Case No. S206350

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

RIVERSIDE COUNTY SHERIFFS' DEPARTMENT,

Petitioner/Respondent,

vs.

JAN STIGLITZ

Respondent.

RIVERSIDE SHERIFFS' ASSOCIATION

Intervenor/Appellant.

[Court of Appeal No. E052729
Riverside Sup. Ct. No. RIC10004998]

After a Published Decision by the Court of Appeal
Fourth Appellate District, Division Two

Appeal from an Order
of the Riverside Superior Court
Hon. Mac R. Fisher, Judge Presiding
Department 5

ANSWER TO PETITION FOR REVIEW

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TO THE HONORABLE CHIEF JUSTICE OF CALIFORNIA AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Intervenor/Appellant RIVERSIDE SHERIFF'S ASSOCIATION respectfully Answers the Petition for Review of the decision in *Riverside County Sheriffs' Department v. Jan Stiglitz, et al.* (2012) 209 Cal. App. 4th 883 (Court of Appeal No. E052729).

I.

INTRODUCTION

The Petition for Review filed by the Riverside County Sheriff's Department ("Petitioner" or "Department") should be denied as it presents no issues of public policy, institutional importance or an issue that requires the Supreme Court to articulate uniform rules of law in areas in which there may be confusion or a conflict of authority. (Cal. Rules of Court, Rule 8.500(b).)

Contrary to Petitioner's representation, the published opinion in this case does not conflict with the published decision in *Brown v. Valverde*, (2010) 184 Cal.App.4th 1531 ("*Brown*"). In the instant case, the court of appeal for the Fourth Appellate District correctly held that the hearing officer in an administrative appeal of the dismissal of a correctional officer, who was a non-probationary employee of the Department, has the authority to hear and grant a *Pitchess* motion.

In *Brown*, the court of appeal for the First Appellate District held that in a DMV administrative per se hearing, a driver facing a license suspension following arrest for driving under the influence could not seek discovery of confidential peace officer records pursuant to *Pitchess*. (*Id.* at 1535.) *Brown* did not hold that an administrative hearing officer presiding over an administrative disciplinary appeal mandated by Government Code § 3304(b) was statutorily barred from ruling on a *Pitchess* motion. Rather, *Brown* focused on the statutory scheme surrounding the Vehicular Code. *Brown*

intentionally limited its holding to a *Pitchess* motion within the context of a DMV administrative per se hearing. (*Id.* at 1535.)

Evidence Code section 1043 provides that a party seeking peace or custodial officer personnel records "shall file a written motion with the appropriate court or administrative body . . . ." *Brown* and *Drinkwater* stand for the proposition that the determination as to whether a particular administrative body has the power to hear a *Pitchess* motion is made on a case-by-case basis.

Petitioner's Petition fails to present conflicting decisions that would require review by this Court since the court in *Brown* intentionally limited its holding to a *Pitchess* motion within the context of a DMV administrative per se hearing and did not concern an administrative appeal of a termination of employment. Therefore, this Court should deny the Petition.

II.

FACTUAL AND PROCEDURAL BACKGROUND

Following her termination as a Correctional Deputy with the County of Riverside ("County"), Kristy Drinkwater ("Drinkwater") sought a disciplinary administrative appeal of her termination. Because Drinkwater is a Correctional Deputy, the administrative appeal hearing was conducted pursuant to Article XII of the Memorandum of Understanding ("MOU") between the County and Respondent/Appellant, Riverside Sheriffs' Association ("RSA"), and Government Code § 3304(b) of the Public Safety Officers Procedural Bill of Rights Act ("POBR"), Government Code §§ 3300-3313.

During the administrative appeal hearing of her termination, Drinkwater submitted a motion to hearing officer Jan Stiglitz ("Stiglitz") for discovery of redacted law enforcement records pursuant to Evidence Code § 1043 ("1043 motion") to establish her defense of disproportionate penalty. The redacted records would show that the penalty imposed on Drinkwater

(termination) was disproportionately harsh in comparison with the discipline that the Riverside County Sheriff's Department ("Department") had ordinarily and historically imposed on others for the same alleged misconduct. Stiglitz granted the 1043 motion with a finding of good cause and ordered an in-camera review of the records.

Pursuant to Code of Civil Procedure § 1094.5, the Department filed a petition for an administrative writ ("Petition") seeking to compel Stiglitz to vacate his decision that good cause existed to grant the 1043 motion. Initially, the Petition did not challenge the authority of Stiglitz to rule on the 1043 motion and did not name RSA as a party to the lawsuit. After the court of appeals issued its decision in *Brown,* the Department opportunistically changed its argument hoping to extend a holding, limited by the language of the decision to a DMV administrative per se hearing, to apply to Drinkwater's administrative hearing.

Thereafter, RSA intervened and filed an opposition to the Petition which argued among other things that *Brown* was inapplicable as it solely concerned a DMV administrative per se hearing. The trial court granted the Department's petition pursuant to *Brown* and ordered Stiglitz to deny the 1043 motion. RSA filed its notice of appeal of the Order.

On appeal, the court held that *Brown* does not stand for the proposition that *Pitchess* discovery is unavailable in all administrative proceedings as a matter of law. *Riverside County Sheriffs' Department v. Jan Stiglitz, et al., supra,* 209 Cal. App. 4th at 900-902. Instead, the court held that *Pitchess* discovery is available in a section 3304(b) hearing as a matter of due process where it is relevant to the officer's defense. The court reasoned that an interpretation of Evid. Code, §§ 1043 and 1045, that excluded administrative bodies as venues for *Pitchess* motions, conflicted with the due process rights afforded to peace officers in disciplinary hearings by Gov. Code, § 3304, subd. (b). On that basis, among other reasons, the court of appeal reversed the

order granting the writ petition and directed the trial court to deny the petition filed by the Department. This petition for review followed.

III.

PETITIONER'S PETITION FOR REVIEW SHOULD BE DENIED

This matter was carefully and properly decided by the court of appeal. The petition for review should be denied as it does not raise an important question of law or require review to secure uniformity of decision among the appellate courts. (Cal. Rules of Court, Rule 8.500(b).)

As set forth more fully below, the published opinion in this case does not conflict with the prior published decision in *Brown v. Valverde*, (2010) 184 Cal.App.4th 1531. The statutory scheme encompassing the *Pitchess* process does not contain an unresolved ambiguity. Instead, the court of appeal in this case resolved the ambiguity through an interpretation that does not rewrite the statutory scheme by striking language authorizing the filing of a discovery motion with an administrative body or creating a cause of action that does not now exist. The court's decision balanced the due process right of peace officers in disciplinary appeals with the privacy rights of peace officers. In this case, the appealing peace officer has both a constitutional and statutory right to present a meaningful defense in a full evidentiary hearing whereas the records of a non-party peace officer sought by a *Pitchess* motion are only used for the limited purpose, if at all, in a nonpublic hearing. In balancing these interests, the court rendered a decision that is consistent with legislative intent.

The issue presented has no widespread statewide application. Nor does Petitioner's issue require review to secure uniformity of decision among the courts. The Court of Appeal, in a concise and well-articulated opinion, properly reversed the trial court's ruling that *Pitchess* discovery is unavailable in all administrative proceedings as a matter of law. Since there is no proper

issue before this Court that would require review, the Petition should be denied.

IV.

ARGUMENT

A. THE PUBLISHED OPINION IN THIS CASE DOES NOT CONFLICT WITH THE PUBLISHED DECISION IN *BROWN V. VALVERDE*, (2010) 184 CAL.APP.4TH 1531.

As before both the trial court and the court of appeals, the Department primarily relies on *Brown*, *supra*, 183 Cal.App.4th 1531 as its authority that *Pitchess* motions are not available in any administrative proceeding as a matter of law. As the court of appeals stated in its published decision, this was not the holding in *Brown*:

> In *Brown*, the issue of the availability of *Pitchess* discovery arose in the context of a Department of Motor Vehicles (DMV) "administrative per se" hearing. An administrative per se hearing is one in which a hearing officer, typically a DMV employee, determines whether a driver's license must be suspended following an arrest for driving with a blood-alcohol level of 0.08 percent or greater. (*Brown, supra*, 183 Cal.App.4th at pp. 1535–1538.) The court expressly addressed only that issue. (*Id.* at p. 1546 ["The issue before us is whether a *Pitchess* motion is available in a DMV administrative per se hearing."]; see id. at pp. 1547–1559 [entire discussion falls under the subheading "*Pitchess Discovery Is Not Available in DMV Administrative Per Se Hearings*"].) Moreover, although in the course of deciding the narrow issue presented the court rejected Brown's contention that Pitchess discovery is available in all administrative proceedings, the court ultimately found itself forced to conclude that the scheme does not foreclose

the use of *Pitchess* motions in all types of administrative proceedings.

Riverside County Sheriffs' Dept. v. Stiglitz, supra, 209 Cal. App. 4th at 900.

While acknowledging the relevancy of a disparate discipline defense in any administrative appeal (Petition, p.4), the Department dismisses the due process concerns relied upon by the court of appeals in this case as a mere "guise." However, the constitutional rights of peace officers may not be dismissed so lightly.

In a disciplinary appeal, peace officers are entitled to present a meaningful defense in a full evidentiary hearing; and an interpretation of Evidence Code sections 1043 and 1045 which excludes administrative bodies as venues for *Pitchess* motions, conflicts with the due process rights afforded to peace officers in disciplinary hearings by Government Code section 3304, subdivision (b).

B. THE STATUTORY SCHEME ENCOMPASSING THE *PITCHESS* PROCESS DOES NOT CONTAIN AN UNRESOLVED AMBIGUITY

The Department acknowledges that Evidence Code §1043 (a) provides that a *Pitchess* motion is to be filed in the appropriate court or administrative body. The court of appeals held there exists an ambiguity in the statutory scheme because Evidence Code § 1045, which provides the procedure for deciding a *Pitchess* motion, refers only to how a court shall proceed upon the filing of a *Pitchess* motion.

The court of appeals resolved this ambiguity by first analyzing the language of the relevant statutes. Because Evidence Code § 1043(a) provides for a *Pitchess* motion to be filed with an administrative body, the Legislature did not intend that *Pitchess* motions may be decided only by courts. *Riverside County Sheriffs' Dept. v. Stiglitz, supra,* 209 Cal. App. 4th at 903-904. This conclusion is also evident from the fact that there is no procedural

mechanism set forth in the statutory scheme to allow a party seeking *Pitchess* discovery in an administrative proceeding to invoke the jurisdiction of a court to rule on the motion. *Id.* Thus, there is no procedural mechanism in which to bring a *Pitchess* motion in court regarding a defense raised in an administrative hearing. To bring a motion in court, there must be a pending matter before the court; but at this time, no such cause of action exists or was created by the statutory scheme that codified the holding in *Pitchess.*

The court also held that it cannot simply read the phrase "or administrative body" out of Evidence Code section 1043:

> "It is a settled axiom of statutory construction that significance should be attributed to every word and phrase of a statute, and a construction making some words surplusage should be avoided." (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1010 [239 Cal. Rptr. 656, 741 P.2d 154].) We see no justification for interpreting Evidence Code section 1043 in such a way as to render the phrase "or administrative body" meaningless.

Riverside County Sheriffs' Dept. v. Stiglitz, supra, 209 Cal. App. 4th at 904.

C. THE ISSUE PRESENTED HAS NO WIDESPREAD STATEWIDE APPLICATION

It is undisputed that hearing officers have routinely decided *Pitchess* motions in administrative hearings of peace officers for years in Riverside County. At the trial court level in the instant matter, RSA and Drinkwater submitted substantial, undisputed evidence that since as early as 1993, numerous 1043 motions had been submitted to the hearing officers in disciplinary appeal hearings under Article XII of the MOU, all without challenge by the Department or the County to the hearing officer's jurisdiction to rule.

Despite this widespread practice, the Department was unable throughout this litigation to cite or rely on a single instance wherein the concerns now expressed in this Petition manifest. There is no evidence of confusion; no evidence of the disclosure of confidential peace officer records outside of the nonpublic hearing process; no evidence of harm to any peace officer whose records were produced; and no evidence of problems arising from a hearing officer's, who is mutually agreed upon by the parties, ruling on a *Pitchess* motion rather than a judicial officer. With such a well-established, long-term past practice, if such concerns were real, the Department could conjure up something more than speculation in support of its position. Instead, the Department's argument is a solution in search of a problem.

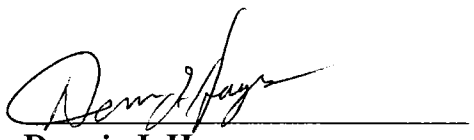
V.

CONCLUSION

For all of the reasons set forth herein, the Petition for Review should be denied as it does not raise an important question of law or require review to secure uniformity of decision among the appellate courts. (Cal. Rules of Court, Rule 8.500(b).)

Dated: November 13, 2012

HAYES & CUNNINGHAM

By: 

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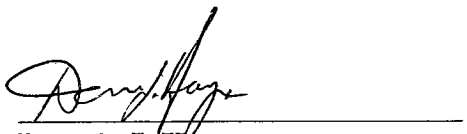
CERTIFICATE OF COMPLIANCE

Pursuant to rule 14(c) of the California Rules of Court, I hereby certify that this brief contains 2,199 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: November 13, 2012

HAYES & CUNNINGHAM

By: 

Dennis J. Hayes
Attorneys for Intervenor/Appellant
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PROOF OF SERVICE BY MAIL

CASE NAME: *Riverside County Sheriff's Department (Petitioner) v. Jan Stiglitz, et al. (Respondent)*

CALIFORNIA SUPREME COURT CASE NUMBER: S206350
COURT OF APPEAL CASE NUMBER: E052729
RIVERSIDE SUPERIOR COURT CASE NUMBER: RIC10004998

I, Sarah Holko, declare as follows:

1. At the time of service, I was at least 18 years of age and not a party to this legal action. I am a resident or employed in the county where the within-mentioned service occurred.

2. My business address is 5925 Kearny Villa Rd., Ste. 201, San Diego, California 92123.

3. On November 14, 2012, I served the **Answer to Petition for Review** by United States mail as follows: I enclosed a copy in separate envelopes, with postage fully prepaid, addressed to each individual addressee named below, and I deposited each sealed envelope with the United States Postal Service in San Diego, California, for delivery as follows:

Bruce D. Praet, Esq.
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1631 E. 18th Street
Santa Ana, CA 92705-7101
(one copy)

Clerk of the Superior Court
County of Riverside
4050 Main Street
Riverside, CA 92501
(one copy)

Clerk of the Appellate Court
California Court of Appeal
Fourth District, Division Two
3389 Twelfth Street
Riverside, CA 92501
(one copy)

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

Date: November 14, 2012 _____

SARAH HOLKO, Declarant