

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ROBERT QUIHUIS,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES et al.,

Defendants and Respondents.

B196367

(Los Angeles County  
Super. Ct. No. BS096271)

ORDER MODIFYING OPINION  
AND DENYING REHEARING

NO CHANGE IN JUDGMENT

THE COURT:

It is ordered that the opinion filed herein on January 28, 2008, be modified as follows:

On page 5, line 7, after the word “petition,” add the following as footnote 3:

*Moore v. City of Los Angeles, supra*, 156 Cal.App.4th 373 was decided after briefing in the instant case was completed. No previous appellate decision had held that a public safety officer must bring a claim under section 3309.5 in order to raise a statute of limitations defense that was not presented at the administrative hearing. Prior case law could be read as holding, to the contrary, that the administrative exhaustion requirement does not apply to officers’ assertion of their rights under the Act. (See *Mounger v. Gates* (1987) 193 Cal.App.3d 1248, 1255-1257.) Thus, when Quihuis filed his writ petition under Code of Civil Procedure section 1094.5, he had no reason to believe that he would be barred from presenting his statute of limitations defense if he failed to bring an action under section 3309.5 as well.

This modification does not affect the judgment. Respondents' petition for rehearing is denied.

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JACKSON, J.\*

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VOGEL, Acting P. J.

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ROTHSCHILD

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\* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.