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**IN THE
SUPREME COURT OF CALIFORNIA**

Deputy



ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS,

Petitioner,

v.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,**

Respondent.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT et al.,

Real Parties in Interest.

On Review from the Court of Appeal
For the Second Appellate District, Division 8
Case No.: B280676

After a Writ Proceeding from the Superior Court of Los Angeles County
Hon. James C. Chalfant
Case No.: BS166063

OPPOSITION TO MOTION FOR JUDICIAL NOTICE

THE GIBBONS FIRM, PC

*ELIZABETH J. GIBBONS [SBN 147033]
811 Wilshire Boulevard
Seventeenth Floor
Los Angeles, California 90017-2606
(323) 591-6000 (tel)
E-mail: egibbons@thegibbonsfirm.com

BENEDON & SERLIN, LLP

*DOUGLAS G. BENEDON [SBN 110197]
JUDITH E. POSNER [SBN 169559]
22708 Mariano Street
Woodland Hills, California 91367-6128
(818) 340-1950 (tel)
(818) 340-1990 (fax)
E-mail: douglas@benedonserlin.com
E-mail: judy@benedonserlin.com

Attorneys for Petitioner
ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS

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Woodland Hills, California 91367-6128
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E-mail: douglas@benedonserlin.com
E-mail: judy@benedonserlin.com

Attorneys for Petitioner
ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS

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OPPOSITION TO MOTION FOR JUDICIAL NOTICE

INTRODUCTION

The Los Angeles County Sheriff's Department, together with the County of Los Angeles and Jim McDonnell, the Sheriff of Los Angeles County, (collectively, "Department") has moved for judicial notice of Chapter 14, entitled Disclosure of Exculpatory and Impeachment

Information, of the Legal Policies Manual of the Los Angeles County District Attorney's Office, dated January 19, 2018. The Association for Los Angeles Deputy Sheriffs ("ALADS") opposes the motion.

The basis for the opposition is as follows. First, the Department has not established proper ground for judicial notice of Chapter 14 of the policy. Neither Evidence Code section 452, subdivisions (b) nor (h), cited by the Department in its motion, constitute a basis for judicial notice here. Second, even if judicial notice were taken of the fact that the policy exists, it would not accomplish what the Department seeks by virtue of its motion. The policy, which was not in effect at the time of the trial court's or the Court of Appeal's decision in this case, cannot, as the Department suggests, prove the lawfulness of the Department's decision to turn over its own version of a *Brady* list to prosecutors absent compliance with the statutory scheme enacted after *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. Rather, the policy must be compliant with the law based on the interplay of *Brady v. Maryland* (1963) 373 U.S. 83 and its progeny and the *Pitchess* statutory scheme. As a result, no need exists for judicial notice of the policy.

In short, the Court should deny the Department's motion for judicial notice.

LEGAL DISCUSSION

Evidence Code section 452 specifies the matters that may be judicially noticed in the Court's discretion. The Department relies on subdivisions (b) and (h) of the statute. Neither applies here.

Subdivision (b) provides that judicial notice may be taken of “[r]egulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States. Chapter 14 of the January 19, 2018, policy of the Los Angeles County District Attorney's Office is not a regulation or legislative enactment. It is not even a public document. Rather, it is an internal policy, applicable to one district attorney's office in the State, that must comply with federal and state laws. Judicial notice thus is not proper under subdivision (b).

Subdivision (h) provides that judicial notice may be taken of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” The Department's use of Chapter 14 in its reply brief demonstrates that it is not seeking judicial notice of any fact or proposition. Instead, it is attempting to use the policy to prove the lawfulness of its decision to turn over its own version of a *Brady* list to prosecutors absent compliance with the *Pitchess* statutory scheme. Consequently, no basis exists for judicial notice under subdivision (h).

Even if judicial notice were taken, the most it could establish, under subdivision (h), is the fact that the Los Angeles District Attorney's Office adopted Chapter 14 as its internal policy as of January 19, 2018. But that fact is irrelevant to this case. Indeed, the Department does not even rely on that fact in its judicial notice motion or reply brief.

Rather, as noted, the Department wants to use Chapter 14 to support its contention that its decision to turn over its own version of a *Brady* list to prosecutors absent compliance with the *Pitchess* statutory scheme is lawful. Chapter 14, however, cannot prove the lawfulness of the Department's decision. On the contrary, Chapter 14 must comply with *Brady* and its progeny as well as the *Pitchess* statutory scheme. The same goes for any decision of the Department, such as the one at issue here. The Department cannot turn over its own version of a *Brady* list to prosecutors unless doing so complies with *Brady* and its progeny as well as the *Pitchess* statutory scheme. (As ALADS established in its answer brief, turning over a *Brady* list to prosecutors absent compliance with the *Pitchess* statutory scheme is neither compelled by *Brady* nor lawful.) Consequently, because the Department improperly is attempting to use judicial notice of an internal district attorney policy to make lawful its unlawful decision to

avoid compliance with the *Pitchess* statutory scheme, no basis exists for judicial notice.¹

¹ To the extent the Department might claim that judicial notice of the policy is warranted because ALADS relied on a declaration from a district attorney in its answer brief, such a claim would not have merit. Judicial notice can be taken only of facts, and, as noted, the Department is not relying on the fact that Chapter 14 was adopted as of January 19, 2018. Moreover, the Department does not refer to the whole of Chapter 14, which in large measure comports with the prior policy as referenced in the declaration. Chapter 14 states only what a deputy district attorney must do if given certain information by a law enforcement agency. It does not establish that disclosure of such information is routine, nor, as explained, can it prove the lawfulness of such disclosure. Indeed, Chapter 14 demonstrates the Los Angeles County District Attorney's Office has its own internal procedure to ensure *Brady* compliance that is completely independent from any disclosures by a law enforcement agency.

CONCLUSION

For the reasons stated herein, this Court should deny the Department's motion for judicial notice.

Dated: April 19, 2018

THE GIBBONS FIRM, PC
Elizabeth J. Gibbons

BENEDON & SERLIN, LLP
Douglas G. Benedon
Judith E. Posner

A handwritten signature in cursive script, reading "Judith E. Posner", is written over a horizontal line.

Judith E. Posner
Attorneys for Petitioner
**ASSOCIATION FOR LOS ANGELES
DEPUTY SHERIFFS**

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that the total word count of this Opposition to Motion for Judicial Notice, excluding covers, table of contents, table of authorities, and certificate of compliance is 918.

Dated: April 19, 2018

THE GIBBONS FIRM, PC
Elizabeth J. Gibbons

BENEDON & SERLIN, LLP
Douglas G. Benedon
Judith E. Posner


Judith E. Posner

Attorneys for Petitioner
**ASSOCIATION FOR LOS ANGELES
DEPUTY SHERIFFS**

PROOF OF SERVICE

(C.C.P. § 1011)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of eighteen (18) years and not a party to the within action. I am a resident of or employed in the county where the mailing took place. My business address is 22708 Mariano Street, Woodland Hills, California 91367-6128.

On April 19, 2018, I served the **OPPOSITION TO MOTION FOR JUDICIAL NOTICE**, by enclosing a true and correct copy thereof in a sealed envelope as follows:

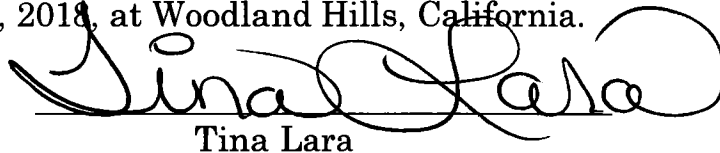
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Geoffrey S. Sheldon Alexander Yao-En Wong Liebert Cassidy Whitmore 6033 West Century Boulevard Fifth Floor Los Angeles, California 90045-6410 Tel: (310) 981-2000 Fax: (310) 337-0837 E-mail: gsheldon@lcwlegal.com E-mail: awong@lcwlegal.com	<i>Attorneys for Real Parties in Interest Los Angeles County Sheriff's Department, Sheriff Jim McDonnell and County of Los Angeles</i>
Elizabeth J. Gibbons The Gibbons Firm, PC 811 Wilshire Boulevard, 17th Floor Los Angeles, California 90017-2606 Tel: (323) 591-6000 E-mail: egibbons@thegibbonsfirm.com	<i>Co-Counsel for Petitioner Association for Los Angeles Deputy Sheriffs</i>

Hon. James Chalfant Los Angeles Superior Court 111 North Hill Street, Department 85 Los Angeles, California 90012-3117 Tel: (213) 830-0785	<i>Respondent Trial Court</i>
Court of Appeal, State of California Second Appellate District Division Eight 300 South Spring Street Floor Two, North Tower Los Angeles, California 90013-1213 Tel: (213) 830-7108	<i>Appellate Court</i>

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

Executed on April 19, 2018, at Woodland Hills, California.


Tina Lara