

Declaration". It is unclear what document is meant by the "Order After Hearing OSC", but none of the documents listed on the proof of service are obviously either the Court's Order to Show Cause re: Contempt signed April 9, 2021, or the Final Order that plaintiff was ordered to prepare, submit and serve, but failed to do. The Court therefore will proceed only upon a showing by Plaintiff of service sufficient to establish jurisdiction to do so.

If the Court finds Defendants were properly served with notice of the hearing, and Defendants fail to appear, the Court will issue a bench warrant for the arrest of Defendant Phil Paisley as an individual defendant and principal of defendant Interbill Corporation. If all parties are present, the Court will arraign the defendants, including informing them of their right to counsel. The time and place for an evidentiary hearing shall then be set. The Court notes that the declaration of James MacLeod is not signed or dated. As to the request to seal documents, an additional application supported by a sufficient showing is required under CRC Rule 2.550-2.551.

2.3. SCV-266378, Spaghetini, LP, dba Spaghetini Italian Grill v. Fireman's Fund

Tentative Ruling: Plaintiff's unopposed *pro hac vice* applications to allow attorneys Samuel B. Dordick and Marni S. Bergerto to represent Plaintiff in this action are GRANTED.

Unless oral argument is requested, the Court will sign the proposed orders lodged with the applications.

4. SCV-267581, Essick v. County Counsel Robert Pittman

Tentative Ruling: This reverse Public Records Act (PRA) action is on calendar pursuant to Petitioner Sheriff Mark Essick's request for a preliminary injunction to enjoin the Respondents County of Sonoma and County Counsel Robert Pittman from disclosing a "confidential report" and related documents to the Press Democrat in response to a December 10, 2020 Public Records Act request. The subject report and related documents were prepared by an outside investigator following a complaint lodged by Sonoma County Supervisor Linda Hopkins against Sheriff Essick on August 21, 2020 following an August 20, 2020 telephone call between the two. The subject PRA request seeks "[a]ny harassment complaints against Sonoma County Sheriff Mark Essick filed, reported or investigated in 2020, and any associated documents."

On December 16, 2020, the County informed Sheriff Essick that, absent a protective order, it would produce the documents, including Supervisor Hopkin's complaint, the investigative report, the

executive summary, and the “Formal Notice of Outcome of Investigation,” to the Press Democrat on December 24, 2020. Sheriff Essick filed an ex parte application for a temporary restraining order to prevent the disclosure, which request was granted. This hearing was set to determine whether a preliminary injunction should issue. The parties briefed the issues and, after being given notice of the hearing, the Press Democrat declined to intervene in the action.

After an exhaustive review of the legal authorities, consideration of the parties’ briefs and supporting documentation, and careful application of the law to the facts presented here, the Court DENIES Petitioner’s request for a preliminary injunction enjoining the County from disclosing the identified records in response to the Press Democrat’s PRA request. Sheriff Essick has failed to show that the subject records qualify as “personnel records” under Penal Code section 832.8 because: (1) the records are not maintained by Sheriff Essick’s “employing agency;” (2) the records do not involve Sheriff Essick’s “advancement, appraisal, or discipline;” and (3) the records do not pertain to the manner in which Sheriff Essick performed his duties as a peace officer. (See, Penal Code §832.8; see also, *Pasadena Police Officers Assn. v. Superior Court*, (2015) 240 Cal.App.4th 268, 290 [petitioner seeking to prevent disclosure under the Public Records Act has burden to show records qualify for exemption under Government Code section 6254(k).]) Thus, Sheriff Essick has not shown he is entitled to a preliminary injunction. The temporary restraining order is vacated.

However, the vacation of the TRO and effect of this order is STAYED for twenty (20) days following service of entry of a final order to allow Sheriff Essick to seek an extraordinary writ if he so chooses. (See, Gov. Code §6259(c) [an order of the court “directing disclosure by a public official... shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon the party of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow.”].)

1. Standard for Granting a Preliminary Injunction.

The purpose of a preliminary injunction is to prevent irreparable harm and to preserve the *status quo* pending a final determination of the action on the merits. (*Jamison v. Dep’t of Transp.*, (2016) 4 Cal.App.5th 356, 361, see also, *SB Liberty, LLC v. Isla Verde Assn., Inc.*, (2013) 217 Cal.App.4th 272, 280.) The granting or denying of a request for preliminary injunction does not amount to an adjudication of the ultimate rights in controversy but merely determines that the court, balancing the equities of the parties, concludes that, pending a trial on the merits, the defendant should or should not be restrained from exercising the right claimed. (*Ibid.*)

“In deciding whether to issue a preliminary injunction, a trial court must evaluate two interrelated factors: (i) the likelihood that the party seeking the injunction will ultimately prevail on the merits of his

[or her] claim; and (ii) the balance of harm presented, *i.e.*, the comparative consequences of the issuance and nonissuance of the injunction.” (*Ibid*; see also, *Integrated Dynamic Sols., Inc. v. VitaVet Labs, Inc.*, (2016) 6 Cal.App.5th 1178, 1183 [“A trial court may grant a preliminary injunction upon a showing that (1) the party seeking the injunction is likely to prevail on the merits at trial, and (2) the ‘interim harm’ to that party if an injunction is denied is greater than ‘the [interim] harm the [opposing party] is likely to suffer if the...injunction is issued.’”], citing, *SB Liberty, LLC, supra*, 217 Cal.App.4th at 280.) The trial court’s determination whether to issue a preliminary injunction operates on a sliding scale and the greater the plaintiff’s showing on one; the less must be shown on the other to support an injunction. (*Ibid*, citing *Butt v. State of California*, (1992) 4 Cal.4th 668, 678.)

2. California Public Records Act Generally.

The Legislature enacted the Public Records Act in 1968 to clarify the scope of the public’s right to inspect records. (*County of Los Angeles v. Superior Court*, (2000) 82 Cal.App.4th 819, 825.) The PRA was intended to increase freedom of information by giving members of the public access to information in the possession of public agencies. (*Becerra v. Superior Court*, (2020) 44 Cal.App.5th 897, 913, citing Gov. Code §6250; see also, *Long Beach Police Officers Assn. v. City of Long Beach*, (2014) 59 Cal.4th 59, 66-67; *Los Angeles Unified School District v. Superior Court*, (2014) 228 Cal.App.4th 222, 237.) The Act is premised on the principle that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” (Gov. Code §6250; see also, *Becerra, supra*, 44 Cal.App.5th at 913, quoting *Los Angeles County Bd. of Supervisors, supra*, 2 Cal.5th at 290; *CBS, Inc. v. Block*, (1986) 42 Cal.3d 646, 651, fn. 5.) In furtherance of this goal, the Supreme Court has declared that “[m]aximum disclosure of the conduct of governmental operations” is necessary. (*CBS, Inc., supra*, 42 Cal.3d at 651-652.)

As the result of a voter initiative passed in 2004, the PRA’s principles are now enshrined in the state Constitution: “The people have the right of access to information concerning the conduct of the people’s business, and, therefore...the writings of public...agencies shall be open to public scrutiny.” (Cal. Const., art. I, § 3(b)(1); see also, *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court*, (2007) 42 Cal.4th 319, 329.) The PRA embodies a strong policy in favor of access and must be construed broadly. (Cal. Const., art. I, § 3(b)(2); see also, *Becerra, supra*, 44 Cal.App.5th at 913 [“the CPRA must be ‘broadly construed’ because its statutory scheme ‘furthers the people’s right of access.’”].)

3. Exceptions to Disclosure Under the Public Records Act.

“[T]he act does not confer an absolute right of access” however and “[a]s part of the CPRA, the Legislature included a provision declaring it was ‘mindful of the right of individuals to privacy.’” (*Becerra, supra*, 44 Cal.App.5th at 913, quoting Gov. Code §6250.) “This express policy declaration ‘bespeaks legislative concern for individual privacy as well as disclosure.’” (*Becerra,*

quoting *Copley Press, Inc. v. Superior Court*, (2006) 39 Cal.4th 1272, 1282.) “In the spirit of this declaration, judicial decisions interpreting the [CPRA] seek to balance the public right to access to information, the government’s need, or lack of need, to preserve confidentiality, and the individual’s right to privacy.” (*Becerra* at 913-914, quoting *Copley Press, Inc.*, *supra*, 39 Cal.4th 1272, 1282.) “The CPRA balances the dual concerns for privacy and disclosure by providing for various exemptions that permit public agencies to refuse disclosure of certain public records.” (*Becerra* at 914, citing Gov. Code §§6254–6255.) For instance, the CPRA does not require agencies to permit public inspection of records that are exempted or prohibited from public disclosure pursuant to federal or state law, including Evidence Code provisions relating to privilege. (*Becerra* at 914, citing Gov. Code §6254(k).)

One of the established exceptions to disclosure, as Sheriff Essick argues here, is set forth in Penal Code section 832.7, also referred to as the “Pitchess” statute. Section 832.7 states in relevant part that “[t]he personnel records of peace officers and custodial officers and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code.” (Penal Code §832.7(a).) As is relevant here, section 832.8 defines “personnel records” as any file “maintained under that individual’s name by his or her employing agency” and containing records relating to “[e]mployee advancement, appraisal, or discipline” or “[c]omplaints, 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.” (Penal Code §832.8(a)(4)-(5).) Section 832.5 requires any department employing a peace officer to “establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies...” (Penal Code §832.5(a)(1).) These records “shall be retained for a period of at least five years” and “[a]ll complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer’s general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law.” (Penal Code §832.5(b).)

One of the fundamental purposes of the *Pitchess* statutes is to protect a police officer’s right of privacy in their personnel records. (See, *Copley Press, Inc. v. Superior Court*, (2006) 39 Cal.4th 1272, 1300; see also, *City of Santa Cruz v. Municipal Court*, (1989) 49 Cal.3d 74, 83–84 [statutory scheme includes “forceful directive” to consider privacy interests of the officers whose records are sought].) “In enacting the Pitchess statutes, the Legislature made policy choices, deciding which information should be public and which information should be exempt from disclosure, and ‘drew the line carefully, with due concern for the competing interests.’” (*Pasadena Police Officers Assn. v. Superior Court*, (2015) 240 Cal.App.4th 268, 285, quoting *Comm’n on Peace Officer Standards & Training v. Superior Court*, (2007) 42 Cal.4th 278, 298.) However, “[s]ince disclosure is favored, all exemptions are narrowly construed.” (*Am. Civil Liberties Union of N. Cal. v. Superior Court*, (2011) 202 Cal.App.4th 55, 67; see also, *Am. Civil Liberties Union Foundation v. Superior Court*, (2017) 3

Cal.5th 1032, 1042; *Long Beach Police Officers Assn. v. City of Long Beach*, (2014) 59 Cal.4th 59, 70; *County of Los Angeles v. Superior Court*, (2012) 211 Cal.App.4th 57, 63; *County of Santa Clara v. Superior Court*, (2009) 170 Cal.App.4th 1301, 1321.)

4. The Pitchess Statute Does Not Apply to the Records in this Case.

In his petition and subsequent briefs requesting the preliminary injunction, Sheriff Essick contends that the subject documents are protected from disclosure under Penal Code section 832.7 because they are “personnel records” maintained by his employer, Sonoma County. As explained above, the Code defines “personnel records” as “any file maintained under that individual’s name by his or her employing agency and containing records relating to...[e]mployee advancement, appraisal, or discipline” or “[c]omplaints, 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...” (Penal Code §832.8(a)(4)-(5).) The records sought here are distinguishable from those described in Penal Code section 832.8.

As argued by the County, for purposes of the Pitchess statute, the Sheriff’s Department is Sheriff Essick’s “employing agency,” not the County or the Board of Supervisors. The Board of Supervisors is the “agency” that received Supervisor Hopkins’ complaint, retained the investigator, and received the investigator’s report. (County’s Opposition at 4:17-19.) In doing so, it was not acting on behalf of the Sheriff’s Department, nor was this action because any sort of disciplinary or investigatory function required to be completed by the Sheriff’s department had been outsourced to it. The facts of this case are therefore distinguishable from those in *Copley Press, Inc. v. Superior Court*, (2006) 39 Cal.4th 1272.

Indeed, Sheriff Essick is an elected official and the Board of Supervisors does not appoint him and has no power to discipline or remove him from office. (*Id.* at 4:19-21, citing, Cal. Const., art. XI, § 1(b) and Gov. Code §24205.) The Board of Supervisors does not keep a personnel file on Sheriff Essick and any such file is kept by his employer, the Sheriff’s Department. (*Id.* at 21-22.) The County argues that Sheriff Essick is not a County employee within the meaning of the Pitchess statutes merely because the County pays his salary. (*Id.* at 4:22-25, citing, Pet., ¶3; Sonoma County Code §21-5 [“The unclassified service shall consist of...(a) All officers elected by the people.”].) The Court agrees with this argument and finds that Sheriff Essick has failed to show that either Sonoma County, or the Board of Supervisors, is his “employing agency” for purposes of the Pitchess statute.

There is also no indication that the subject documents, or any of the information contained in them, relate Sheriff Essick’s “advancement, appraisal, or discipline.” Sheriff Essick is an elected official and neither the County, nor the Board of Supervisors, plays a role in appraising his performance or making decisions regarding his advancement and discipline. The documents at issue here were prepared by an independent investigator who was retained solely by the Board of Supervisors to investigate

Supervisor Hopkins' allegations. There is no evidence to show that any information contained in the documents comes from Sheriff Essick's actual "personnel file," which is presumably kept by the Sheriff's Department. Although the facts here are somewhat distinguishable, the case *Pasadena Police Officers Assn. v. Superior Court* is nonetheless illustrative of this point.

In that case, the City of Pasadena retained an independent consultant to review departmental policies following the shooting death of an unarmed teenager by a city police officer. (*Pasadena Police Officers Assn.*, *supra*, 240 Cal.App.4th at 274.) After the consultant completed its report, several groups, including the Los Angeles Times, made requests for the report under the Public Records Act. (*Ibid.*) The Pasadena Police Officers Association initiated a reverse-PRA action and after initially issuing a temporary restraining order, the trial court denied the request for a preliminary injunction and ordered the report disclosed, although the court agreed to redact certain portions of the report. (*Id.* at 274-275.)

The Court of Appeal denied the Association's writ and found that "[t]he trial court correctly concluded that the Report itself is a public document." (*Id.* at 275.) In its opinion the court stressed that "[o]nly records generated in connection with an administrative appraisal or discipline qualify as Pitchess protected personnel records and "[o]nly records that themselves reflect 'advancement, appraisal, or discipline' fall within the scope" of the statute." (*Id.* at 228, citing *Long Beach Police Officers Assn.*, *supra*, 59 Cal.4th at 71-72.) There was "no indication [the report] was intended to be used in connection with performance appraisals, or the advancement or discipline of the officers, and the [police department]...expressly affirmed that the Report will not be considered in future employment decisions involving those officers." (*Id.* at 289.) The court refused to "read the phrase 'records relating to...[e]mployee...appraisal[] or discipline' so broadly as to include every record that might be considered for purposes of an officer's appraisal or discipline, for such a broad reading of the statute would sweep virtually all law enforcement records into the protected category of 'personnel records.'" (*Id.* at 288, quoting *Long Beach Police Officers Assn.*, *supra*, 59 Cal.4th at 71-72.) Only records that themselves reflect 'advancement, appraisal, or discipline' fall within the scope of the Pitchess exemption. (*Ibid.*) Thus, while portions of the report culled from personnel records or officer statements made in connection with the police department's own investigation were protected, the majority of the report, which did not "constitute or relate to employee appraisal," was not protected. (*Id.* at 290.)

In this case, as in *Pasadena Police Officers Assn.*, there is no indication that the subject records could be used in performance appraisals, or the advancement or discipline of Sheriff Essick. Indeed, because the Board of Supervisors is not Sheriff Essick's "employing agency," it has no ability to discipline him, remove him from office, or directly affect his advancement.

Accordingly, because "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state" and based on the policy to broadly

construe the PRA and narrowly construe the exceptions, the Court concludes that Sheriff Essick has not met his burden to show the Pitchess statute applies in this case. Therefore, the request for a preliminary injunction is denied. This ruling is STAYED for twenty (20) days following service of entry of a final order to allow Sheriff Essick time to seek an extraordinary writ if he so chooses. (See, Gov. Code §6259(c).) It appears to the Court that this ruling disposes of all issues raised in the Petition, and that no new or different evidence would be presented at a trial on the matter. The matter is calendared on June 29, 2021 at 3:00 p.m. in Department 18 for discussion of whether further proceedings are necessary or whether judgment for Respondents should be entered, and for status of any possible extraordinary writ proceedings.

The County's counsel shall submit a written order to the Court that is consistent with the ruling and in compliance with Rule of Court 3.1312.

5. SCV-267931, In Re: R.M.

Tentative Ruling: Petitioner's unopposed petition for approval of transfer of payment rights for structured settlement is GRANTED. The Court finds that the Petition sufficiently complies with all statutory requirements; the 6.58% discount rate is fair and reasonable; and the proposed transfer is in Respondent's best interest. Accordingly, the Petition is granted and the proposed transfer is approved.

Petitioner's counsel shall submit a written order to the Court that is consistent with this tentative ruling and in compliance with Rule of Court 3.1312.

6. SPR-093097, Matter of Rosemary Ong 1992 Trust

Tentative Ruling: The hearing on Petitioner's motion for sanctions is **CONTINUED to June 23, 2021 at 3:00 PM in Department 18.** (The Court notes that the trial date of June 4, 2021 has been vacated.) Petitioner's April 23, 2021 Amended Declaration filed in support of the motion references Exhibits A-I and states those exhibits are attached. However, there are no exhibits attached to the declaration. Additionally, the original March 10, 2021 declaration references Exhibits A-F but again, there are no exhibits attached. Finally, the May 12, 2021 reply declaration references an Exhibit J and although there is an attachment to the declaration, it is not identified as Exhibit J. Accordingly, if Petitioner wants the Court to consider this motion on its merits, Petitioner should file and serve a supplemental declaration with all referenced exhibits clearly identified no later than May 28, 2021.