2d Civ. No. **B231245**
(Los Angeles Super. Ct. No. NC05549)

In the Court of Appeal

OF THE

State of California

SECOND APPELLATE DISTRICT, DIVISION TWO

LONG BEACH POLICE OFFICERS ASSOCIATION, and
DOE OFFICERS 1-150,
Plaintiffs and Appellants,

v.

CITY OF LONG BEACH, a municipal corporation, LONG BEACH POLICE DEPARTMENT, and JAMES McDONNELL, Chief of Police,

Defendants and Appellants,

LOS ANGELES TIMES COMMUNICATIONS LLC,
Real Party In Interest and Respondent

APPEAL FROM AN ORDER OF THE LOS ANGELES SUPERIOR COURT
HON. PATRICK T. MADDEN, JUDGE, (562) 491-6127

BRIEF OF AMICI IN SUPPORT OF LOS ANGELES TIMES COMMUNICATIONS LLC

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I. SUMMARY OF ARGUMENT AND AMICI'S INTERESTS IN PUBLIC ACCESS

The *Los Angeles Times* (the *Times*) requested simple public access to the ***names alone*** of police officers who used lethal force to shoot people, for a five-year period, in Long Beach, California. ***The Times did not ask for anything more*** — not confirmation of whether their employer conducted investigations into the shootings, not whether any specific officer had been investigated, not the details or findings of any such investigations, not whether any officer was admonished or disciplined as a result of any shooting, not whether any criminal charges were brought, ***nor any other detail whatsoever*** — just the officers' names.

No law allows Appellants to withhold public disclosure of those names, as the Superior Court correctly ruled. Rather, controlling law requires that the names be publicly disclosed. (*See New York Times Co. v. Superior Court* (*New York Times*) (1997) 52 Cal.App.4th 97; Section II, A, *infra*.) Appellants gratuitous annexation of the fact that the Long Beach Police Department ***automatically*** conducts investigations into ***every*** officer-involved shooting to the officers' public names, cannot unilaterally transform those names — which are required to be publicly displayed on officers' uniforms and otherwise disclosed by law — into "secret information" forever protected by the Pitchess Statutes, with absolutely no

showing of any particularized harm. (Cal. Penal Code § 830.10; Cal. Penal Code §§ 832.7 *et. al.*; *Commission on Peace Officer Standards and Training v. Superior Court* (*Post*) (2007) 42 Cal.4th 278; *New York Times, supra,* 52 Cal.App.4th 97.) Appellant Long Beach Police Officers Association (LBPOA) further has no standing in this litigation to raise any "privacy" rights of its members, even assuming *arguendo* such a right existed in an officer's name linked with a shooting, which it does not. (*See* Section II, B, *infra.*) Moreover, LBPOA's attempt to turn rights they claim are granted by the Pitchess Statutes into constitutional privacy rights, and to then question the CPRA's constitutionality if it fails to protect these purported "rights," is unsupported by any law. (*Ibid.*)

Transparency and public accountability of law enforcement are imperative in a democratic society, as California and numerous other states have recognized. (*See* Section III, *infra.*) Courts have long held that one of the true safeguards on the extraordinary power of government, including law enforcement, is the public, "deputizing the press as guardians of their liberty," to provide the necessary "checks and balances." (*Detroit Free Press v. Ashcroft* (6th Cir. 2002) 303 F.3d 681, 683.) Society has also long recognized that "when government seeks to take away the public safeguard by placing its actions beyond public scrutiny," democracies die behind those closed doors. (*Ibid.*) Society simply cannot afford

anonymous lethal shootings. Rather, the public must be kept informed of police conduct, as many courts have recognized.

Amici are organizations that either directly report on law enforcement or that support newsgathering and reporting efforts in other ways. (*See* Motion to file Brief of Amici, filed herewith.) Amici cannot fulfill their function as a "check and balance" on law enforcement — or even monitor the number of times the same officer is involved in shootings — if the names of such officers are never publically disclosed. Fortunately, secrecy is not the law. Instead, substantial authority requires that names of officers involved in shootings be publicly disclosed forthwith.

II. NO LEGAL AUTHORITY ALLOWS APPELLANTS TO SHIELD THE NAMES OF OFFICERS INVOLVED IN SHOOTINGS FOR NO REASON, AND CONTROLLING AUTHORITY REQUIRES INSTEAD THAT THEY BE DISCLOSED FORTHWITH

As this Court is aware, *Times* reporter Richard Winton sought the names of the officers involved in the "garden nozzle shooting" of a 35-year-old unarmed, intoxicated father on December 12, 2010, as well as the names of all officers involved in shootings from January 1, 2005 through December 11, 2010. (*See* Superior Court order (the Order), p. 7.) By law, the names are public information. (Cal. Penal Code § 830.10 [officers must wear name tags on their uniforms]; *Post, supra,* 42 Cal.4th 278 [officer names, employing departments, and employment dates are public

information]; Penal Code §§ 832.7, 832.8; Evid. Code §§ 1043-1046 [requiring disclosure of complaints and discipline of officers involved in arrest to arrestees]; CPRA § 6254, subd. (f) [requiring public disclosure of certain police incident report information].) To underscore this point, the Pitchess Statutes themselves compel disclosure of officers' names to the very people that have the most incentive to retaliate against officers — *e.g.*, the persons they have arrested or the families of those they killed who bring wrongful death or other claims. (*Cf.* Order, p. 14; *Post, supra,* 42 Cal.4th at pp. 301-03 [officer identifying information is routinely available from other sources, even to those who are arrested]; Penal Code §§ 832.7, 832.8; Evid. Code §§ 1043-1046.)

The names of officers involved in shootings are also contained in many documents outside of any officer personnel files generated in the normal course of Long Beach Police Department operations, including "duty logs, incident reports, radio transmissions, audio devices, public safety statements, and the like." (Clerk's Transcript 000119-00020, 000123-124, 000127, 000133; Order, p. 7.)[1] They are also

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[1] As the Long Beach police manual further documents, the names of such officers linked to specific shootings are disseminated to, and therefore known by, many persons, *e.g.*, the officers' supervisors, watch, division and incident commanders, homicide supervisors, field sergeants and related personnel, patrol officers securing the scene, homicide detail personnel, officer involved shooting (OIS) personnel, peer officers, internal affairs personnel, department psychology personnel, Peace Officer Association

known by public witnesses to the shooting, others involved in the shooting, and on-duty officers at the scene, among others.

Therefore, in accordance with controlling legal authority, the names of officers linked to shootings are public, not secret, information that must be disclosed to the public upon request, including the *Times*. (*New York Times, supra,* 52 Cal.App.4th 97.) Appellants' disingenuous "bootstrapping" of the police department's automatic investigation of officer-involved shootings to each officer's name fails to invoke the *Copley* holding as Appellants contend, and *New York Times, supra,* 52 Cal.App.4th 97 controls instead. (*Ibid.*; *Copley Press v. Superior Court* (*Copley*) (2006) 39 Cal. 4th 1272; Pen. Code §§ 832.7, 832.8; City's Reply Brief, pp. 1-2; 10-13; LBPOA Reply Brief, p. 4.)

A. California's Attorney General and the Superior Court Have Confirmed This Court's *New York Times* Decision Remains Binding and Mandates Public Disclosure of Officers' Names, And the Supreme Court Has Cited That Decision With Approval

LBPOA argues that *Copley, supra,* 39 Cal. 4th 1272, is controlling here. (*See* LBPOA Reply Brief, p. 4.) It is not. As the Attorney General and the Superior Court correctly held, no legal authority

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representatives, the Chief of Police, various deputy chiefs, members of the shooting review board, training personnel, and perhaps others. (*See* Request for Judicial Notice, Exhibit A to Declaration of Christina L. Checel (the Police Manual), pp. 3-6, 10-13.)

shields public disclosure of officers' names simply because they are linked to shootings. (*See* Order, *passim;* 91 Ops. Cal. Atty. Gen. 11.)

1. The California Attorney General's Decision Correctly Analyzed Why Officers' Names Must Be Publicly Disclosed Absent a Particularized Showing Of Harm

In May 2008, the Office of the California Attorney General was asked by law enforcement whether the names of officers involved in "critical incidents" must be publicly disclosed. In a correctly reasoned decision, the Attorney General opined that they must be in accordance with all existing authority:

> In response to a request made under the California Public Records Act [CPRA] ***for the names of peace officers involved in a critical incident,*** such as one in which lethal force was used, ***a law enforcement agency must disclose those names*** unless, on the facts of the particular case, the public interest served by not disclosing the names clearly outweighs the public interest served by disclosing the names.

(91 Ops. Cal. Atty. Gen. 11 at p. *1 [emphasis added].)

The Attorney's General's decision rested on this Court's controlling decision in *New York Times, supra,* 52 Cal.App.4th 97, wherein the *Times* had requested the names of sheriff's deputies who had fired shots at a private citizen resulting in the citizen's death. After the superior court denied access to those names, this Court reversed, ruling that the CPRA requires that the officers' names be publically disclosed. (*Id.* at pp. 99-100,

103-05.) This Court correctly reasoned that a request encompassing "***simply the names of officers who fired their weapons while engaged in the performance of their duties,***" just as the *Times* requested here, did not, in itself, call for production of confidential peace officer "personnel records," as would a request for information concerning citizen complaints against peace officers (distinguishing *City of Richmond v. Superior Court* (1995) 32 Cal.App.4th 1430, 1440 [holding same]), or requests for reports on an internal investigation involving a peace officer (distinguishing *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1416 [holding same]). (*Id.* at pp. 102-104; *cf. In re Matter of Hearst* (N.Y. 2010) 15 N.Y.3d 795 [officer identification tags (gun tags) on assault rifles are not "personnel records" exempted from public disclosure].) This Court aptly concluded that the deputies' names could be "readily provided ... without disclosure of any portion of the deputies' personnel files," and would "reveal no deliberative process" of any internal investigation connected to the shooting. (*Ibid.*) The Attorney General therefore correctly opined that this controlling authority requires law enforcement to publicly disclose the names of officers involved in critical incidents, absent some compelling safety reason shown by law enforcement to delay or prevent public disclosure of any officer's name. (91 Ops. Cal. Atty. Gen. 11 at p. *2.)

Notably, this Court expressly negated in *New York Times, supra,* Appellants' argument that linking officer names to an "automatic

investigation" renders them "private" information. (LBPOA Reply Brief, pp. 4-6; City Reply Brief, pp. 1, 4-7.) This Court made clear that "[u]nder Penal Code sections 832.7 and 832.8, an individual's name linked to a critical incident is not exempt from disclosure." (52 Cal.App.4th at p. 101; City Reply Brief, pp. 4-7.) This is true even where, as here, those names "were determined as a result of an investigation [by the sheriff's department] that is standard procedure when a shooting occurs ...." (*Id.* at p. 103.) Put simply, such an investigation reveals nothing about any "discipline" or even any "selective" investigation of any officer. Accordingly, Appellants attempt to annex the police department's "automatic investigation" of shootings to each officer's name in an attempt to prevent their disclosure under the Pitchess Statutes has already been fatally rejected by this Court. (*Ibid.*)

2. The Attorney General Correctly Confirmed The *Copley* Decision Did Not Overrule The *New York Times* Decision

The Attorney General's analysis did not stop with the *New York Times* decision. The Attorney General next confirmed the Supreme Court's decision in *Copley, supra,* 39 Cal.4th 1272 did not create a "conflict" with the ruling in *New York Times, supra*, as law enforcement there and LBPOA here erroneously contends. (LBPOA Reply Brief pp. 4-7; 91 Ops. Cal. Atty. Gen. 11 at p. *3.) *Copley* involved the appeal of a

deputy sheriff ***already disciplined by his employer because of a citizen complaint*** to the San Diego County Civil Service Commission. The Supreme Court, in a narrow ruling, held the identity of the ***disciplined officer in a disciplinary proceeding based on a citizen complaint*** is protected from disclosure under Penal Code section 832.7, subdivision (a), which expressly protects "'the ***identity of officers' subject to complaints***." (*Id.* at p. 1297 [emphasis added].)[2] In so ruling, and to the extent language in the *New York Times'* decision could be read to hold that an officer's name could ***never*** be exempt from disclosure, the Supreme Court qualified that language only to allow withholding of officer names in connection with "disciplinary" records, or "[c]omplaints, or investigations of complaints," protected by the Pitchess Statutes. (*Id.* at p. 1298.) As the Attorney General therefore correctly concluded, this qualified change to the *New York Times'* language did not overrule its central holding that a peace officer's name is generally subject to disclosure. (91 Ops. Cal. Atty. Gen. 11 at p. *3.) The Attorney General reemphasized this point:

> To look at it another way, *New York Times* holds that the name of an officer involved in a given incident ***must be disclosed as long as the***

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[2] Notably, the Supreme Court expressed no opinion regarding whether the public has a constitutional right to attend Civil Service Commission hearings of officers, which would necessarily reveal their identity. (39 Cal.4th at p. 1304, fn. 27.) The ruling was limited to the records protected by the Pitchess Statutes. (*Ibid.*)

> ***disclosure does not reveal confidential information from the officer's personnel file, or endanger either the integrity of an investigation or the safety of a person.*** (52 Cal.App.4th at 102-103.) This rule simply does not apply to the circumstances presented in *Copley*, where a peace officer's name was sought ***precisely because of its connection with a confidential disciplinary proceeding.*** Therefore, we conclude that *Copley* did not overrule the central holding of *New York Times*.

(91 Ops. Cal. Atty. Gen. 11 at p. *3 [emphasis added].)

Here, it is undisputed that the *Times* did not request that law enforcement identify officers involved in disciplinary proceedings or that had received citizen complaints — much less whether any specific officers were being investigated. The *Copley* decision is therefore not controlling here. (*Copley, supra,* 39 Cal.4th at p. 1297; Order, pp. 7-8, 12-25.)

3. The Supreme Court's *Post* Decision Further Confirmed The Correctness of the *New York Times* Decision

The Attorney General also reviewed the Supreme Court's decision in *Post, supra,* 42 Cal.4th 278, wherein the Supreme Court itself confirmed its own narrow holding in *Copley, supra*. *Post* involved a media request for the names, employing departments, and employment dates of numerous peace officers from a statewide organization that collects such data. The superior court denied the request, finding the information was protected as "personnel records" under Penal Code section 832.7 — the

same provision Appellants rely on here. (City Reply Brief, p. 5; LBPOA Reply Brief, p. 4.) The Supreme Court reversed, holding such information did not constitute protected "personnel records" and was instead subject to public disclosure. (*Id.* at pp. 298-303.) The Supreme Court emphasized that *Copley, supra,* protected only the identity of officers involved in disciplinary proceedings, and then quoted with approval this Court's *New York Times* decision allowing public access to the names of officers involved in critical incidents:

> The public's legitimate interest in the identity and activities of peace officers is even greater than its interest in those of the average public servant. 'Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. ***In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officer.'***

(*Id.* at p. 297 [quoting *New York Times, supra,* 52 Cal.App.4th at pp. 104-105].) As the Attorney General noted, it is highly doubtful that the Supreme Court would have cited *New York Times* with approval if it had overruled it one year earlier in *Copley*. (91 Ops. Cal. Atty. Gen. 11 at pp. *3-4.)

The Attorney General therefore correctly concluded that, "because the name of an officer involved in a critical incident does not, in itself, reveal confidential information from the officer's personnel file as defined by Penal Code section 832.8, subdivision (e), the name *may not* be

withheld under Government Code section 6254, subdivision (k) [*e.g.*, the "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law"].) (91 Ops. Cal. Atty. Gen. 11 at p. *2-4.)

4. The Superior Court Correctly Agreed With The Attorney General and the *New York Times* Decision In Ordering Disclosure Of Officer Names Here

Based on the same controlling authority the Attorney General relied on, the Superior Court also found the *Times'* request for names alone of officers involved in shootings did not seek information from officer "personnel records," and therefore Penal Code sections 832.7 and 832.8 do not apply. (Order, pp. 19-22.) In so ruling, the Superior Court exhaustively reviewed each of the categories of protected "personnel file" information contained in 832.8 — ***none of which protect the officer's name or the name when linked to a "critical incident" as Appellants admit*** — and ruled that linking an officer's name to a critical event is not "personal" to the officer in the same way information like the officer's medical information is "personal" under the Pitchess Statutes. (*Ibid.*; City Reply Brief, p. 5 [admitting the plain language of section 832.8 does not list "an officer's name" as part of the enumerated categories of protected information].) Moreover, Section 832.7, subdivision (e) by its express terms applies only to "[c]omplaints, or investigations of complaints" by

citizens, which are not at issue here.[3] The Superior Court therefore correctly concluded, "a police shooting is an event of public concern," rather than "an unwarranted invasion" of the officers' privacy, and the Pitchess Statutes simply do not apply. (*Id.* at p. 22.)

The Superior Court then similarly distinguished *Copley, supra,* as the Attorney General had, on the grounds the *Copley* decision pertained only to a request "for disciplinary" information about an officer, and "all the *Times* is asking for is the identity of officers involved in shootings ... [not] whether these officers were disciplined, promoted, or about how the shootings affected the officers' performance evaluations." (*Id.* at p. 21.) The Superior Court also underscored that the identity of an officer involved in a shooting originates outside the officer's personnel file:

> Information about the names of officers involved in shootings would not come from the officers' personnel files. It might also be contained in the personnel files, but that alone doesn't transform it into confidential

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[3] In fact, Appellants' argument that the statutory language is clear, needing no rules of statutory construction or other interpretation, is curious given that nowhere in the plain language of Penal Code sections 832.7 or 832.8 is there any reference to withholding of officer names or withholding of such names if the officer is linked to a shooting. (City Reply Brief, p. 10.) Their further reliance on the Ralph M. Brown Act is more curious given that the Act actually requires public employee misconduct to be publicly reported. (Govt. Code § 54957.1(a)(5) ["Action taken to . . . dismiss . . . or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held."].)

> information. On the contrary, the information would have originated outside the officers' personnel files, and would be kept in any number of alternative sources.

(Order, pp. 10-11.) Because the release of a pure name of an officer in connection with the fact of a shooting says nothing about "discipline" or any "complaints or investigations of complaints" about the officer, or the "personnel file," the Superior Court ruled, as did this Court, that release of this information is not protected under the Pitchess Statutes, at least absent strict compliance with the *New York Times* test. (Order, pp. 21-22.)

Accordingly, contrary to Appellants' argument that the *Copley* decision is controlling, it is not even applicable as the Pitchess Statutes simply do not apply. The fact that the Long Beach police department conducts automatic investigations of all shootings is simply a "red herring."

B. LBPOA Also Has No Standing To Assert Officers' "Privacy" Interests In This Litigation

1. LBPOA Attempts to Create Rights Where None Exist In Arguing It Has Standing

LBPOA argues it has "standing" to be heard in this lawsuit to protect its members "privacy" rights in the linking of their public names with automatic investigations of all shootings — notwithstanding the clear controlling authority to the contrary — because California's Civil Code section 3523 states, "For every wrong there is a remedy." (LBPOA Reply

Brief, pp. 7-11; *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 434-35 [affirming the sole remedy under the CPRA]; *New York Times, supra,* 52 Cal.App.4th at pp. 99-100, 103-05.) LBPOA therefore argues that standing is conferred under Civil Code section 3523 to protect its members constitutional rights of privacy. (Cal. Const. art. I, § 3 [right to privacy].)

But LBPOA engages in bootstrapping in trying to convert rights that it claims are conferred by the Pitchess Statutes into purported constitutional privacy rights. (*People v. Belmares* (2003) 106 Cal.App.4th 19, 27-20 [a litigant cannot bootstrap a claim of a statutory violation into a claim of a constitutional violation].) LBPOA cites ***no case*** establishing such a right of privacy in an officer's name with or without linking it to a shooting, nor could it. That purported "privacy right" is granted, if at all, only by statute, therefore raising no question about the constitutionality of the CPRA if it is interpreted to deny third parties leave to intervene as the Supreme Court has ruled. (*Filarsky, supra,* 28 Cal.4th at 434-35. *See also* LBPOA Reply Brief at pp. 9-10; Respondent's Brief at pp. 66-76.)

In any event, shooting people is never a "private" matter. Rather, it is a core matter of public concern, as the Supreme Court has recognized. (Order, p. 17 [citing *Post*, 42 Cal.4th at p. 297 ["The public's legitimate interests in the identity and activities of peace officers is even greater than its interest in those of the average public servant"], *cf.* p. 300 ["The public has a legitimate interest … in the conduct of individual

officers"]; *cf. New York Times*, *supra*, 52 Cal.App.4th at p. 105 [disclosure of officer names "is all the more a matter of public interest when those officers use deadly force and kill a suspect"].) Accordingly, police officers involved in shootings have no ***"privacy interest"*** to assert in their names, "unless the officer demonstrates some particularized threat to his/her safety," as this Court and the Superior Court correctly held. (Order, p. 17, citing *New York Times, supra*, 52 Cal.App.4th at pp. 99-105]; *cf. Post*, 42 Cal. 4th at pp. 299-03 [confirming generalized "privacy and safety interests of peace officers ... do not outweigh the public's interest in the disclosure" of officers' names as a "police officer's privacy interest in his or her identity" is "insubstantial"].)

Indeed, many officer shootings take place in public places, witnessed by members of the public, and are therefore not even "private events," much less "private information" about an officer, unlike Appellant's superfluous cancer example. (*Post*, 42 Cal.4th at p. 301 [police officers "operate in the public realm"]; City Reply Brief, p. 6 [cancer example].) In fact, as previously stated, an officer's name, complaints and discipline are compelled by the Pitchess Statutes to be disclosed by law to those with the most incentive to retaliate against them — *e.g.*, those they arrest (Penal Code §§ 832.7, 832.8; Evid. Code §§ 1043-1046) and the families of those they kill. (Order, p. 14; *Post, supra,* 42 Cal.4th at pp. 301-03 [identifying information is routinely available from other sources, even

to those who are arrested]; Penal Code §§ 832.7, 832.8; Evid. Code §§ 1043-1046; *see, also* Section II, *supra*.)

Civil Code section 3523 further does not create any new substantive rights, including any "privacy rights," and the Pitchess Statutes by their express terms do not protect officers' identities with or without an "automatic" investigation into shootings. (Cal. Pen. Code §§ 832.7, 832.8; *Mega Life and Health Ins. Co. v. Superior Court* (2009) 172 Cal.App.4th 1522, 1526 [Civil Code section 3523 does not create substantive rights; this "wholesome maxim of jurisprudence … can obviously have no application to any but legal wrongs or those wrongs for which the law authorizes or sanctions redress"]; *New York Times, supra,* 52 Cal.App.4th at pp. 99-100, 103-05.) Because LBPOA's privacy rights are subject only to the exemptions enumerated in the Pitchess Statutes and the related CPRA exemptions, and because those exemptions do not include officer names or involvement in critical incidents like the shootings at issue here, as a matter of law LBPOA has ***no privacy interests*** to protect, and therefore no standing to protect those non-existent "privacy rights." (*Ibid.*; *cf. New York Times*, 52 Cal.App.4th at pp. 104-05 [the "privacy of individuals whose personal affairs are recorded in government files is as important as, but narrower than, the fundamental interest of the public in disclosure of information that "' … permits checks against the arbitrary exercise of official power and secrecy …."].)

LBPOA should also not be allowed to argue for the first time on appeal in its Reply Brief that its constitutional "privacy rights" surpass and trump any privacy rights that may have been afforded by the Pitchess Statutes. (*See* court file, *passim;* Reply Brief, pp. 7-11; *Children's Hosp. & Med. Ctr. v. Bonta* (2002) 97 Cal.App.4th 740, 776–777 [argument not raised in trial court is waived].) Accordingly, this argument fails.

2. The Pitchess Statutes' Legislative History Also Makes Clear That the Legislature Did Not Create a Privacy Right In the Names of Officers' Involved in Shootings

The legislative history behind the Pitchess Statutes makes clear the statutes apply only to pure law enforcement personnel files and citizen complaint records, as the primary abuses for which they were enacted was to curb "the practice of record shredding" by police departments of evidence of misconduct, and "discovery abuse" by litigants routinely requesting officers' personnel files as a fishing expedition — not to protect officer privacy. (*See, e.g., San Francisco Police Officers' Assn. v. Superior Court* (1988) 202 Cal.App.3d 183, 189-190 [the legislative history shows the Pitchess Statutes were enacted require a uniform statewide procedure for police departments to keep and investigate citizen complaints, and to curtail police record-shredding and litigant discovery abuse], citing *People v. Superior Court* (1979) 24 Cal.3d 428, 434 ["It is

reasonable to presume the Legislature [acted] with the intent and meaning expressed in the Legislative Counsel's digest].) Therefore, California's Legislature, as well as its Supreme Court, have made clear that officer names are not "private information" protected by the Pitchess Statutes, at least absent a demonstrated compelling safety reason, and that they must be publicly disclosed. (*New York Times, supra,* 52 Cal.App.4th at pp. 99-100, 103-05; *Post, supra*, 42 Cal.4th at p. 303.) Appellants have no authority to the contrary.

III. TRANSPARENCY IN THE IDENTITY OF POLICE OFFICERS INVOLVED IN SHOOTINGS IS IMPERATIVE TO A DEMOCRATIC SOCIETY

Peace officers are public employees who wield awesome power in our society, and must be held accountable to the public. (*See CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651 ["Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process."]; *id.* at pp. 665-666 [also recognizing the public's right to know about the operation of its government ....]; *Post, supra,* 42 Cal.4th at p. 288-98, citing *New York Times, supra,* 52 Cal.App.4th at pp. 103-105 ["Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the

state," and public accountability is required to maintain the public's trust]; *San Francisco Police Officers' Assn. v. Superior Court* (1988) 202 Cal.App.3d 183, 191 [same].)

Because officers are charged with the authority and responsibility to enforce the laws of the state, public scrutiny of police conduct lies at the heart of a trustworthy, effective law enforcement system. (*Post, supra,* 42 Cal.4th at pp. 297-302; *see, also,* Chemerinsky, *The Rampart Scandal: Policing The Criminal Justice System, An Independent Analysis of The Los Angeles Police Department's Board of Inquiry Report on the Rampart Scandal*, 34 Loy. L. Rev. 545 [discussing the need for public scrutiny of police departments]; Geraghty and Velez, *Bringing Transparency and Accountability to Criminal Justice Institutions in the South*, 22 Stanf. L. & Pol. Rev. 455 [discussing the need for public scrutiny, and noting "no good comes from permitting government officials to perform their duties in secret," and that "public scrutiny is often a prerequisite for changing harmful, entrenched practices"]; Luna, *Transparent Policing*, 85 Iowa L. Rev. 1107 [discussing the importance of transparent police activity].)

Widespread concern about America's serious police misconduct problems and the failure of its internal police disciplinary procedures to curb brutality is prevalent both domestically and abroad. (*See, e.g.,* Chemerinsky, *The Rampart Scandal, supra,* 34 Loy. L. Rev. 545;

Luna, *Transparent Policing*, *supra,* 85 Iowa L. Rev. 1107*; see, also,* Amnesty International Report on Race, Rights and Police Brutality (http://www.amnesty.org/en/library/asset/AMR51/147/1999/en/735f2b8c-e038-11dd-865a-d728958ca30a/amr511471999en.pdf).) Such concern includes the rise in documented patterns of police misconduct across the United States, including unjustified shootings, the failure of internal police systems to monitor or check abusers due to officer "codes of silence," and racial and ethnic discrimination. (*Ibid.*) Substantial taxpayer dollars are spent to pay for police abuse, to train law enforcement to deal with police brutality and unlawful misconduct, to pass legislation to stem it, and to investigate and prosecute officers in an effort to curb further misconduct. (*Ibid.*) Thus, police misconduct and effective prevention are serious, expensive issues in our society that deserve public scrutiny.

In *Post, supra*, the Supreme Court recognized how police abuse and lack of public oversight of law enforcement "can have great potentiality for social harm." (42 Cal.4th at p. 299 [citing numerous state courts addressing same].) In order to maintain public trust and accountability, the public simply must be kept informed of police conduct, including lethal shootings. (*Ibid.; CBS, Inc. v. Block, supra*, 42 Cal.3d at p. 651; *Post, supra,* 42 Cal.4th at p. 300; *cf. New York Times, supra,* 52 Cal.App.4th 97 at pp. 104-105, citing supporting case law from other states.) Public disclosure is especially crucial when officers are perceived

to have wrongly used lethal force to abuse or kill someone, as other states agree. (*Ibid. See, also, Direct Action for Rights and Equality v. Gannon* (R.I. 1998) 713 A.2d 218, 224-25; *Great Falls Tribune Co., Inc. v. Cascade County Sheriff* (Mont. 1989) 775 P.2d 1267, 1269; *State of Hawaii Org. of Police Officers v. Society of Prof'l Journalists* (Haw. 1996) 927 P.2d 386, 405; *State ex rel. Police Officers for Equal Rights v. Lashutka* (Ohio 1995) 648 N.E.2d 808, 809-10.)

Public service is a public trust. Because officer-involved shootings are of significant public concern, the public should be entitled to know who was involved, to investigate on their own and draw their own conclusions regarding the officers involved, and to press for reforms if needed. (*See, e.g.,* Chemerinsky, *The Rampart Scandal, supra,* 34 Loy. L. Rev. 545.) The public oversight necessity is particularly acute in communities plagued by police scandals, like the Los Angeles geographic area. (*Ibid.*) Anonymous killings undermine the relationship of trust and confidence between the police and the citizenry that is essential to law enforcement. A citizenry's full and fair assessment of a police department's use of lethal force promotes the core value of trust between citizens and police essential to law enforcement and the protection of constitutional rights. Police shootings simply must be exposed to the light of human conscience and publicly debated.

Public scrutiny may also compel officers to be more honest, as they may be subject to demanding analysis by people with knowledge of the events and considerable incentive to make sure the truth comes out. As the court in *Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester* (Mass. 2003) 787 N.E.2d 602, 607, stated, "It would be odd, indeed, to shield from the light of public scrutiny ... the workings and determinations of a process whose quintessential purpose is to inspire public confidence." The public must possess the ability to assess the thoroughness, impartiality, and correctness of the conduct of officers in uniform and the public whose interests they have sworn to serve.

Accordingly, police accountability for officers involved in shootings is imperative to the effective functioning of our democratic society, and revealing the names of officers involved in shootings is crucial to that accountability. Our democracy simply cannot accept the proposition that police may anonymously kill people.

IV. CONCLUSION

Law enforcement is not entitled to the absolute, unfettered authority to act as judge and jury on the question of what information about their performance of their public duties the public has a right to see, and most crucially, regarding lethal shootings. The public has a strong interest in itself assessing the legitimacy of officer-involved shootings. As

controlling legal authorities demonstrate, the Superior Court's Order, based on the controlling *New York Times* decision, that the City of Long Beach release the names of officers involved shootings to the *Times* as it requested is correct, and that Order should be affirmed forthwith.

Dated: October 19, 2011

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

The text of this brief consists of 5,381 words as counted by the Microsoft Word XP processing system used to generate this brief and therefore is in compliance with the length requirements pursuant to California Rules of Court, Rules 8.204 (c)(1).

Dated: October 19th, 2011

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PROOF OF SERVICE

Long Beach Police Officers Association v. City of Long Beach, et al.
Case No. B231245

I am employed in the County of San Diego; I am over the age of eighteen years and not a party to the within entitled action; my business address is 501 West Broadway, 19th Floor, San Diego, California 92101-3598.

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BRIEF OF AMICI IN SUPPORT OF LOS ANGELES TIMES COMMUNICATIONS LLC

on interested party(ies) in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

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Anjali B. Strauss

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