriff's Department." (Ex Parte App. Exh. C.) The letter specified the deputies could invoke their Fifth Amendment privilege and the OIG would not compel an answer over a Fifth Amendment assertion at the initial interview. (Ex Parte App. Exh. C.)

On May 18, 2023, Sheriff Robert Luna sent an email to sheriff's department employees stating:

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[2] The court adopts ERCOM's definition of "Oversight Legislation" herein.

[3] The January 2022 letter also requested the Sheriff produce certain "documents and information gathered by the Sheriff's Department regarding deputy gangs." (Huntsman Decl. ¶ 41, Exh. Z.)

> The Office of the Inspector General issued a letter on May 12, 2023, to a number of sworn personnel in the Department requesting their participation in an interview process. Please be advised that all Department personnel who received such a request are hereby ordered to appear and cooperate in such interviews. All statements made by Department personnel shall be full, complete, and truthful statements. (Huntsman Decl. ¶ 45; Ex Parte App. Exh. D.)

The Association for Los Angeles Deputy Sheriffs (ALADS), a labor union representing sheriff's deputies, filed a petition for a writ of mandate in this court (Hon. James C. Chalfant) seeking to enjoin the interviews.[4] ALADS asserted claims for violations of the Fourth and Fifth Amendments to the United States Constitution, California's constitutional right to privacy, protections under *Pitchess v. Superior Court* and related statutes, as well as various labor laws.

The court found ALADS had established a likelihood of success on the merits only as to the labor law claims, and after balancing the harms, issued an injunction in July 2023. (Ex Parte App. Exh. F.) Specifically, the court's order provided the preliminary injunction "shall issue that will enjoin the OIG's interviews of Affected Deputies until the County completes its effects bargaining or – since effects bargaining is the sole basis for injunctive relief – until ERCOM decides the UFC [Unfair Employee Relations Practice Charge], whichever occurs first." (Ex Parte App. Exh. F.) The County appealed the court's decision.

OIG's Subpoena to Sheriff Luna

On December 19, 2023, OIG issued a subpoena *duces tecum* to Sheriff Luna seeking production of the following documents:

> a) All Documents and Information relating to any instances where LASD employees have been contacted for an interview either through an attorney or representative, or contacted directly, in any ICIB investigation and have not been interviewed from January 1, 2023, through the date of this subpoena;
>
> b) All records relating to any instances where LASD employees have been contacted for an interview either through an attorney or representative, or contacted directly, in any ICIB investigation and have not been interviewed from January 1, 2023, through the date of this subpoena which may indicate why they were not interviewed, including the ID # and witness identifying information;
>
> c) All Communications relating to any instances identified in section "a" or "b" and/or the issue of compelling witness statements in criminal cases to or from any LASD employees in 1dB, their chain of command, Sheriff Luna, Captain

[4] PPOA was not a party to the *ALADS* litigation.

Kopperud, and/or Eileen Decker (Johnson Decl. ¶ 14, Exh. E; Huntsman Decl. ¶ 56, Exh. HH.)[5]

The Writ Proceedings

On January 23, 2024, PPOA filed its verified petition for a writ of mandate and complaint for declaratory relief. PPOA's first cause of action seeks a writ of mandate and alleges Respondents violated the MMBA and the ERO. PPOA's second cause of action is for declaratory relief. PPOA prays for a writ of mandate:

1. Compelling Respondents to act in compliance with their ministerial duty to engage in good faith meet and confer regarding the Oversight Legislation, consistent with ERCOM's Decision and Order, and regarding the OIG's investigative efforts attempted on December 19, 2023;

2. Restraining Respondents from authorizing compliance with the OIG's December 19, 2023 subpoena;

3. Restraining Respondents from taking any punitive or disciplinary action against affected PPOA members pursuant to OIG investigative efforts pending disposition of PPOA and ALADS' current Joint Unfair Employee Relations Practice Charges filed with ERCOM. (Pet. Prayer, First Cause of Action, ¶¶ 1-3.)

On January 24, 2024, PPOA filed its ex parte application for a temporary restraining order (TRO) and Order to Show Cause (OSC) re: preliminary injunction.[6] On February 2, 2024, Respondents filed their opposition.

On February 8, 2024, after a hearing, the court denied PPOA's request for a TRO and set the OSC re: preliminary injunction for hearing.

LEGAL STANDARD

The purpose of a preliminary injunction is to preserve the status quo pending a decision on the merits. (*MaJor v. Miraverde Homeowners Assn.* (1992) 7 Cal. App. 4th 618, 623.) The court considers two factors when considering a request for a preliminary injunction: "(1) the

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[5] Steven Johnson, President of PPOA, attests: "on December 19, 2023, the OIG authorized a subpoena towards all Department personnel." (Johnson Decl. ¶ 14.) However, the subpoena named only Sheriff Luna as the responding party.

[6] The moving brief is 20 pages and exceeds the applicable page limit of 15 pages. (Cal. Rules of Court, Rule 3.1113, subd. (d).) Respondents highlight the procedural error but do not object or show prejudice from the rule violation. (Opposition 15, fn. 1.) The court exercises its discretion to consider all 20 pages of PPOA's brief. PPOA is reminded of the rule and the need to seek leave in the future if PPOA intends to file an oversize brief.

likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief." (*White v. Davis* (2003) 30 Cal.4th 528, 553-54.) The factors are interrelated, with a greater showing on one permitting a lesser showing on the other. (*Dodge, Warren & Peters Ins. Services, Inc. v. Riley* (2003) 105 Cal.App.4th 1414, 1420.) However, the party seeking an injunction must demonstrate at least a reasonable probability of success on the merits. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 73-74.) The party seeking the injunction bears the burden of demonstrating both a likelihood of success on the merits and the occurrence of irreparable harm. (*Savage v. Trammell Crow Co.* (1990) 223 Cal.App.3d 1562, 1571.) Irreparable harm may exist if the plaintiff can show an inadequate remedy at law. (Code Civ. Proc., § 526, subd. (a).)

ANALYSIS

PPOA's Likelihood of Success

PPOA alleges "the OIG's December 19, 2023 subpoena implicates mandatory subjects of bargaining, both as to the decision to implement the changes and regarding the 'effects' of the implementation of Penal Code section 13670, subdivision (b) under Gov. Code section 3500 et seq. and ERO section 5.04.090(B)." (Pet. ¶ 79.) PPOA contends "Respondents clearly violated their duties under the MMBA to meet and confer over the reasonably foreseeable effects of the OIG's December 19, 2023 subpoena which impacts material terms and conditions of employment for Affected PPOA members." (Ex Parte App. 12:7-9; see also Pet. ¶ 84.)

Applicable Legal Test

The duty to meet and confer in good faith is limited to matters within the "scope of representation." (Gov. Code, § 3505.)[7] "The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order." (§ 3504.)

The California Supreme Court has set forth the following three-part test relevant here:

> First, we ask whether the management action has "a significant and adverse effect on the wages, hours, or working conditions of the bargaining-unit employees." [Citation.] If not, there is no duty to meet and confer. [Citations.] Second, we ask whether the significant and adverse effect arises from the implementation of a fundamental managerial or policy decision. If not, then, as in *Building Material,* the meet-and-confer requirement applies. (*Building Material, supra,* 41 Cal.3d at p. 664, [].) Third, if both factors are present—if an action taken to implement a fundamental managerial or policy decision has a

[7] All undesignated statutory references are to this code.

> significant and adverse effect on the wages, hours, or working conditions of the employees—we apply a balancing test. The action "is within the scope of representation only if the employer's need for unencumbered decisionmaking in managing its operations is outweighed by the benefit to employer-employee relations of bargaining about the action in question." (*Building Material, supra,* 41 Cal.3d at p. 660, [].) (*Claremont Police Officers Assn. v. City of Claremont* (2006) 39 Cal.4th 623, 638 [*Claremont*]; see also Ex Parte App. Exh. A at 14-15.)

PPOA has not disputed that OIG's issuance of the December 19, 2023 subpoena to Sheriff Luna (the Subpoena) was a non-negotiable management decision. (See e.g., Ex Parte App. 17-18; Reply 4-5; Pet. ¶ 78 ["non-negotiable decisions that have a foreseeable effect on discipline"]; see also Opposition Exh. HH p. 1517-1518 [discussing authority vested in OIG by Penal Code section 13670, Government Code section 25303.7, and County Code section 6.44.190.I].)

Reasonably Foreseeable Effects on Wages, Hours, and Working Conditions

PPOA contends "whether a PPOA member will potentially lose their peace officer license **for failing to comply with** OIG investigative efforts represent issues that have a direct and unequivocal impact on employment affecting all licensed PPOA members." (Ex Parte App. 12:15-17 [emphasis added].) PPOA's argument is not sufficiently supported by the evidence and is speculative. The Subpoena named only Sheriff Luna as the responding party and seeks records that are presumably in his possession. (Ex Parte App. Exh. B.) PPOA fails to demonstrate the Subpoena requires any action or compliance by PPOA members. To the extent PPOA suggests its members could suffer discipline if they fail to produce records in their possession to the sheriff (so **Sheriff Luna** may comply with the Subpoena), PPOA does not support its position with evidence.

More persuasively, PPOA argues "no assurances or explanations have been provided by Respondents regarding how any information obtained pursuant to the OIG's December 19, 2023 subpoena will ultimately be utilized for purposes of PPOA members' discipline and/or decertification." (Ex Parte App. 13:12-15.) PPOA elaborates in reply arguing the Subpoena is "exceedingly broad" and "PERB has held that effects bargaining is required to address the impact of expanding certain subpoena powers over employees of law enforcement agencies for civilian oversight commissions." (Reply 3 [*County of Sonoma* PERB Dec. No. 2772-M (2021)].)

During argument, PPOA asserted the Subpoena is not narrowly tailored—its seeks all "information relating to" certain circumstances, including information through documents and records about its members and their attorneys to the extent the attorneys were involved in ICIB requests for interviews. The Subpoena seeks, among other things, "all Documents and Information relating to any instances where LASD employees have been contacted for an interview either through an attorney or representative, or contacted directly, in any ICIB investigation and have not been interviewed from January 1, 2023, through the date of this subpoena. . . ." (Johnson Decl. ¶ 14, Exh. E; Huntsman Decl. ¶ 56, Exh. HH.)

The Subpoena justifies the document demand as follows:

> Specifically, the Office of Inspector General is investigating the Sheriff's Department's failure to implement California Penal Code 13670. Previous facts relevant to the existence of a "Code of Silence" within the Sheriff's Department are set forth in the OIG 2020 report on LASD's criminal investigation of an alleged assault by Banditos titled Analysis of the Criminal Investigation of Alleged Assault by Banditos and in the OIG 2021 report on the internal discipline system titled Los Angeles County Sheriff's Department: Review and Analysis of Misconduct Investigations and Disciplinary Process, in the section entitled "Department Policies, Procedures and Practices Condone and Effectuate the Code of Silence." (Johnson Decl. ¶ 14, Exh. E; Huntsman Decl. ¶ 56, Exh. HH.)

Penal Code section 13670, subdivision (b) provides "each law enforcement agency shall maintain a policy that prohibits participation in a law enforcement gang **and that makes violation of that policy grounds for termination.**" (Emphasis added.) The statute continues: "Notwithstanding any other law, local agencies may impose greater restrictions on membership and participation in law enforcement gangs, **including for discipline and termination purposes**." (Emphasis added.)

The Subpoena admits the OIG seeks disclosure of employee-related documents and records to support an investigation into the Department's alleged failure to implement Probate Code section 13670, including through a "Code of Silence." Because of the potential for discipline, including termination, for participation in a law enforcement gang, PPOA has demonstrated some merit to its claim OIG's issuance of the Subpoena pursuant to Penal Code section 13670 and the Oversight Legislation significantly and adversely affects the working conditions of PPOA's members. PPOA argues the information sought provides building blocks that may impact terms and conditions of employment—including the potential for discharge. PPOA urges the ramifications of the investigation and the information sought have the potential to directly affect its members' employment. PPOA argues the meet and confer will allow the parties to understand the OIG's intentions and negotiate for relevant protections for its members.[8]

In opposition, Respondents acknowledge they have an "obligation to provide notice and a meaningful opportunity to bargain over the reasonably-foreseeable effects of even non-negotiable decisions within the scope of bargaining prior to implementation of those decisions." (Opposition 13:20-22.) Respondents contend the claimed effects of OIG's actions are "rank speculation" (Opposition 14:11-12) and do not require bargaining because "OIG has no authority beyond the authority to investigate and report and any tangentially foreseeable adverse impacts at this juncture would run to Sheriff Luna himself and the LASD as an entity, and not the PPOA's members." (Opposition 14:7-10.) Respondents fail to provide a complete

[8] During argument, PPOA suggested through a meet-and-confer process the parties could agree to limit disclosures of the material provided by the sheriff and/or create proper procedures related to disclosures.

discussion of the Oversight Legislation and pertinent statutes to support their argument. Moreover, even assuming OIG's role is solely to "investigate and report," such actions could plausibly lead to evidence or "reports" that could be used in disciplinary proceedings (up to and including termination) against PPOA's members.

Based on the foregoing and for purposes of this motion, PPOA has demonstrated some likelihood of proving up a fundamental managerial or policy decision with a significant and adverse effect on the wages, hours, or working conditions of the bargaining-unit employees. The court therefore balances competing interests pursuant to *Claremont*.

Balancing of Interests

"[I]f an action taken to implement a fundamental managerial or policy decision has a significant and adverse effect on the wages, hours, or working conditions of the employees—we apply a balancing test. The action 'is within the scope of representation only if the employer's need for unencumbered decisionmaking in managing its operations is outweighed by the benefit to employer-employee relations of bargaining about the action in question.' [Citation.] In balancing the interests to determine whether parties must meet and confer over a certain matter (§ 3505), a court may also consider whether the 'transactional cost of the bargaining process outweighs its value.' " (*Claremont, supra,* 39 Cal.4th at 638.)

Here, employer-employee relations would clearly benefit from the completion of the meet and confer process as to implementation of the Oversight Legislation and Penal Code section 13670 **before** OIG issues a subpoena or takes other investigative acts affecting the working conditions of PPOA's members.

Respondents contend "[t]he fundamental policy decision by the State, as evidenced by passage of Penal Code section 13670, to remove the widespread evils presented by law enforcement gangs . . . is aimed at protecting the public and law enforcement officers alike." (Opposition 12:14-17.) Respondents analogize Penal Code section 13670 to the city's decision to revise its use of force policy in *San Francisco Police Officers' Assn. v. San Francisco Police Comm.* (2018) 27 Cal.App.5th 676, 690, in which the Court of Appeal concluded "compelling the City to arbitrate issues surrounding the new use of force policy before it can be implemented would defeat the purpose of requiring cities to make fundamental managerial or policy decisions independently."[9] (*Ibid.*)

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[9] During argument, Respondents argued there is an urgent need today to address law enforcement gangs, and the Legislature has made the need clear. The court agrees. Nonetheless, a meet-and-confer obligation is not onerous and provides an available remedy to Respondents if the parties reach impasse. The OIG's frustration with his ability to investigate law enforcement gangs because of actions by ALADS and PPOA is understandable. To be clear, nothing precludes the OIG from taking other actions to investigate, and under the terms of this order may proceed with enforcement of the Subpoena after satisfying a meet-and-confer obligation.

Admittedly, the balancing of interests here is close. In the abstract, an injunction against all implementation of Penal Code section 13670 or the Oversight Legislation by the OIG until the meet and confer process is complete could undermine the purpose of that legislation. Nonetheless, Respondents do not demonstrate any clear or irreparable harm to a specific OIG investigation from a preliminary injunction against the Subpoena until bargaining is completed. Accordingly, for purposes of this motion, PPOA has shown a least some likelihood of success on the merits of *Claremont*'s balancing test.

ERCOM's November 30, 2022 Decision and Order

PPOA also contends "Respondents' unilateral circumvention of ERCOM's November 30, 2022 Decision and Order, which commanded the OIG to engage in good faith meet and confer prior to utilizing investigative subpoena power of the type OIG authorized on December 19, 2023, violates PPOA's representational rights as a recognized labor organization under the MMBA . . . ." (Ex Parte App. 12:21-24.)

ERCOM's order provides: "Members of the employee representation units represented by ALADS and PPOA shall not be required to respond to subpoenas issued pursuant to the Oversight Legislation until the conclusion of the meet-and-confer process described above in Paragraph 4." (Ex Parte App. Exh. B.) The Subpoena names only Sheriff Luna as the responding party. No member of ALADS or PPOA is required to respond. Accordingly, PPOA does not show a violation of this provision of ERCOM's order.

ERCOM's order also provides: "the Respondent shall meet and confer with the Charging Parties with respect to the negotiable effects of the Oversight Legislation." (Ex Parte App. Exh. B.)[10] PPOA indicates five meet and confer sessions have been held and that "[a] sixth meet and

[10] More specifically, the ERCOM order states:

> a. The parties shall immediately meet and confer on the schedule for negotiations and shall, no later than seven (7) days after the issuance of this Decision and Order, report to the Commission on any agreement as to the schedule for negotiations. b. If the parties are unable to reach an agreement as to the schedule for negotiations, then the Commission will consider an application by any party to issue a supplemental Decision and Order establishing the negotiations schedule. c. It is the Commission's hope and expectation that negotiations will be completed no later than sixty (60) days from the commencement of negotiations, and that the parties will take all actions necessary to facilitate such a schedule, including the preselection of a mediator. The parties shall have the discretion to reach a mutual agreement pursuant to a lengthier schedule. d. The meet-and-confer process outlined in this Paragraphs 4 shall be without prejudice to the exhaustion of the impasse procedure otherwise required by law.

confer session regarding the Oversight Legislation is prospectively scheduled to be held on February 27, 2024." (Johnson Decl. ¶ 10.) "To date, the County and PPOA are still engaged in meet and confer over the effects of the Oversight Legislation." (Johnson Decl. ¶ 10.)

For the same reasons discussed earlier, PPOA has some likelihood of success on its claim OIG's issuance of the Subpoena, before the meet and confer process has completed, affects the working conditions of PPOA's members and is a "negotiable effect" of the Oversight Legislation. Relatedly, PPOA has some likelihood of success on its claim the Subpoena violates ERCOM's order such that the court should issue the writ compelling Respondents to engage in meet and confer and enjoin compliance with the Subpoena pending the meet and confer.

Based on the foregoing, PPOA has shown some reasonable likelihood of success on its first cause of action for a writ of mandate.

Constitutional and Pitchess Claims

PPOA contends the Subpoena "contemplates disclosure of materials that implicates the constitutional, POBR, employment and privacy rights of thousands of peace officers across the County even though less intrusive and more focused means may be available for Respondents to obtain the information sought." (Ex Parte App. 13:9-12.) PPOA contends the Subpoena "violate[s] Affected PPOA members' Fourth Amendment right against unreasonable search and seizure, Fifth Amendment right against self-incrimination (in light of the OIG's failure to assure that any relevant *Lybarger* related admonitions will be provided), and right to privacy under the California Constitution." (Ex Parte App. 13:19-22) PPOA also contends that the Subpoena violates the right of its members under the *Pitchess* statutes. (Ex Parte App. 15:12-14.)

The petition does not plead a cause of action for violation of the Fourth or Fifth Amendments. "A cause of action must exist before a court may grant a request for injunctive relief." (*Ivanoff v. Bank of America, N.A.* (2017) 9 Cal.App.5th 719, 734.) PPOA has not shown a preliminary injunction may issue based on alleged violations of the Fourth or Fifth Amendments not actually pleaded in the petition.

Alternatively, PPOA has not shown a reasonable likelihood of success on its Fourth and Fifth Amendment claims. "To determine whether a Fourth Amendment violation occurred, we ask two primary questions: first, whether the government conduct amounted to a search within the meaning of the Fourth Amendment; and second, whether that search was reasonable." (*United States v. Dixon* (9th Cir. 2020) 984 F.3d 814, 819.) The Subpoena named only Sheriff Luna as the responding party. No member of ALADS or PPOA is required to respond. PPOA has failed to develop an argument that the Subpoena amounts to a "search" within the meaning of the Fourth Amendment or that, even if it does, that the search is unreasonable. (See *Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862-863. ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived."])

PPOA contends it is likely to succeed on its Fifth Amendment claim based on *Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822 because OIG has allegedly failed "to assure that any relevant *Lybarger* related admonitions will be provided." (Ex Parte App. 13:19-22.) *Lybarger v. City of Los Angeles* held that a police officer's compelled testimony pursuant to Penal Code section 832.7 cannot be used against the officer in later criminal proceedings. (*People v. Gwillim* (1990) 223 Cal.App.3d 1254, 1270.) The Subpoena seeks records relating to instances where the Department's employees "have not been interviewed" and, thus, not compelled to make statements. (Ex Parte App. Exh. G.) PPOA has not developed an argument that *Lybarger v. City of Los Angeles* applies in such circumstances. PPOA also has not cited any evidence that the records responsive to the Subpoena are reasonably likely to include compelled statements of any Department employees.

Arguably, PPOA's petition and second cause of action for declaratory relief include claims related to the privacy and *Pitchess* rights of PPOA's members. (See e.g. Pet. ¶¶ 76, 84.) A claim for violation of the right to privacy under Article I, Section 1 of the California Constitution requires proof of three threshold elements: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy; and (3) conduct by defendant constituting a serious invasion of privacy. (*Hill v. Nat'l Collegiate Athletic Ass'n* (1994) 7 Cal.4th 1, 35-37.) Here, the Subpoena seeks information about the Department's alleged failure to interview some of PPOA's members in ICIB[11] criminal investigations. PPOA has not sufficiently developed an argument any of its members have a legally protected privacy interest in the employment-related records held by the Sheriff and sought in the Subpoena.

Pitchess is triggered by a disclosure of personnel records. (Pen. Code, § 832.7, subd. (b).) A "[p]ersonnel record" is "any file maintained under that individual's name by his or her employing agency" containing records related to "(1) Personal data, including marital status, family members, educational and employment history, home addresses, or similar information. (2) Medical history. (3) Election of employee benefits. (4) Employee advancement, appraisal, or discipline. (5) Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties. (6) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy." (Pen. Code, § 832.8, subd. (a).)

Records maintained by the Department addressing whether an employee was interviewed could possibly fall within the categories of "personnel records" in Penal Code section 832.8, subdivision (a) pertaining to "discipline" or "investigations of complaints." Nonetheless, PPOA has not persuasively explained how a disclosure to OIG, a County entity, violates *Pitchess.*

For purposes of this motion, PPOA has not shown a reasonable likelihood of success on its claims made under the Fourth or Fifth Amendments, the right to privacy, or the *Pitchess* statutes. However, PPOA has shown some likelihood of success on its petition for a writ of

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[11] ICIB, as used in the Subpoena, refers to Internal Criminal Investigations Bureau. (See Opposition 9:14.)

mandate seeking to enforce the MMBA and ERO. PPOA's likelihood of success on the writ petition is sufficiently strong for the court to reach the balance of harms.

Balance of Harms

For the second factor, the court must consider "the interim harm that the plaintiff would be likely to sustain if the injunction were denied as compared to the harm the defendant would be likely to suffer if the preliminary injunction were issued." (*Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 749.) "Irreparable harm" generally means the defendant's act constitutes an actual or threatened injury to the personal or property rights of the plaintiff that cannot be compensated by a damages award. (See *Brownfield v. Daniel Freeman Marina Hospital* (1989) 208 Cal.App.3d 405, 410.)

PPOA shows irreparable harm if the preliminary injunction is not issued. As discussed, PPOA submits evidence that Respondents have failed to complete the bargaining process with respect to implementation of the Oversight Legislation and Penal Code section 13670. A "failure to bargain in good faith, has long been understood as likely causing an irreparable injury to union representation." (*Frankl ex rel. NLRB v. HTH Corp.* (2011) 650 F.3d 1334, 1363; accord *Small v. Avanti Health Systems, LLC* (2011) 661 F.3d 1180, 1192.)

Respondents contend PPOA "delayed with regard to the December 19, 2023 subpoena. PPOA had over two weeks—from December 19, 2023 (the date the subpoena was issued) until January 4, 2024— to file a regularly noticed motion." (Opposition 19:13-15.)[12] The Subpoena set a compliance date of January 30, 2023. (Ex Parte App. Exh. G.)[13] PPOA filed its petition on January 23, 2024, and this application on January 24, 2024. Considering the compliance date, PPOA's delay from December 19, 2023 until January 23, 2024, was not so substantial as to show a lack of irreparable harm.

Respondents contend the preliminary injunction would cause "harm to the public, public distrust, and financial injury to Respondents" in connection with the ongoing existence of deputy gangs. (Opposition 20:13) Respondents argue "[g]ranting PPOA's request for relief would effectively shut down OIG's ability to function in *any* meaningful capacity." (Opposition 20:17-18.) Respondents claim is exaggerated. Respondents do not show OIG lacks the ability to conduct a more narrowly tailored investigation into the deputy gang problem. While there are important legislative and policy interests expressed through Penal Code section 13670, Respondents have not cited any evidence suggesting preliminarily enjoining compliance with the Subpoena—until the court conducts a hearing on the writ petition—would materially injury OIG's ability to investigate or report.

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[12] Any delay with respect to the OIG's May 12, 2023 letter is not at issue for this application.
[13] Neither party contends the Sheriff complied with the Subpoena on the compliance date or anytime thereafter.

The balance of harms weighs in favor of granting the preliminary injunction. Having considered PPOA's likelihood of success on the merits and the balance of harms, the court grants PPOA's request for a preliminary injunction.

Undertaking

A preliminary injunction ordinarily cannot take effect unless and until the plaintiff provides an undertaking for damages which the enjoined defendant may sustain by reason of the injunction if the court finally decides that the plaintiff was not entitled to the injunction. (See Code Civ. Proc., § 529, subd. (a); *City of South San Francisco v. Cypress Lawn Cemetery Assn.* (1992) 11 Cal.App.4th 916, 920; see *Abba Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 15-16 ["the prevailing defendant may recover that portion of his attorney's fees attributable to defending against those causes of action on which the issuance of the preliminary injunction had been based"].)

PPOA has asked for a reasonable bond amount based on the nature of its organization. Respondents have not cited evidence that persuasively supports a large bond. (See Opposition 21:5-18.) PPOA's request is granted; bond is required in the amount of $1,000.

CONCLUSION

The application for a preliminary injunction is GRANTED. PPOA shall post an undertaking of $1,000.

IT IS SO ORDERED.

March 18, 2024

Hon. Mitchell Beckloff
Judge of the Superior Court