PEACE OFFICER STANDARDS ACCOUNTABILITY ADVISORY BOARD MEETING

March 21, 2024
AGENDA
9:00 AM

The Peace Officer Standards Accountability Advisory Board (Board) operates under the requirements set forth by the Bagley-Keene Open Meeting Act (Bagley-Keene) under Government Code sections 11120 through 11132. Bagley-Keene generally requires that the Board publicly notice meetings, prepare agendas, allow public participation, and conduct meetings in a location accessible to public members unless specifically authorized by Bagley-Keene to meet in closed session.

Public comment will be limited in time at the discretion of the Board Chair. The public comment period preceding items on the agenda will allow members of the public to comment on items not on the agenda but must be within the Board's jurisdiction. Further, public comment will be allowed after each item on the agenda and must relate to matters on the agenda. Members of the public who wish to participate during public comment may do so in person by attending the meeting, by telephonic means stated hereafter or by submitting a written public comment submission no later than three days before the meeting date. Written public comments will be published on the Commission on POST's website under the Public Comment section under the corresponding meeting date. Written public comments can be submitted via email to posadpc@post.ca.gov. Telephonic public comment can be made by dialing +1 (224) 501-3412 and, when prompted, entering access code 510-442-157.

The Board cannot act on or deliberate on items not on the agenda, but only to the extent necessary to determine whether they should be made an agenda item at a future meeting, respond briefly to statements or questions posed during public comment, request clarification, or refer the item to staff. Agenda items may be taken out of order and action (e.g., voting) may be taken on any agenda item.

Persons requesting disability-related accommodations or modifications may do so by contacting the Board assistant at (916) 227-3909 (voice), posadpc@post.ca.gov (email), or Speech-to-Speech users may dial 7-1-1 for the California Relay Service to request special accommodations. Please note: This meeting and all public meetings will be recorded.

No weapons are allowed on the premises during public meetings. Upon entering POST's facility, you are subject to a weapons screening and will be denied entry if you possess any weapon. POST's Executive Director retains the discretion to grant exceptions for duly-authorized individuals, such as on or off-duty law enforcement officers who are not the subject of a POST administrative investigation, suspension, or decertification action.

I. CALL TO ORDER

II. ROLL CALL OF POSAAB MEMBERS

Elizabeth T. Buchen - Senate Rules Appointee - Public Member
Dr. Nicole Clavo Psy.D - Governor Appointee - Public Member
Regina Hatcher-Crawford - Governor Appointee - Public Member
Robert Doyle - Governor Appointee - Former Command Rank Peace Officer
Joyce E. Dudley - Chair - Governor Appointee - Attorney
Professor Jack Glaser - Governor Appointee - Public Member
Cephus Johnson - Governor Appointee - Public Member
Lieutenant Charles Lara - Governor Appointee - Management Rank Peace Officer
Margaret Pena - Speaker of Assembly Appointee - Public Member

III. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

The Board Chair will advise the audience of the following:

This time is set aside for members of the public who wish to comment on items not on the agenda but within the board's jurisdiction. Public comment on matters on the agenda will be heard at the time each item is called. Public comment on specific peace officer revocation cases to be heard today will be heard at the time of the hearing of each such matter. Members of the public who wish to speak during the public comment period may be asked to limit their remarks in time at the discretion of the Board Chair.

IV. ASSISTANT EXECUTIVE DIRECTOR COMMENTS

V. NEW BUSINESS

Peace Officer Standards Accountability Division (POSAD) Update

This item is for presented for information only. No action is required.

Report on Outcome of Case Review from the March 07, 2024 Commission Meeting

This report is for information only. No action is required.

Election of Vice Chair

The purpose of this item is to select a Vice Chair for 2024.

VI. APPROVAL OF MEETING MINUTES AND TRANSCRIPT

Approval of Meeting Minutes and Transcripts from the previous Peace Officer Standards Accountability Advisory Board Meeting held on December 13-14, 2023.

Approval of Meeting Minutes from the December 13, 2023 Meeting

If the Board concurs, the appropriate action would be a **MOTION** to approve the Meeting Minutes from the last Board meeting.

Approval of Meeting Transcript from the December 14, 2023 Meeting

If the Board concurs, the appropriate action would be a **MOTION** to approve the Meeting

transcript from the last Board Meeting.

VII. NEW CASES - REVIEW, DISCUSSION AND RECOMMENDATIONS TO COMMISSION

POST2311496 - Cesar Hazel Diaz (POST ID: C68-U20) Last employing agency: Los Angeles School District Police Department

The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigation presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

POST2300809 - Dillon Fuston (POST ID: C71-S10) Last employing agency: San Diego Police Department

The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigation presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

POST2300204 - David Wesley Hubbard (POST ID: C15-B77) Last employing agency: Kern County District Attorney's Office

The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigation presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

POST2322012 - Ivan D. Sarabia-Medina (POST ID: C12-A96) Last employing agency: Los Angeles County Sheriff's Department

The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigation presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

VIII. CLOSED SESSION

At this time the meeting will adjourn into closed session for deliberations on the cases presented today.

IX. FUTURE BOARD MEETING DATES

Upcoming Board meetings will be held:

- May 15-16, 2024 - POST, West Sacramento
- July 24-25, 2024 - POST, West Sacramento

X. ADJOURNMENT

AGENDA ITEM REPORT

Title: PEACE OFFICER STANDARDS ACCOUNTABILITY DIVISION (POSAD) UPDATE

REPORT PROFILE

MEETING DATE 03/21/2024	**BUREAU SUBMITTING THE REPORT** Executive Office	
RESEARCHED BY Annemarie Del Mugnaio	**REVIEWED BY** Annemarie Del Mugnaio	
REPORT DATE 03/08/2024	**APPROVED BY**	**DATE APPROVED**
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE: This is a report on updates regarding the operations of the Peace Officer Standards Accountability Division and to provide operational updates and statistical data on reports and cases of serious misconduct received by POST.

This report is presented for information only. No action is required.

BACKGROUND: On September 30, 2021, Governor Gavin Newsom signed Senate Bill 2, which outlines peace officer certification requirements in California. The investigations and the process for reviewing serious misconduct cases is now implemented within the Peace Officer Standards Accountability Division.

ANALYSIS: As the final provisions authorized under Senate Bill 2 took effect on January 1, 2023, POST staff reports out on the activities and relevant actions of the Peace Officer Standards Accountability Division and the Peace Officer Standards Accountability Advisory Board since the last Commission meeting.

RECOMMENDATION: This item is for presented for information only. No action is required.

ATTACHMENT(S):
SB2 Update March 21, 2024 POSAAB Admin Rpt.pdf

PEACE OFFICER STANDARDS ACCOUNTABILITY DIVISION

March 21, 2024

UPDATE

ADMINISTRATIVE UPDATES

RECRUITMENT

- 103 Total Positions 51 Permanent Positions Filled
- 13 FT/Perm LECs effective
- 14 LEC RAs- 2 more in process of hire

TRAINING

- In-person training for both the Commission and the Peace Officer Standards Accountability Advisory Board Members held on February 13, 2024 (Stages of Appeal, Structure of Case Review and Evidentiary Findings)
- POSAD staff attended in-person specialized regulatory investigations training – February 20-21, 2024
- Training for Administrative Law Judges from the Office of Administrative Hearings – March 14, 2024

DECERTIFICATION PROCEEDINGS

- Mid-January 2024 - 6 Notices of Intent to Revoke were sent - Resulted in 4 appeals; those appeals are before POSAAB today

ADMINISTRATIVE UPDATES CONT'D

DECERTIFICATION PROCEEDINGS- Cont'd

- Internal process improvements – Notice of Investigation to the Subject Peace Officer has resulted in an uptick in Voluntary Surrenders – 10 Voluntary Surrenders have been received since January 2024.
- Disciplinary Guidelines will be presented for Commission Review- June 13, 2024; those will also be share with POSAAB.

SB 2 VIDEO PRODUCTION – Completion March 2024

- The Peace Officer Certification Video is Complete- Explanation of the Development, Implementation, and Process for Review and Resolution of Cases of Serious Misconduct as Reported to POST [Preview for Board]
  - Interviewees included line-level peace officers, academy directors, agency heads, internal affairs staff, POSAD staff
  - Separate Academy Video for recruits will be ready within the next few months

PROFESSIONAL CONDUCT BUREAU STATISTICS AS OF 1/30/24

- 22,729 Agency Misconduct reports received (Approved)
  - 69% are retro (Prior to 01/01/2023)
  - 14,940 unique Law Enforcement Officers
  - 515 - Public complaints (Approved)
- Context: Approximately 8% of cases resulted in sustained findings, and after triage around 5% appear to have potential merit for decertification
- Triaging reports for prioritization and professional staff working on non-actionable retro and unfounded/exonerated/not sustained cases to help clear backlog.
- Continue to offer online Mark43 training to agency users
- 15,624 Total Cases
  - 10,327 Open Cases (66% of total cases)
    - 5,588 Open w/POST (54% of open cases)
    - 4,739 Open w/Agency (46% of open cases)
- 5,297 Closed Cases (34% of total cases)

- Top 3 areas of serious misconduct allegations:
  - 39% - Physical abuse/excessive or unreasonable use of force
  - 27% - Demonstrating Bias
  - 12% - Abuse of power

AGENDA ITEM REPORT

Title: REPORT ON OUTCOME OF CASE REVIEW FROM THE MARCH 07, 2024 COMMISSION MEETING
** **

REPORT PROFILE

MEETING DATE 03/21/2024	**BUREAU SUBMITTING THE REPORT** Executive Office	
RESEARCHED BY Annemarie Del Mugnaio		**REVIEWED BY** Annemarie Del Mugnaio
REPORT DATE 03/08/2024	**APPROVED BY**	**DATE APPROVED**
PURPOSE		**FINANCIAL IMPACT** No

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

This is a report on the outcome of cases heard at the Commission on Peace Officer Standards and Training meeting held on March 7, 2024. This report is presented for information only. No action is required.

BACKGROUND:

At its March 7, 2024 meeting, the Commission reviewed the recommendations made by the Peace Officer Standards Accountability Advisory Board (POSAAB) from the December 14, 2023 Board hearing.

The Commission's decision to adopt a recommendation by POSAAB to seek revocation shall require a two-thirds vote of Commissioners present and shall be based on whether the record, in its entirety, supports POSAAB's conclusion that serious misconduct has been established by clear and convincing evidence. In any case in which the Commission reaches a different determination than POSAAB's recommendation, it shall set forth its analysis and reasons for reaching a different determination in writing.

ANALYSIS:

POST2303691 - James Kurtz Fillmore (POST ID A37-Q67)
The Commission voted to refer the case to the Division for the discussion of possible settlement terms. Should the parties agree to the Commission's terms, the Commission shall review the settlement at its June 13, 2024 Commission meeting.

POST2308479 - Justin Raymond Ramirez (POST ID: C37-

S81) The Commission supported the POSAAB's recommendation for revocation of the peace officer certification for Justin Ramirez.

RECOMMENDATION: This report is for information only. No action is required.

ATTACHMENT(S):
POST2308479 - Justin Raymond Ramirez.PDF

STATE OF CALIFORNIA
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

In Re: CERTIFICATION OF Justin Ramirez, **Respondent.**	**COMMISSION'S DETERMINATION ON BOARD RECOMMENDATION** Penal Code section 13510.85(a)(5)

The Peace Officer Standards Accountability Division (the Division) found reasonable grounds for the revocation of Respondent's peace officer certification in this matter. Respondent timely requested a review of the Division's findings. In accordance with Penal Code section 13510.85, the Peace Officer Standards Accountability Advisory Board (the Board) held a public hearing on December 14, 2023, and issued its decision recommending that Respondent's peace officer certification be revoked.

Under Penal Code section 13510.85, the Commission shall review all recommendations made by the Board. Accordingly, on March 7, 2024, the Commission held a public meeting to consider the Board's recommendation in this matter. The Commission hereby issues this determination on the Board's recommendation.

At the time of Respondent's request for review of the Division's determination, Respondent had been issued the following POST certification(s):

__ Proof of Eligibility
X Basic
X Intermediate
X Advanced
__ Supervisory
__ Management
__ Executive

COMMISSION'S REVIEW OF THE RECORD

Having considered the Board's recommendations in this matter and the record in its entirety, the Commission has determined that:

X The record, in its entirety, supports the Board's conclusion that serious misconduct has been established by clear and convincing evidence.

__ The record, in its entirety, does not support the Board's conclusion that serious misconduct has been established by clear and convincing evidence.

COMMISSION'S DECISION

In light of the Commission's review of the record and the Board's recommendation in this case, the Commission hereby determines that the following action(s) must be taken against Respondent's certification:

X Revocation of Certification

__ Suspension of Certification for the following period of time, not to exceed 3 years, per 11 CCR section 1213(b): _____.

__ No further action.

REASONS FOR DIFFERENT DETERMINATION

__ (Where applicable) In accordance with Penal Code section 13510.85(a)(5), the Commission has reached a different determination than the Board's recommendation. The Commission's reasons for its determination are as follows:

_____

_____

_____

_____

_____

_____

_____

_____

COMMISSION'S INSTRUCTIONS

X (Where applicable) In light of the Commission's determination requiring action to be taken as stated above, this matter shall be returned to the Division. Pursuant to Penal Code section 13510.85(a)(6), the Division is directed to initiate proceedings for a formal hearing to take action consistent with the Commission's determination in this matter.

Dated: 3/7/24

Chairperson or Designee
Commission on Peace Officer Standards and Training

AGENDA ITEM REPORT

Title: ELECTION OF VICE CHAIR

REPORT PROFILE

MEETING DATE 03/21/2024	**BUREAU SUBMITTING THE REPORT** Executive Office	
RESEARCHED BY Annemarie Del Mugnaio		**REVIEWED BY** Annemarie Del Mugnaio
REPORT DATE 03/08/2024	**APPROVED BY**	**DATE APPROVED**
PURPOSE		**FINANCIAL IMPACT** No

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE: The Peace Officer Standards Accountability Advisory Board (POSAAB) will select a Vice Chair from among its members for 2024.

BACKGROUND: Penal Code section 13509.6 established the new Peace Officer Standards Accountability Advisory Board (POSAAB) and vested POSAAB with the responsibility of reviewing cases of serious misconduct by peace officers for the purpose of making recommendations regarding suspension or revocation of a peace officer's certification to the Commission on Peace Officer Standards and Training. The Governor designates the Chair of POSAAB from among its members. The person designated as the Chair serves at the pleasure of the Governor. POSAAB is required to annually select a Vice Chair from among its members.

ANALYSIS:

RECOMMENDATION: The purpose of this item is to select a Vice Chair for 2024.

AGENDA ITEM REPORT

**Title: APPROVAL OF MEETING MINUTES FROM THE DECEMBER 13, 2023 MEETING **

REPORT PROFILE

MEETING DATE 03/21/2024	**BUREAU SUBMITTING THE REPORT** Peace Officer Standards Accountability Division	
RESEARCHED BY	**REVIEWED BY** Sarah Wallace	
REPORT DATE	**APPROVED BY** Annemarie Del Mugnaio	**DATE APPROVED**
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

BACKGROUND:

ANALYSIS:

RECOMMENDATION: If the Board concurs, the appropriate action would be a **MOTION** to approve the Meeting Minutes from the last Board meeting.

ATTACHMENT(S):
12.13.2023_POSAAB_Training_Meeting_Minutes_DRAFT.pdf

POST

GAVIN NEWSOM
GOVERNOR

ROB BONTA
ATTORNEY GENERAL

PEACE OFFICER STANDARDS ACCOUNTABILITY ADVISORY BOARD TRAINING MEETING

DRAFT MEETING MINUTES
Wednesday, December 13, 2023

The Peace Officer Standards Accountability Advisory Board (Board) met on Wednesday, December 13, 2023, with the following location available for Board and public member participation:

Commission on Peace Officer Standards and Training
860 Stillwater Road, Training Rooms A and B
West Sacramento, CA 95605

Members Present:
Dr. Nicole Clavo, Psy.D
Regina Hatcher-Crawford
Joyce Dudley, JD – Chair
Robert Doyle
Professor Jack Glaser, PhD.
Cephus Johnson
Lt. Charles Lara
Margaret Peña

Members Absent:
Elizabeth Buchen

Guests Present:
Debbie Eglin, Government Training Agency
Chrisopher Beaty, Deputy Attorney General, POSAAB Counsel

Staff Present:
Manny Alvarez, Executive Director
Annemarie Del Mugnaio, Assistant Executive Director
William “Toby” Darden, Chief Legal Counsel, Legal Affairs Bureau
Sarah Wallace, Bureau Chief, Intake and Disposition Bureau
Chandler Knapp, Staff Services Analyst, Executive Office

9:00 a.m., Thursday, December 13, 2023

Agenda Item 1: Call to Order and Welcome
Board Chair Joyce E. Dudley called the meeting to order at 9:06 a.m. and welcomed the Board members present.

Agenda Item 2: Roll Call of Board Members
Staff called the roll, eight members were present, and a quorum was established.

Agenda Item 3: Public Comment
There was no public comment.

Agenda Item 4: Assistant Executive Director Comments
POST Assistant Executive Director, Annemarie Del Mugnaio addressed the Board.

Agenda Item 5: Approval of Meeting Minutes
The Board voted to approve the meeting minutes from the August 3, 2023, Board Meeting. Three members who were not present at the August 3, 2023, Training abstained. Minutes were accepted.

Agenda Item 6: Peace Officer Standards Accountability Advisory Board Training
The Board Chair Dudley introduced Debbie Eglin of the Government Training Agency (GTA), who provided a brief overview of the training which included guidelines, training, and evaluation related to use of force. Eglin began by discussing the impact of Senate Bill 2, its impact on officers, and families impacted by excessive use of force and the emotions involved. Eglin then asked the Board to introduce themselves and share their stories as it relates to their seat on the Board. Board members were asked about expectations and concerns they have going forward in the decertification processes. Eglin then provided guidelines on evaluating use of force. The Board were then shown videos depicting use of force and asked to provide their feedback. Eglin provided further scenario-based training and asked the Board to openly discuss the scenarios using the guidelines provided. Eglin took questions and then concluded her presentation.

The Board took the following breaks:

10:35 a.m. – 10:45 a.m.
12:00 p.m. – 12:45 p.m.

Agenda Item 5: Swearing-in Ceremony
Manny Alvarez, Executive Director, conducted a ceremonial swearing-in of the newly appointed Members present.

The Board took the following breaks:

2:00 p.m. – 2:13 p.m.
3:39 p.m. - 3:50 p.m.

DRAFT

Administrative Debrief

At the Conclusion of the swearing in ceremony, Assistant Executive Director Annemarie Del Mugnaio and POST Chief Counsel William "Toby" Darden then addressed the Board. Del Mugnaio gave an overview of the proceedings for the December 14, 2023, hearings. Darden provided an in-depth step by step presentation on the decertification workflow process, regulatory clarification, and hearing logistics. With that, Del Muganio, Darden and the Board Chair answered questions of the Board.

Future Board Meeting Dates

The Board Chair announced the following future meeting dates:

- December 14, 2023 – POST, West Sacramento
- March 21, 2024 – POST, West Sacramento
- May 15-16, 2024 – POST, West Sacramento
- July 24-25, 2024 – POST, West Sacramento

Agenda Item 6: Adjournment

The Board Chair adjourned the training meeting at 4:24 p.m.

DRAFT

AGENDA ITEM REPORT

**Title: APPROVAL OF MEETING TRANSCRIPT FROM THE DECEMBER 14, 2023 MEETING **

REPORT PROFILE

MEETING DATE 03/21/2024	**BUREAU SUBMITTING THE REPORT** Peace Officer Standards Accountability Division	
RESEARCHED BY	**REVIEWED BY** Chandler T. Knapp	
REPORT DATE	**APPROVED BY** Annemarie Del Mugnaio	**DATE APPROVED**
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

BACKGROUND:

ANALYSIS:

RECOMMENDATION: If the Board concurs, the appropriate action would be a **MOTION** to approve the Meeting transcript from the last Board Meeting.

ATTACHMENT(S):
12/14/2024 POSAAB Transcript.pdf

STATE OF CALIFORNIA

COMMISSION ON

PEACE OFFICER STANDARDS AND TRAINING

PEACE OFFICER STANDARDS ACCOUNTABILITY ADVISORY BOARD

(POSAAB) MEETING

THURSDAY, DECEMBER 14, 2023

9:03 A.M.

MEETING HELD

AT THE OFFICES OF

COMMISSION ON POST

860 STILLWATER ROAD, SUITE 100

WEST SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Stenographically Reported By:
Kathryn S. Swank
California Certified Shorthand Reporter #13061
Registered Professional Reporter

A P P E A R A N C E S

POSAAB MEMBERS PRESENT

JOYCE E. DUDLEY
(Board Chairperson)
Governor Appointee
Attorney

NICOLE CLAVO, Psy.D.
Governor Appointee
Public Member

REGINA HATCHER-CRAWFORD
Governor Appointee
Public Member

ROBERT DOYLE
Governor Appointee
Former Command Rank Peace Officer

JACK GLASER
Governor Appointee
Public Member

CEPHUS JOHNSON
Governor Appointee
Public Member

CHARLES LARA
Governor Appointee
Management Rank Peace Officer

MARGARET PENA
Speaker of Assembly Appointee
Public Member

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A P P E A R A N C E S C O N T I N U E D

POST COMMISSION STAFF

CHRISTOPHER BEATTY
Staff Counsel
Legal Affairs Bureau

ROBERT BRINGOLF
Law Enforcement Consultant
Professional Conduct Los Angeles County Bureau

WILLIAM "TOBY" DARDEN
Chief Counsel
Legal Affairs Bureau

ANNEMARIE DEL MUGNAIO
Assistant Executive Director
Peace Officer Standards
Accountability Division
Executive Office

ADELE DIN
Staff Counsel
Legal Affairs Bureau

CHANDLER KNAPP
Staff Services Manager
Executive Office

TREVOR SHIELDS
Law Enforcement Consultant
Professional Conduct Southern Bureau

SARAH WALLACE
Bureau Chief
Intake & Disposition Bureau

CARRIE WOOLEY
Staff Counsel
Legal Affairs Bureau

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A P P E A R A N C E S C O N T I N U E D

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ALSO PRESENT

ROBERT BAUMANN
Counsel for
Officer Justin Ramirez
(Via videoconference)

MATTHEW BRADBURY
Deputy District Attorney
Orange County

LESLIE WILCOX
Counsel for
Officer James Fillmore

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Thursday, December 14, 2023, 9:03 a.m.

West Sacramento, California

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CHAIRPERSON DUDLEY: Good morning. Today we will be making history. This is the first meeting of the Peace Officer Standards Accountability Advisory Board in the history of California.

My name is Joyce Dudley, and I am the Board Chair. Today is December 14th, 2023.

We are here today as a direct result of the hard work of peace officers, activists, legislators, voters, Governor Newsom's Office, and the staff of POST under the extraordinary leadership of its Executive Director, Manny Alvarez.

We are also here because, historically, people have been treated unjustly or have been unjustly accused. Some of these people include victims, their loved ones, and law enforcement officers.

To quote Dietrich Bonhoeffer, quote, "We are not to simply bandage the wounds of victims beneath the wheels of injustice. We are to drive a spike [sic] into the wheel itself."

We are here to listen carefully, think thoughtfully, and act judiciously as we seek truth and justice for all.

To quote Mahatma Gandhi, quote, "Truth never damages a cause that is just."

Our primary mission is to protect the public and all constitutional and statutory rights.

As Martin Luther King, Jr., said, "Human progress is neither automatic nor inevitable ... Every step toward the goal of justice requires sacrifice, suffering, and struggle; the tireless exertion and passionate concern of dedicated individuals."

Which is why all of you were chosen to serve on this board.

To end my personal comments, I leave you with the words of Robert F. Kennedy. "Few will have the greatness to bend history itself, but each of us can work to change a small portion of events. It is from numberless, diverse acts of courage and belief that human history is shaped. Each time a person stands up for an ideal or acts to improve the lot of others, or strikes out against injustice, they send forth a tiny ripple of hope and crossing each other from a million different centers of energy and daring those ripples build a current which can sweep down the mightest walls of oppression and resistance."

I want to personally thank you all for joining us today, the board and members and our community.

Before the meeting officially begins, allow me to remind you that this meeting is being webcast, recorded, and transcribed. So I may ask you to slow down, repeat things, or speak more clearly so that our transcriber can most accurately capture the discussion of our minutes.

Further, please note that the microphones are on and off. When you begin speaking, they may go live. With this in mind, you will need to pay attention to your cross-talk.

Mr. Knapp, please call the roll call.

MR. KNAPP: Madam Chair, Members of the Board, good morning.

Board Member Buchen.

(No response.)

MR. KNAPP: Board Member Clavo.

MEMBER CLAVO: Present.

MR. KNAPP: Board Member Crawford.

MEMBER HATCHER-CRAWFORD: Present.

MR. KNAPP: Board Member Doyle.

MEMBER DOYLE: Here.

MR. KNAPP: Board Member Dudley.

CHAIRPERSON DUDLEY: Here.

MR. KNAPP: Board Member Glaser.

MEMBER GLASER: Here.

MR. KNAPP: Board Member Johnson.
MEMBER JOHNSON: Here.
MR. KNAPP: Board Member Lara.
MEMBER LARA: Present.
MR. KNAPP: And Board Member Pena.
MEMBER PENA: Present.
MR. KNAPP: Thank you.
CHAIRPERSON DUDLEY: Thank you, Mr. Knapp.
A quorum has been established. There are eight members here today.
I would like to introduce -- and the name of this board, the initial of this board of POST, POSAAB. I'm not sure it is any easier to say than the full board name, but it is P-O-S-A-A-B.
And so our legal counsel is Christopher Beatty. Thank you for being here. And POST Assistant Executive Director Annemarie Del Mugnaio. Okay. She is to my right.
Public comment.
This time is set aside for members of the public who wish to comment on items not on the agenda, but those within the board's jurisdiction. Public comments on matters on the agenda will be heard after each item is presented.
Public comment on specific peace officer revocation

cases will be heard later. At that time, of each such matter, we will be able to hear individuals speak on those matters.

I may ask members of the public to limit their remarks in time pursuant to existing board policy. I may conclude the public comment period if multiple speakers are voicing repetitive or similar statements and the 15-minute public comment period has expired.

Members of the public who wish to speak are asked to limit their remarks to no more than three minutes each. If we have many people who wish to speak on the same topic, I, as the Chair, may intervene and will ask that you limit your remarks to no more than one minute.

Please be advised that the board cannot take action on items not on the agenda, but only to the extent necessary to determine whether they should be made an agenda item at a future meeting, respond briefly to statements or questions posed, request clarification, or refer the items to staff.

Members of the public who would like to provide public comment may approach the designated table, right there, and -- thank you -- and the microphone at the front of the room.

Please remember that this meeting is being transcribed. So, once again, I may politely interrupt

and ask you to repeat or speak slowly and clearly so your comment can be correctly captured in the transcript.

Before I open public comment on matters not on the agenda, please note that if you have a specific complaint on an officer that is not on today's agenda, you should file a complaint with POST or with the officer's employing agency. Staff will assist you in this matter.

I would like to remind individuals making comments to not discuss pending complaints or pending discipline actions that may later come before this board for recommendation. If the board takes action on your complaint, you will have an opportunity to address the board at that time. Following these rules is necessary to comply with the law and to avoid compromising the board's mission.

Now, is there anyone who would like to address the board during this public comment period?

(No response.)

CHAIRPERSON DUDLEY: Seeing no one, we shall proceed.

At this time, Assistant Executive Annemarie -- Assistant Director Annemarie Del Mugnaio would like to address the board and pronounce her name correctly

because I keep not pronouncing her name correctly.

MS. DEL MUGNAIO: You have actually done a terrific job. It's not an easy name to pronounce.

Good morning, everyone. My name is Annemarie Del Mugnaio. I'm the Assistant Executive Director for Peace Officer Standards Accountability Division. This was the division that was prompted in SB 2 to do the investigations and review of complaints that come before the board.

I first want that thank Chair Dudley for her compelling opening remarks. And I echo both the importance of the board and the opportunity that is before us today for transparency and accountability for this process.

I want to open today's meeting with a little bit of insight into what the division has done since January 1st, 2023, with regard to taking in the complaints, charges, allegations, and completed investigations with regard to officer misconduct.

So if we could put up some stats this morning. We have a few statistical documents here that I would like to share.

So I'm not going to read all of these to you, but I want to point out just the sheer volume. So since January 1st, 2023, there's been 21,364 reports of

serious misconduct that have been received by POST.

As we mentioned yesterday, much of this, 73 percent of this, involves cases that are considered look-back. That's from January 1st, 2020, forward.

There is a number of allegations that may come in for each of the reports received by the division. So you see that third column there, third data point, is actually number of allegations. What we're hoping to provide you in the near future is the number of officers that are reflective in these reports and allegations.

We further collect stats, and we do publish these stats at every Commission meeting. And we'll also be publishing these stats on our website in addition to the actual agency reporting of cases of serious misconduct and the actions that have been taken as a result.

Of the 615 agencies that are under POST, 59 percent of those agencies are reporting. You will see 41 percent -- there's 41 percent of the agencies that we have not received a report on to date. But of those agencies, they have less than a dozen peace officers. Therefore, they may not have acts of serious misconduct at this point.

The reason we think it is important to publish the reporting of the agencies is so the public has -- it's transparent, first and foremost; and the public has an

opportunity to look at the reporting history of each and every agency.

There's also some statistics there regarding immediate temporary suspensions, voluntary surrenders, ineligibilities that are as a result of a felony conviction prior to January 1st, 2022, and revocations as a result of a felony conviction after January 1st, 2022.

So I offer you this just as a -- an insight and a picture of the volume of what the division is dealing with today, in terms of investigations, review, and proceedings that will -- at some point, they rise to the level of serious misconduct by clear and convincing evidence, come before this board.

Are there any questions on the statistics that I presented before we move on?

MEMBER GLASER: Oh, go ahead.

My question is with respect to the zero-report agencies. Are they just not reporting, or is there a requirement that they report that they have zero events, or zero cases?

MS. DEL MUGNAIO: Thank you, Board Member Glaser.

At this point, there is no mechanism by which POST can enforce reporting.

However, what we are doing is we are sending

notices out to zero-reporting agencies to request just that: Have you not had any reports of serious misconduct because you have a limited number of peace officers within your agency, or have you failed to submit a report that otherwise falls under SB 2?

And so we will be reporting on that as well.

But thank you for your question.

CHAIRPERSON DUDLEY: Any other questions from board members?

(No response.)

CHAIRPERSON DUDLEY: Thank you, Annemarie.

At this time, I would like to call upon Bureau Chief Sarah Wallace to discuss the new business items.

Good morning, Ms. Wallace.

MS. WALLACE: Good morning, Madam Chair and members of the board.

MEMBER DOYLE: Before we go on, Annemarie, is there any evidence that the agencies have had zero reporting that they have had cases, and they are just not reporting them?

MS. DEL MUGNAIO: No. To date, we don't have evidence to suggest that that they have failed to report. Just that they have not reported anything since January 1st.

MEMBER DOYLE: Thank you.

MEMBER HATCHER-CRAWFORD: I'm sorry. I would like to add to that.

Is there any way that you can break down your report to show the counties, by counties, if they are reporting or not reporting?

MS. DEL MUGNAIO: We actually have a list of agencies, and we currently have those statistics. So we are making those available by the end of the month. So they are going to be on our website, and you will be able to look at every agency and see what their reporting history has been.

MEMBER HATCHER-CRAWFORD: Thank you.

MS. DEL MUGNAIO: You are welcome.

CHAIRPERSON DUDLEY: Any other questions or comments?

(No response.)

CHAIRPERSON DUDLEY: Okay. Thanks again, Annemarie.

And Sarah.

MS. WALLACE: Good morning, Madam Chair and members of the board.

Before you today, we have several new business items to present, the first of which is a proposed regulation to adopt a Conflict of Interest Code, pursuant to Government Code section 87300. This

Government Code requires new state agencies to designate positions who make or participate in making decisions, who may have an economic or material impact on the decision making process to adopt a Conflict of Interest Code section.

Today before you in your meeting materials, our legal counsel here at POST has drafted a proposed regulatory section to incorporate into POST regulations, which would effectively incorporate by reference the Fair Political Practices Commission's regulation relating to conflict of interest. This regulatory language is out for approval and review by the Fair Political Practices Commission. We are currently waiting for feedback.

If the board would like to adopt this Conflict of Interest Code section today, then we would move forward with a formal rulemaking process to post it for public comment for 45 days, and it would go through the Office of Administrative Law's review process.

Today in your board meeting packet is the proposed language for consideration. Board members would also be required to file a Statement of Economic Interests, or Form 700, annually to declare any economic interests that would need to be sought out as part of the rulemaking process.

We have our board counsel here today to answer any questions if there's anything. And I'm happy to answer any questions, as well.

CHAIRPERSON DUDLEY: Do any board members have any questions or comments?

(No response.)

CHAIRPERSON DUDLEY: Okay. Are there any members of the public that would like to address the board regarding this specific agenda item?

(No response.)

CHAIRPERSON DUDLEY: Seeing no one, are there any questions from the board?

(No response.)

CHAIRPERSON DUDLEY: If the board concurs, the appropriate action would be a motion to adopt the proposed policy for the board.

Is there such a motion?

MEMBER DOYLE: I will make that motion. Doyle.

CHAIRPERSON DUDLEY: Thank you.

Is there a second?

MEMBER CLAVO: I second.

CHAIRPERSON DUDLEY: All in favor?

(Ayes.)

CHAIRPERSON DUDLEY: Any opposed?

(No response.)

CHAIRPERSON DUDLEY: Seeing none, any abstentions?

(No response.)

CHAIRPERSON DUDLEY: Seeing none.

The motion then is unanimous, and the motion passes.

Please go on, Ms. Wallace.

MS. WALLACE: Thank you.

Next, we have a series of four proposed policy documents for the board's review and approval, the first of which is an Administrative Requirements Policy that has been drafted. This Administrative Requirements Policy reviews the board's responsibility to review cases of serious misconduct, outlines communication requirements, and outlines how to handle media requests, outlines the mandatory training requirements, the conflict of interest requirements, and the acceptance of gifts.

I would be happy to answer any questions.

CHAIRPERSON DUDLEY: Do any board members have any questions?

(No response.)

CHAIRPERSON DUDLEY: I'm going to do this about five more times, so we can start to pick up the rhythm on this.

Are there any members of the public who would like

to address the board regarding this particular agenda item?

(No response.)

CHAIRPERSON DUDLEY: Seeing none, are there any questions?

MEMBER PENA: I have a question, actually.

And this is on the media portion of it, that if a board member receives a media call, that we should promptly refer the caller to the POST office public affairs.

Is that -- is that a standard practice with boards to do that?

MS. WALLACE: Thank you.

Yes. In our experience, that has been a standard practice with multiple departments across state agencies where all calls are referred to their office of public affairs to handle the media requests.

CHAIRPERSON DUDLEY: And I can tell you in the six years that I was chair of the Commission, I followed that practice. So it is -- it is part of the general rules.

MEMBER HATCHER-CRAWFORD: I do have a question.

Considering the position I hold in the county, I do do media responses to current issues, sometimes involving law enforcement, wearing my other hat. Would

that be a conflict? I know as long as I don't address anything that POST is currently working on.

CHAIRPERSON DUDLEY: Right. I can give you an answer, but then I'm also going to turn to the real lawyer at the table.

MEMBER HATCHER-CRAWFORD: Okay.

CHAIRPERSON DUDLEY: The answer would be not using the title of this committee and not mentioning the board member, but certainly we want you to go ahead and do the excellent work you have been doing.

Counsel.

MR. BEATTY: I think that's right, and then not addressing current cases. So those are kind of the lines of demarcation that are significant and important to respect. But I think all board members are going to be encouraged to continue their work because that's why they are here. And so we don't want to impose on that.

MEMBER HATCHER-CRAWFORD: So I guess, you know, when you are speaking to the media, they like to try to loop in things. I would then contact you to let you know that they tried to loop in something because a lot of times, I shut them down.

CHAIRPERSON DUDLEY: But you grant an interview. So you are in control.

MEMBER HATCHER-CRAWFORD: Okay.

CHAIRPERSON DUDLEY: And certainly, please let us know.

Thank you.

Board Member Pena, did you have more you wanted to say on that?

MEMBER PENA: No.

CHAIRPERSON DUDLEY: Okay. Any other comments, questions?

(No response.)

CHAIRPERSON DUDLEY: Is there a motion?

MEMBER LARA: I would like to make a motion.

CHAIRPERSON DUDLEY: Thank you.

A second?

MEMBER HATCHER-CRAWFORD: Second.

CHAIRPERSON DUDLEY: Thank you.

All in favor?

(Ayes.)

CHAIRPERSON DUDLEY: Are there any -- any opposed?

(No response.)

CHAIRPERSON DUDLEY: Any abstentions?

(No response.)

CHAIRPERSON DUDLEY: Okay. Seeing none, then the motion is passed.

On to the next policy, Ms. Wallace, which is the board meeting procedures.

MS. WALLACE: Yes. The next policy before the board is our board meeting procedures draft. This policy outlines all of the requirements for board meetings in accordance with the Bagley-Keene Open Meeting Act. It outlines the frequency of meeting requirements, attendance, communication, public participation, the notification of meetings, the use of electronic devices during meetings. And it also outlines a policy relating to the delegation to the Chair to finalize any recommendations made by the board to move to the commission.

I would be happy to answer any questions.

CHAIRPERSON DUDLEY: Are there any questions?

(No response.)

CHAIRPERSON DUDLEY: Ms. Wallace, for the sake of the transcriber, I'm going to ask you to slow down just a little bit. But thank you so much.

And is there any public comment on this item?

(No response.)

CHAIRPERSON DUDLEY: Seeing none, if the board concurs, then it would be appropriate to ask for a motion on this point.

Is there a motion?

MEMBER PENA: I move.

CHAIRPERSON DUDLEY: A second?

MEMBER GLASER: Second.
CHAIRPERSON DUDLEY: All in favor?
(Ayes.)
CHAIRPERSON DUDLEY: Any opposed?
(No response.)
CHAIRPERSON DUDLEY: Any abstentions?
(No response.)
CHAIRPERSON DUDLEY: It's all unanimous, and the motion passes.
Sarah, on to the next one.
MS. WALLACE: The next policy outlines the general requirements for conduct and performance of board members. And it includes general rules of conduct, including items relating to confidentiality and the board's primary mission.
Again, I would be happy to answer any questions.
CHAIRPERSON DUDLEY: Thank you.
Are there any members of the public who wish to address this issue?
(No response.)
CHAIRPERSON DUDLEY: Seeing none, are there any questions from the board?
(No response.)
CHAIRPERSON DUDLEY: Okay. Is there a motion?
MEMBER GLASER: I move.

CHAIRPERSON DUDLEY: Thank you.

A second?

MEMBER LARA: Second.

CHAIRPERSON DUDLEY: I'm going to ask the transcriber, would you like people to say their names when they make a motion?

THE COURT REPORTER: That probably would be helpful, since the microphones are not picking them up.

CHAIRPERSON DUDLEY: Sure. Okay.

We very much appreciate the motion and the second, but if you could say, motion by -- give your last name. Second by -- thank you so much.

So we had a motion. We had a second.

All those in favor?

(Ayes.)

CHAIRPERSON DUDLEY: Any opposed?

(No response.)

CHAIRPERSON DUDLEY: Any abstentions?

(No response.)

CHAIRPERSON DUDLEY: Seeing none, the motion passes.

Okay. Ms. Wallace, next.

MS. WALLACE: The last policy before the board today is in relation to travel and compensation. This policy establishes the standards for appropriate

business and travel expenses, outlines the requirements for travel arrangements, travel claims, and provides the maximum reimbursement rates, which are now effective -- new rates that will become effective on January 1st, 2024.

I would be happy to answer any questions.

CHAIRPERSON DUDLEY: Any questions?

(No response.)

CHAIRPERSON DUDLEY: Any public member want to make a comment?

(No response.)

CHAIRPERSON DUDLEY: Seeing none, is there a motion?

MEMBER CLAVO: I motion.

CHAIRPERSON DUDLEY: Last name?

MEMBER CLAVO: Clavo.

MEMBER HATCHER-CRAWFORD: I second it. Crawford.

CHAIRPERSON DUDLEY: Thank you.

All in favor?

(Ayes.)

CHAIRPERSON DUDLEY: Any opposition?

(No response.)

CHAIRPERSON DUDLEY: Any abstention?

(No response.)

CHAIRPERSON DUDLEY: Seeing none, this motion also

passes.

And I want to thank all the board members for doing all that reading last night. Obviously, you were very prepared, and it is very much appreciated.

Okay. We now move to the next items on the agenda, and that is the two cases that are before us today.

We will only be reviewing the facts and evidence as presented by the division. This is not an evidentiary hearing. The rules of evidence do not apply. Evidence is not formally admitted into the record. There is no need to make any objections, and objections will not be ruled upon.

Under the Penal Code and applicable state regulations, this initial hearing will determine only if the matter will proceed forward for the Commission's review. And then should the Commission approve, for a full evidentiary hearing before an administrative law judge to determine whether the allegations are true and justify discipline.

For those commenting on each item at this early stage, the board must only consider the facts that the division, after investigation, believes can be proved at a later evidentiary hearing.

For that reason, today, the board will entertain arguments as to whether or not those facts as presented

by the division demonstrate a high probability that serious misconduct, as defined in Penal Code section 13510.8 and Regulation 1205, occurred.

This finding simply results in the matter being moved forward. No actions by the board or the Commission prior to a full evidentiary hearing amount to a final determination that an officer did, in fact, engage in misconduct or that the revocation or suspension is mandated. That will be determined after the evidentiary hearing.

At this time, I will now call upon Law Enforcement Consultant Trevor Shields, Professional Conduct, Southern Bureau; and Carrie Wooley, Attorney Level III, Legal Affairs Bureau, to provide a report on case POST 2308479, Justin Raymond Ramirez, formerly of the Orange County Sheriff's Department.

Thank you both.

MR. SHIELDS: Good morning, Madam Chair, members of the board. My name is Trevor Shields. I'm a Law Enforcement Consultant with POST's Professional Conduct Bureau Southern Bureau -- Conduct Southern Bureau. Seated to my right -- I will let you introduce yourself, Carrie.

MS. WOOLLEY: My name is Carrie Wooley. I'm an Attorney III with the Legal Affairs Bureau for POST.

MR. SHIELDS: This case does involve former Deputy Justin Ramirez of the Orange County Sheriff's Department.

Deputy Ramirez was trained and assigned as a school resource officer. Like all peace officers, school resource officers are held to a higher standard of conduct. School resources act as teachers, counselors, role models, and protectors of our children.

Deputy Ramirez violated his duty to protect the children by utilizing his personal cell phone to show two separate groups of 14-year-old freshmen female students two videos and two photos that contained harmful matter as defined by California Penal Code 313(a).

If we could get it put up on the -- actually, it is the other one. Yes.

CHAIRPERSON DUDLEY: Is that not the Penal Code --

MS. WOOLLEY: Next slide, please.

MR. SHIELDS: Next slide.

MS. WOOLLEY: Thank you.

MR. SHIELDS: The definition of "harmful matter," according to the Penal Code.

MS. WOOLLEY: Yes. That's correct.

CHAIRPERSON DUDLEY: Stand by.

MR. SHIELDS: I will give you guys a moment to read

it.

CHAIRPERSON DUDLEY: Would you please read the definition?

MR. SHIELDS: Would you like me to read it?

CHAIRPERSON DUDLEY: Yes, please.

MR. SHIELDS: As used in this chapter, "'Harmful matter' means matter taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prudent [sic] interests, and is a matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors."

The Orange County Sheriff's Department conducted a criminal and administrative investigations. They sustained departmental policy violations of serious misconduct against Deputy Ramirez. They referred a criminal complaint to the Orange County District Attorney's Office.

The Orange County District Attorney's Office filed one misdemeanor charge of 313.1(a) of the California Vehicle Code, which was distributing harmful manner -- matter to a minor.

The following are facts to the serious misconduct charge of acts that violate the law:

On September 2nd, 2022, Deputy Ramirez was on campus at Trabuco High School in Mission Viejo during the freshman lunch period. Deputy Ramirez knew or should have known the students around him were high school students under the age of 18.

Deputy Ramirez was in full uniform. He was seated in his patrol car when he was approached by several freshman students. These students asked him questions about events he had seen in his job as a deputy sheriff. Specifically, and I quote, "What was the most horrible call you got?"

Instead of using this student interaction as a positive teaching moment, and providing an age-appropriate response, Deputy Ramirez used very poor judgment and utilized his personal cell phone to show the group of 14-year-old freshman students the two videos and two photos containing explicit, graphic, sexual, and violent content, as well as one -- as well as one of illicit drug use, all of which was not appropriate for juveniles.

Deputy Ramirez was not part of these events he was showing. He was not on scene, and he was not part of the investigation of these events.

The first video depicts two individuals engaging in sexual intercourse, who were subsequently stabbed by an

assailant with a knife, resulting in the death and apparent death of one of the victims. The video is very explicit and graphic in nature and shows the faces and intimate body contact between the victims.

The second video shows two males sitting on the ground in a room, smoking a controlled substance, most likely crack cocaine, from glass pipes. The males engaged in an explicit act -- activity of blowing narcotics smoke into the intimate body part of another.

The deputy also showed two students the -- two photos. The first was of a deceased young female similar age as the students. The female was laying in a roadway as a result of a traffic collision with a severe head injury.

The second photo was taken in a hospital setting depicting a severe lacerations to a female's leg from the bite of a sheriff's K9.

Deputy Ramirez repeated the act of showing these same videos and photos to -- a few minutes later to a new group of freshman female students. These students came over to him after hearing about the videos and photos from the first group of students. Each student had a different reaction to being shown these images.

One student stated she will never forget the image of a, quote, "a 17-year-old girl on the street. There

was a gash, and her brains were coming out."

Later that same student said, and I quote, "That's actually somebody dying in front of my face."

One of the students was disturbed enough to share what she saw with her mother, who turned around and called the Orange County Sheriff's Department to report the incident, which led to this investigation.

The Orange County Sheriff's Department investigation -- or during the Orange County Sheriff's Department's investigation, Deputy Ramirez resigned from the sheriff's department on December 14th, 2022, prior to his administrative interview, and has not provided a statement.

On the PowerPoint is the definition of the criminal charge he was charged with.

Madam Chair, would you like me to read the law? Okay.

California Penal Code 313.1(a). "Every person who, with knowledge that a person is a minor, or fails to exercise reasonable care in ascertaining the true age of a minor, knowingly sells, rents, distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded phone messages, any harmful matter to the minor shall be punished as specified in section

313.4."

CHAIRPERSON DUDLEY: Thank you.

MR. SHIELDS: On April 25th of this year, Deputy Ramirez appeared in Orange County Superior Court on one misdemeanor count of this section of 313.1(a). Despite opposition from the Orange County District Attorney's Office, the court granted Deputy Ramirez a misdemeanor pretrial diversion under Penal Code section 1001.95.

As part of that agreement, Deputy Ramirez agreed to commit no new misdemeanor or felony crimes, performed 40 hours of community service, complete sensitivity training, comply with the stay-away order, and pay a diversion restitution fee.

Information obtained during this investigation was analyzed by the clear and convincing evidence standard. For purposes of this investigation, clear and convincing evidence means evidence of a charge is clear and convincing so long as there is a high probability that the charge is true. The evidence not -- the evidence need not establish a fact beyond a reasonable doubt.

As a school resource officer, Deputy Ramirez was entrusted with an extremely high level of public trust in the community; namely, the safety and the protection of the community's youth. He received training from his agency as a school resource officer.

Deputy Ramirez's actions were egregious and repeated. They were inconsistent with the obligation of a peace officer to uphold the law and respect the rights of members of the public.

Deputy Ramirez not only violated the Penal Code, but showed his lack of judgment and disregard for his assignment as a deputy and a school resource officer.

Deputy Ramirez should have acted as a role model for these students, not exposing them to explicit, graphic, and violent material. He chose to show this inappropriate material not once, but twice to two separate groups of 14-year-old female students, while in uniform and sitting in a marked patrol vehicle as a high school.

Based on the facts of this case, as described here and in the investigative summary and findings, there is clear and convincing evidence that Deputy Ramirez committed acts that violate the law, defined in Penal Code section 13510.8(b)(6).

Therefore, the recommendation is that Deputy Ramirez -- Deputy Ramirez's Peace Officer's Certificate be revoked.

If the board has any questions, Carrie and I will be happy to answer them at this time.

CHAIRPERSON DUDLEY: I know all of you have

reviewed the documentary evidence that was sent to you, and all of you have seen the videos that have been described as well as the photographs.

So do any of you have any additional questions or comments?

I have one question, and then I will be calling upon Board Member Doyle.

Perhaps I misunderstood this, but when the parent of the daughter who explained to her what happened at school, that alleged victim, then after she, her daughter, told her what happened, that parent then called 911 or the sheriff's department.

And was it true, in fact, that the responding officer was Officer Ramirez?

MR. SHIELDS: Yes. Yes, it was.

CHAIRPERSON DUDLEY: So he interviewed the child who he, in fact, showed this photo to?

MR. SHIELDS: Briefly, yes.

CHAIRPERSON DUDLEY: Okay. And then at some point, he came to realize that it was, in fact, he who she was describing?

MR. SHIELDS: That is correct.

CHAIRPERSON DUDLEY: Okay. And then another officer came in?

MR. SHIELDS: He did. He contacted his supervisor

who came to the scene.

CHAIRPERSON DUDLEY: Okay. So there was a period of time -- moments, I don't know -- where he -- in addition to showing the photographs and the videos, where he then took a report about his own behavior?

MR. SHIELDS: Correct.

CHAIRPERSON DUDLEY: Okay. And about how long was that?

MR. SHIELDS: From the time he arrived at the residence to the time the supervisor arrived, I believe it was -- I don't know exactly. I would have to be -- give you an approximate. It was approximately 20 to 30 minutes.

CHAIRPERSON DUDLEY: Okay. During that period of time, do you happen to know if he stayed with that child, or whether he immediately took himself out of the case?

MR. SHIELDS: He did not. He did. He stepped -- when he realized that this case was about him, he did excuse himself, went out to his patrol car. That's where he made a phone call to another school resource officer and to his supervisor.

CHAIRPERSON DUDLEY: Okay.

MR. SHIELDS: When his supervisor arrived, they then went back into the house.

CHAIRPERSON DUDLEY: Okay.

MR. SHIELDS: He was not alone with the child.

CHAIRPERSON DUDLEY: But when -- and I believe this was all in your report. He waited outside, and then when his supervisor arrived, he again entered that house where this child and her mother were?

MR. SHIELDS: Correct.

CHAIRPERSON DUDLEY: Okay.

Yes. Board Member Doyle.

MEMBER DOYLE: The decision to provide diversion, was that a court -- Orange County court policy?

MR. SHIELDS: Yes -- oh, that's probably more of a --

MS. WOOLLEY: It would have been within the discretion of the trial judge. It was over the objection of the district attorney. I believe the district attorney who handled the case was supposed to be appearing today. If he's here for public comment, he may be able to answer that question in full.

CHAIRPERSON DUDLEY: Board Member Doyle, he is due here at about 10 o'clock.

MEMBER DOYLE: No, that's sufficient. I just wanted to know -- because I know there are misdemeanors that are excluded from diversion and just wanted to clarify if that was a board policy to pretty much divert

misdemeanors.

MS. WOOLLEY: Right.

MEMBER DOYLE: Okay. Thank you.

MS. WOOLLEY: It would have been excluded had it been registerable under Penal Code section 298. This was not, though.

CHAIRPERSON DUDLEY: Any other board members have any other questions?

Yes.

MEMBER GLASER: Yeah. Just on Chair Dudley's earlier point.

In your report, it says, on page 6 in the fourth paragraph, that the sergeant that he called, Sergeant Huerta, assisted the respondent to complete his -- to complete his interviews by talking with the parents so the respondent could interview Student Number 1 in the adjacent room.

Did that interview occur in the adjacent room, or did they just set that up, and then it got scuttled?

MR. SHIELDS: No, he did interview the student in an adjacent room.

But there was a little -- Deputy Ramirez wasn't a hundred percent completely honest with the supervisor. I don't believe the supervisor, at that point, knew that this was about him. And I think things would have been

a little different, maybe.

It wasn't until after they exited the residence that Deputy Ramirez came a little bit forward with what he thought was going on.

MEMBER GLASER: But that interview had occurred --

MR. SHIELDS: Had occurred --

MEMBER GLASER: -- in the adjacent room between the respondent and the student?

MR. SHIELDS: That is correct.

MEMBER GLASER: Alone?

MR. SHIELDS: It's still within eye -- it's within the house. They were within eyeshot of the -- of each other, the parents and the sergeant.

CHAIRPERSON DUDLEY: Are there any other questions or comments from any of the board members at this time?

MEMBER LARA: Actually, I have a question. Was there any explanation -- I didn't see in the report -- about the evolution of the story that the deputy gave to Sergeant Huerta?

The story began, he did not -- the videos were not of a sexual nature. And then later on, the story becomes something different, that he explains to the supervisor.

Was there any expansion on why that might have happened?

MR. SHIELDS: There was not. It was -- you know, he told them at the scene, before they left, that he -- you know, that it might have been about him.

And then later on in the shift, he then, I think, was probably trying to write the report, and contacted the supervisor and gave him that further update that he did show a couple of videos and photos to students.

MS. WOOLLEY: And to your point, Board Member Lara, he was not interviewed for the administrative investigation. He resigned prior to being interviewed.

CHAIRPERSON DUDLEY: Are there any other comments or questions?

Yes, Mr. Johnson.

MEMBER JOHNSON: Yes. I do have a question. How did he come to get the videos, I guess, is the first question.

And the second question is: There's a violation -- I'm not sure what code -- of the evidence that he had on his phone, which is a private phone, his personal phone, from what I believe.

So the first question is: How did he come to get the videos? And was it okay for him to have those on his phone?

MR. SHIELDS: I'm not sure how he came to get them. He was not part of those investigations. Whether they

were sent to him by another person, deputy, friend, I don't know who sent them to him.

There were quite a few photos on his phone when the sheriff's department did a search warrant. There was a homicide investigator that completed the criminal portion of the -- of the report, of Orange County's report. And he did go through all -- I believe it was close to 18,000 videos and photos.

When I spoke with him, he said that there was nothing criminal in nature that specifically was criminal to possess. It became criminal when Deputy Ramirez showed them to the underage females.

MEMBER HATCHER-CRAWFORD: I do have a question.

CHAIRPERSON DUDLEY: One moment, please.

Was there a follow-up on that, Mr. Johnson?

MEMBER JOHNSON: No. No. He answered it.

CHAIRPERSON DUDLEY: The law that I think you are referring to is Kobe's Law, and that law wasn't yet enacted.

And, yes, Ms. Pena.

MEMBER PENA: Kobe's Law was what I was going to comment on.

CHAIRPERSON DUDLEY: Thank you.

Anything else? Any other questions from the board?

Yes.

MEMBER HATCHER-CRAWFORD: So they kind of answered the question about the Kobe's Law.

When did the sheriff's department -- did he voluntarily show the videos, or was it during at the time that they got the search warrant to go to the house, and they obtained this -- the videos off of his personal phone?

MR. SHIELDS: The search warrant -- they called him into the -- I believe it was their city hall. And they had the search warrant. And he volunteer -- you know, he certainly didn't fight them. Provided those phones in accordance with that -- with that search warrant.

MEMBER HATCHER-CRAWFORD: Thank you.

CHAIRPERSON DUDLEY: Any other questions or comments from the board?

(No response.)

CHAIRPERSON DUDLEY: Are there any members of the public who would like to address the board regarding this agenda item?

(No response.)

CHAIRPERSON DUDLEY: I believe we have someone online. Would you please identify yourself, sir.

MR. BAUMANN: Yes, good morning. Madam Chair, board members. My name is Robert Baumann. I'm a representative for Deputy Ramirez.

CHAIRPERSON DUDLEY: Okay. Thank you.

And do you have a public comment regarding this matter?

MR. BAUMANN: Yes, ma'am. Just a couple items that I wanted to address. The first piece is, as it relates to Deputy Ramirez, it has been mentioned that he did not provide a statement, and the division has never reached out to conduct an investigation or any further investigation to discuss this with Deputy Ramirez. I think Deputy Ramirez's statement and what he says is imperative and pertinent to this investigation.

And, again, my understanding, unless I have a misunderstanding, is that the division does have the authority and the ability to conduct further investigation. Obviously, the standard before the board is clear and convincing evidence, which is a higher standard than what the department -- the department's burden of preponderance of the evidence.

Therefore, I think Deputy Ramirez's statement is pertinent and, again, would shed light on a lot of these allegations, because as of right, these are -- the allegations are being substantiated by one side by statements by one party essentially, without Deputy Ramirez's input.

That was the first item I wanted to address and

bring to the board's attention.

The second item --

CHAIRPERSON DUDLEY: May I interrupt you and just have them respond to that, and then we can go on to the next event? Is that okay?

MR. BAUMANN: Yes.

CHAIRPERSON DUDLEY: Please, go ahead.

MS. WOOLLEY: Thank you.

I did just confer with Mr. Shields. That's true that the division did not reach out for a statement from Deputy Ramirez. However, I would like to point out that under the law, we are not obligated to reach out to Deputy Ramirez for a statement or to any officer for a statement if we feel that the investigation that was performed by the agency was sufficient in and of itself, which was the case here.

We had the evidence from Deputy Ramirez's phones that corroborated the victims' statements.

We also had the evidence from Deputy Ramirez's statements to the other officer that was on his body-worn camera footage, where he indicated and admitted to the other officer that he, in fact, did show these videos to those children at the high school.

So we felt that the investigation was complete and did not require further statements or investigation on

our part.

CHAIRPERSON DUDLEY: Thank you. Please, you can either respond or go on to your next item.

MR. BAUMANN: Thank you, Madam Chair. Just to briefly respond.

If there's other body-worn camera footage or other evidence, again, I would request that that evidence be provided to Deputy Ramirez. Deputy Ramirez has not received that evidence and, therefore, it would be a due process violation to move forward and use that evidence without him having the opportunity to see that evidence and to respond to that evidence.

So to move on, the second and last item I wanted to address as well, Madam Chair, is in the evidence provided by POST in their investigation summary, talking about the criminal case and the criminal investigation against Deputy Ramirez, in page 3 of 14, it specifically states that Deputy Ramirez pled guilty. And that is a hundred percent incorrect. Deputy Ramirez has never pled guilty to the misdemeanor. And, in fact, if you pull up the court status of the case, it clearly states that he pled not guilty to the misdemeanor allegation against him.

So I wanted to bring that to the board's attention as well, that the document provided by POST is clearly

false and misleading as it relates to that point.

And, further, Deputy Ramirez -- and, again, I'm just making the representation based on his representation, because I do not represent Deputy Ramirez in the criminal matter -- is that he anticipates that the case will be dismissed come April, his next court date.

So I think that is important clarification for the board, considering it is mentioned in the POST investigation summary. And it is inaccurate.

CHAIRPERSON DUDLEY: He did, in fact, accept diversion as a result of this charge; is that correct?

MR. BAUMANN: Yes. That is correct, Madam Chair.

CHAIRPERSON DUDLEY: Okay. Counsel, did you want to respond?

MS. WOOLLEY: I would. Thank you.

That is correct that our investigative summary and findings is factually inaccurate. I would not say it's false and misleading. Deputy Ramirez did accept a diversion deal, which requires that he agree to some terms with the court, that he actually perform those terms in order for his case to be dismissed.

But as counsel should be aware under Penal Code section 1001.97, even though his case would be dismissed, if he applies for another position as a peace

officer, he would still have to disclose his arrest and the fact that he was given diversion. It would not be wiped clean from his slate.

CHAIRPERSON DUDLEY: Okay. Thank you.

Counsel, is there anything else?

MR. BAUMANN: No. Nothing further, Madam Chair. Thank you.

CHAIRPERSON DUDLEY: Thank you.

I will accept some more questions and comments from the board. Let me first ask: Is there any other public member who would like to respond to this?

(No response.)

CHAIRPERSON DUDLEY: What we will do, just so everyone is aware of procedurally what will happen now is, I will entertain any other questions and comments from the board.

Then we will take a break. And I believe, at that point, there may be another person who wants to make public comment.

So now back to the board. Board Member Doyle.

MEMBER DOYLE: I have a question.

I just assumed from the documents that we got that Ramirez refused to give a statement. And so I'm sort of concerned. Because having experience, you would never not interview the subject of an investigation just

because all of the other evidence was overwhelming.

And so I'm -- and so I know they don't have to, but I don't understand why they wouldn't close that loop.

MS. WOOLLEY: It is discretionary on the division whether or not to interview the subject officer. When we have a case like this, where we have a large body of evidence, and we actually have a video where it shows an admission by the officer, the division may make the decision at its discretion not to interview the officer. So it is simply within POST's discretion whether to go ahead and interview.

MEMBER DOYLE: Thank you.

MS. WOOLLEY: Thank you.

CHAIRPERSON DUDLEY: Anything else?

MEMBER DOYLE: No.

CHAIRPERSON DUDLEY: Would any other board member like to make -- please.

MEMBER PENA: Question. On the photo of the young woman who was the victim of an automobile accident, was that a crime scene photo, a local crime scene photo? Or was that from a website or obtained elsewhere? Or do you know?

MR. SHIELDS: I don't know for sure. I know it is within the County of Orange -- Orange County. The Orange County also has a coroner division. So somebody

from within the Orange County Sheriff's Department's coroner division would have come out. I don't know who took the photo or how it was sent to Deputy Ramirez.

MEMBER PENA: But it was a local photo?

MR. SHIELDS: Yes. Yes.

MEMBER PENA: Okay. Thank you.

CHAIRPERSON DUDLEY: Thank you.

Any other questions or comments at this time?

(No response.)

CHAIRPERSON DUDLEY: Okay. We'll be taking breaks at about every hour, every 15 minute -- or an hour and 15 minutes to give the transcriber a break.

So we will now -- it is approximately three minutes to 10:00. We will now break until approximately 10:08.

Thank you all.

(Break taken in proceedings.)

CHAIRPERSON DUDLEY: Okay. This is my granddaughter's favorite part of my job.

Having banged the gavel, we are back on. And at this time, I will ask, again: Is there anyone in the audience who would like to make a public statement?

(No response.)

MR. BRADBURY: Yes. There is no one else.

CHAIRPERSON DUDLEY: Please. Come on up. And please state your name and your agency if you would

like.

MR. BRADBURY: Yes. Good morning, everyone. My name is Matthew Bradbury. I appreciate you all opening this up to public comment. There we go. Like I said, my name is Matthew Bradbury. I'm a deputy district attorney in Orange County. And I'm the deputy DA who filed the criminal charges against Mr. Ramirez earlier this year.

So I will be brief because I know that a lot has been said already. We do have the criminal case. The criminal case is in diversion.

Just to kind of hammer home some of the major points that we felt made it necessary to file criminal charges here: Mr. Ramirez was working as a deputy sheriff. He was on campus at a high school in South Orange County. Some high school girls, teenagers, approached him. And I think they thought it was just kind of a friendly, casual conversation. He showed them videos and photographs that are -- were extremely inappropriate. Inappropriate to show anyone, not affiliated law enforcement, let alone, you know, freshmen in high school, female freshmen in high school.

Based on that, the girls told their parents. They made statements to the effect of being shocked and traumatized by what they saw.

One of the girls' parents called the sheriff's department, and then that's how the Internal Affairs investigation opened up. It then came to us at the district attorney's office. My unit at the DA's office looks at all of those Internal Affairs cases, and we usually don't file charges, to be honest. But this is one that we did.

There was an additional search warrant that was done of Mr. Ramirez's phone. And apologies if you know all of this already. But the search warrant showed additional photographs that -- and videos that we felt were very inappropriate, including two -- including photographs from other crime scenes that he had kept on his personal phone. And, you know, without speculating why he chose to do that, you know, two of those photographs were of dead bodies from other crime scenes in Orange County.

There was other material, personal material to him, that we also felt was very inappropriate for him to have, including a video that he took of himself while on sheriff's property. A selfie, but a video, if you will.

And just -- there's a lot of material on there in that search warrant that we felt added to our general sense that Mr. Ramirez just does not have the judgment to be a peace officer.

Now, that is obviously not what we decide, but it was part of the reason that we wanted to be here in person today. And we're very happy that this -- this Commission, which I know is brand new, is taking a look at this.

And so we feel that all in all, not only the way that Mr. Ramirez behaved with the high school students, but also the other materials found on his personal device related to other crime scenes, were more than just a lapse in judgment. But were really a complete -- it just showed a complete lack of judgment on his part.

And, look, no one is saying that on a criminal case, he needs to spend a decade in prison. Of course not. It is a misdemeanor. But in terms of his ability to serve and wear a badge, in our view, that is just something he should be foreclosed from doing.

And so, again, I will leave with, if you have not had a chance to see the videos and photographs, and I believe there were still images provided --

CHAIRPERSON DUDLEY: This board has seen the videos and the photographs, or at least most of the photographs you just described. This board has not seen any photograph of the defendant in uniform. But the other photographs that you have articulated, they have seen.

May I ask you a question?

MR. BRADBURY: Yes.

CHAIRPERSON DUDLEY: There has been some discussion about the plea and about the meaning of diversion. Would you explain to us what the plea was and what the ramifications of diversion are.

MR. BRADBURY: Yes. Definitely.

So it is a -- there has been no guilty plea entered. So state of California, Penal Code section 1001 -- I think it's .6 is this form of diversion. We just call it misdemeanor diversion. It is a diversion without a guilty plea up front that is available to any defendant in Superior Court in California for a misdemeanor, barring certain specific misdemeanors; like DUIs typically can't be diverted in this way.

So there's no guilty plea for Mr. Ramirez. It is a -- it is a kind of an indefinite period of time where he has to perform counseling, community service, stay out of trouble, things like that.

So he did accept that. He did not fight the case in the sense of, I'm taking this to trial. This is not true. Okay. But, at the same time, he has not pled guilty.

CHAIRPERSON DUDLEY: Okay.

MR. BRADBURY: And it would lead -- just -- sorry -- it would lead to a dismissal if you were to

abide by all those terms and stay out of trouble on the criminal case. It could take a year or two, essentially at most.

CHAIRPERSON DUDLEY: The other question that was raised was: What was the district attorney's position on whether he should be able to get -- to be diverted on this case?

MR. BRADBURY: We objected to diversion pretty vehemently, actually. We not only objected to diversion, we also filed a motion to reconsider and actually went back to the same court.

So we objected to diversion, again, based on the reasons I have outlined.

CHAIRPERSON DUDLEY: Okay. Thank you. Let me just talk to the board members, see if they have any questions or comments.

Any other board members have any questions?

Yes, please.

MEMBER GLASER: Yeah. Just a simple question. If he were to be found to be -- to have violated the conditions of his diversion, what would happen subsequently?

MR. BRADBURY: That would reinstate the criminal case, and then we would be back in an open, active criminal case.

So at that point, it would have to go to -- you know, he could fight it, go to trial, or he could plead guilty and resolve it. But that would end his diversion.

But that would not mean an automatic conviction if that is kind of what you are getting at.

CHAIRPERSON DUDLEY: Any other questions or comments of the board?

Mr. Johnson.

MEMBER JOHNSON: Yes. He resigned. Did he give a statement on why?

MS. WOOLLEY: I can answer that question.

He did not. He just simply resigned prior to being interviewed for his Internal Affairs investigation.

CHAIRPERSON DUDLEY: Any other questions or comments from the board?

(No response.)

CHAIRPERSON DUDLEY: Thank you very much, Counsel.

MR. BRADBURY: I appreciate it. Thank you.

CHAIRPERSON DUDLEY: Are there any other -- is there any other public comments on this case?

(No response.)

CHAIRPERSON DUDLEY: Okay. With that said, at this time, the meeting will adjourn into closed session for deliberations on this case.

As some of the case material is graphic and explicit in nature, and you have all heard about that, unredacted versions that will be shown to the board if they request it in closed session now, because the public's interest served by not publicly disclosing the unredacted version clearly outweighs the public's interest in disclosure of the full, unredacted versions.

The board will now exit this room and go to the left, I believe, and view closed session material in secure room. And then come back again for regular discussion.

And we should be coming back shortly. I'm not sure what that means because I need to hear from the board members.

Thank you. And we will take the court reporter -- the transcriber with us.

(Time noted: 10:18 a.m.)

---o0o---

(Closed session was held from 10:22 a.m. to 10:34 a.m.)

---o0o---

(Time noted: 10:36 a.m.)

CHAIRPERSON DUDLEY: We are back from closed session. We will now reconvene in regular session to take a vote on the board's recommendation to the

Commission in the matter of POST2308479, Justin Raymond Ramirez, formerly of the Orange County Sheriff's Department.

Are there any other comments that the board members would like to make?

(No response.)

CHAIRPERSON DUDLEY: Hearing none, is there a motion to make a recommendation to the Commission on this matter?

MEMBER CLAVO: I make a motion.

CHAIRPERSON DUDLEY: And what is that motion?

MEMBER CLAVO: Decertify.

CHAIRPERSON DUDLEY: There is a motion to decertify Mr. Ramirez.

Is there a second?

MEMBER PENA: I second.

CHAIRPERSON DUDLEY: We will now take a roll call as to each member of the board articulating their decision.

Mr. Knapp, please call the roll call vote.

MR. KNAPP: Board Member Buchen.

Absent.

Board Member Clavo.

MEMBER CLAVO: Agree.

MR. KNAPP: Board Member Crawford.

MEMBER HATCHER-CRAWFORD: Agree.
MR. KNAPP: Board Member Doyle.
MEMBER DOYLE: I support the motion.
MR. KNAPP: Board Member Dudley.
CHAIRPERSON DUDLEY: Aye.
MR. KNAPP: Board Member Glaser.
MEMBER GLASER: Aye.
MR. KNAPP: Board Member Johnson.
MEMBER JOHNSON: Aye.
MR. KNAPP: Board Member Lara.
MEMBER LARA: Aye.
MR. KNAPP: And Board Member Pena.
MEMBER PENA: Aye.
MR. KNAPP: Thank you.
CHAIRPERSON DUDLEY: Okay. It appears that every member of the board who is here today has voted that the recommendation be revocation.
Are there -- is there anyone that is deciding that they don't want to vote that way?
(No response.)
CHAIRPERSON DUDLEY: Seeing none, hearing none, is there anybody who is abstaining?
(No response.)
CHAIRPERSON DUDLEY: Seeing none, hearing none, it is unanimous. The motion passes.

Counsel, anything else?

(No response.)

CHAIRPERSON DUDLEY: Okay.

Now, at this time, I will call upon Law Enforcement Consultant Robert Bringolf, Professional Conduct, Los Angeles County Bureau; and Adele Din, Attorney IV, Legal Affairs Bureau, to provide a report on case POST2303691, James Kurtz Fillmore, formerly of the Los Angeles Police Department.

Please proceed when you are ready.

MR. BRINGOLF: Thank you.

Good morning, Chair, and members of the board. My name is Robbie Bringolf, and I'm one of the law enforcement consultants assigned to the Los Angeles County Professional Conduct Bureau in the Peace Officers Standards Accountability Division.

To my left is Adele Din, an attorney with our Legal Affairs Bureau.

I'm here to present to you case POST 2303691, involving Los Angeles Detective James Fillmore.

Detective Fillmore started his law enforcement career as a police officer with the Los Angeles Police Department in 2003. Mr. Fillmore was promoted to the rank of detective in 2014.

On February 27th, 2016, while off duty, Detective

Fillmore was stopped by the Los Angeles County Sheriff's Department for failing to stop at a traffic signal. When the deputy approached Detective Fillmore's vehicle, he noticed a smell of an alcoholic beverage emitting from the vehicle and from Detective Fillmore's person. The deputy observed an open 25-ounce can of beer in Detective Fillmore's center console.

So the deputy conducted an investigation and determined Detective Fillmore was driving under the influence of alcohol.

Detective Fillmore was arrested and taken to the Santa Clarita station for booking. On the floorboard of his vehicle, deputies located five empty whiskey bottles of varying sizes.

While at the station, Detective Fillmore was uncooperative in providing a breath sample, despite being given five opportunities to do so. Detective Fillmore told the arresting deputy he would only provide a blood sample with a court order.

So deputies sought a search warrant and transported Detective Fillmore to the Henry Mayo Hospital to obtain a sample. After nearly two half hours after the stop, a sample was obtained via search warrant. The sample resulted in a blood alcohol concentration of 0.12 percent, which was above the legal limit of

.08 percent.

Detective Fillmore ultimately pled guilty to one misdemeanor count of driving a vehicle, with a blood alcohol content of 0.08 or greater. In that plea, Detective Fillmore was ordered to complete three years of summary probation; his driver's license was suspended; and he was fined $390; Detective Fillmore was also ordered to complete a six-month alcohol education program.

The Los Angeles Police Department suspended Detective Fillmore for ten days. And in August of 2017, he signed a settlement agreement with the Los Angeles Police Department expressly stating he would abstain from using alcohol for a period of four years.

Four years and a few months later, on April 30th, 2022, Mr. Fillmore was off duty and driving an unmarked LAPD detective vehicle. While driving southbound on Circle J Ranch Road at a high rate of speed, Detective Fillmore was involved in a vehicle accident.

Detective Fillmore's police vehicle collided with the rear of a parked vehicle, causing that vehicle, in turn, to collide with the vehicle in front of it. Detective Fillmore's unmarked police vehicle was totaled, and the two parked cars received major damage.

Detective Fillmore was pinned in the vehicle and

sustained a broken wrist and ultimately required surgery for that injury.

Los Angeles County sheriff's deputies went to the hospital and determined that Detective Fillmore had been drinking -- or driving under the influence in his unmarked police vehicle.

A blood sample was taken around two hours and 45 minutes after the vehicle accident. At that point, Detective Fillmore was found to have a blood alcohol content of 0.18 percent. Again, this is well above the legal limit of .08.

Detective Fillmore admitted to the deputy he had been the driver and sole occupant of the vehicle. He admitted he has been driving at a high rate of speed, and he admitted he had been drinking prior to driving.

In March of this year, Detective Fillmore was relieved of duty by the LAPD. Detective Fillmore still shows to be employed by the Los Angeles Police Department and has been directed to a Board of Rights, which is scheduled for April of next year.

April of this year, Detective Fillmore pled no contest to his second misdemeanor charge of driving under the influence of alcohol with a blood content concentration of .08 or greater.

Detective Fillmore received five-year summary

probation, 15 days in jail, and a fine of $500 or four additional days in jail. Detective Fillmore was also ordered to complete an 18-month alcohol education program.

Detective Fillmore's actions have resulted in the destruction of City-owned property, destruction of private property, and caused him to receive a serious injury.

He's been convicted of driving under the influence twice while employed as a detective for the Los Angeles Police Department.

The facts I have just relayed support the division's findings that Detective James Fillmore was involved in serious misconduct, specifically acts that violate the law, that are sufficiently egregious to be inconsistent with a peace officer's obligation to uphold the law and respect the rights of the public.

For purposes of the division's analysis, clear and convincing evidence means evidence of a charge is clear and convincing. So long as there's a high probability that the charge is true, the evidence need not establish a fact beyond a reasonable doubt.

I would like to take one last moment to make a quick correction to the record. In the document I drafted called, the "Investigative Summary of the

Finding," there's a typo. And that's on the date that Detective Fillmore received his first DUI. In two locations in that document it lists the date as July 10th, 2016. That should be February 27th, 2016.

With that, I'm happy to answer any questions that the board may have.

CHAIRPERSON DUDLEY: Thank you.

That date change does not affect the fact that it was just a few months after the agreement was signed. So he was told, for four years, and we all read the terms and conditions of that agreement. And then about nine months later, he violated again; is that correct?

MR. BRINGOLF: Madam Chair, the date change was on the first DUI, so it has no relevance to the four-year --

CHAIRPERSON DUDLEY: Okay. The second one. And therefore, the timing is the same as to the plea, as well as the amount of time that went by that he was put on those restrictions.

Okay. Thank you.

Okay. Board questions, comments?

MEMBER HATCHER-CRAWFORD: I also see -- Crawford. I also see that he was charged for fast driving under the influence. Was he -- was he charged with it or --

MR. BRINGOLF: I believe he was charged with it,

but he did not -- that was not part of his plea.

MEMBER HATCHER-CRAWFORD: Not part of his plea.

And the courts found him guilty or not guilty?

MR. BRINGOLF: He pled no contest.

MEMBER HATCHER-CRAWFORD: No contest. Okay.

And you said he received 15 days, five years, and 18 months for the second DUI, correct?

MR. BRINGOLF: So he received five years of summary probation, 15 days in jail, and then he had a fine. And then there was an 18-month alcohol education program that was also part of that plea.

MEMBER HATCHER-CRAWFORD: And I assume his license was suspended; correct?

MR. BRINGOLF: That's correct.

MEMBER HATCHER-CRAWFORD: And how long was his license suspended?

MR. BRINGOLF: That, I don't know.

MEMBER HATCHER-CRAWFORD: Okay.

MEMBER JOHNSON: I have a question.

CHAIRPERSON DUDLEY: Yes. Just a comment in response.

My position on this board is, I was brought in and under the title of attorney. And I can tell you that having worked in a district attorney's office for three -- 32 and a half years, two things are generally

true: One is, when someone pleads to one of the counts, either the A or the B, traditionally district attorney's offices throughout this state dismiss the other.

The other was a question you had about -- what was the second point you made? One was on the plea, and the other was -- do you remember? It was a long time ago.

MEMBER HATCHER-CRAWFORD: No. I reiterated what the second DUI, what he received. And then I asked about his license being revoked.

CHAIRPERSON DUDLEY: Okay. There was another point, but it is not significant. But I wanted to at least respond from my history.

Yes. More comments or questions?

MEMBER LARA: Lara.

Just on page 127 of the materials that were put together for us, I see that there's a paragraph that talks about the embarrassment and contrition displayed by the officer -- or the detective, forgive me.

And I had some questions. Were there any -- do you know anything about the personal issues that were discussed that led to his behavior? And do you know any of the activities that he said that were -- that were pointed out that, you know, the positive life changes that he made? Can you expand on that, or is what we have is what we have before us?

MR. BRINGOLF: Yeah. What I have is what's in the record. That is what was used to find our clear and convincing evidence. I don't have anything further on that conversation.

MEMBER LARA: Thank you.

CHAIRPERSON DUDLEY: I also noted from the report that I thought the alcohol that was found in his car, the small bottles of various -- a variety of liquors -- liquors, they were all small. But they were, in fact, varying sizes?

MR. BRINGOLF: They were varying sizes. Varying small sizes.

CHAIRPERSON DUDLEY: Okay. And those bottles of alcohol or bottles or alcohol like those were found during both arrests?

MR. BRINGOLF: No. Just during the first arrest.

CHAIRPERSON DUDLEY: Just the primary one?

MR. BRINGOLF: That's correct.

CHAIRPERSON DUDLEY: Okay. Thank you.

Yes.

MEMBER GLASER: Glaser. In the report it says that he was driving his vehicle at a high rate of speed. Do you have any more specific information on that? I gather that that was based on the impact to the other vehicles. But do we know anything more about his

driving?

MR. BRINGOLF: No, sir.

It is a 25-mile-per-hour zone where he got in an accident, and he totaled his vehicle. I don't know what -- how high a speed he was driving, and I don't know that that was ever determined. It was high enough for him to total his vehicle and cause two other vehicles to sustain major damage. That's all I have on that point.

MEMBER HATCHER-CRAWFORD: Crawford. I have one more question.

CHAIRPERSON DUDLEY: Please.

MEMBER HATCHER-CRAWFORD: You said -- I mean, what in the report, it states -- I know you didn't say it -- but in the report, he was driving an unmarked --

CHAIRPERSON DUDLEY: Detective's car.

MEMBER HATCHER-CRAWFORD: -- detective's car.

What is the policy as far as detectives taking cars home, or do they keep them at home? Or is there any reason other than outside of work that sometimes that they do drive -- drive the cars?

MR. BRINGOLF: Yeah, I want to be careful not to speak to any of the policies of LAPD. Those weren't necessarily used to find and determine clear and convincing evidence in this point.

I can tell you that it's never been that ambiguous that driving under the influence of alcohol in a police car is, you know, not -- not an appropriate --

MEMBER HATCHER-CRAWFORD: I'm trying to get into his mindset.

MR. BRINGOLF: Yeah, I'm not sure. But, yeah, that's never been a question as far as I know.

CHAIRPERSON DUDLEY: But fair to say there was nothing in your reports that indicated him taking that car that evening and driving an unmarked car was a problem?

MR. BRINGOLF: That's correct. There was nothing in my report to that.

CHAIRPERSON DUDLEY: The problem was that he was under the influence of alcohol?

MR. BRINGOLF: That's correct.

CHAIRPERSON DUDLEY: Okay. Any other --

MEMBER GLASER: But it does say in the report that he did not have permission to be driving the City vehicle at the time of the accident.

MEMBER DOYLE: That's what I was going to point out, too. He was not on call. And so he was not supposed to be driving a City car.

MR. BRINGOLF: There was not clear and convincing evidence to establish that fact. So --

MEMBER DOYLE: Not to argue, but it is in the report by LAPD that they interviewed --

MR. BRINGOLF: Correct.

MEMBER DOYLE: -- people who shared that car, and he was not supposed to drive it.

MR. BRINGOLF: We were able to establish that he was off duty when it happened. Whether he had permission to drive that vehicle is -- we don't have clear and convincing evidence.

CHAIRPERSON DUDLEY: I think as a former sheriff, you are very aware of when you can take that kind of vehicle. And I'm -- perhaps LA has different rules and regulations than your department did.

MEMBER DOYLE: Actually --

CHAIRPERSON DUDLEY: That he had made statement. Yeah, I saw that.

MEMBER DOYLE: Yeah. So --

MEMBER JOHNSON: I think, if I can ask, too, also -- Johnson, by the way.

I remember reading that he also tried to -- I guess I can use the word -- "bribe" the arresting officer to not allow this to be known, that he was arrested and had this level of alcohol in his system.

MR. BRINGOLF: One of the allegations from the agency was that he had tried to use his official

position to gain favor after his arrest. To what extent that happened, I'm not -- I'm not certain.

The facts that we used in this case to show an egregious act had occurred was the fact that we have -- factually have a repeated act. We have two DUIs. We have an officer who was driving a police vehicle under the influence of alcohol. Two hours and 45 minutes or thereabouts after his blood -- after the accident, his blood sample was taken and returned at 0.18 percent, which is over 200 percent more than the legal limit.

The fact that he caused an injury to himself, the fact that he damaged City-owned property, the fact that he damaged two separate people's vehicles, this was in a residential area. Those are the things that we're using to help establish the egregious nature of this particular act.

There are the other parts that you bring up about the question as to whether he had permission to drive the vehicle, the question as to how he tried to gain favor to, you know, maybe get a lesser charge or something to that effect. That is unclear with the record we were provided during investigation.

So just bring it back to the facts that we're using to establish clear and convincing.

CHAIRPERSON DUDLEY: There was no evidence

presented that he bribed someone, but it was that he used his badge to influence; is that correct?

MR. BRINGOLF: Potentially. He may have shown his badge, and that may have been interpreted as an attempt to gain favor. Or it may have been the fact that he was a peace officer, and he felt compelled to show his badge.

CHAIRPERSON DUDLEY: Mr. Johnson, you may consider anything in the report in forming your opinion.

The point I wanted to make before was the -- there were two and a half hours went by from the time he was driving until the time he had a blood alcohol level of .012. And there was an expert who opined what his blood alcohol level was at the time that he was driving; is that correct?

MR. BRINGOLF: There was a blood alcohol expert. You know, an expert in the -- in extrapolating blood alcohol content. That expert used a formula for the first DUI and provided that.

I used that same formula for the second DUI, which would have put him around a .24 to .22 around 15 minutes prior to the accident.

CHAIRPERSON DUDLEY: .22 to .24?

MR. BRINGOLF: Correct.

CHAIRPERSON DUDLEY: And the legal blood alcohol

level is .08?

MR. BRINGOLF: That's correct.

CHAIRPERSON DUDLEY: Any other questions about that?

Yes.

MEMBER CLAVO: Clavo.

For clarity purposes, the first DUI is where the alcohol containers were found, but not in number two DUI?

MR. BRINGOLF: That's correct, ma'am.

MEMBER CLAVO: Thank you.

CHAIRPERSON DUDLEY: Thank you.

MEMBER LARA: Lara. I have a question.

As this process is new, the -- I don't know. As the investigator from POST, are you permitted or allowed -- I don't know the right terminology -- to move forward, or was it considered a recommendation for suspension, or this was solely -- your thought was this was a revocation case?

MR. BRINGOLF: Yeah. Our -- the division's findings support there's clear and convincing evidence that serious misconduct occurred. The egregious nature kind of speaks to that.

There's several reasons. First, it's not his first DUI. It his second while employed as a peace officer.

Second, the severity of the events has increased rather than decreased. In his second DUI, Detective Fillmore totaled the police car, caused extensive damage to two privately owned vehicles, and caused an injury to himself that caused surgery.

Third point would be that Detective Fillmore had been suspended administratively after his first DUI, and likely his license was suspended in that case as well. And neither of those suspensions prevented his second DUI. So it shows that suspension might not be the appropriate avenue.

And finally, these criminal acts show a wanton disregard for public safety, which we find incongruous with being a peace officer, hence the recommendation to revoke.

CHAIRPERSON DUDLEY: So thank you for clarifying that. So they did consider that in their recommendation. And, of course, you know, as a board member, you can still make a motion that that be appropriate.

Any other questions or comments?

MEMBER CLAVO: Clavo. One more question.

Do we know if he was offered any EAP or any services for his drinking behavior and habits?

MR. BRINGOLF: That's unclear. That may be part of

the settlement agreement. He was likely offered EAP. The fact that he had a alcohol education program, those tend to parallel in nature the type of things that one might get from an EAP just from a different source.

So he did receive two rounds of alcohol education after each --

CHAIRPERSON DUDLEY: So to be clear, the first time he had a DUI, he went -- he had to, by law, go to the DUI school for a first offender.

The second time he had the DUI, he had to go for a second offender. So there are two forms of education after that.

Additionally, as part of the terms and conditions of his first DUI, the agency insisted that, I believe, counseling was one of the provisions that they also insisted upon; that he begin and complete counseling session.

Is that correct?

MR. BRINGOLF: That is correct.

CHAIRPERSON DUDLEY: Okay. So, hopefully, that answers your question.

MEMBER CLAVO: Yes, thank you.

CHAIRPERSON DUDLEY: Any other questions of --

MEMBER HATCHER-CRAWFORD: Crawford. And I know that you said earlier it was about policy.

CHAIRPERSON DUDLEY: Right.

MEMBER HATCHER-CRAWFORD: Yeah. That, I'm interested in seeing -- and maybe we'll do that in closed session -- the policy of --

CHAIRPERSON DUDLEY: Let me suggest to you. We don't have to go into closed session, or we can go into closed session with this case.

The first case, the primary reason we went into closed session was because of the nature of the videos. So there is a provision that would allow us to go into closed session for the deliberation process, or we could stay out here.

Please go on.

MEMBER HATCHER-CRAWFORD: So -- and maybe this is to my attorney, Christopher. I'm interested in seeing the policy each -- of POST regarding officers and the misconduct.

And also the policy of, you know, the station. You know, former DOD generally, if you get like a first DUI, you don't get a second option.

And so maybe somewhere within the body of the policy, I don't know what it may read; one, two, or three offenses.

CHAIRPERSON DUDLEY: I could speak to POST. POST wouldn't have a policy on something like that.

MEMBER HATCHER-CRAWFORD: Okay.

CHAIRPERSON DUDLEY: But the agency may or may not.

Do you happen to know if the agency -- if there was a policy on what would happen on first or second offenses on DUIs?

MR. BRINGOLF: No, ma'am.

Colloquially, it's referred to as the bail schedule, right, with punishment imposed by an organization. That bail schedule changes from organization to organization. And I think it is taken on a case-by-case basis.

What I can say, in this case, is that Detective Fillmore was relieved of duty, and he was ordered to a Board of Rights, which happens next year in April.

So the suggested outcome is termination. He's been, like, de facto terminated, waiting for his Board of Rights. So...

CHAIRPERSON DUDLEY: Any other questions?

MEMBER DOYLE: Just in my experience, I -- and I don't even know if the Police Officer Bill of Rights would agree to this, but we have never had a chart of what you get for different disciplines. I mean, there's unwritten.

For instance, in my agency, the first DUI was five days. The second was termination. Fortunately, I never

had to do the second.

But I kind of think -- and maybe Toby or Christopher know. I don't think the Police Officer Bill of Rights would allow you to have a matrix that if you did this, this is what you get. I mean, because each case is supposed to be dealt with individually.

CHAIRPERSON DUDLEY: Would you like Mr. Darden to approach, and you can ask him?

MEMBER DOYLE: Excuse me?

CHAIRPERSON DUDLEY: Would you like Mr. Darden to approach, and you can ask him that question?

MEMBER DOYLE: No.

CHAIRPERSON DUDLEY: Okay.

Any other questions or comments of -- any questions for the attorney?

(No response.)

CHAIRPERSON DUDLEY: Okay. Thank you very much.

So now I would like to know if any member would like to go into closed session, or if you would like to deliberate this out here.

I'm sorry. I completely forgot public comment. So is there someone who would like to make public comment? Thank you.

Good morning. It's up to you if you'd like to introduce yourself.

MS. WILCOX: Hi. I'm Leslie Wilcox.

CHAIRPERSON DUDLEY: I apologize for having stalled on that.

MS. WILCOX: No, no. That's okay. It's new. We are all learning.

I'm Leslie Wilcox. I'm a union attorney for the Los Angeles Police Protective League. And I represent Detective Fillmore in this POST SB 2 matter with POSAAB.

I would like to address a couple of issues that the board has asked questions about, and I may be slightly more familiar with that process.

I would like, Mr. Johnson, for you to know that LAPD policy requires all of their employees to identify themselves as an officer or an employee of the Los Angeles Police Department any time they are contacted by another law enforcement agency, which I think the law enforcement consultant alluded to that presentation of their identification sometimes can be misinterpreted. It is definitely something that Detective Fillmore is disputing, just so that you are aware of the department's policy requiring that.

And, Ms. Crawford, I also wanted to let you know that Detective Fillmore disputes that he did not have authorization to have that detective car at home. That is one of the issues that will be appealed in his Board

of Rights that is scheduled for April of 2024.

And regarding the discipline matrix, LAPD does have a penalty guideline that gives guidance to both their command staff in reaching a decision for a proposed discipline in any of their cases for allegations of misconduct.

And then once it is appealed, either to a civilian or a sworn board for the Board of Rights, they are also given that penalty guideline. And it ranges anywhere from an official reprimand, which is a written penalty, with guidelines for suspension days, all the way up to termination for various different categories of allegations of misconduct.

And there would be a specific guideline for driving under the influence in this particular case, just so that you are aware of that.

Someone asked what led to this. Officer -- Detective Fillmore was in the process of dealing with three open homicide cases, had three people that he was searching for, for murder warrants. That's the reason he had the take-home car.

He was in the middle of two murder trials and was up for a promotion to a Detective II and learned shortly before this incident of the second DUI that they promoted someone that he had trained himself to that

position.

Thank you.

CHAIRPERSON DUDLEY: Counsel, would you mind sitting down? The mic carries better if you are sitting. Pull it towards you.

MS. WILCOX: Of course. Thank you.

CHAIRPERSON DUDLEY: And I'm sorry to interrupt.

MS. WILCOX: That's okay.

They were promoting someone that he had trained that had ten years less experience than him. And given the amount of time that he had been with the department and the work that he was doing, this was fairly devastating to him. And, unfortunately, triggered a relapse to his alcohol addiction, which led to the second DUI that we are here about.

Since then, when -- he was taken to the hospital because he broke his wrist. Immediately upon being released from the hospital, he went to an inpatient program for alcohol addiction and was there for 65 days, and has been sober since.

So I wanted to make sure that the board was aware that he had addressed this situation in a different manner that had been addressed in 2016, and has been successful in maintaining his sobriety as a result of that intensive outpatient program that he went to

straight from the hospital.

Additionally, I am requesting that the board defer this matter until his Board of Rights. My understanding from the POST website is that if there is an appeal from the proposed discipline, that the board will wait until that discipline has become final before it moves forward with its own process. And in this case, the final discipline is not until a Board of Rights, in Detective Fillmore's case, makes a decision about the final discipline, and then the chief of police signs off on that decision.

And that will be, I believe, on April 3rd. He has three days scheduled.

So I'm requesting that this either be continued or deferred until a date after that, before this particular board makes its decision about whether or not to go forward with a suspension or a revocation, mainly because there will be a significant amount of evidence that will come out that may address some of this board's questions. But it is a de novo hearing, which involves multiple witnesses, cross-examination, closing argument, all of the body-worn video evidence from the agency that arrested Detective Fillmore. So it is a very extensive process that can shed some light about some of the questions that this board has raised today.

And I think it would be most efficient if this board would defer that until his final discipline has been imposed so that you have more detailed answers than the investigative summary that's been provided to you at this point.

According to the Frequently Asked Questions on the POST website, my understanding of POSAAB is that it will not undertake revocation or decertification or suspension recommendation until the discipline is final. In Detective Fillmore's case, it is not final yet.

As the law enforcement consultant told you, he is still technically a member of Los Angeles Police Department until that board makes that final decision in April of 2024.

CHAIRPERSON DUDLEY: Okay. Thank you.

I will ask Counsel to respond to what the website says and the relationship between Board of Rights hearing and this board's job in a moment.

But let me ask you: You mentioned this LAPD guideline. What is the guideline when someone suffers a second DUI?

MS. WILCOX: It is 20 pages long, so I don't remember that one specifically.

I believe --

CHAIRPERSON DUDLEY: Let me ask you. The

guidelines is 20 pages long on what to do if someone has a second DUI, or just the entire guideline?

MS. WILCOX: Correct.

CHAIRPERSON DUDLEY: So you don't know?

MS. WILCOX: I can pull it up for you, if you would like.

CHAIRPERSON DUDLEY: Okay. Thank you.

MS. WILCOX: Give me just one moment, please.

CHAIRPERSON DUDLEY: Sure. Take your time.

MS. WILCOX: Madam Chair, it is Frequently Asked Question Number 23.

CHAIRPERSON DUDLEY: I appreciate the Frequently Asked Question Number 23, and we'll take a look at that. But I think maybe I asked my question inartfully.

I'm wondering what the LAPD guideline is on someone who suffers a second DUI.

MS. WILCOX: Yes. I'm trying to pull up their guidelines.

(Pause in proceedings.)

MS. WILCOX: Found it.

CHAIRPERSON DUDLEY: Would you like us to take a five- or ten-minute break to give you more time?

MS. WILCOX: I just found it. I'm sorry.

CHAIRPERSON DUDLEY: You just found it.

MS. WILCOX: Yes. Of course, Murphy's Law.

CHAIRPERSON DUDLEY: Please take your time.

MS. WILCOX: That's okay.

There are different sections for driving and traffic collisions. Specifically, driving a City vehicle in violation of policy resulting in a fatality or severe injury. I'm not sure that this technically would qualify as that. But a first offense can go from an official reprimand up to termination. And a second offense can go from 16 days suspended up to termination.

CHAIRPERSON DUDLEY: Okay. And in this case, we had serious injury to the driver. We had a wrist that required surgery and hospitalization for some point -- period of time.

So thank you for that.

And then I have at least three people who can respond to your other question. We'll start with the Assistant Executive Director.

MS. DEL MUGNAIO: Thank you.

The division objects to the request for a continuance. The continuance was not received until December 5th, which was after the matter was presented to the board and was posted on the POST website as a matter of public record.

More importantly, to speak to the request for continuance in this matter, the Board of Rights hearing

has no binding effect with respect to the board's recommendation regarding decertification and, therefore, should not be delayed.

The evidentiary hearing that you heard today, in terms of allowing litigation and evidence and facts to be fully explored, will happen before an administrative law judge with respect to the board's recommendation and, forthcoming, the Commission's recommendation. And, therefore, this matter should not be continued or tolled.

I respectfully request the board move forward with its decision or recommendation.

Thank you.

CHAIRPERSON DUDLEY: Thank you.

Counsel, is there anything you would like to respond to?

Just so you are familiar, he is counsel for this board, and then we also have counsel for POST.

MS. WILCOX: Understood.

MR. BEATTY: Unless the board members have questions about what they were just instructed on, I concur with the thought that there is no relationship between the Board of Rights hearing and what this board is deciding. What this board is deciding is restricted to the investigation as described. There's no --

there's no connective connection.

CHAIRPERSON DUDLEY: Thank you.

And also the chief attorney for POST, Toby Darden, did you want to respond to any of that?

MR. DARDEN: Thank you.

Thank you, Board Members. The tolling provisions in the Act refer to something that is a little bit different. There is a tolling provision in Senate Bill 2. And the tolling provision there says that once an agency gives a completed investigative file to POST, it has three years to investigate and then serve the notice of intent to decertify upon the officer.

The matter can be tolled during that period of time, but that is just an order to ensure that POST has a sufficient opportunity to investigate, but that within three years after receipt of the completed investigation, we will complete it unless there is something that requires tolling, such as, for example, an appeal.

So that is a little bit different from the situation that we have here.

What really Counsel is asking for is a continuance, which, of course, she can request. And I do understand the confusion about the website question. It is perhaps not worded as clearly as it should be. So the website

does say that generally, a matter can be tolled pending an administrative appeal.

However, general does yield to specific circumstances. And, in this case, I believe the division's position is that when we have an officer who is still currently employed -- this is not a circumstance where he has been terminated and is not working as a peace officer. So the idea is that in this specific circumstance where he is specifically employed and has a history of these alcohol-related incidents, including the most recent one that caused injury and damage, that it is not appropriate to toll it in this particular case, even though that might generally be the case.

And the idea that from the division's perspective is quite simply that the question of his employment relationship with LAPD, whether or not LAPD will continue to employ him or not, that's between him and LAPD. And he certainly has a right to his Board of Rights hearing, and he can resolve that issue with the Board of Rights with respect to his employment relationship with LAPD.

What the division is doing is something different and more fundamental than what the board is being asked to do. And that is to revoke his peace officer

certification, which would be statewide. So the division's position is that, as has been said, there really is no reason to grant a continuance of the board's recommendation in this matter.

Of course, in addition, the board's recommendation will then have to go to the Commission. The Commission will then have to approve it or not in public hearing. And then -- and it will then be sent out to an administrative law judge for determination.

And if the Board of Rights is going to go forward in April, just simply as a matter of calendaring, this matter wouldn't go to the board until, Annemarie, what are we talking about, March, for the Commission meeting?

MS. DEL MUGNAIO: March.

MR. DARDEN: March. The Commission meeting would be in March. If the Commission approves it, it would refer it back to the division. We would engage the attorney general's office. They would file an accusation. It would start the process of that whole discovery and that whole administrative hearing.

So the Board of Rights would likely be concluded in any event well before the administrative hearing occurred.

So if you have any questions, I'm happy to answer them.

CHAIRPERSON DUDLEY: Just stay there.

Would you like to respond to any the responses you got, Counsel?

MS. WILCOX: Yes. Thank you. I would just like to read into the record what the POST website says specifically regarding the issue of a continuance or a deferral.

"When a peace officer appeals discipline relating to serious misconduct, does that delay the decertification process with POST?"

The answer is, "Generally, POST will toll any determination or recommendation for decertification pending the outcome of disciplinary appeals or civil or criminal actions."

So that is what I was relying on in my request for continuance.

I would also like to respond to Ms. Del Mugnaio's response that my request for a continuation was not received until December 5th, which, after this was posted for public comment, as I'm sure you all know, this is our first time doing this. I was not given any sort of notification about when any request needed to be received; and was told to come to ask the board directly for that request, which I did here today.

If there is a process that needs to be in place for

representatives of law enforcement officers to be able to make those kinds of requests, I would -- I would ask that be given to us in advance so that we can make this process more smooth and more streamlined.

Also, I believe the relationship between this board's duty in making a recommendation for either suspension or decertification is related to the hearing at the Board of Rights.

If you are, in fact, searching for the facts and the truth and the why on why Detective Fillmore behaved as if he did, I think that that is a very serious matter for this board to consider in its recommendation.

I would also note, as my last point, that it appears, so far, at least on the information that I can glean from the website, that all other revocations for law enforcement officers in this state have been for felony convictions. And Detective Fillmore does not have that same status.

And so I would request that if the board does choose to move forward, that it go -- move forward on a recommendation for suspension instead of decertification.

Thank you.

CHAIRPERSON DUDLEY: Thank you. First, there's no discrepancy between what you read and what Chief Counsel

Darden read. He responded to the "generally," the statement that says "generally," and said that this was specific.

As to the second point.

MS. DEL MUGNAIO: Thank you, Ms. Wilcox.

Yes. We sent out the notice of intent to revoke in late December. Actually, that's not true. We sent it out in mid October with a 30-day response period for an appeal. So there was a 30-day window within which the officer/officer's counsel could appeal the actual notice of intent to revoke.

We did receive an appeal regarding this matter on November 21st. We did not receive a request for continuance until December 5th.

At that point, we had already moved forward with posting the information and obviously, sending it to the board for review and consideration.

In terms of the -- the final resolutions of anything that has been taken, final actions that have been taken by POST, the reason that the only actions at this point are as related to felony convictions, is because this is the first hearing of the board, where they can consider acts of misconduct.

The felony conviction statute, Government Code 1029, is an absolute. So if an officer suffers a felony

conviction, they shall be revoked. There is no discretion on the part of the board or the Commission or anyone else, for that matter.

So that is the reason why the current resolution, if you will, for all of the matters that are posted on the POST website, are revocations as a result of a felony conviction, because we are, today, considering our first hearing for serious misconduct, unrelated to a 1029 violation.

Thank you.

CHAIRPERSON DUDLEY: Thank you.

Are there any questions from the board for Counsel?

Yes.

MEMBER CLAVO: Yes. I wanted to just make sure I understood.

So for clarity purposes -- Clavo, I'm sorry -- you stated that your client did not dispute that he -- he disputes that he did not have permission to have his car home, stored. But does he dispute the fact that he did not have permission to drive said car while off duty?

MS. WILCOX: That's a little bit difficult to answer because of the way LAPD handles their off-duty vehicles for people who are allowed to have cars off-duty. He was responding to meet a supervisor. He definitely did not have permission to drive it while

under the influence. He's not disputing that. But he did have permission to have the vehicle in the manner in which he did.

MEMBER CLAVO: Thank you.

CHAIRPERSON DUDLEY: When you are saying "in the manner in which he did," but not to drive the vehicle under the influence of alcohol --

MS. WILCOX: Of course not.

CHAIRPERSON DUDLEY: -- you weren't suggesting that.

MS. WILCOX: Of course not.

CHAIRPERSON DUDLEY: Board Member Lara.

MEMBER LARA: I don't have a question.

CHAIRPERSON DUDLEY: Oh, you didn't?

Okay. Yes.

MEMBER GLASER: Hi. Glaser.

I wanted to get some clarification on what his current status is with respect to his ability to serve as a law enforcement officer currently. I know that he is described in the report as being relieved of duty. But he is still, apparently, an employee of LAPD.

MS. WILCOX: It is a little confusing.

I actually have this dispute with the department all the time. He's "relieved of duty" is a terminology that they use, meaning that he doesn't have a badge or a

gun. He has no police powers even in an off-duty capacity under the Penal Code.

That -- for LAPD, once they have determined that they want someone to go to a Board of Rights to be considered for termination, they are still on the payroll of the City for 30 days.

After that, they are no longer on the payroll of the City, but the department still believes that they have control over that particular employee while they are pending their appeal.

I don't know if that clears it up.

MEMBER GLASER: That is a partial clarification, thanks.

I think my question is for other people as well, which is: What is his status with respect to POST at this point? Is he under Immediate Temporary Suspension? And -- or, you know, is he -- yeah. I think that is my question.

CHAIRPERSON DUDLEY: Okay. I will ask Annemarie to respond to that.

MS. DEL MUGNAIO: Thank you, Board Member Glaser.

No, he is not. And the reason Mr. Fillmore, or Officer Fillmore, is not under an Immediate Temporary Suspension is there is no authority in this case for the Executive Director to take that action because he has

not been terminated. He did not resign during a pending investigation. And he was not arrested or indicted for a felony matter.

We don't have the authority to issue an Immediate Temporary Suspension. Thereby, Mr. Fillmore is -- at this point, his certification status is free and clear. He could seek employment from another agency. He is not restricted in terms of his ability to retain a law enforcement position elsewhere.

CHAIRPERSON DUDLEY: Anything else, Mr. Glaser? No? Thank you.

Ms. Pena.

MEMBER PENA: I have a couple questions, actually.

I'm trying to understand the Board of Rights versus the revocation proceeding that we're considering here today.

Let's say, for example, we recommend revocation. It goes to POST. POST upholds that.

Board of -- does the Board of Rights hearing still go on? And if so, how does that then impact a POST decision on revocation? I'm asking, actually, any of the attorneys.

MS. WILCOX: I will speak to the Board of Rights part, if I may.

Sorry. You can go ahead.

MS. DIN: You can go ahead.

MS. WILCOX: Again, this is all new to all of us in this area.

My belief would be that if this board and the POST Commission, at its final decision, revokes his peace officer certification, then I think, under his MOU, he would have a right to go to a Board of Rights and still appeal that. But they would not be able to reinstate him to his position because he wouldn't have a certification.

MEMBER PENA: Anybody else on that?

MS. DIN: So I just want to reiterate what Mr. Darden had explained about how the two tracks are completely separate.

Sorry, is it picking me up?

The two tracks, the disciplinary track between the officer and the agency, that is completely separate from our revocation process and the statutory scheme that is set forth by SB 2.

So the outcome of the disciplinary proceeding or the appeal with the Board of Rights, it really has no bearing on our decision to move forward with revocation.

MR. BEATTY: It is somewhat intentional, right? This board is making independent recommendations, independent of agencies' determination of their

employment issue. Right? And so they are discreet and unconnected.

Does that make sense?

MEMBER PENA: Yes.

MS. DIN: And an agency decision does not preclude POST from moving forward with the recommendation for decertification.

CHAIRPERSON DUDLEY: Other questions?

MEMBER PENA: Second question is -- and any of the attorneys, feel free to speak to this -- is there any significance to be obtained from the fact that the first offense was more than four years before the second offense? Does that matter at all?

CHAIRPERSON DUDLEY: I can respond to it from the board's position.

I believe the reason -- the division can speak to this -- that this was brought to everyone's attention was because of the contract, for lack of a better term, that was articulated.

So after his first DUI, he entered into a contract. And you read the terms and conditions of that: Not drinking alcohol, not going to a place where alcohol is served, and more of that.

And then certain number of months later, he violated.

I think the point was to show his -- the information about the fact that he had these very strict terms and merely months went by before he violated them. But to also show that, in fact, the four-year period had ended.

Anybody else want to say anything about that?

(No response.)

MS. WILCOX: I would just only note that the contract had ended, and it wasn't a violation of the contract.

CHAIRPERSON DUDLEY: Correct. It was not in violation of the contract. It ended, I think it was, nine months previous.

MEMBER PENA: Is there any significance to that?

CHAIRPERSON DUDLEY: Only whatever significance you place on that.

MEMBER PENA: Okay. Okay. Thank you.

CHAIRPERSON DUDLEY: There's no legal significance.

MEMBER PENA: Okay. Thanks.

CHAIRPERSON DUDLEY: Any other questions, Ms. Pena?

MEMBER JOHNSON: I do have a question.

CHAIRPERSON DUDLEY: Yes, Mr. Johnson.

Ms. Pena, is that all your questions?

MEMBER PENA: Yes.

CHAIRPERSON DUDLEY: Okay. Mr. Johnson, please.

MEMBER JOHNSON: I'm still kind of stuck on this idea when I used the word "bribery." Because in the report -- and I guess I'm trying to understand if he really accepted his responsibility for what he did.

But it states (as read), "On at least two occasions during the investigation, Fillmore attempted to use his position with the department to secure release and avoid the ramification of his actions. He told Morgan that the two were on the same team, that it, the investigation, did not have to go this far. And if it were up to me, I would let it go."

And, of course, it goes on to talk about him attempting to hide this matter. And so it is very concerning to me that we're being asked, I guess, by his counsel -- you are representing him, correct? --

MS. WILCOX: Yes.

MEMBER JOHNSON: -- to overlook this, to give him time. And so I'm troubled with that. I just wanted to put that on the record.

MS. WILCOX: Yes.

CHAIRPERSON DUDLEY: And I think the Counsel made reference to it. And I believe -- and please correct me if I'm wrong -- when you said he is required to let them know that he is a member of law enforcement when you work for the LAPD. And that was in reference to the

articulation of that position. It is not -- was not in reference to everything else you just read.

MS. WILCOX: Correct. I was just indicating that his department policy requires him to identify himself as a law enforcement officer and for the agency that he works with any time he is contacted by any other law enforcement agency, aside from a traffic ticket.

And that as the law enforcement consultant here for POST indicated, that can often be misunderstood. And we do not have all the details regarding that particular interaction.

MEMBER JOHNSON: Yeah. It is just troubling in the report that he -- at least the investigator said he attempted to use his position. Not just showing the badge. But attempted to use the position to just totally make this go away.

CHAIRPERSON DUDLEY: Well, you have the words there. Part of the same team. And the other things you read.

Thank you.

Other questions for Counsel -- for public comment? Counsel?

(No response.)

CHAIRPERSON DUDLEY: Okay. Thank you very much for coming in.

MS. WILCOX: Thank you all for your time.

CHAIRPERSON DUDLEY: Okay. Now, any other public comment?

(No response.)

CHAIRPERSON DUDLEY: Seeing none, I now go back to the board and ask if anybody would like to go into closed session to discuss this further? Or does everyone want to stay out here and have any further discussion that we might have? So first the question: Anybody want to go into closed session?

MEMBER GLASER: I would like to go into closed session.

CHAIRPERSON DUDLEY: Okay. Let's go into closed session.

And let me ask you, do you need a break?

THE COURT REPORTER: I could use a break.

CHAIRPERSON DUDLEY: Okay. So we are going to have a break, and then we will resume in closed session at 20 to 12:00. 10 minutes from now.

(Time noted: 11:32 p.m.)

---o0o---

(Closed session was held from 11:41 a.m. to 12:08 p.m.)

---o0o---

(Time noted: 12:10 p.m.)

CHAIRPERSON DUDLEY: We are back from closed session.

Are there any additional comments or questions from any board members?

(No response.)

CHAIRPERSON DUDLEY: Seeing none, is there a motion?

MEMBER JOHNSON: I would like to make a motion to decertify.

CHAIRPERSON DUDLEY: Okay. Is there a second?

MEMBER PENA: Second.

CHAIRPERSON DUDLEY: Okay. At this point, we will take a roll call vote. The motion is to decertify this -- to recommend to the Commission that this officer be decertified.

Mr. Wallace -- I mean, Mr. Knapp.

MR. KNAPP: Board Member Buchen.

(No response.)

MR. KNAPP: Board Member Clavo.

MEMBER CLAVO: Aye.

MR. KNAPP: Board Member Crawford.

MEMBER HATCHER-CRAWFORD: Nay.

MR. KNAPP: Board Member Doyle.

MEMBER DOYLE: No.

MR. KNAPP: Board Member Dudley.

CHAIRPERSON DUDLEY: Aye.
MR. KNAPP: Board Member Glaser.
MEMBER GLASER: Aye.
MR. KNAPP: Board Member Johnson.
MEMBER JOHNSON: Aye.
MR. KNAPP: Board Member Lara.
MEMBER LARA: Nay.
MR. KNAPP: And Board Member Pena.
MEMBER PENA: Aye.
CHAIRPERSON DUDLEY: Okay. What does that tell us?
MR. KNAPP: We have five yeses, and we have three nays.
CHAIRPERSON DUDLEY: Okay. So again, this is based upon a majority. So that motion has passed. And the recommendation to the Commission is that this officer be decertified. And the record reflects the people who voted against that.
Okay. Of now, as to upcoming meetings, we have a meeting on March 20th through 21st; May 15th through 16th; July 24th through July 25th. All of those meetings are here at POST in West Sacramento. There has been some discussion about a meeting in January.
For those of you who were here for the first training session, we set aside a January date as well. There's been some discussion that we might want to

debrief the process at that meeting. It would probably not be a hearing, but we don't know that definitely yet. But if it weren't a hearing, it may be a time for us to meet, to discuss how this process went, and any concerns or questions you might have about the process before we come back in March.

So I'm going to ask Annemarie to comment on whether she thinks there will be cases and the possibility of meeting in January for that debriefing/training session.

Annemarie?

MS. DEL MUGNAIO: Thank you, Madam Chair.

There will not be a hearing in January. It takes roughly eight to nine weeks from the point that we receive a case and a notice of intent to revoke goes out, for us to be able to meet all of the time frames, procedural time frames, to schedule a hearing.

So our next hearing will be March 20th and 21st.

In terms of additional training, I would offer up maybe an opportunity to meet in February. And then we can send out some potential dates.

CHAIRPERSON DUDLEY: February or January?

MS. DEL MUGNAIO: February.

CHAIRPERSON DUDLEY: We -- I think several of the board members have that January date, not the February date.

MS. DEL MUGNAIO: Correct. But in terms of we are offering training to the Commission with regard to the procedural overview of case review in February. And just for the sake of staff preparing for an additional day of training, it would be helpful if we could combine that effort and offer training to the board and training to the Commission around some of these procedural steps. Answer more of your questions about the process, about the case review, about the hearing stages, etc.

So what we're in the process of doing right now is we have identified some dates in February. I don't know if we have all of those dates in front of us. But we were going to send out a Doodle poll, as we have done in the past, and determine how many folks are available on what dates. And then try to set aside a day for training where we can, again, revisit some of the administrative overview.

CHAIRPERSON DUDLEY: Okay. Anybody want to comment on not meeting in January? Meeting -- potentially meeting in February?

MEMBER DOYLE: Well, if there are going to be no cases, then there's no need for us to meet in January. Correct?

CHAIRPERSON DUDLEY: There's no reason to have a hearing.

MEMBER DOYLE: Right.

CHAIRPERSON DUDLEY: But for those of us who were here for the first training session, we put those dates aside. I understand it would be very complicated for the staff, but I want to give you all the options.

MEMBER DOYLE: Do you know what the dates are in February? And I think it's smart to combine so staff doesn't have to do it twice.

MS. DEL MUGNAIO: Ms. Wallace is going to help me out here.

CHAIRPERSON DUDLEY: It is going to come in Doodle, and we're either going to be able to do it or not.

MS. DEL MUGNAIO: Just as a matter of procedure as well, in terms of the traveling to the hearings, or to the board meetings, Chandler wanted an opportunity to kind of review reimbursement for you folks, since when we have you on what is CalATERS, that is going to change a little bit.

So if we have time for that, Chandler can kind of go over what to expect for reimbursement.

CHAIRPERSON DUDLEY: Let me see if there's more discussion about the timing of the meetings.

Anybody else want to just going to wait and see about those February dates? See if they work for you, but we already have the March.

Okay. I am seeing everybody nod.

MEMBER JOHNSON: I did have a question concerning our next hearing date. I believe it was in March 20th or 21st.

Do we know how many hearings we will hear per meeting? We don't. Okay.

CHAIRPERSON DUDLEY: But the other question is, so we don't know whether we will need one day or two. We put aside two in case we have a lot of hearings.

But generally the way we know how many hearings we're going to have is you heard Annemarie talk about that 30-day rule. So they get letters, and they have 30 days to respond. We don't yet know how many letters will be sent out, and we don't yet know how many will want to come before this board.

MEMBER JOHNSON: Okay.

CHAIRPERSON DUDLEY: Is that correct? Okay.

Okay. So I think we know where we are.

And let's turn to Chandler for our travel.

MR. KNAPP: Madam Chair, thank you.

I just want to touch quickly on how the reimbursement will work for the purposes of this meeting. You will receive digitally a letter of agreement from me, and that is going to contain instructions on how you will go through the

reimbursement process.

Now, as Annemarie mentioned, we are going to eventually have you guys logged into CalATERS where there's direct bill to the division, rather than yourselves.

Until that occurs, we have to do it the way that we have done it for this meeting, as far as your travel and hotel accommodations.

So I will walk all of you through that process, and you should expect that letter of agreement emailed to you, likely by close of business today. But we can touch on all of that individually. Get you through it.

Thank you.

CHAIRPERSON DUDLEY: So I -- I was talking to Annemarie, so I wasn't able to hear that last part. For now, we pay for our own transportation, and we get reimbursed. At some point, there may be some ability for POST to pay that ahead of time and working through the travel agency, but we're not there yet.

MR. KNAPP: We're not there yet, correct.

CHAIRPERSON DUDLEY: Okay. Thank you.

Question?

MEMBER HATCHER-CRAWFORD: Question. So on the training, is it during Monday through Friday? Not weekends?

CHAIRPERSON DUDLEY: All trainings are Monday through Friday. But we don't have the exact possible dates yet.

MEMBER HATCHER-CRAWFORD: Okay. I have residency.

CHAIRPERSON DUDLEY: Now, we do have some possible dates. It's amazing how life can change. And -- so you want to tell us what those possible dates are?

MS. DEL MUGNAIO: Sure.

MS. WALLACE: So the proposed dates that we are currently looking at are Wednesday, February 7th; Thursday, February 8th; Tuesday, February 13th, or Wednesday, February 14th.

CHAIRPERSON DUDLEY: And you don't have to discuss those now. They will be, again, in a Google Doodle, which is -- and you can make your opinion known then.

MEMBER PENA: Do we give you our preference now, or do we get it later?

MS. WALLACE: We will send an email with a Google poll. So we can know everyone's availability.

MEMBER PENA: Got it.

MS. WALLACE: Yes, thank you.

CHAIRPERSON DUDLEY: So as this was the last item on the agenda, do any of the members of the board have any additional comments before we adjourn?

(No response.)

CHAIRPERSON DUDLEY: Seeing none, I will need a motion to adjourn for the record. Please clearly state your name and your motion.

MEMBER DOYLE: Doyle. So moved.

MEMBER HATCHER-CRAWFORD: Second. Crawford.

CHAIRPERSON DUDLEY: Okay. All in favor?

(Ayes.)

CHAIRPERSON DUDLEY: Any opposed?

(No response.)

CHAIRPERSON DUDLEY: Any abstentions?

(No response.)

CHAIRPERSON DUDLEY: Okay. It was unanimous. And in fact, the motion passes, and we are adjourned. And we will see you in either February or March.

Thank you very much.

(Proceedings concluded at 12:19 p.m.)

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CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing proceedings were reported, to the best of my ability, in shorthand by me, Kathryn S. Swank, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings nor in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of January 2024.

/s/ Kathryn S. Swank
KATHRYN S. SWANK, CSR
Certified Shorthand Reporter
License No. 13061

E R R A T A S H E E T

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AGENDA ITEM REPORT

Title: POST2311496 - CESAR HAZEL DIAZ (POST ID: C68-U20)
LAST EMPLOYING AGENCY: LOS ANGELES SCHOOL DISTRICT POLICE DEPARTMENT

REPORT PROFILE

MEETING DATE 03/21/2024	**BUREAU SUBMITTING THE REPORT** Professional Conduct Los Angeles Bureau	
RESEARCHED BY William Imboden	**REVIEWED BY** Mike Radford	
REPORT DATE	**APPROVED BY** Annemarie Del Mugnaio	**DATE APPROVED**
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

The matter is before the Peace Officer Standards Accountability Advisory Board (POSAAB) for review and recommendation regarding the subject peace officer's certification status.

BACKGROUND:

The Respondent began his employment with the Los Angeles School District Police Department on February 16, 2018. Respondent was promoted to a fulltime peace officer after graduating from the Los Angeles Police Academy on August 17, 2018. At the time of the incident before the POSAAB, he was assigned as a Los Angeles District School Police Officer. The Respondent resigned from the Los Angeles District Police Department on November 12, 2023, while holding the rank of police officer. The Respondent is not currently employed as a peace officer in the State of California.

This position is a peace officer position as defined under California Penal Code §830.1(a) and is required to be certified pursuant to California Penal Code §13510.1(a).

ANALYSIS:

The Division found that the clear and convincing evidence substantiated that Respondent violated California Penal Code § 13510.8(b)(6), specifically Respondent was placed under arrest for 23152(a) and 23152(b) and transported to Santa Clarita Station where he was booked for the above charges, Driving under the Influence (DUI) of alcohol. This arrest was

Respondent's second arrest for DUI in ten weeks. On July 30, 2021, Respondent was convicted of California Vehicle Code Section 23152(b) - Driving Under the Influence with a Blood Alcohol of .08% or greater, a misdemeanor, after entering a "No Contest" plea. The charge of 23152(a) CVC was dismissed as a part of a plea negotiation. Court records show Respondent's Blood Alcohol Content (SAC) at the time of his arrest was .17%.

RECOMMENDATION: The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigation presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

ATTACHMENT(S):

BR1_POST2311496-Diaz_Ceasr-ISF_.pdf
Attachment A - LA Superior Court Minute Orders.pdf
Attachment B - LA Superior Court Charging Documents.pdf
Attachment C - LA Superior Court Plea Documents.pdf
Attachment D - Orange County Superior Court Minutes_Redacted.pdf

INVESTIGATIVE SUMMARY AND FINDINGS

PEACE OFFICER NAME

Cesar Hazel Diaz

POST ID NUMBER

C68-U20

EMPLOYING AGENCY

Los Angeles School District Police Department

POST CASE NUMBER: 2311496

WRITTEN BY: William Imboden

DATE: 01-16-2024

I. Background Information

A. Employing Agency

Cesar Hazel Diaz ("Respondent") began his employment with the Los Angeles School District Police Department on February 16, 2018, as a fulltime Police Officer.

B. Employment History

Respondent does not have any additional law enforcement appointments in California. On November 12, 2023, Respondent resigned his Peace Officer position with the Los Angeles School District Police Department and moved to the state of Montana, where he took a position with the Billings, Montana Police Department effective November 27, 2023. Respondent notified POST that Billings PD was aware of this investigation and his employment eligibility as a peace officer in Montana would be denied if his certification in California was revoked.

C. Peace Officer Certificate:

Respondent is assigned POST ID C68-U20. He received the following peace officer certificates from the Peace Officer Standards and Training (POST):

- Basic (03-06-2019)
- Intermediate (02-28-2022)

D. Prior Allegations of Serious Misconduct

On June 13, 2020, Respondent was arrested for two misdemeanor counts of Driving Under the Influence of Alcohol in Orange County, California. On October 12, 2022, he pled guilty to both counts in Orange County Superior Court (Case# 20WM07704). POST received a report of serious misconduct for Acts That Violate the Law on June 19, 2023, at 1356 hours (Case 2311480).

II. Executive Summary

A. Receipt of Allegation

On June 19, 2023, at 1450 hours POST received a second report of serious misconduct for Acts That Violate the Law after Respondent was arrested for Driving Under the Influence of Alcohol on August 27, 2020, in Los Angeles County, California.

B. Synopsis of Alleged Serious Misconduct

On August 27, 2020, the Los Angeles County Sheriff's Department arrested off-duty Police Officer Cesar Diaz for California Vehicle Code (CVC) section 23152 (a) – Driving under the Influence (DUI) of alcohol. This arrest was Respondent's second arrest for DUI in ten weeks. Respondent was stopped for violating multiple California Vehicle Code sections while driving his vehicle. Deputies conducted a traffic stop for the traffic violations and possible DUI investigation. Based on the deputies' investigation, Respondent was placed under arrest for 23152(a) and 23152(b) CVC and transported to Santa Clarita Station where he was booked for the above charges. On July 30, 2021, Respondent was convicted of California Vehicle Code Section 23152(b) – Driving Under the Influence with a Blood Alcohol of .08% or greater, a misdemeanor, after entering a "No Contest" plea. The charge of 23152(a) CVC was dismissed as a part of a plea negotiation. Court records show Respondent's Blood Alcohol Content (BAC) at the time of his arrest was .17%.

C. Relevant Penal Code(s) and Commission Regulation(s)

California Vehicle Code section 23152 – Driving under influence; blood alcohol percentage.

(a) It is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle.

(b) It is unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

California Penal Code section 13510.8 – Revocation of Certification

(a)(2) A peace officer may have their certification suspended or revoked if the person has been terminated for cause from employment as a peace officer for, or has, while employed as a peace officer, otherwise engaged in, any serious misconduct as described in subdivision (b).

(b) By January 1, 2023, the commission shall adopt by regulation a definition of "serious misconduct" that shall serve as the criteria to be considered for ineligibility for, or revocation of, certification. This definition shall include all of the following:

(6) Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as determined by the commission.

III. Investigative Summary

A. Methodology

This report summarizes the findings related to allegations of serious misconduct. This investigation was conducted in accordance with the regulations and policies of POST. The investigation included review of the Los Angeles School District Police Department Internal Affairs administrative investigation, which included interviews of two witnesses and the subject officer. Additionally, the Los Angeles County Superior Court complaint and minute orders from the court proceedings were reviewed, as well as the complaint and minute orders from the DUI conviction from the Orange County Superior Court (POST2311480).

Information obtained was analyzed using the clear and convincing evidence standard. For purposes of this report, clear and convincing evidence means "evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. The evidence need not establish a fact beyond a reasonable doubt."

B. Details

On August 27, 2020, around midnight, off-duty LA School District Police Officer Cesar Diaz was stopped by Los Angeles County Sheriff's Department Deputies while driving his vehicle in the city of Santa Clarita. The Sheriff's Deputies first observed Respondent's vehicle travelling in a parking lot where it then stopped for an extended period of time before exiting the lot and then accelerating rapidly. The vehicle crossed four lanes of traffic in one movement in violation of the Vehicle Code and stopped at a red-light intersection. When the light turned green, the vehicle accelerated and then swerved across two lanes of traffic into a right turn lane without signaling, which resulted in a second violation of the Vehicle Code.

The Deputies made a traffic enforcement stop on the vehicle for the traffic violations and a possible Driving Under the Influence investigation. Upon contact, the driver (Respondent) provided the Deputies with his driver's license. The Deputies later stated Respondent had the odor of alcohol on his breath, his speech was slurred, and his eyes were glassy. When asked if he had been drinking alcohol prior to driving, Respondent stated "no." When asked a second time, Respondent admitted drinking two Coors Light beers and White Claw mixed drinks at Schooner's Bar and Grill approximately one mile from where he was stopped.

Respondent submitted to a series of Standardized Field Sobriety Tests (SFST), which he performed poorly. He was then arrested for suspicion of driving under the influence of alcohol. During the investigation, Respondent submitted breath samples that showed he had a BAC of .17% and .19% at the time of his arrest.

During an inventory of Respondent's vehicle subsequent to his arrest, one of the Deputies recovered a loaded Sig Sauer handgun that was registered to Respondent located on the floor under the front passenger seat. At the time of the traffic stop, Respondent had a female companion, who was not a peace officer, and who had been drinking alcohol also. The companion had been sitting in the front passenger seat when the vehicle was stopped.

On July 30, 2021, during a pretrial hearing Respondent pled "nolo contendere" to one misdemeanor count of CVC 23152(b) – driving a vehicle with a BAC of .08% or greater. The charge of 23152(a) CVC was dismissed as part of the plea bargain.

During the subsequent Internal Affairs administrative investigation, Respondent stated he did not remember what he had been drinking that night or how many drinks he had. He also said he did not believe he was over the legal limit to drive that night, prior to leaving the bar and was not feeling the effects of the alcohol he consumed.

Respondent also admitted that his firearm was loaded and unsecured under the seat of his vehicle at the time of his arrest.

Ten weeks prior to this arrest for DUI, on June 13, 2020, Respondent was arrested by a State Department of Parks and Recreation Police Officer for DUI after the officer observed Respondent travelling at a high rate of speed, driving on the wrong side of the road adjacent to a parking lot, and crossing over solid double-yellow median lines. During that incident, Respondent also had his loaded firearm with him, tucked in his waistband, and several passengers in the vehicle. Subsequent testing showed Respondent's BAC was .14% at the time of his arrest.

Due to these incidents being prosecuted in two separate counties, they were not combined. The arrest from August 27, 2020, was prosecuted and adjudicated prior to the arrest from June 13, 2020; however, they were reported to POST in chronological order.

On October 12, 2022, during court proceedings for the June 13, 2020, arrest, Respondent pled "guilty" to both counts and was sentenced to 5 years informal probation, fines, and 90 days in the county jail. The jail term was stayed in-lieu of completion of an in-home confinement and alcohol monitoring program, which he completed on April 17, 2023.

Although Respondent's employer initiated an Administrative Investigation (IA 2020-008) subsequent to his arrest in June 2020, the investigation was tolled pending the outcome of the criminal charges against him. On November 21, 2022, the Department concluded their Administrative Investigation and submitted it for final disposition. Respondent was not interviewed as part of

the Administrative Investigation until November 2, 2022. On December 14, 2022, the allegations investigated in IA 2020-008 were sustained and discipline was recommended. On January 31, 2023, the Deputy Chief amended the recommended discipline of a twelve (120 hours) day suspension to a twenty-four (240 hours) day suspension without pay. The Respondent completed his imposed suspension and returned to work in good standing until he voluntarily separated on November 12, 2023.

C. Analysis

1. Does the alleged conduct violate California Regulation 1205(a)(6) – Acts That Violate the Law?

While a single isolated arrest for driving under the influence of alcohol, with no aggravating factors, may not constitute serious misconduct as intended by PC 13510.8(2)(b)(6), multiple arrests for driving under the influence in a short period of time would meet this standard due to the fact that the acts are repeated and the facts here show that there were aggravating factors as outlined below.

Respondent was arrested twice for driving under the influence of alcohol within a ten-week period in 2020, and then subsequently convicted. During both incidents, Respondent displayed erratic and dangerous driving behavior that put the rest of the driving public and his passengers at risk of serious injury or death. Additionally, Respondent had a loaded firearm with him both times. The first time, the firearm was in his waist band. The second time, the firearm was unsecured, on the floor, and under the front seat where his passenger (who was not a peace officer) was sitting. At the time of the first arrest, Respondent's BAC was 1 ½ times the legal limit. At the time of his second arrest, his BAC was over twice the legal limit, indicating Respondent not only did not learn his lesson from the first arrest, he was actually more intoxicated when he decided to drive.

The facts of these two cases demonstrate sufficiently egregious *and* repeated acts as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public.

D. Supporting Evidence and Documentation

Attachment A – LA Superior Court Minute Orders
Attachment B – LA Superior Court Charging Documents
Attachment C – LA Superior Court Plea Documents
Attachment D – Orange County Superior Court Minute Orders

IV. Findings

Reasonable grounds exist to submit this case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation pursuant to Penal Code 13510.8.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

NO. 0SC03424 PAGE NO. 1
THE PEOPLE OF THE STATE OF CALIFORNIA VS. CURRENT DATE 07/20/23
DEFENDANT 01: CESAR HAZEL DIAZ
LAW ENFORCEMENT AGENCY EFFECTING ARREST: LASD - STA CLARITA VALLEY STAT

BAIL: APPEARANCE DATE	AMOUNT OF BAIL	DATE POSTED	RECEIPT OR BOND NO.	SURETY COMPANY	REGISTER NUMBER

CASE FILED ON 11/05/20.
COMPLAINT FILED, DECLARED OR SWORN TO CHARGING DEFENDANT WITH HAVING COMMITTED, ON OR ABOUT 08/27/20 IN THE COUNTY OF LOS ANGELES, THE FOLLOWING OFFENSE(S) OF:
COUNT 01: 23152(A) VC MISD
COUNT 02: 23152(B) VC MISD
PF
NEXT SCHEDULED EVENT:
11/25/20 830 AM ARRAIGNMENT DIST SANTA CLARITA CRTHOUSE DEPT 002

ON 11/25/20 AT 830 AM IN SANTA CLARITA CRTHOUSE DEPT 002

CASE CALLED FOR ARRAIGNMENT
PARTIES: GARY MICON (JUDGE) KIM OLIVAREZ (CLERK)
ELIZABETH SALAZAR (REP) SHEA J. SANNA (DA)
DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY LANE SCHERE PRIVATE COUNSEL
DEFENDANT APPEARING BY COUNSEL PURSUANT TO PENAL CODE SECTION 977 ET SEQ, BY LANE SCHERE PRIVATE COUNSEL
DEFENDANT PLEADS NOT GUILTY TO COUNT 01, 23152(A) VC.
DEFENDANT PLEADS NOT GUILTY TO COUNT 02, 23152(B) VC.
AS A CONDITION OF OWN RECOGNIZANCE RELEASE, DEFENDANT IS ORDERED TO CONTINUE IN THE FIRST RESPONDER PROGRAM, IS NOT TO DRINK ANY ALCOHOL AND IS NOT TO DRIVE WITHOUT A VALID CALIFORNIA DRIVER'S LICENSE.
.
DEFENSE COUNSEL APPEARING BY WEBEX.
WAIVES STATUTORY TIME.
NEXT SCHEDULED EVENT:
03/04/21 830 AM PRETRIAL HEARING DIST SANTA CLARITA CRTHOUSE DEPT 002

DAY 00 OF 30

CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE

ON 03/04/21 AT 830 AM IN SANTA CLARITA CRTHOUSE DEPT 002

CASE CALLED FOR PRETRIAL HEARING
PARTIES: GARY MICON (JUDGE) KIM OLIVAREZ (CLERK)
ELECTRONIC RECORDING (REP) TATIANA CHAHOIAN (DA)
DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY MATTHEW J. COHEN PRIVATE COUNSEL
DEFENDANT APPEARING BY COUNSEL PURSUANT TO PENAL CODE SECTION 977 ET SEQ, BY MATTHEW J. COHEN PRIVATE COUNSEL
WAIVES STATUTORY TIME.
NEXT SCHEDULED EVENT:
04/23/21 830 AM PRETRIAL HEARING DIST SANTA CLARITA CRTHOUSE DEPT 002

CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE

ON 04/23/21 AT 830 AM IN SANTA CLARITA CRTHOUSE DEPT 002

CASE CALLED FOR PRETRIAL HEARING
PARTIES: GARY MICON (JUDGE) KIM OLIVAREZ (CLERK)
ELECTRONIC RECORDING (REP) SHEA J. SANNA (DA)
DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY LANE SCHERE PRIVATE COUNSEL
DEFENDANT APPEARING BY COUNSEL PURSUANT TO PENAL CODE SECTION 977 ET SEQ, BY LANE SCHERE PRIVATE COUNSEL
WAIVES STATUTORY TIME.
NEXT SCHEDULED EVENT:
06/24/21 830 AM PRETRIAL HEARING DIST SANTA CLARITA CRTHOUSE DEPT 002
DAY 00 OF 30

CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE

ON 06/24/21 AT 830 AM IN SANTA CLARITA CRTHOUSE DEPT 002

CASE CALLED FOR PRETRIAL HEARING
PARTIES: GARY MICON (JUDGE) STEPHANIE FUNK (CLERK)
ELECTRONIC RECORDING (REP) SHEA J. SANNA (DA)
DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY MATTHEW J. COHEN PRIVATE COUNSEL
DEFENDANT APPEARING BY COUNSEL PURSUANT TO PENAL CODE SECTION 977 ET SEQ, BY MATTHEW J. COHEN PRIVATE COUNSEL
DEFENSE COUNSEL PROVIDES PROOF OF PROGRESS IN THE FIRST RESPONDERS PROGRAM.
.
THIS MATTER IS CONTINUED AS INDICATED BELOW FOR POSSIBLE DISMISSAL.
WAIVES STATUTORY TIME.
NEXT SCHEDULED EVENT:
07/30/21 830 AM PRETRIAL HEARING DIST SANTA CLARITA CRTHOUSE DEPT 002
DAY 00 OF 30

CUSTODY STATUS: RELEASED ON OWN RECOGNIZANCE

ON 07/30/21 AT 830 AM IN SANTA CLARITA CRTHOUSE DEPT 002

CASE CALLED FOR PRETRIAL HEARING
PARTIES: GARY MICON (JUDGE) KIM OLIVAREZ (CLERK)
ELECTRONIC RECORDING (REP) NATALIE H. WEINGROW (DA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY MATTHEW J. COHEN PRIVATE COUNSEL
DEFENDANT STATES HIS/HER TRUE NAME AS CHARGED.
DEFENDANT WAIVES FURTHER ARRAIGNMENT.
DEFENDANT ADVISED OF AND PERSONALLY AND EXPLICITLY WAIVES THE FOLLOWING RIGHTS:
WRITTEN ADVISEMENT OF RIGHTS AND WAIVERS FILED, INCORPORATED BY REFERENCE HEREIN
TRIAL BY COURT AND TRIAL BY JURY
CONFRONTATION AND CROSS-EXAMINATION OF WITNESSES;
SUBPOENA OF WITNESSES INTO COURT TO TESTIFY IN YOUR DEFENSE;
AGAINST SELF-INCRIMINATION;

DEFENDANT ADVISED OF THE FOLLOWING:
THE NATURE OF THE CHARGES AGAINST HIM, THE ELEMENTS OF THE OFFENSE IN THE COMPLAINT, AND POSSIBLE DEFENSES TO SUCH CHARGES;
THE POSSIBLE CONSEQUENCES OF A PLEA OF GUILTY OR NOLO CONTENDERE, INCLUDING THE MAXIMUM PENALTY AND ADMINISTRATIVE SANCTIONS AND THE POSSIBLE LEGAL EFFECTS AND MAXIMUM PENALTIES INCIDENT TO SUBSEQUENT CONVICTIONS FOR THE SAME OR SIMILAR OFFENSES;
THE EFFECTS OF PROBATION;
IF YOU ARE NOT A CITIZEN, YOU ARE HEREBY ADVISED THAT A CONVICTION OF THE OFFENSE FOR WHICH YOU HAVE BEEN CHARGED WILL HAVE THE CONSEQUENCES OF DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES.
THE COURT FINDS THAT EACH SUCH WAIVER IS KNOWINGLY, UNDERSTANDINGLY, AND EXPLICITLY MADE; COUNSEL JOINS IN THE WAIVERS
THE DEFENDANT PERSONALLY WITHDRAWS PLEA OF NOT GUILTY TO COUNT 02 AND PLEADS NOLO CONTENDERE WITH THE APPROVAL OF THE COURT TO A VIOLATION OF SECTION 23152(B) VC IN COUNT 02. THE COURT FINDS THE DEFENDANT GUILTY.
COUNT (02) : DISPOSITION: CONVICTED

COURT FINDS THAT THERE IS A FACTUAL BASIS FOR DEFENDANT'S PLEA, AND COURT ACCEPTS PLEA.
WAIVES TIME FOR SENTENCE.
NEXT SCHEDULED EVENT:
SENTENCING
DEFENDANT WAIVES ARRAIGNMENT FOR JUDGMENT AND STATES THERE IS NO LEGAL CAUSE WHY SENTENCE SHOULD NOT BE PRONOUNCED. THE COURT ORDERED THE FOLLOWING JUDGMENT:
AS TO COUNT (02):
IMPOSITION OF SENTENCE SUSPENDED
DEFENDANT PLACED ON SUMMARY PROBATION
FOR A PERIOD OF 036 MONTHS UNDER THE FOLLOWING TERMS AND CONDITIONS:
PAY A FINE OF $390.00
LESS CREDIT OF $125.00
PLUS $53.00 CRIMINAL FINE SURCHARGE (PURSUANT TO 1465.7 P.C.)
$50.00 ALCOHOL ABUSE/PREVENTION ASSESSMENT (23645 V.C.)
$33.00 LABORATORY SERVICE FUND(PURSUANT TO 1463.14(B) P.C.)
$30.00 CRIMINAL CONVICTION ASSESSMENT (PURSUANT TO 70373 G.C.)
$40.00 COURT OPERATIONS ASSESSMENT (PURSUANT TO 1465.8(A)(1) P.C.)
OR SERVE 3 DAYS IN LOS ANGELES COUNTY JAIL
DEFENDANT TO PAY FINE TO THE COURT CLERK

DEFENDANT TO PAY COURT COST OF $809 .
THE DEFENDANT SHALL ENROLL AND PARTICIPATE IN, AND SUCCESSFULLY COMPLETE, A 18-MONTH LICENSED SECOND-OFFENDER ALCOHOL AND OTHER DRUG EDUCATION AND COUNSELING PROGRAM
DEFENDANT SHALL PAY A RESTITUTION FINE IN THE AMOUNT OF $150.00 TO THE COURT
TOTAL DUE: $1,430.50
IN ADDITION:
-DEFENDANT IS ORDERED TO PAY A PROBATION REVOCATION RESTITUTION FINE PURSUANT TO PENAL CODE SECTION 1202.44, IN THE AMOUNT OF $ 150.00. THIS FINE SHALL BECOME EFFECTIVE UPON THE REVOCATION OF PROBATION.
-ENROLL WITHIN 21 DAYS IN AN SB-38 PROGRAM.
.
THE COURT NOTES THAT THE DEFENDANT IS IN AN ALCOHOL PROGRAM ALREADY, BUT MUSH COORDINATE WITH NCADD.

-DO NOT DRIVE ANY VEHICLE WITH ANY MEASURABLE AMOUNT OF ALCOHOL OR DRUGS IN YOUR BLOOD OR REFUSE TO TAKE AND COMPLETE ANY BLOOD ALCOHOL OR DRUG CHEMICAL TEST, ANY FIELD SOBRIETY TEST, AND ANY PRELIMINARY ALCOHOL SCREENING TEST, WHEN REQUESTED BY ANY PEACE OFFICER.
-THE DEFENDANT WAS ADVISED AND UNDERSTOOD THAT BEING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS, OR BOTH, IMPAIRS HIS/HER ABILITY TO SAFELY OPERATE A MOTOR VEHICLE, AND IT IS EXTREMELY DANGEROUS TO HUMAN LIFE TO DRIVE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS, OR BOTH. DEFENDANT WAS FURTHER ADVISED THAT IF HE/SHE CONTINUES TO DRIVE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS, OR BOTH, AND AS A RESULT OF HIS/HER DRIVING, SOMEONE IS KILLED, THE DEFENDANT CAN BE CHARGED WITH MURDER.
-DO NOT DRIVE A MOTOR VEHICLE WITHOUT A VALID DRIVER'S LICENSE IN YOUR POSSESSION OR WITHOUT LIABILITY INSURANCE IN AT LEAST THE MINIMUM AMOUNTS REQUIRED BY LAW.
-OBEY ALL LAWS AND ORDERS OF THE COURT.
-DEFENDANT ACKNOWLEDGES TO THE COURT THAT THE DEFENDANT

UNDERSTANDS AND ACCEPTS ALL THE PROBATION CONDITIONS, AND DEFENDANT AGREES TO ABIDE BY SAME.
COURT ORDERS AND FINDINGS:
-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.
ANY MANDATORY AND NON-PUNITIVE FEES OR ASSESSMENTS ORDERED IN THIS CASE ARE NOT CONDITIONS OF PROBATION
COURT COSTS IN THE AMOUNT OF $809.00 REFLECTED ABOVE IS TO BE DISTRIBUTE AS FOLLOWS:
.
-$768.50 PENALTY ASSESSMENTS
-$30.00 INSTALLMENT FEE PURSUANT TO PENAL CODE SECTION 1205.
-$10.00 CITE PROCESSING FEE PURSUANT TO PENAL CODE SECTION 463.07.
-$1.00 NIGHT COURT ASSESSMENT PURSUANT TO VEHICLE CODE SECTION 42006.
.
DEFENDANT IS ORDERED TO COMPLY WITH THE : SUPPLEMENTAL TERMS OF PROBATION INTERLOCK DEVICE" REGARDING INSTALLATION OF AN IGNITION INTERLOCK AS ORDERED BY THE DEPARTMENT OF MOTOR VEHICLES.
COUNT (02): DISPOSITION: CONVICTED

REMAINING COUNTS DISMISSED:
COUNT (01): DISMISSED DUE TO PLEA NEGOTIATION
BLOOD ALCOHOL CONTENT TEST SHOWED BAC OF .17 PERCENT.
ABSTRACT ISSUED ON 07/30/21 FOR COUNT 02
DMV JUDGMENT CODE OWG
NEXT SCHEDULED EVENT:
11/02/21 830 AM PROGRESS REPORT DIST SANTA CLARITA CRTHOUSE DEPT 002
NEXT SCHEDULED EVENT:
08/01/22 900 AM FINES/FEES DIST SANTA CLARITA CRTHOUSE DEPT CLK

CUSTODY STATUS: ON PROBATION

07/30/21 ARREST DISPOSITION REPORT SENT VIA FILE TRANSFER TO DEPARTMENT OF JUSTICE

ON 11/02/21 AT 830 AM IN SANTA CLARITA CRTHOUSE DEPT 002

CASE CALLED FOR PROGRESS REPORT
PARTIES: GARY MICON (JUDGE) KIM OLIVAREZ (CLERK)

ELECTRONIC RECORDING (REP) JESSICA M. BALADY (DA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY REGINA L. SHERER PRIVATE COUNSEL
PROBATION IS CONTINUED ON SAME TERMS AND CONDITIONS.
AS TO COUNT (02):
COURT ORDERS AND FINDINGS:
PROOF OF PROGRESS IN ALCOHOL PROGRAM IS FILED THIS DATE.
.
PROGRESS REPORT HEARING IS SET FOR THE DATE BELOW.
DEFENDANT IS ORDERED TO APPEAR ON THE DATE BELOW.
.
DMV ABSTRACT NOT REQUIRED
NEXT SCHEDULED EVENT:
05/03/22 830 AM PROGRESS REPORT DIST SANTA CLARITA CRTHOUSE DEPT 002

CUSTODY STATUS: ON PROBATION

ON 05/03/22 AT 830 AM IN SANTA CLARITA CRTHOUSE DEPT 002

CASE CALLED FOR PROGRESS REPORT
PARTIES: MARIA CAVALLUZZI (JUDGE) KIM OLIVAREZ (CLERK)
ELECTRONIC RECORDING (REP) NATALIE H. WEINGROW (DA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JONATHAN A RAPEL PRIVATE COUNSEL
PROBATION IS CONTINUED ON SAME TERMS AND CONDITIONS.
AS TO COUNT (02):
COURT ORDERS AND FINDINGS:
PROOF OF PROGRESS IN ALCOHOL PROGRAM IS FILED THIS DATE.
.
DEFENDANT IS ORDERED TO APPEAR AND PROVIDE PROOF OF COMPLETION OF ALCOHOL PROGRAM TO THE CLERK'S OFFICE NO LATER THAT THE DATE AND TIME BELOW.
.
FINES AND FEES REMAIN DUE ON AUGUST 1, 2022 IN THE CLERK'S OFFICE.
DMV ABSTRACT NOT REQUIRED
NEXT SCHEDULED EVENT:
07/05/22 900 AM PROOF OF COMPLETION DIST SANTA CLARITA CRTHOUSE DEPT CLK

CUSTODY STATUS: ON PROBATION

ON 05/16/22 AT 900 AM :

PROOF OF COMPLETION FOR THE 18 MONTH ALCOHOL PROGRAM RECEIVED AND FILED.
ENTERED BY ALEJANDRA C.
PROOF OF COMPLETION

ON 08/01/22 AT 900 AM IN SANTA CLARITA CRTHOUSE DEPT CLK

CASE CALLED FOR FINES/FEES
PARTIES: NONE (JUDGE) NONE (CLERK)
NONE (REP) NONE (DDA)
DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL
DEFENDANT FAILED TO APPEAR AT CLERKS OFFICE TO PAY COURT FINE.
CASE FILE FORWARDED TO

DEPARTMENT 002 FOR JUDICIAL ACTION.
SUBMITTED BY P. SALINAS
NEXT SCHEDULED EVENT:
JUDICIAL ACTION

ON 08/05/22 AT 1000 AM IN SANTA CLARITA CRTHOUSE DEPT 002

CASE CALLED FOR JUDICIAL ACTION
PARTIES: GARY MICON (JUDGE) KIM OLIVAREZ (CLERK)
NONE (REP) NONE ()
DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL
PROBATION REVOKED
AS TO COUNT (02):
COURT ORDERS AND FINDINGS:
HAVING BEEN INFORMED BY THE CLERK'S OFFICE THAT THE
DEFENDANT FAILED TO APPEAR ON 08-01-22 AND PROVIDE:

.
PAYMENT OF FINE.
.
BENCH WARRANT IS ISSUED FORTHWITH,
BAIL IS SET AT TWO THOUSAND DOLLARS.
DMV ABSTRACT NOT REQUIRED
NEXT SCHEDULED EVENT:
PROBATION REVOKED/BW ISSUED

08/05/22 BENCH WARRANT IN THE AMOUNT OF $2,000.00 BY ORDER OF JUDGE GARY MICON ISSUED. (08/05/22).

ON 09/20/22 AT 830 AM IN SANTA CLARITA CRTHOUSE DEPT 002

CASE CALLED FOR BENCH WARRANT HEARING
PARTIES: MARTIN R. GLADSTEIN (JUDGE) KIM OLIVAREZ (CLERK)
ELECTRONIC RECORDING (REP) JESSICA LANSKY (DA)
DEFENDANT IS PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL
DEFENDANT APPEARS IN PRO PER

DEFENDANT FOUND NOT IN VIOLATION OF PROBATION
PROBATION REINSTATED
PROBATION IS CONTINUED ON SAME TERMS AND CONDITIONS.
AS TO COUNT (02):
COURT ORDERS AND FINDINGS:
PROOF OF PAYMENT OF FINES AND FEES IN FULL IS FILED THIS
DATE.
.
DMV ABSTRACT NOT REQUIRED
NEXT SCHEDULED EVENT:
PROBATION IN EFFECT

CUSTODY STATUS: ON PROBATION

ON 09/20/22 AT 130 PM :

FINE PAYMENT PAID IN FULL IN THE AMOUNT OF $1,390.50
.

ENTERED BY M KEARNS.
PAYMENT IN THE AMOUNT OF $1,390.50 PAID ON 09/20/22 RECEIPT # NEW648291007
PROBATION IN EFFECT

09/20/22 BENCH WARRANT IN THE AMOUNT OF $2,000.00 RECALLED. (09/20/22).

07/20/23

I HEREBY CERTIFY THIS TO BE A TRUE AND CORRECT COPY OF THE ELECTRONIC DOCKET ON FILE IN THIS OFFICE AS OF THE ABOVE DATE.
DAVID W. SLAYTON ,EXECUTIVE OFFICER/CLERK OF SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

BY _____, DEPUTY

FILED
Superior Court of California
County of Los Angeles

NOV 05 2020

Sherri R. Carter, Executive Officer/Clerk
By Pamela Flemming, Deputy
Pamela Flemming

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. **CESAR HAZEL DIAZ** [redacted] Defendant(s).	**CASE NO. 0SC03424** ***MISDEMEANOR COMPLAINT***

The undersigned is informed and believes that:

COUNT 1

On or about August 27, 2020, in the County of Los Angeles, the crime of DRIVING UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE, in violation of VEHICLE CODE SECTION 23152(a), a Misdemeanor, was committed by CESAR HAZEL DIAZ, who did drive a vehicle while under the influence of an alcoholic beverage.

* * * * *

COUNT 2

On or about August 27, 2020, in the County of Los Angeles, the crime of DRIVING WITH A .08% BLOOD ALCOHOL CONTENT, in violation of VEHICLE CODE SECTION 23152(b), a Misdemeanor, was committed by CESAR HAZEL DIAZ, who did drive a vehicle while having a 0.08 percent or more, by weight, of alcohol in his blood.

Furthermore, during the commission of the above violation of Vehicle Code Section 23152 , the defendant, CESAR HAZEL DIAZ had a blood alcohol concentration that was 0.15 percent or more, by weight, and is thus subject to the additional punishment provided for in Vehicle Code Section 23578.

* * * * *

I certify that this is a true and correct copy of the original on file in or issued from this office, consisting of 2 pages.
DAVID W. SLAYTON, Executive Officer/Clerk of the Superior Court of California, County of Los Angeles.
Date: 11/20/20 By: [signature], Deputy

[redacted]

NOTICE: Conviction of this offense will require the defendant to provide DNA samples and print impressions pursuant to Penal Code sections 296 and 296.1 if the defendant has suffered a prior felony conviction. Willful refusal to provide the samples and impressions is a crime.

NOTICE: The People of the State of California intend to present evidence and seek jury findings regarding all applicable circumstances in aggravation, pursuant to Penal Code section 1170(b) and *Cunningham v. California* (2007) 549 U.S. 270.

NOTICE: A Suspected Child Abuse Report (SCAR) may have been generated within the meaning of Penal Code §§ 11166 and 11168 involving the charges alleged in this complaint. Dissemination of a SCAR is limited by Penal Code §§ 11167 and 11167.5 and a court order is required for full disclosure of the contents of a SCAR.

Further, attached hereto and incorporated herein are official reports and documents of a law enforcement agency which the undersigned believes establish probable cause for the arrest of defendant(s) CESAR HAZEL DIAZ for the above-listed crimes.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS COMPLAINT CONSISTS OF 2 COUNT(S).

Executed at VALENCIA, County of Los Angeles, on November 3, 2020.

EDUARDO G SAUCEDO
DECLARANT AND COMPLAINANT

JACKIE LACEY, DISTRICT ATTORNEY BY: SERA J. BOYADJIAN, DEPUTY

AGENCY:	LASD - SANTA CLARITA VLY PATROL (SCV)	I/O: EDUARDO G SAUCEDO	ID NO.: 480768	PHONE : (661) 255-1121	
DR NO.:	920115610643242	OPERATOR: DB			

DEFENDANT	CII NO.	CITATION NO.	BOOKING NO.	BAIL RECOM'D	CUSTODY R'TN DATE
DIAZ, CESAR HAZEL	[redacted]	AC362839	5999829		11/25/2020

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defense counsel provide discovery to the People as required by Penal Code Section 1054.3.

Count II
24 SP, 390 PA, SBJ8
cmEA 1.17

SUPERIOR COURT OF CALIFORNIA	Reserved for Clerk's File Stamp: Superior Court of California, County of Los Angeles, JUL 30 2021, Sherri R. Carter, Executive Officer/Clerk, By K. Olivarez, Deputy, Kim Olivarez
COUNTY: COUNTY OF LOS ANGELES	
PLAINTIFF: PEOPLE OF THE STATE OF CALIFORNIA	
DEFENDANT: CESAR HAZEL DIAZ	
DUI WITHOUT INJURIES ADVISEMENT OF RIGHTS, WAIVER, AND PLEA FORM (Vehicle Code, §§ 23152, 23103(a)/23103.5, 23140, 23154, 14601 et seq., 12500(a))	CASE NUMBER: 0SC03424 / DEPARTMENT: 2

INSTRUCTIONS

Fill out this form if you wish to plead guilty or no contest to the charges against you and admit the truth of the special allegations. Initial the box for each applicable item only if you understand it, and **sign and date the form on page 7**. If you have any questions about your case, the possible sentence, or the information on this form, ask your attorney or the judge.

NATURE OF THE CHARGES AND SPECIAL ALLEGATIONS (Initial all items with which you are charged.)

I understand that I am charged with a violation of Vehicle Code section(s):

		INITIALS
1.	**23152(a)** – Driving under the influence of alcohol	1. CD
2.	**23152(b)** – Driving when my blood-alcohol concentration (BAC) was .08 percent or more	2. CD
3.	**23152(d)** – Driving a commercial vehicle when my BAC was .04 percent or more	3. X
4.	**23152(e)** – Driving a vehicle for hire with a passenger when my BAC was 0.4 percent or more (operative Jul. 1, 2018)	4. X
5.	**23152(f)** – Driving under the influence of drugs	5. X
6.	**23152(g)** – Driving under the influence of both alcohol and drugs	6. X
7.	**23103(a), 23103.5** – Reckless driving involving alcohol or drugs, or both	7. X
8.	**23140** – Driving when my BAC was 0.05 percent or more when I was under 21 years old	8. X
9.	**23154** – Operating a vehicle while on probation for a DUI when my BAC was 0.01 percent or more.	9. X
10.	**Check if applicable** – ☐ **14601(a)** or ☐ **14601.1** or ☐ **14601.2** or ☐ **14601.5** Driving in knowing violation of a driver's license restriction, suspension, or revocation	10. X
11.	**Check if applicable** – ☐ **14601.3** (habitual traffic offender) – Accumulating a driving record history in knowing violation of a driver's license suspension or revocation	11. X
12.	**Check if applicable** – ☐ **12500(a)** – Driving without a valid driver's license	12. X

I understand that the following special allegations have been alleged **(check if applicable):**

13. ☒ Driving a vehicle when my BAC was at .15 percent or above.
☐ Willfully refusing to submit to or complete a peace officer's request for a breath or urine test.
☐ Driving under the influence of alcohol or drugs, or both, in willful or wanton disregard for the safety of persons or property on a freeway at _____ miles per hour, which is 30 or more miles per hour over the maximum, prima facie, or posted speed limit.
☐ Driving under the influence of alcohol or drugs, or both, in willful or wanton disregard for the safety of persons or property on a street or highway at _____ miles per hour, which is 20 or more miles per hour over the maximum, prima facie, or posted speed limit.
☐ Driving under the influence of alcohol or drugs, or both, while a minor under 14 years of age was a passenger in the vehicle.

13. CD

14. **If applicable** – I understand that I am also charged with the following **other offense(s):**

_____
TYPE OF OFFENSE(S) AND SECTION NUMBER(S)

14. X

15. **If applicable** – I understand that I am also charged with the following **other conviction(s):** X

LIST OFFENSE(S), CASE NUMBER(S), AND DATE(S)

16. **If applicable** – I am also charged with violating the **probation order(s)** in the following case(s): X

CASE NUMBER(S) AND DATE(S)

17. I understand the charge(s) and allegation(s) against me, and the possible pleas and defenses..... 17.

CONSTITUTIONAL RIGHTS AND PRIVILEGES

18. **RIGHT TO AN ATTORNEY** – I understand that I have the right to be represented by an attorney throughout the proceedings. I understand that the court will appoint a free attorney for me if I cannot afford to hire one, but at the end of the case, I may be asked to pay all or part of the cost of that attorney, if I can afford to. I understand that there are dangers and disadvantages to giving up my right to an attorney, and that it is almost always unwise to represent myself ..... 18.
19. **RIGHT TO A JURY TRIAL** – I understand that I have the right to a speedy, public jury trial. At the trial, I would be presumed innocent, and I could not be convicted unless 12 impartial jurors were convinced of my guilt beyond a reasonable doubt ..... 19.
20. **RIGHT TO CONFRONT WITNESSES** – I understand that I have the right to confront and cross-examine (see, hear, and question) all witnesses testifying against me ..... 20.
21. **RIGHT AGAINST SELF-INCRIMINATION** – I understand that I have the right to remain silent and a right not to incriminate myself, and the right to testify on my own behalf during any proceeding. I understand that by pleading guilty or no contest, or admitting other conviction(s) or probation violation(s), I am incriminating myself..... 21.
22. **RIGHT TO PRODUCE EVIDENCE** – I understand that I have the right to present evidence and to have the court issue subpoenas at no cost to me to compel attendance of witnesses in court and the production of evidence favorable to me. I have the right to testify in court if I waive my privilege against self-incrimination ..... 22.

RIGHTS ON CHARGES OF OTHER CONVICTION(S), ENHANCEMENT ALLEGATION(S), AND PROBATION VIOLATION(S)

23. **If applicable** – I understand that I have the right to an attorney, the right to a jury trial, the right to confront witnesses, the right against self-incrimination, and the right to produce evidence and witnesses for **all** charges against me, including other alleged conviction(s), enhancement allegation(s), or probation violation(s). However, for a charge of violating probation, I do not have the right to a jury trial, but I do have the right to a hearing before a judge ..... 23.

WAIVER OF RIGHTS

Understanding all of the above, for all of the charges and allegations against me, including any other alleged conviction(s) or probation violation(s):

24. I give up my right to an attorney, and I choose to represent myself. (Does not apply if you have an attorney.) ..... X 24.
25. I give up my right to a jury trial..... 25.
26. I give up my right to confront and cross-examine witnesses ..... 26.
27. I give up my right to remain silent and to not incriminate myself ..... 27.
28. I give up my right to produce evidence and witnesses on my own behalf..... 28.

CONSEQUENCES OF PLEA OF GUILTY OR NO CONTEST PLEA

29. I understand that if I am not a citizen, a plea of guilty or no contest (*nolo contendere*) could result in my deportation, exclusion from admission to this country, or denial of naturalization..... 29.

30. I understand that a plea of no contest will have the same effect in this case as a plea of guilty, but it cannot be used against me in a civil lawsuit unless the offense is punishable as a felony ..... 30.

31. I understand that any plea entered in this case may be grounds for revoking probation or parole which has previously been granted to me in any other case ..... 31.

32. I understand that the Department of Motor Vehicles (DMV) will consider any of my other convictions for driving under the influence of alcohol or drugs or their combined influence (DUI) or reckless driving, **even those that are not charged in this proceeding**, and may impose a more severe license suspension or revocation as a result ..... 32.

33. I understand that in addition to the fine, **the court will add a surcharge, assessments, and penalties, and may add fees, which will significantly increase the amount I must pay.** I may also be ordered to make victim restitution, if any, and to pay a restitution fine no less than $150 and up to $1000 (or no less than $300 and up to $10,000 if the offense is a felony), unless the court finds compelling and extraordinary reasons not to do so ..... 33.

34. I understand that being under the influence of alcohol or drugs, or both, impairs my ability to safely operate a motor vehicle, and it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If I continue to drive while under the influence of alcohol or drugs, or both, and as a result of my driving, someone is killed, I can be charged with murder ..... 34.

I understand that if I am the **registered owner** of the vehicle used in the offense:

35. The court may impound my vehicle at my expense for up to 90 days, unless it is in the interests of justice not to do so. The court may also declare my vehicle to be a nuisance and order it sold following a hearing if I have 2 or more other convictions for DUI, vehicular manslaughter (Pen. Code, §§ 191.5 or 192.5, subd. (a)), or any combination thereof, in the past 7 years ..... 35.

36. The court or DMV may also require me to install and maintain a functioning, certified ignition interlock device for up to three years. Installation of this device, which prevents the vehicle from starting if I have alcohol in my body, does not authorize me to drive without a valid driver's license.. 36.

37. If I am convicted of a second or subsequent violation of driving with a suspended or revoked license (Veh. Code, § 14601 et seq.) or driving without a license (Veh. Code, § 12500, subd. (a)), my vehicle may be subject to forfeiture as a nuisance ..... 37.

SENTENCES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS (SECTION 23152)
(cont. on next page)

Offense	Minimum and Maximum Sentences when Probation is Granted (3 to 5 years Probation Term)	Minimum and Maximum Sentences without Probation
First offense within 10 years See Nos. **38-52**	The court may order a jail term of 48 hours to 6 months. It will impose a fine of $390 to $1,000 and order me to complete a 3-month or longer alcohol/drug treatment program. If my BAC was .20% or more, or if I refused a breath or urine test upon my arrest, I must complete a 9-month or longer treatment program. The DMV will also impose a 6-month driver's license suspension, or a 10-month license suspension if the 9-month program is required.	96 hours to 6 months in jail, and a $390 to $1,000 fine. The DMV will also impose a 6-month driver's license suspension.
Second offense within 10 years See Nos. **38-52**	A jail term of either: (a) 10 days to 1 year, or (b) 96-hours to 1 year; a $390 to $1,000 fine, and completion of at least an 18-month (or at least a 30-month) alcohol/drug treatment program. The DMV will also impose a 2-year driver's license suspension.	90 days to 1 year in jail, and a $390 to $1,000 fine. The DMV will also impose a 2-year driver's license suspension.
Third offense within 10 years See Nos. **38-52**	120 days to 1 year in jail, a $390 to $1,000 fine, and completion of an 18-month (or 30-month) alcohol/drug program if I have not completed one before. The DMV will impose a 3-year driver's license revocation. The court may impose a 10-year driver's license revocation.	120 days to 1 year in jail, and a $390 to $1,000 fine. The DMV will impose a 3-year driver's license revocation. The court may impose a 10-year driver's license revocation.
Fourth or subsequent offense within 10 years (may be a felony) See Nos. **38-52**	180 days to 1 year in jail, a $390 to $1,000 fine, and completion of an 18-month alcohol/drug program if I have not completed one before. The DMV will impose a 4-year driver's license revocation. The court may impose a 10-year driver's license revocation.	16 months, or 2 or 3 years imprisonment, (or 180 days to 1 year in county jail); and a $390 to $1,000 fine. The DMV will impose a 4-year driver's license revocation. The court may impose a 10-year driver's license revocation.

SENTENCES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS (SECTION 23152) (cont. from previous page)

Offense	Minimum and Maximum Sentences when Probation is Granted (3 to 5 years Probation Term)	Minimum and Maximum Sentences without Probation
Offense with felony prior within 10 years of a felony violation of Veh. Code, §§ 23152 or 23153, or Pen. Code, § 192, subd. (c)(1); or of a felony violation of Pen. Code, § 191.5, sub. (b); or any violation of Pen. Code, §§ 191.5, subd. (a) or 192.5, subd. (a) See Nos. **38-52**	The court may order a jail term of up to 1 year (or, with a waiver (see No. 51), the court may order a jail term of up to 3 years) (see Pen. Code, §§ 19.2, 1203.1, subds. (a), (a)(2)), up to a $1,000 fine, and completion of an 18-month (or 30-month) alcohol/drug program. The DMV will impose a 4-year driver's license revocation. If the conviction is also a third or subsequent DUI (§§ 23152, 23153) within 10 years, the court may impose a 10-year driver's license revocation.	16 months, or 2 or 3 years imprisonment in state prison (or not more than 1 year in county jail); and a $390 to $1,000 fine. The DMV will impose a 4-year driver's license revocation. If the conviction is also a third or subsequent DUI (§§ 23152, 23153) within 10 years, the court may impose a 10-year driver's license revocation.

SENTENCES FOR RECKLESS DRIVING (SECTIONS 23103(a) AND 23103.5)

Nature of Offense	Minimum and Maximum Sentences		Other Consequences
Reckless driving reduced from driving under the influence	If probation is granted:	A maximum of 90 days in jail, or $1,000 fine, or both, plus attendance at a treatment program.	If alcohol or drugs are involved, this conviction will act as a separate DUI conviction if I commit a subsequent DUI offense within 10 years.
	If probation is not granted:	5 days to 90 days in jail, or $145 to $1,000 fine, or both.	

SENTENCES FOR DRIVING IN VIOLATION OF A LICENSE SUSPENSION, REVOCATION, OR RESTRICTION

Vehicle Code Section	First Offense	Second or Subsequent Offense I have one or more prior convictions in the past 5 years of either sections 14601(a), 14601.1, 14601.2, or 14601.5.
14601(a)	5 days to 6 months in jail, and a fine of $300 to $1,000.	10 days to 1 year in jail, and a fine of $500 to $2,000. 10 days in jail required if probation is imposed.
14601.1	Up to 6 months in jail, or a fine of $300 to $1,000, or both.	5 days to 1 year in jail, and a fine of $500 to $2,000.
14601.2	10 days to 6 months in jail, and a fine of $300 to $1,000. 10 days in jail required if probation is imposed. If I have been designated as a habitual traffic offender within 3 years of this conviction, in addition to the penalties above, I will be sentenced to serve 180 days in jail and to pay a $2,000 fine.	30 days to 1 year in jail, and a fine of $500 to $2,000. 30 days in jail required if probation is imposed.
14601.5	Up to 6 months in jail, or a fine of $300 to $1,000, or both.	10 days to 1 year in jail, and a fine of $500 to $2,000. Note - section 14601.3 also constitutes a prior conviction for this offense.

Vehicle Code Section	First Offense	Second or Subsequent Offense Prior conviction(s) in past 7 years of section 14601.3.
14601.3	30 days in jail, and a fine of $1,000.	180 days in jail, and a fine of $2,000.

SENTENCE FOR DRIVING WITHOUT A VALID DRIVER'S LICENSE (SECTION 12500(a))

Nature of Offense	Maximum Sentence
Driving without a valid driver's license.	A maximum of 6 months in jail, or $1,000 fine, or both.

ENHANCED SENTENCES – EXCESSIVE SPEED (SECTION 23582)

	Sentence Enhancement – Whether or Not Probation is Granted
If I recklessly drove 30 or more miles per hour above the speed limit on a freeway, or 20 or more miles per hour above the speed limit on any other street or highway during the commission of a violation of section 23152 or 23153:	My sentence will be increased by 60 days in jail. If this is my first section 23582 conviction, the court will order me to complete an alcohol/drug program, even if probation is not granted.

ENHANCED SENTENCES – WILLFUL REFUSAL (SECTION 23577)		
Offense	**Sentence Enhancement**	**Driver's License Suspension or Revocation**
First offense within 10 years See Nos. **38-52**	If I am granted probation, the court will order me to serve a mandatory jail term of 48 hours to 6 months.	The DMV will impose a 1-year driver's license suspension.
Second offense within 10 years See Nos. **38-52**	My sentence will be increased by 96 hours in jail.	The DMV will impose a 2-year driver's license revocation if: (1) I have a prior conviction in the past 10 years of Vehicle Code sections 23103 (under 23103.5), 23140, 23152, 23153, or Penal Code sections 191.5, 192.5, subdivision (a); or (2) the DMV previously suspended or revoked my driver's license in the past 10 years pursuant to Vehicle Code sections 13353 or 13553.2 for an offense that occurred on a separate occasion.
Third offense within 10 years See Nos. **38-52**	My sentence will be increased by 10 days in jail.	The DMV will impose a 3-year driver's license revocation if: (1) I have any combination of two or more prior convictions in the past 10 years of Vehicle Code sections 23103 (under 23103.5), 23140, 23152, 23153, or Penal Code sections 191.5, 192.5, subdivision (a); (2) the DMV previously suspended or revoked my driver's license two or more times pursuant to Vehicle Code sections 13353 or 13353.2 for an offense that occurred on a separate occasion; or (3) any combination of two or more of the above prior convictions or driver's license suspensions or revocations.
Fourth or subsequent offense within 10 years See Nos. **38-52**	My sentence will be increased by 18 days in jail.	

ENHANCED SENTENCES – PASSENGER UNDER 14 YEARS OF AGE (SECTION 23572)	
Offense	**Sentence Enhancement – Whether or Not Probation is Granted**
First offense within 10 years See Nos. **38-52**	My sentence will be increased by 48 continuous hours in jail.
Second offense within 10 years See Nos. **38-52**	My sentence will be increased by 10 days in jail.
Third offense within 10 years See Nos. **38-52**	My sentence will be increased by 30 days in jail.
Fourth or subsequent offense within 10 years (misdemeanor only) See Nos. **38-52**	My sentence will be increased by 90 days in jail.

38. I have read and understand the applicable charts on pages 3 through 5 which list the minimum and maximum penalties for the offense(s) with which I am charged. (See No. 39 for the offenses not listed in the charts.)

39. **If applicable** - I understand that the possible consequences for the offense(s) charged, which are not listed on the penalty charts on pages 3 through 5, include the following:

- _____ SECTION NUMBER _____ JAIL – MIN. _____ MAX. _____ JAIL – MIN. _____ MAX.
  OTHER CONSEQUENCES: _____
- _____ SECTION NUMBER _____ JAIL – MIN. _____ MAX. _____ JAIL – MIN. _____ MAX.
  OTHER CONSEQUENCES: _____
- _____ SECTION NUMBER _____ JAIL – MIN. _____ MAX. _____ JAIL – MIN. _____ MAX.
  OTHER CONSEQUENCES: _____
- _____ SECTION NUMBER _____ JAIL – MIN. _____ MAX. _____ JAIL – MIN. _____ MAX.
  OTHER CONSEQUENCES: _____

38. CD

X

39.

ADDITIONAL PENALTIES

40. I understand that the DMV will suspend my driver's license under an administrative procedure which is separate from this criminal action. I understand that the DMV's action, if any, will be in addition to the court's sentence and that I must obey it ..... 40. CD

41. I understand that the DMV will notify me that I am required to install a functioning, certified ignition interlock device in all vehicles that I own or operate, and it will issue a restricted license if I comply. I understand I must keep the DMV advised of my current mailing address to receive this notice..... 41. CD

42. I understand that the DMV will not restore my driving privilege following a driver's license suspension or revocation unless I provide the DMV with proof of insurance for 3 years ..... 42. CD

43. I understand that proof of my successful completion of an alcohol/drug program must be received at DMV headquarters in order for me to have my driving privilege reinstated, **even if I am not ordered to attend such a program by the court**. If I have not already surrendered my license, I also understand that I must surrender my license to the court..... 43. CD

44. I understand that the DMV will prohibit me from operating a **commercial** vehicle for one year if I am convicted of a **first** DUI offense or willful refusal to submit to or complete a breath or urine test to determine my BAC which occurred in **any** vehicle. The DMV will prohibit me from operating a commercial vehicle ever again if I am convicted of a **second or subsequent** DUI offense or willful refusal to submit to or complete a breath or urine test in any vehicle ..... 44. CD

45. I understand that the DMV will revoke my driver's license for a period of 4 years if I have a prior felony conviction in the past 10 years of: Vehicle Code sections 23152 or 23153; Penal Code sections 191.5, subdivision (b) or 192, subdivision (c)(1); or any conviction within 10 years of Penal Code sections 191.5, subdivision (a) or 192.5, subdivision (a) ..... 45. CD

46. I understand that if I was **under the age of 21** at the time of my arrest, my driver's license will also be suspended for 1 year, and I must surrender my license to the court..... 46. X

47. I understand that if my BAC was .15 percent or more, or if I refused to submit to a breath or urine test, the court will consider this in determining whether to enhance the penalties, grant probation, or impose additional terms of probation..... 47. CD

48. I understand that if I am placed on probation, it is unlawful to drive with a BAC of .01 percent or greater and that the DMV will suspend my license for up to 1 year if I do so. If I violate my probation by driving with a BAC of over 0.04 percent, the court will only grant me a new term of probation if I serve not less than 48 hours in county jail for each of these violations ..... 48. CD

49. I understand that if I am convicted of a **third or subsequent** DUI violation, I will be designated as a habitual traffic offender for 3 years after my conviction, and I may receive an enhanced sentence if I drive in violation of my license revocation. If probation is granted, I may also request to participate in a 30-month treatment program. If the court grants my request, I will be sentenced to the county jail for at least 30 days but not more than 1 year as a condition of probation..... 49. CD

50. **If applicable –** I understand that if I am convicted of a violation of Vehicle Code section 14601.2, or if the charge was for a violation of that section but I am pleading to Vehicle Code section 14601(a), 14601.1, or 14601.5, the court will order me to install a functioning, certified ignition interlock device on any vehicle that I own or operate for up to three years. Installation of this device does not authorize me to drive without a valid driver's license ..... 50. CD

51. **If applicable –** I understand that I have a statutory right to not be sentenced to more than one year in county jail as a condition of probation. I give up this statutory right and agree to be sentenced to more than one year in county jail for a period up to and including the maximum time fixed by law .... 51. X

52. **If applicable –** I understand that if I have previously been convicted of a violation of Vehicle Code section 23152 or 23153 that occurred more than 10 years ago, or if I have previously been convicted of a violation of Penal Code section 647, subdivision (f) (public intoxication), I will be ordered to attend and complete an alcohol and drug problem assessment program. If the program assessment recommends additional treatment, the court may order me to enroll, participate in, and complete an 18-month or a 30-month treatment program, even if I am convicted of a first offense .... 52. CD

PLEA(S)

53. I hereby freely and voluntarily plead NO CONTEST to:
GUILTY OR NO CONTEST

VC 23152(b)
LIST CHARGE(S)

53. CD

SPECIAL ALLEGATION ADMISSIONS

If applicable – I admit the truth of the following special allegations:

54. ☒ I drove a vehicle when my BAC was at .15 percent or above.
☐ I willfully refused a peace officer's request to submit to, or willfully failed to complete, a breath or urine test.
☐ When I drove a vehicle under the influence of alcohol or drugs, or both, I drove in willful or wanton disregard for the safety of persons or property on a freeway at _____ miles per hour, which is 30 or more miles per hour over the maximum, prima facie, or posted speed limit.
☐ When I drove a vehicle under the influence of alcohol or drugs, or both, I drove in willful or wanton disregard for the safety of persons or property on a street or highway at _____ miles per hour, which is 20 or more miles per hour over the maximum, prima facie, or posted speed limit.
☐ When I drove a vehicle under the influence of alcohol or drugs, or both, a minor under 14 years of age was a passenger in the vehicle.
54. CD

55. **If applicable** – I freely and voluntarily admit the other conviction(s) that I listed on this form, and I understand that this admission will increase the penalties which are imposed on me..... 55. X

56. **If applicable** – I freely and voluntarily admit the probation violation(s) that I listed on this form and give up my right to a hearing before a judge regarding the probation violation(s)..... 56. X

57. I understand that I have the right to a delay of from 6 hours to 5 days prior to being sentenced for a misdemeanor, and the right to a delay of up to 20 days for a felony. I give up this right and agree to be sentenced at this time..... 57. CD

58. **If applicable** – I understand that I have the right to enter my plea before, and to be sentenced by, a judge. I give up this right and agree to enter my plea before, and to be sentenced by:

_____
TEMPORARY JUDGE'S NAME

58. CD

DEFENDANT'S SIGNATURE: _____ **DATE:** 07-30-2021

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed the form and any addenda with my client. I have explained each of the defendant's rights to the defendant and answered all of the defendant's questions with regard to this plea. I have also discussed the facts of the defendant's case with the defendant, and explained the consequences of this plea, the elements of the offense(s), and the possible defenses. I stipulate to a factual basis for the plea(s) and admissions(s) based on the police reports, and have explained to the defendant that he or she may enter a plea if he or she feels to do so is in his or her best interests. I concur in this plea and in the defendant's decision to waive his or her constitutional rights.

_____ 7/30/21
DEFENDANT'S ATTORNEY'S SIGNATURE DATE

INTERPRETER'S STATEMENT (if applicable)

I, having been sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language indicated below. The defendant stated that (s)he understood the contents of the form, and then (s)he initialed and signed the form.

Language: ☐ Spanish ☐ Other (specify): _____

COURT INTERPRETER'S SIGNATURE	TYPE OR PRINT NAME	DATE

COURT'S FINDINGS AND ORDER

The court, having reviewed this form and any addenda, and having questioned the defendant concerning the defendant's constitutional rights and the defendant's admission of other conviction(s), enhancement allegation(s), and probation violation(s), if any, finds that the defendant has expressly, knowingly, understandingly and intelligently waived his or her constitutional rights. The court finds that the defendant's plea(s) and admission(s) are freely and voluntarily made with an understanding of the nature and consequences thereof, and that there is a factual basis for the plea(s). The court accepts the defendant's plea(s), the defendant's admission of the other conviction(s), enhancement allegation(s), and probation violation(s), if any, and orders this form filed and incorporated in the docket by reference as though fully set forth therein.

	7/30/21
☑ JUDGE OF THE SUPERIOR COURT	DATE
☐ TEMPORARY JUDGE OF THE SUPERIOR COURT	

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

I certify that this is a true and correct copy of the original on file in or issued from this office, consisting of 8 pages.

DAVID W. SLAYTON, Executive Officer/Clerk of the Superior Court of California, County of Los Angeles.

Date: 7/27/22 By: _____, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

MINUTES

Case : 20WM07704

Name : Diaz, Cesar Hazel 01/09/2024 13:42:12 PM

Date of Action	Text
06/29/2020	Original Complaint filed on 06/29/2020 by Orange County District Attorney.
06/29/2020	Name filed: Diaz, Cesar Hazel
06/29/2020	MISDEMEANOR charge of 23152(a) VC filed as count 1. Date of violation: 06/13/2020.
06/29/2020	MISDEMEANOR charge of 23152(b) VC filed as count 2. Date of violation: 06/13/2020.
06/29/2020	Accusatory pleading filed by the prosecutor pursuant to Penal Code section 959.1.
06/29/2020	Notice to Appear filed.
11/19/2020	COVID-19 Misdemeanor Action Request filed.
11/19/2020	Case referred to Department W1 for review.
11/20/2020	Hearing held on 11/20/2020 at 09:00:00 AM in Department W1 for Chambers Work.
11/20/2020	Judicial Officer: Robert Gerard, Judge
11/20/2020	Clerk: M. Canchola
11/20/2020	No appearance by parties.
11/20/2020	Court read and considered COVID-19 Misdemeanor Action Request.
11/20/2020	Arraignment set on 01/20/2021 at 08:30 AM in Department W1.
11/20/2020	Defendant ordered to appear.
11/20/2020	Copy of Minute Order forwarded to District Attorney's Office
11/20/2020	Copy of Notice to defendant mailed to defendant
11/20/2020	Notice to defendant issued.
12/07/2020	COVID-19 Misdemeanor Action Request. filed.
12/07/2020	Case referred to W1 for review.
12/07/2020	Hearing held on 12/07/2020 at 09:00:00 AM in Department W1 for Chambers Work.
12/07/2020	Judicial Officer: John Zitny, Judge
12/07/2020	Clerk: L. Morfin
12/07/2020	No appearance by parties.
12/07/2020	Court read and considered Misdemeanor Action Request form.
12/07/2020	Arraignment for 01/20/2021 08:30 AM in W1 to remain.
12/07/2020	Defendant ordered to appear.
12/07/2020	Notice to defendant issued.
12/07/2020	Copy of Minute Order forwarded to District Attorney's Office
12/08/2020	Arraignment Letter filed.
12/14/2020	The court finds good cause to reschedule the matter set for ARGN on 01/20/2021 in Department W1 at 08:30 AM to 07/02/2021 in Department W18 at 08:30 AM.
12/15/2020	Rescheduled Hearing Notice sent.
04/14/2021	Calendar Line for ARGN transferred from W18 on 07/02/2021 at 08:30 AM to W1 on 07/02/2021 at 08:30 AM.
06/17/2021	Calendar Line for ARGN transferred from W1 on 07/02/2021 at 08:30 AM to W3 on 07/02/2021 at 08:30 AM.
07/02/2021	Hearing held on 07/02/2021 at 08:30:00 AM in Department W3 for Arraignment.
07/02/2021	Judicial Officer: Scott Van Camp, Commissioner

MINUTES

Case : 20WM07704

Name : Diaz, Cesar Hazel

01/09/2024 13:42:12 PM

Date of Action	Text
07/02/2021	Clerk: R. Wilder
07/02/2021	Bailiff: A. S. Lee
07/02/2021	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
07/02/2021	People represented by Paige Cavendish, Deputy District Attorney, present.
07/02/2021	Appearance made by Richard Sudar, Retained Attorney, by video.
07/02/2021	Matter heard by video.
07/02/2021	Defendant's appearance is waived pursuant to Penal Code 977(a).
07/02/2021	Canon 3E(1) of the California Code of Judicial Ethics requires a judge to disqualify himself in any proceeding where disqualification is required by law. Canon 3E(2) requires a judge in all trial court proceedings to disclose on the record any information that is reasonably relevant to disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification. To comply with these requirements, the court discloses the following: 1) I was sworn in as a Commissioner of the Orange County Superior Court on March 1, 2019. 2) Before becoming a commissioner, I worked as a Deputy District Attorney for the Orange County District Attorney's office for about one year and two months. 3) Prior to becoming a Deputy District Attorney, I worked as a Deputy Public Defender for the Orange County Public Defender's office for about eighteen years. 4) My wife, Cynthia Nichols, is currently employed as a Deputy District Attorney for the Orange County District Attorney's office. Her current assignment is the Assistant Head of Court for the D.A.'s office at the West Justice Center. To further comply with the disclosure requirements, the court requests all counsel to examine their case files to determine: (1) whether I had any contact with the case while employed as a Deputy District Attorney or Deputy Public Defender; and (2) whether my wife had any contact with the case as a Deputy District Attorney. If this review reveals that my wife or I have had any contact with the case, please bring it to my attention immediately. I do not believe that any of the foregoing facts or circumstances will affect my ability to be fair and impartial in these proceedings.
07/02/2021	Defendant waives reading of the Original Complaint and advisement of rights.
07/02/2021	To the Original Complaint defendant pleads NOT GUILTY to all counts.
07/02/2021	Defense reserves all motions.
07/02/2021	Informal request for discovery made by Defense.
07/02/2021	Pre Trial set on 09/21/2021 at 08:30 AM in Department W18.
07/02/2021	Defendant enters general time waiver.
07/02/2021	Court orders defendant released on own recognizance.
09/21/2021	Hearing held on 09/21/2021 at 08:30:00 AM in Department W18 for Pre Trial.
09/21/2021	Judicial Officer: Kevin Haskins, Judge
09/21/2021	Clerk: D. Phillips
09/21/2021	Bailiff: A. Ha

MINUTES

Case : 20WM07704

Name : Diaz, Cesar Hazel 01/09/2024 13:42:12 PM

Date of Action	Text
09/21/2021	Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Kevin Haskins, Judge in court.
09/21/2021	People represented by MIchael Zanides, Deputy District Attorney, present.
09/21/2021	Defendant not present in Court represented by Richard Sudar, Retained Attorney.
09/21/2021	Defendant's appearance is waived pursuant to Penal Code 977(a).
09/21/2021	Request for Continuance - Misdemeanor filed.
09/21/2021	Pre Trial continued to 01/11/2022 at 08:30 AM in Department W18 by stipulation of all parties.
09/21/2021	Defendant ordered to appear.
09/21/2021	Defendant enters general time waiver.
09/21/2021	Defendant's release on own recognizance continued.
09/21/2021	Minutes entered by M. Saam on 09/22/2021.
01/11/2022	Hearing held on 01/11/2022 at 08:30:00 AM in Department W18 for Pre Trial.
01/11/2022	Judicial Officer: Kevin Haskins, Judge
01/11/2022	Clerk: K. Rodriguez
01/11/2022	Bailiff: A. Ha
01/11/2022	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
01/11/2022	People represented by Paige Cavendish, Deputy District Attorney, present.
01/11/2022	Defendant not present in Court represented by Jonathan Adam Rapel, Retained Attorney.
01/11/2022	Defendant's appearance is waived pursuant to Penal Code 977(a).
01/11/2022	Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Kevin Haskins, Judge in court.
01/11/2022	First Amended Complaint filed by Orange County District Attorney.
01/11/2022	23152(b) VC, dated 07/30/2021, added as other allegation as to count 1.
01/11/2022	23152(b) VC, dated 07/30/2021, added as other allegation as to count 2.
01/11/2022	Copy of first amended complaint given to defense attoreny.
01/11/2022	Counsel acknowledges receipt of the charging document.
01/11/2022	Defendant waives reading and advisement of the First Amended Complaint.
01/11/2022	To the First Amended Complaint defendant pleads NOT GUILTY to all counts.
01/11/2022	Defendant denies allegations.
01/11/2022	Defense reserves all motions.
01/11/2022	Defendant invokes state, federal and constitutional rights.
01/11/2022	Request for Continuance - Misdemeanor filed.
01/11/2022	Pre Trial set on 03/21/2022 at 08:30 AM in Department W18.
01/11/2022	Defendant enters general time waiver.
01/11/2022	Defendant's release on own recognizance continued.
01/11/2022	Minutes entered by L. Sanchez on 01/11/2022.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

MINUTES

Case : 20WM07704

Name : Diaz, Cesar Hazel 01/09/2024 13:42:12 PM

Date of Action	Text
03/21/2022	Hearing held on 03/21/2022 at 08:30:00 AM in Department W18 for Pre Trial.
03/21/2022	Judicial Officer: Kevin Haskins, Judge
03/21/2022	Clerk: A. Saloky
03/21/2022	Bailiff: D. Hinojosa
03/21/2022	Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Kevin Haskins, Judge in court.
03/21/2022	People represented by Thomas Collins, Deputy District Attorney, present.
03/21/2022	Defendant not present in Court represented by Jonathan Adam Rapel, Retained Attorney.
03/21/2022	Defendant's appearance is waived pursuant to Penal Code 977(a).
03/21/2022	Request for Continuance - Misdemeanor filed.
03/21/2022	Pre Trial continued to 05/24/2022 at 08:30 AM in Department W18 at request of Defense.
03/21/2022	Defendant enters general time waiver.
03/21/2022	Defendant ordered to appear.
03/21/2022	Defendant's release on own recognizance continued.
03/21/2022	Minutes entered by M. Canchola on 03/21/2022.
05/24/2022	Hearing held on 05/24/2022 at 08:30:00 AM in Department W18 for Pre Trial.
05/24/2022	Judicial Officer: Kevin Haskins, Judge
05/24/2022	Clerk: D. Phillips
05/24/2022	Bailiff: P. Bui
05/24/2022	Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Kevin Haskins, Judge in court.
05/24/2022	People represented by Danielle Vicino, Deputy District Attorney, present.
05/24/2022	Defendant not present in Court represented by Jonathan Adam Rapel, Retained Attorney.
05/24/2022	Defendant's appearance is waived pursuant to Penal Code 977(a).
05/24/2022	Request for Continuance - Misdemeanor filed.
05/24/2022	Defendant enters general time waiver.
05/24/2022	Pre Trial continued to 07/21/2022 at 08:30 AM in Department W18 at request of Defense.
05/24/2022	Defendant ordered to appear.
05/24/2022	Defendant's release on own recognizance continued.
05/24/2022	Minutes entered by R. Murphy on 05/25/2022.
07/21/2022	Hearing held on 07/21/2022 at 08:30:00 AM in Department W18 for Pre Trial.
07/21/2022	Judicial Officer: Kevin Haskins, Judge
07/21/2022	Clerk: M. Jimenez
07/21/2022	Bailiff: J. Chao
07/21/2022	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

MINUTES

Case : 20WM07704

Name : Diaz, Cesar Hazel 01/09/2024 13:42:12 PM

Date of Action	Text
07/21/2022	Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Kevin Haskins, Judge in court.
07/21/2022	People represented by Richard Angel, Deputy District Attorney, present.
07/21/2022	Appearance made by Richard Sudar, Retained Attorney, by video.
07/21/2022	Defendant's appearance is waived pursuant to Penal Code 977(a).
07/21/2022	Pre Trial continued to 09/01/2022 at 08:30 AM in Department W18 at request of Defense.
07/21/2022	Defendant enters general time waiver.
07/21/2022	Defendant ordered to appear.
07/21/2022	Defendant's release on own recognizance continued.
07/21/2022	Minutes entered by M. Canchola on 07/21/2022.
09/01/2022	Hearing held on 09/01/2022 at 08:30:00 AM in Department W18 for Pre Trial.
09/01/2022	Judicial Officer: Kevin Haskins, Judge
09/01/2022	Clerk: A. Saloky
09/01/2022	Bailiff: J. Chao
09/01/2022	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
09/01/2022	Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Kevin Haskins, Judge in court.
09/01/2022	People represented by Danielle Vicino, Deputy District Attorney, present.
09/01/2022	Defendant not present in Court represented by Jonathan Adam Rapel, Retained Attorney.
09/01/2022	Defendant's appearance is waived pursuant to Penal Code 977(a).
09/01/2022	Request for Continuance - Misdemeanor filed.
09/01/2022	Pre Trial continued to 10/12/2022 at 08:30 AM in Department W18 at request of Defense.
09/01/2022	Defendant enters general time waiver.
09/01/2022	Defendant ordered to appear.
09/01/2022	Defendant's release on own recognizance continued.
09/01/2022	Minutes entered by K. Fogg on 09/01/2022.
10/12/2022	Hearing held on 10/12/2022 at 08:30:00 AM in Department W18 for Pre Trial.
10/12/2022	Judicial Officer: Kevin Haskins, Judge
10/12/2022	Clerk: D. Phillips
10/12/2022	Bailiff: B. Terry
10/12/2022	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
10/12/2022	Pursuant to the California Code of Judicial Ethics, Canon 3, subsection E(2), Court Disclosure regarding the criminal case filed in the People of the State of California v. Isaac Jones, case number 19CF0869 given by Kevin Haskins, Judge in court.

MINUTES

Case : 20WM07704

Name : Diaz, Cesar Hazel 01/09/2024 13:42:12 PM

Date of Action	Text
10/12/2022	People represented by Lance Cotton, Deputy District Attorney, present.
10/12/2022	Defendant present in Court with counsel Jonathan Adam Rapel, Retained Attorney.
10/12/2022	Plea to the Court.
10/12/2022	Defendant advised of maximum possible sentence.
10/12/2022	Defendant advised of consequences of violating probation and parole.
10/12/2022	Defendant advised of and waives the following:
10/12/2022	- The right to a trial by Court or Jury.
10/12/2022	- The right to confront and cross-examine witnesses.
10/12/2022	- The right to testify in own defense.
10/12/2022	- The right to remain silent.
10/12/2022	- The right to a speedy trial.
10/12/2022	Defendant waives the right to subpoena and present evidence.
10/12/2022	Defendant advised of right to appeal.
10/12/2022	The defendant understands that, if they are not a citizen of the United States, the conviction or sentence for the offense(s) charged will have the consequence of deportation, exclusion from admission to the United States, and denial of naturalization pursuant to the laws of the United States
10/12/2022	Before entering this plea, the defendant had a full opportunity to discuss with the attorney of record the facts of the case, the elements of the charged offenses and prior convictions (if any), any possible defenses, constitutional and statutory rights and waiver of those rights, the consequences of this plea, and anything else the defendant thinks is important to the case.
10/12/2022	Defendant states that it is their initials and signature on the Waiver of Rights form.
10/12/2022	Defendant's motion to withdraw plea of NOT GUILTY and enter plea of Guilty as to count(s) 1, 2 of the First Amended Complaint granted.
10/12/2022	Defendant admits other allegations.
10/12/2022	Counsel joins in waivers, pleas, and admissions.
10/12/2022	Court finds factual basis and accepts plea.
10/12/2022	Court finds defendant intelligently and voluntarily waives legal and constitutional rights to jury trial, confront and examine witnesses, and to remain silent.
10/12/2022	The defendant has been advised of constitutional rights, waivers and consequences in writing pursuant to the guilty plea form. The defendant makes the plea with a full understanding of all the matters set forth in the charging document and in the guilty plea form, that defendant has read, understood and personally initialed each item herein. Defendant understands that the signing and filing of the guilty plea form is conclusive evidence that defendant has pleaded GUILTY to the charges set forth.
10/12/2022	Defendant waives statutory time for Sentencing.
10/12/2022	Defendant's written waiver of legal and constitutional rights for guilty plea received and ordered filed.
10/12/2022	Pursuant to Vehicle Code Section 23593(a), defendant was advised that being under the influence of alcohol or drugs, or both, impairs the ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and, as a result of that driving, someone is killed, you can be charged with murder.
10/12/2022	Court stays sentence pursuant to Penal Code 654 on count(s) 2.

MINUTES

Case : 20WM07704

Name : Diaz, Cesar Hazel 01/09/2024 13:42:12 PM

Date of Action	Text
10/12/2022	No legal cause why judgment should not be pronounced and defendant having Pled Guilty to count(s) 1, Imposition of sentence is suspended and defendant is placed on 5 Year(s) INFORMAL PROBATION on the following terms and conditions:
10/12/2022	Violate no law.
10/12/2022	Obey all orders, rules, and regulations, and directives of the Court and Jail.
10/12/2022	Do not drive a motor vehicle with a measurable amount of alcohol in your blood and submit to a chemical test of your blood on demand of any peace officer, probation officer, or mandatory supervision officer.
10/12/2022	Do not drive without a valid driver's license in your possession.
10/12/2022	Do not drive without proof of valid auto liability insurance or financial responsibility as required by law.
10/12/2022	Use true name and date of birth only at all times.
10/12/2022	Disclose terms and conditions of probation when asked by any law enforcement or probation officer.
10/12/2022	Pay FINE of $390.00 plus penalty assessments as to count(s) 1.
10/12/2022	Pay mandatory state restitution fine of $150.00 pursuant to Penal Code 1202.4 or Penal Code 1202.4(b).
10/12/2022	Pay $100.00 Alcohol & Drug Assessment Program fee pursuant to Vehicle Code 23649.
10/12/2022	Pay $50.00 Alcohol Abuse Education FEE pursuant to Vehicle Code section 23645.
10/12/2022	Pay $50.00 DUI Lab/Blood Alcohol Penalty pursuant to Penal Code 1463.14(b).
10/12/2022	Pay $40.00 Court Operations Fee per convicted count pursuant to Penal Code 1465.8.
10/12/2022	Pay Criminal Conviction Assessment Fee per convicted count of $30.00 per misdemeanor/felony and $35.00 per infraction pursuant to Government Code 70373(a)(1).
10/12/2022	Defendant ordered to report to the West Collections Department forthwith. Defendant ordered to cooperate with and pay as directed by the Collections Department.
10/12/2022	Pay $150.00 Probation Revocation Restitution Fine pursuant to Penal Code 1202.44. Restitution fine stayed, to become effective only upon revocation of probation.
10/12/2022	Serve 90 Day(s) Orange County Jail as to count(s) 1.
10/12/2022	Credit for time served: 0 actual, 0 conduct, totaling 0 days pursuant to Day-for-day.
10/12/2022	90 days Jail as to count(s) 1 imposed on 10/12/2022 stayed until 02/24/2023 at 07:00 PM Theo Lacy Jail. Defendant to report as ordered.
10/12/2022	Defendant may apply for electrononic confinement.
10/12/2022	Attend and complete 18 months Multiple Offender Alcohol Program as to count(s) 1. Proof of enrollment due by 11/14/2022.
10/12/2022	Defendant ordered to submit proof of 18 months Multiple Offender Alcohol Program to be mailed or submitted to West Justice Center, 8141 13TH Street, Westminster, CA 92683 or placed in the Drop Box at any Superior Court of CA, County of Orange, Justice Center. Proof must be received no later than 11/14/2022.
10/12/2022	18 months Multiple Offender Alcohol Program is concurrent to case 0SC03424.
10/12/2022	Obey all rules of the program(s) and do not leave the program without court approval.
10/12/2022	Defendant accepts terms and conditions of probation.
10/12/2022	Defendant ordered to report to Collections forthwith.
10/12/2022	Notice to Sheriff issued.

MINUTES

Case : 20WM07704

Name : Diaz, Cesar Hazel 01/09/2024 13:42:12 PM

Date of Action	Text
10/12/2022	Declaration Re: Vehicle Code Section 13550 filed.
10/12/2022	Probation Order reprinted.
10/12/2022	Remittance from receipt # 18883757 received in the amount of $ 2027.31.
10/12/2022	Forthwith case assigned to Collections.
10/12/2022	Collections Referral activity deleted from case.
10/12/2022	DD1-CGJOZ sent to DMV. Return Code: 800
10/12/2022	DOJ Initial Abstract sent. - Validated by DOJ: Yes
10/17/2022	Proof of Completion filed as to 18 months Multiple Offender Alcohol Program imposed on 10/12/2022.
10/21/2022	Copy Request received, not filed.
10/21/2022	Certified Copy of Prior Packet mailed to Los Angeles Unified School District.
02/24/2023	At the request of Defendant, case calendared on 02/24/23 at 08:30 AM in W3 for SENT JSTA.
02/24/2023	Hearing held on 02/24/2023 at 08:30:00 AM in Department W3 for Sentencing Jail Stay.
02/24/2023	Judicial Officer: Juliet O. Macaulay, Judge
02/24/2023	Clerk: R. Wilder
02/24/2023	Bailiff: X. Ornelas
02/24/2023	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
02/24/2023	Defendant present in Court with counsel Jonathan Adam Rapel, Retained Attorney.
02/24/2023	Oral motion by Defense for extension on surrender date
02/24/2023	Motion granted.
02/24/2023	Probation on count(s) 1 modified as follows:
02/24/2023	90 days Jail as to count(s) 1 further stayed to 03/31/2023 at 07:00 PM. This modifies the commitment dated 02/24/2023. Defendant to report to Theo Lacy Jail as ordered.
02/24/2023	Credit for time served: 0 actual, 0 conduct, totaling 0 days pursuant to Day-for-day.
02/24/2023	Later in AM:
02/24/2023	Appearance made by Jonathan Adam Rapel, Retained Attorney, by telephone.
02/24/2023	Oral motion by Defense for earlier Jail stay date
02/24/2023	Motion granted.
02/24/2023	90 days Jail as to count(s) 1 further stayed to 03/03/2023 at 07:00 PM. This modifies the commitment dated 03/31/2023. Defendant to report to Theo Lacy Jail as ordered.
02/24/2023	Notice to Sheriff issued.
02/24/2023	All terms and conditions of probation are to remain the same.
02/24/2023	Minutes entered by C. Benjamin on 02/24/2023.
02/24/2023	DOJ Subsequent Abstract - 42. - Validated by DOJ: Yes
03/01/2023	Sentencing re: Modification set on 03/08/2023 at 08:30 AM in Department W3.
03/01/2023	Defendant is requesting to address Electronic Confinement/Jail Stay.
03/03/2023	At the request of Defendant, case calendared on 03/03/23 at 08:30 AM in W3 for SENT JSTA.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

MINUTES

Case : 20WM07704

Name : Diaz, Cesar Hazel 01/09/2024 13:42:12 PM

Date of Action	Text
03/03/2023	Hearing held on 03/03/2023 at 08:30:00 AM in Department W3 for Sentencing Jail Stay.
03/03/2023	Judicial Officer: Patrick Flannery, Commissioner
03/03/2023	Clerk: R. Wilder
03/03/2023	Bailiff: H. Colunga
03/03/2023	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
03/03/2023	Defendant present in Court with counsel Jonathan Adam Rapel, Retained Attorney.
03/03/2023	Oral motion by Defense for SCRAM-X in lieu of Jail
03/03/2023	Motion granted.
03/03/2023	SCRAM-X Acceptance Letter filed.
03/03/2023	Probation on count(s) 1 modified as follows:
03/03/2023	90 days Jail imposed on 10/12/2022 stayed pending completion of ScramX.
03/03/2023	Credit for time served: 0 actual, 0 conduct, totaling 0 days pursuant to Day-for-day.
03/03/2023	Court authorizes SCRAM-X in lieu of 90 days Jail. To be done in Santa Clarita.
03/03/2023	Hearing re: Progress Review set on 04/03/2023 at 08:30 AM in Department W3 for 90 days Jail. Progress Review Of SCRAM-X
03/03/2023	Counsel authorized to appear pursuant to Penal Code 977(a) at next court hearing.
03/03/2023	Sentencing re: Modification vacated for 03/08/2023 at 08:30 AM in W3.
03/03/2023	All terms and conditions of probation are to remain the same.
03/03/2023	Notice to Sheriff issued.
03/03/2023	Minutes entered by C. Benjamin on 03/03/2023.
03/03/2023	DOJ Subsequent Abstract - 42. - Validated by DOJ: Yes
04/03/2023	Hearing held on 04/03/2023 at 08:30:00 AM in Department W3 for Hearing Progress Review.
04/03/2023	Judicial Officer: Patrick Flannery, Commissioner
04/03/2023	Clerk: K. Rodriguez
04/03/2023	Bailiff: A. Flynn
04/03/2023	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
04/03/2023	District Attorney not present in Court.
04/03/2023	Defendant present in Court with counsel Jonathan Adam Rapel, Retained Attorney.
04/03/2023	Proof of progress in SCRAM-X filed.
04/03/2023	Hearing re: Proof of completion set on 04/17/2023 at 08:30 AM in Department W3.
04/03/2023	Defendant ordered to appear.
04/03/2023	All other terms and conditions of probation are to remain the same.
04/17/2023	Hearing held on 04/17/2023 at 08:30:00 AM in Department W3 for Hearing Proof of completion.
04/17/2023	Judicial Officer: Patrick Flannery, Commissioner

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

MINUTES

Case : 20WM07704

Name : Diaz, Cesar Hazel 01/09/2024 13:42:12 PM

Date of Action	Text
04/17/2023	Clerk: M. Jimenez
04/17/2023	Bailiff: J. Walker
04/17/2023	Proceedings recorded electronically. The recording equipment is functioning normally, and all of the proceedings in open court between designated times of day will be recorded, except for such matters as were expressly directed to be "off the record" or as otherwise specified.
04/17/2023	Defendant not present in Court represented by Jonathan Adam Rapel, Retained Attorney.
04/17/2023	Defendant's appearance is waived pursuant to Penal Code 977(a).
04/17/2023	Proof of Notice of Completion of SCRAM X filed.
04/17/2023	90 days Jail sentenced on 10/12/2022 and stayed, permanently stayed.
04/17/2023	All terms and conditions of probation are to remain the same.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, WEST JUSTICE CENTER

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

06/29/2020
02:55 PM
DAVID H. YAMASAKI, Clerk of the Court
20WM07704

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. CESAR HAZEL DIAZ [redacted] [redacted] AKA CESAR H DIAZ CESAR DIAZ Defendant(s)	COMPLAINT No. CDPR 200613SUR-0179 BAC .14 BL

The Orange County District Attorney charges that in Orange County, California, the law was violated as follows:

COUNT 1: On or about June 13, 2020, in violation of Section 23152(a) of the Vehicle Code (DRIVING UNDER THE INFLUENCE OF ALCOHOL), a MISDEMEANOR, CESAR HAZEL DIAZ did unlawfully drive a vehicle while under the influence of an alcoholic beverage.

COUNT 2: On or about June 13, 2020, in violation of Section 23152(b) of the Vehicle Code (DRIVING WITH BLOOD ALCOHOL .08% OR MORE), a MISDEMEANOR, CESAR HAZEL DIAZ did unlawfully drive a vehicle while defendant's blood alcohol concentration was 0.08 percent (%) or more by weight of alcohol in defendant's blood.

COMPLAINT SUPERSEDES CITATION NUMBER(s) 873953.

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MISDEMEANOR CITATION E-FILED (DA CASE# 20W04983) 07-27-2020
OC DNA NOT ON FILE: CESAR DIAZ

I declare under penalty of perjury, on information and belief, that the foregoing is true and correct.

Dated 06-29-2020 at Orange County, California.
DC/YC 20W04983

TODD SPITZER, DISTRICT ATTORNEY

by: /s/ STEPHANIE FECCIA
STEPHANIE FECCIA, Deputy District Attorney

RESTITUTION CLAIMED

[X] None
[ ] $_____
[ ] To be determined

BAIL RECOMMENDATION:

CESAR HAZEL DIAZ - $ 1.00

NOTICES:

The People request that defendant and counsel disclose, within 15 days, all of the materials and information described in Penal Code section 1054.3, and continue to provide any later-acquired materials and information subject to disclosure, and without further request or order.

Pursuant to Welfare & Institutions Code §827 and California Rule of Court 5.552, notice is hereby given that the People will seek a court order to disseminate the juvenile case file of the defendant/minor, if any exists, to all parties in this action, through their respective attorneys of record, in the prosecution of this case.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
WEST JUSTICE CENTER
JAN 11 2022
DAVID H. YAMASAKI, Clerk of the Court
BY K. RODRIGUEZ, DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, WEST JUSTICE CENTER

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,	COMPLAINT AMENDMENT 1
vs.	No.20WM07704
	CDPR 200613SUR-0179
CESAR HAZEL DIAZ [redacted]	BAC .14 BL
[redacted]	
AKA CESAR H DIAZ	
CESAR DIAZ	
Defendant(s)	

The Orange County District Attorney charges that in Orange County, California, the law was violated as follows:

COUNT 1: On or about June 13, 2020, in violation of Section 23152(a) of the Vehicle Code (DRIVING UNDER THE INFLUENCE OF ALCOHOL WITH ONE PRIOR), a MISDEMEANOR, CESAR HAZEL DIAZ did unlawfully drive a vehicle while under the influence of an alcoholic beverage, and pursuant to Vehicle Code section 23540, the defendant, CESAR HAZEL DIAZ, within ten (10) years of the commission of the above offense, committed a separate violation of Vehicle Code Section 23103 as specified in section 23103.5, Vehicle Code section 23152, and Vehicle Code section 23153, for which the defendant was convicted.

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MISDEMEANOR CITATION (DA CASE# 20W04983) 01-29-2021
OC DNA NOT ON FILE: CESAR DIAZ

COUNT 2: On or about June 13, 2020, in violation of Section 23152(b) of the Vehicle Code (DRIVING WITH BLOOD ALCOHOL .08% OR MORE WITH ONE PRIOR), a MISDEMEANOR, CESAR HAZEL DIAZ did unlawfully drive a vehicle while defendant's blood alcohol concentration was 0.08 percent (%) or more by weight of alcohol in defendant's blood, and pursuant to Vehicle Code section 23540, the defendant, CESAR HAZEL DIAZ, within ten (10) years of the commission of the above offense, committed a separate violation of Vehicle Code Section 23103 as specified in section 23103.5, Vehicle Code section 23152, and Vehicle Code section 23153, for which the defendant was convicted.

PRIOR CONVICTION(S)

As to Count(s) 1 and 2, it is further alleged, on or about August 27, 2020, CESAR HAZEL DIAZ violated Section 23152(b) of the Vehicle Code, resulting in a conviction on or about July 30, 2021 in the SUPERIOR Court of the State of California, in and for the County of LOS ANGELES, case number: 0SC03424.

COMPLAINT SUPERSEDES CITATION NUMBER(s) 873953.

I declare under penalty of perjury, on information and belief, that the foregoing is true and correct.

Dated 12-29-2021 at Orange County, California.
DC/YC 20W04983

TODD SPITZER, DISTRICT ATTORNEY

by: _____
Deputy District Attorney

RESTITUTION CLAIMED

[X] None
[ ] $_____
[ ] To be determined

BAIL RECOMMENDATION:

CESAR HAZEL DIAZ - $ 10,000.00

NOTICES:

The People request that defendant and counsel disclose, within 15 days, all of the materials and information described in Penal Code section 1054.3, and continue to provide any later-acquired materials and information subject to disclosure, and without further request or order.

Pursuant to Welfare & Institutions Code §827 and California Rule of Court 5.552, notice is hereby given that the People will seek a court order to disseminate the juvenile case file of the defendant/minor, if any exists, to all parties in this action, through their respective attorneys of record, in the prosecution of this case.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
VEHICLE CODE MISDEMEANOR GUILTY PLEA FORM

For Court Use Only
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
OCT 12 2022
DAVID H. YAMASAKI, Clerk of the Court
BY: D. PHILLIPS, DEPUTY

CASE NO. 20WM07704 PEOPLE vs. Diaz

1. My true full name is Cesar Hazel Diaz [redacted]

2. I understand that I am pleading ☒ ***GUILTY*** / ☐ ***NOLO CONTENDERE*** and admitting the following offenses, prior convictions and special punishment allegations, with the maximum punishment indicated below:

CT	CHARGE	PRIORS (Date)	ALLEGATIONS	MAX SENTENCE JAIL/FINES
1.	V.C. 23152(a)	7/30/21		365d / $1000
2.	V.C. 23152(b)	7/30/21		654

3. Remaining count(s), prior(s), and other allegation(s) dismissed on People's motion. 3. X

4. I understand I am also charged with a violation of probation in case no. _____. 4. X

RIGHTS AND WAIVERS

5. I understand I have the following constitutional rights, which I am waiving and giving up by entering my plea, and, if applicable, by my admission of a probation violation: 5.

5a. I have the right to be represented by an attorney at all stages of the proceedings until the case is completed. If I cannot afford an attorney, one will be appointed to represent me. (For defendants without an attorney: I am aware that there are dangers and disadvantages of representing myself and there may be a value in obtaining advice from an attorney in this matter but I knowingly and voluntarily waive and give up my right to an attorney and choose to represent myself.) 5a.

5b. I have the right to a speedy and public trial by a jury or a judge, and if charged with a probation violation, the right to a hearing before a judge. I waive and give up this right. 5b.

5c. I have the right to confront the witnesses against me and to cross examine them. I waive and give up this right. 5c.

5d. I have the right to testify on my own behalf but I cannot be compelled to be a witness against myself and may remain silent if I choose. I waive and give up this right. 5d.

5e. I have the right to present evidence and have the Court issue subpoenas to bring into Court all witnesses and evidence favorable to me, at no cost to me. I waive and give up this right. 5e.

5f. Under the Fourth and Fourteenth Amendments to the United States Constitution, I have a right to be free from unreasonable searches and seizures. If I am granted probation, I waive and give up this right. I agree to submit my person and property, including any residence, premises, container, or vehicle under my control which may include electronic devices, to search and seizure at any time of the day or night by any law enforcement or probation officer, with or without a warrant, and with or without reasonable cause or reasonable suspicion. 5f. X

6. I understand I have the right to appeal an adverse ruling on a Penal Code1538.5 suppression motion. I waive and give up this right. 6.

Best Available Image

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
VEHICLE CODE MISDEMEANOR GUILTY PLEA FORM

CASE NO. _____ PEOPLE vs. _____

7. I understand I have the right to have a delay in pronouncement of my sentence of not less than six hours and not more than five days after my plea. I waive and give up this right and agree to be sentenced at this time. 7.

8. ***Arbuckle Waiver***: I understand I have the right to be sentenced by the judge who accepts this plea. I waive and give up this right. 8.

9. ***Harvey Waiver***: I understand I may be required to pay restitution on a count that is being dismissed pursuant to this plea agreement. 9. X

10. I understand I have the right to be present for the entry of the plea of guilty or nolo contendere, and I hereby waive and give up that right. 10.

11. I understand I have the right to reject probation, and I hereby waive and give up that right and accept probation on the terms and conditions ☐ as imposed by the Court, or ☒ as contained in the attached Sentence Recommendation form. 11.

    11a. If the judge does not wish to follow the prosecutor's sentence recommendation, I may withdraw my plea. 11a.

    11b. If I violate any of the terms of probation, I may be returned to Court and sentenced up to the maximum punishment as indicated on page 1. 11b.

    11c. I understand I have the right to a hearing before a judicial officer to determine whether I violated the conditions of my court-ordered supervision and to determine the appropriate sanction for the violations. I hereby waive and give up this right for all violations for which the county probation department orders me to serve a "flash incarceration", which can be a period of one to ten consecutive days in the county jail. However, if I do not agree with the imposition of flash incarceration, I am preserving my right to demand a hearing. I understand the Court may not deny me probation if I elect not to sign this waiver. 11c.

12. ***Watson Advisement***: I understand that if I am charged with violating Vehicle Code section 23103, as specified in Vehicle Code section 23103.5 or Vehicle Code sections 23152 or 23153, the following warning applies: 12.

    You are hereby advised that being under the influence of alcohol or drugs, or both, impairs my ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If I continue to drive while under the influence of alcohol or drugs, or both, and, as a result of that driving someone is killed, I can be charged with murder.

CONSEQUENCES

13. I understand some of the possible consequences of my plea and admissions are as follows:

    13a. I have read the attached punishment chart and understand the minimum and maximum penalties and consequences listed therein. 13a.

    13b. There will be state penalty assessments added to any fines imposed by the Court. 13b.

    13c. I will be ordered to pay a minimum of $150 and a maximum of $1,000 to the State Restitution Fund unless the Court makes a finding of "compelling and extraordinary reasons" for waiving this fine. 13c.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
VEHICLE CODE MISDEMEANOR GUILTY PLEA FORM

CASE NO. _____ PEOPLE vs. _____

13d. I will be ordered to pay a minimum of $150 and a maximum of $1,000 Probation Revocation Restitution fine pursuant to Penal Code1202.44. The restitution fine will be stayed but will be payable upon revocation of probation. 13d.

13e. I will be ordered to pay restitution on count(s) _____, and dismissed count(s) _____ pursuant to Harvey Waiver, as part of the plea agreement, in the amount of $_____, or in an amount to be determined by the Court or the Probation Department. If I disagree with the amount of restitution determined by the Court or Probation Department, I may request a Court hearing to determine the amount of restitution. 13e. X

13f. ***Immigration consequences:*** I understand if I am not a citizen of the United States, conviction or sentence for the offense(s) charged may have the consequence of deportation, exclusion from admission to the United States, and denial of naturalization pursuant to the laws of the United States. 13f.

13g. ***Firearms Advisement:*** I am now prohibited from owning, purchasing, receiving, possessing, or having under my custody or control any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines. I am ordered to relinquish all firearms and complete a relinquishment form pursuant to Penal Code 29810. 13g. X

13h. If I am charged and convicted of a similar offense in the future, my plea today may be used to increase my punishment for the new offense. 13h.

13i. If I am presently on probation or parole for any previous conviction, my plea today may cause me to be in violation of that probation or parole and result in additional penalties and/or punishment. 13i.

13j. If I am convicted of driving under the influence and I was UNDER 21 at time of arrest, my driver's license will be suspended for one year. If I do not have a license, the Department of Motor Vehicles will delay issuing a license for one year after I become eligible to drive. 13j. X

The Department of Motor Vehicles may take the following action against my driver's license if UNDER 21 years of age, for the following alcohol offenses – 1 year suspension for violation of Penal Code section 191.5, subdivision (a) or (b) of section 192.5; Vehicle Code section 23103 when subject to section 23103.5, or 23140.

13k. If I am convicted of driving under the influence and it involved a <u>REFUSAL/OR BAC (Blood Alcohol Content) OVER .20</u>; I will be required to attend a first offender program of at least nine months duration. 13k. X

13l. **Ignition Interlock:** If I am convicted of a first or subsequent offense for driving under the influence, the Court may order the installation of an Ignition Interlock Device (IID) on all vehicles operated by me for up to a three-year period. If I am convicted of driving on a suspended license under Vehicle Code sections 14601.2, 14601.4 or 14601.5, with a prior conviction for same offenses or for violation of Vehicle Code sections 23103.5, 23152, or 23153, the Department of Motor Vehicles (DMV) will require the installation of an Ignition Interlock Device (IID) as a condition of a restricted license separate from any action by this Court. 13l.

13m. The DMV may restrict or suspend my driver's license separate from any action by this Court. 13m.

13n. If the Court determines that it would be unsafe for me to operate a motor vehicle during a suspension period, the Court may prohibit the issuance of a restricted driver's license. 13n.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
VEHICLE CODE MISDEMEANOR GUILTY PLEA FORM

CASE NO. _____ PEOPLE vs. _____

13o. For a conviction of Vehicle Code sections 23152 or 23153: the DMV will require completion of an alcohol/drug program in order to have my driving privilege reinstated, even if the Court did not order such a program. 13o.

13p. My driving privilege may not be restored until I provide the DMV satisfactory proof of successful completion of a licensed alcohol/drug program of the appropriate length required by law. 13p.

13q. I understand that if I am convicted of certain offenses and ordered to complete a program, I may be subject to supervision under the Interstate Compact if residing outside the state of California. 13q.

13r. I understand that I must reside in the state of California until approval is received from the Probation Department and the Interstate Compact Office. 13r.

14. I understand that if I am the registered owner of the vehicle used in the offense and the offense is:

14a. Vehicle Code sections 23152 or 23153 (first conviction), the Court may order my vehicle impounded up to 30 days at my expense. Upon a second conviction for violation of Vehicle Code sections 23152 or 23153, the Court is **required** (absent unusual circumstances) to order my vehicle impounded for at least one day, but not more than 30 days; the Court may also declare the vehicle a nuisance and order it sold after a hearing. 14a.

14b. Vehicle Code sections 23152 or 23153 (third conviction or more), the Court may order my vehicle impounded up to 90 days at my expense. The court may declare the vehicle to be a nuisance and order it sold after a hearing. 14b.

14c. Driving on a suspended license (Vehicle Code section 14601) or without a license (Vehicle Code section 12500), my vehicle will be subject to impoundment by the police and court for six months and up to one year, and may be subject to forfeiture as a nuisance. 14c.

15. I understand I have the right to enter my plea before, and be sentenced by a judge. I waive and give up this right and agree to enter my plea before, and be sentenced by, a Commissioner or Temporary Judge: 15.

as assigned (enter name of Commissioner or Temporary Judge).

PLEA

16. I offer my plea and admit the listed prior(s) and allegation(s) freely and voluntarily. No one has made any threats, used any force against me or my family or loved ones, and no one has made any promises to me other than as on the Sentence Recommendation form. 16.

17. I make my plea with a full understanding of all the matters set forth in the charging document and in this form. I have read, understood, and personally initialed each item herein, and I understand that the signing and filing of this form is conclusive evidence that I have pleaded ☒ ***GUILTY*** / ☐ ***NOLO CONTENDERE*** to the charges set forth. 17.

18. Discussion with my attorney (*Leave this box blank if you are not represented by an attorney*). Before entering this plea, I have had a full opportunity to discuss with my attorney the facts of the case, the elements of the charged offenses and prior convictions (if any), any defenses that I may have, my constitutional and statutory rights and waiver of those rights, the consequences of this plea, and anything else I think is important to my case. 18.

19. I offer the following as a factual basis for my plea: On or about 6/13/2020 in the County of Orange, State of California, did operate a motor vehicle upon a highway

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
VEHICLE CODE MISDEMEANOR GUILTY PLEA FORM

CASE NO. _____ PEOPLE vs. _____

with a blood alcohol concentration greater than .08 %; to wit .14 %. A I also suffered a prior conviction for V.C. 23152 in Los Angeles County on 7/30/21. case # 0SC03424

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

DATED: 10.12.2022 SIGNED: _____
(Defendant)

DEFENSE ATTORNEY'S STATEMENT: I am the attorney of record for the defendant. I have explained to defendant each of the rights set forth on this form. I have discussed the charges and the facts with the defendant. I have studied the possible defenses to the charges and discussed those possible defenses with the defendant. I have discussed the possible sentence ranges with the defendant. I have advised the defendant of immigration consequences and have complied with the requirements of California Penal Code 1016.3(a). I also have discussed the contents of this form with the defendant. I concur with the defendant's decision to waive the rights set forth on this form and to plead guilty. No promises of a particular sentence or sentence recommendation have been made to the defendant by me, or to my knowledge by the prosecuting attorney or the court, which have not been fully disclosed on this form. I agree that this form may be received by the court as evidence of defendant's advisement and voluntary, intelligent, knowing, and express waiver of the rights set forth on this form.

DATED: _____ SIGNED: _____
(Attorney of Record)

INTERPRETER'S STATEMENT: I, _____, having been duly sworn as a court certified/registered/provisionally qualified interpreter, state that I am fluent in the _____ language. I translated the contents of this form to defendant in that language.

DATED: _____ SIGNED: _____
(Court Interpreter)

FOR THE PEOPLE: I am the prosecuting attorney in this case. I certify that I have complied with the requirements of California Penal Code 1016.3(b).

DATED: _____ SIGNED: _____

Plea to the Court: X

SENTENCE RECOMMENDATION FORM – VEHICLE CODE

CASE NO. _____ PEOPLE vs. _____

SENTENCING CONSEQUENCES FOR SELECTED VEHICLE CODE VIOLATIONS

VEHICLE CODE VIOLATION	MINIMUM SENTENCE	MAXIMUM SENTENCE
23152(a) or (b)* 23152(f) 23152(g)	If probation granted, either option A) or B) may be imposed in addition to penalty C): A) 48 hours in jail, a fine of $390 and attendance at an alcohol/drug program B) a fine of $390 and attendance at an alcohol/drug program C) 6-month suspension of license Without probation: 96 hours in jail, a fine of $390, and 6-month license suspension. *Jail time not to interfere with work schedule. *Commercial driver's license shall be suspended for 12 months if the offense occurred in a vehicle requiring a class A or B driver's license.	6 months jail and $1000 fine
23152(a), (b), (f), or (g) * - within 10 years of one prior conviction for 23152, 23153 or 23103 per VC 23103.5	If probation granted, either option A) or B) may be imposed: A) 10 days in jail, a fine of $390- and 2-year suspension of license B) 96 hours in jail, a fine of $390 and attendance at an 18-month alcohol/drug program and 2-year suspension of driver's license Without probation: 90 days in jail and a fine of $390- and 2-year suspension of license. * Commercial driver's license shall be revoked for life if the offense occurred in a vehicle requiring a class A or B driver's license.	1-year jail and $1,000 fine
23152(a), (b), (f) or (g) - within 10 years of two prior convictions for 23152, 23153 or 23103 per VC 23103.5	If probation granted either option A) or B) may be imposed: A) 120 days in jail, a fine of $390, habitual traffic offender designation for 3 years and an 18-month alcohol/drug program, if not previously completed, 3-year revocation of license and habitual traffic offender designation for 3 years B) 120 days in jail, a fine of $390, habitual traffic offender designation for 3 years and an 18-month alcohol/drug program, if not previously completed and 3-year revocation of license, 30 months in driving under the influence program upon special request and good cause shown. 30 days in jail in lieu of the 120 days Without probation: 120 days in jail, a fine of $390, 3-year revocation of driver's license and habitual traffic offender designation for 3 years.	1-year jail and $1,000 fine; habitual traffic offender designation for 3 years
23152(a), (b), (f) or (g) - within 10 years of three prior convictions for 23152, 23153 or 23103 per VC 23103.5	If probation granted: 180 days in jail, a fine of $390, habitual traffic offender designation for 3 years and may require an 18-month alcohol/drug program, if not previously completed and 4-year revocation of license Without probation: 180 days in jail, a fine of $390 and habitual traffic offender designation for 3 years and 4-year revocation of license.	1-year jail and $1,000 fine; habitual traffic offender designation for 3 years
23153(a), (b), (f) or (g)	If probation granted: 5 days jail, a fine of $390 and attendance at an alcohol/drug program and 1-year suspension of license *If Blood Alcohol Content (BAC) is less than .20% - 3 months with 30 hours of education, counseling and interview program required. *If Blood Alcohol Content (BAC) is more than .20% or if defendant refused to submit to test, 9 months with 60 hours of education, counseling and interview program required. Without probation: 90 days in jail and a fine of $390- and 1-year suspension of license.	1-year jail and $1,000 fine
23153(a), (b), (f) or (g) - within 10 years of one prior conviction for 23152, 23153 or 23103 per VC 23103.5	If probation granted, either option A) or B) may be imposed: A) 120 days in jail and a fine of $390- and 3-year revocation of license B) 30 days in jail, a fine of $390 and18 or 30-month attendance at a driving-under the influence program and 3-year revocation of license Without probation: 120 days in jail, a fine of $390- and 3-year revocation of license.	1-year jail and $5,000 fine Option B) $1000 max fine
23103 pursuant to V.C. 23103.5 * *This conviction will serve as a prior DUI conviction if I commit one or more DUI offenses within 10 years.	If probation granted: 9-month participation in an alcohol and drug treatment program If probation not granted: 5 days in jail and/or a fine of $145	90 days jail and/or $1,000 fine

_____
Defendant's Signature

SENTENCE RECOMMENDATION FORM – VEHICLE CODE

CASE NO. _____ PEOPLE vs. _____

DRIVING WHILE UNDER THE INFLUENCE ENHANCEMENTS	INCREASE IN PUNISHMENT
Willful refusal to submit to or to complete a blood-alcohol chemical test. [V.C. 23577]	First offense of V.C. 23152 - 48 hours in jail added to any other sentence Second offense of V.C. 23152 - 96 hours in jail added to any other sentence Third offense of V.C. 23152 - 10 days in jail added to any other sentence Fourth or subsequent offense - 18 days in jail added to any other sentence First offense of V.C. 23153 - 48 hours in jail added to any other sentence Second offense of V.C. 23153 - 96 hours in jail added to any other sentence
Driving a vehicle 30 or more miles per hour over the speed limit on a freeway in a reckless manner OR driving a vehicle 20 or more miles per hour over the speed limit on any street or highway in a reckless manner. [V.C. 23582]	On 1st offense defendant must attend an education and counseling program. 60 days in jail in addition to any other sentence
One or more passengers in the vehicle was/were a minor under the age of 14 years. [V.C. 23572]	First offense of V. C. 23152 – 48 continuous hours in jail added to any other sentence – no stay of sentence allowed. Second offense of V.C. 23152 – 10 days in jail added to any other sentence – no stay of sentence allowed Third offense of V.C. 23152 – 30 days in jail added to any other sentence – no stay of sentence allowed Fourth or subsequent offense – 90 days in jail added to any other sentence – no stay of sentence allowed
Multiple victims injured or killed [V.C. 23153]	1-year state prison in addition on any felony conviction.
Blood Alcohol Content [V.C 23578]	3 months of 30 hours program activities, educational counseling, interview sessions, in addition to enhanced penalties and conditions of probation that may be taken into consideration.

VEHICLE CODE VIOLATION	FIRST OFFENSE	SECOND OR SUBSEQUENT OFFENSE
14601.3(a)	30 days jail and $1000 fine	If within 7 yrs. of prior conviction of 14601.3(a) 180 days jail and a fine of $2,000

VEHICLE CODE VIOLATION	MINIMUM SENTENCE	MAXIMUM SENTENCE
14601(a)	5 days jail and $300 fine	6 months jail and $1,000 fine
14601(a) - within 5 yrs. of a prior conviction for 14601, 14601.1, 14601.2 or 14601.5	10 days jail and $500 fine 10 days jail required if probation granted	1-year jail and $2,000 fine
14601.1(a)	$300 fine	6 months jail and/or $1,000 fine
14601.1(a) within 5 yrs. of a prior conviction for 14601, 14601.1, 14601.2 or 14601.5	5 days jail and $500 fine	1-year jail and $2,000 fine
14601.2(a) or (b)	10 days jail, $300 fine 10 days jail required if probation granted DMV will require ignition interlock device	6 months jail and $1,000 fine
14601.2(a) or (b) within 5 yrs. of a prior conviction for 14601, 14601.1, 14601.2 or 14601.5	30 days jail, $500 fine and ignition interlock device 30 days jail required if probation granted DMV will require ignition interlock device *If I was designated as a habitual traffic offender within three years of this conviction, I will serve an additional 180 days jail and pay a fine of $2,000.	1-year jail and $2,000 fine
14601.2(a) or (b) within 7 yrs., but over 5 yrs., from a prior conviction for 14601, 14601.1, 14601.2 or 14601.5	10 days jail and $300 fine 10 days jail required if probation granted DMV will require ignition interlock device	6 months jail and $1,000 fine
14601.4(a)	Shall be imprisoned in county jail and shall not be released upon work release, community service, or other release program before the minimum period of time prescribed in 14601.2 is served. If probation is granted, shall serve at least the minimum time of imprisonment specified under 14601.2 as a term of probation. DMV will require ignition interlock device.	
14601.5(a) or (b)	$300 fine or 6 months jail With prior conviction for certain offense(s), DMV will require IID	6 months jail and $1,000 fine
14601.5(a) or (b) within 5 yrs. of a prior conviction for 14601, 14601.1, 14601.2 or 14601.5	10 days jail and $600 fine With prior conviction for certain offense(s), DMV will require IID	1-year jail and $2,000 fine
20002(a)	None required under the statute	6 months jail and/ or $1000 fine
12500(a)	None required under the statute	6 months jail and $1,000 fine

_____
Defendant's Signature

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
MISDEMEANOR SENTENCE RECOMMENDATION

For Court Use Only

(optional)

CASE NUMBER_____ PEOPLE VS _____

☐ Count(s)_____ dismissed on motion of People.
☐ Count(s)_____ sentence suspended.
☒ Count(s) 2 stayed pursuant to Penal Code 654.

TERMS

☒ Imposition ☐ Execution of sentence is suspended. 5 years
☐ Formal ☒ Informal PROBATION as to Count(s) 1.
☒ Violate no laws ☒ Obey all orders and rules of Court, Probation Department & Jail.
☐ Submit your person and property, any residence, premises, container or vehicle under your control ☐ including electronic devices ☐ not including electronic devices, to search and seizure at any time of the day or night by any law enforcement officer, probation officer, with or without a warrant, probable cause, or reasonable suspicion.
☐ Consume no alcoholic beverages and do not be present in any establishment where alcohol is the primary item of sale.
☒ Do not drive with a measurable amount of alcohol in the blood system.
☒ Submit to a chemical test of blood on demand of any peace officer or probation officer.
☐ Use no unauthorized drugs, narcotics or controlled substances and submit to chemical testing on demand of probation officer or police officer.
☐ Cooperate with the Probation Department in any plan for counseling or treatment.
☐ Seek training, schooling, employment and maintain residence as approved by the Probation Department.
☐ Do not associate with anyone disapproved of by your probation officer.
☐ Do not own, purchase, receive, possess or have under your custody or control any type of dangerous or deadly weapon, firearm, ammunition, and ammunition feeding devices, including but not limited to magazines
Relinquishment hearing set on _____.
☐ Court orders weapon destroyed.
☒ Do not drive without a valid driver's license in your possession.
☒ Do not drive without valid insurance.
☒ Use TRUE NAME and Date of Birth at all times.
☐ Carry a valid government-issued identification card at all times.
☐ Provide the Court with your current address, telephone number, employer's name, address, and telephone number. Immediately notify the Court of any changes.
☒ Disclose probation terms upon request of Probation or Law Enforcement Officer.

FINES AND FEES

☒ Pay a fine of $ 390 plus penalty assessment on count 1.
☐ Pay a fine of $_____ plus penalty assessment on count _____.
☒ Credit of $ 125 given towards fine of $ 390 as to count 1 for time already served in custody.
☐ Pay $_____ Court Costs on count(s) _____.
☒ Pay $50 Alcohol Abuse Education Fee. (Vehicle Code 23645)
☒ Pay $50 Alcohol Testing Penalty. (Penal Code 1463.14)
☒ Pay $100 Alcohol Assessment Fee. (Vehicle Code 23649)
☐ Pay $50 Lab Fee for each specified drug offense.
☐ plus penalty assessment. (Penal Code 1463.14/Health and Safety Code 11372.5)
☐ Pay $150 Drug Program Fee for each specified drug offense.
☐ plus penalty assessment. (Health and Safety Code 11372.7)
☐ Pay $_____ Domestic Violence Discretionary Fee for all Orange County Domestic Violence Shelters. (Penal Code 1203.097)
☐ Pay $_____ Domestic Violence Prevention Fund. (Penal Code 1203.097(a)(5))

THE FOLLOWING FEES ARE NOT CONDITIONS OF PROBATION:

☒ Pay $ 150 State Restitution Fine (minimum of $150.00). (Penal Code 1202.4(b)(1))
☒ Pay $ 150 Probation Revocation Restitution Fine (minimum of $150.00). Restitution fine stayed. Effective upon revocation of probation. (Penal Code 1202.44)
☒ Pay the following fees:
- Criminal Conviction Assessment Fee(s) $30/misdemeanor; $35/infraction (per convicted count) (Government Code 70373(a)(1))
- $40 Court Operations Fee (per convicted count) (Penal Code 1465.8)
- Additional fees as required by law

☐ Pay Local Crime Prevention Fund Fee $10 plus penalty assessment (Penal Code 1202.5).
☐ Fines/Fees to be paid forthwith.
☐ Fines/Fees to be paid through Court Collections
☐ forthwith ☐ by _____.
☐ Pay costs of formal probation as directed by Probation Officer.
☐ Fines/Fees to be paid through Probation.
Additional program fees may be applicable and paid through the program.

JAIL

☒ Serve 90 days Orange County Jail on Count 1.
☐ Serve _____ days Orange County Jail on Count _____.
☐ Serve _____ days jail in lieu of fine on Count _____.
☐ Jail to be served through the City of _____.
☒ Credit for 1 actual + 0 = total 1.
☐ Work release denied ☐ Electronic Confinement denied
☐ County Work Program denied
☒ JAIL STAYED to _____ at 7 am/pm. Report to
☒ Theo Lacy ☐ Orange County Jail-Intake Release Center.
☐ May be released to an authorized representative of the _____ _____ program to serve remainder of jail sentence.
☐ Serve _____ weekends at _____ Jail (no good time or work time to be applied to original sentence).
☐ Sentence(s) to run consecutive / concurrent to each other / any other sentence / Case No: _____.
☐ Jail stayed pending successful completion of:
☐ DUI Court (except any statutory minimum term which may be served on SEC during the term of DUI Court as imposed by the Court)
☐ Probation ☐ Community Service ☐ Cal Trans/Physical Labor
☐ _____.
☐ To be served in State Prison concurrently.
☐ Book and Release due to the Clerk's Office by _____.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
MISDEMEANOR SENTENCE RECOMMENDATION

CASE NUMBER_____ PEOPLE VS _____

COMMUNITY SERVICE / OTHER PROGRAMS

☐ Complete _____ ☐ hours ☐ days of
☐ Community Service ☐ Cal Trans ☐ Cal Trans/Physical Labor
☐ In lieu of fines ☐ In lieu of jail
☐ Complete Graffiti Removal as to count(s) _____.
☐ Proof of completion due to the Clerk's Office by _____.

ALCOHOL & DRUG PROGRAMS/DRIVER'S LICENSE

Complete Program:
☐ 3 month ☐ 6 month ☐ 9 month
☒ Multiple Offender – 18 month
☐ 12 hour program

☐ Attend Victim Impact Counseling. Proof of completion due to the Clerk's Office by _____.
☒ May complete program ☒ out of county ☐ out of state.
☐ Attend and complete _____ ☐ Self Help and/or Alcoholics Anonymous meetings ☐ Self Help and/or Narcotics Anonymous meetings ☐ per day ☐ per week ☐ per month.
Proof due by _____.
☐ Attend and complete a _____ day/month probation approved:
☐ residential ☐ outpatient drug/alcohol treatment program;
☐ with a _____ day/month aftercare program.
☐ No day for day credit will be given if the defendant fails to complete program. Full jail sentence to be imposed.
☐ Court designates defendant a Habitual Offender. (VC 13350(b))
☐ Court orders the installation of an ignition interlock Device (IID) on all vehicles operated by defendant for _____ months.
Proof of installation or non-ownership of vehicle due by _____.
☐ Driving privilege suspended for 1 year pursuant to VC 13202.5 (alcohol offense and under the age of 21)
☐ Driving privilege suspended for _____ year(s) pursuant to Vehicle Code 13352(a)(3) (2nd DUI conviction within 10 years)
☐ Driving privilege revoked for _____ year(s) pursuant to Vehicle Code 13352(a)(5).
☐ Complete Youthful Drug & Alcohol Deterrence Program and show proof to the Clerk's Office by _____.
☐ Enroll and complete Penal Code 1210 program. Proof of enrollment due by _____.
Refer to Penal Code 1210 Addendum.
☐ Register with local law enforcement within 5 days from today or within 5 days upon release from custody pursuant to:
☐ Penal Code 186.30 (gang related offense)
☐ Penal Code 457.1 (arson offense) – Lifetime
☐ Penal Code 290 (sex offense) for ☐ a minimum of 10 years
☐ Penal Code 290.024 (sex offense – Internet identifiers)
☐ Submit to AIDS testing. Proof due to Department _____ by _____.
☐ Attend and complete AIDS Prevention Education. Proof of completion due to the Clerk's Office by _____.

DOMESTIC VIOLENCE

☐ Complete Batterer's Treatment Program
(52 weeks of active participation required)
☐ Alcohol/Drug Component
☐ Total abstinence from alcohol and drugs
☐ Test alcohol and drugs (blood or urine only)
☐ Parenting component
☐ One year Child Abuser's Program.
☐ Health Care Agency Perinatal Program.
☐ May complete program ☐ out of county ☐ out of state.
☐ Other program(s) _____
active participation required.
☐ weeks ☐ months ☐ years
☐ Proof of Enrollment due to the Court by _____.
☐ Comply with Court protective order.
☐ Surrender all firearms within 24 hours as required by law and file proof of surrender form within 48 hours with the Court.
☐ Relinquishment hearing set on _____.

RESTITUTION

☐ Make restitution in the amount of $ _____ or as determined through ☐ Victim Witness ☐ Probation, with interest at the rate of 10% ☐ from the date of sentencing ☐ from the date of loss.
☐ Pay cost of counseling to the victim and/or children in the amount of $_____.
☐ Submit a new financial disclosure form if money is still owing on a restitution order or fine 120 days before the scheduled release from probation. File the form with the court at least 90 days before the scheduled release from probation.
☐ Complete and return Statement of Assets form by _____.

ADDITIONAL TERMS & CONDITIONS

☐ Have no contact with _____.
☐ Stay _____ yards away from _____.
☐ Provide a state DNA sample, prints and photographs if not already provided pursuant to DNA Addendum.
☐ Obey all rules of Court ordered program. Do not leave the program without Court approval.
☐ Probation to ☐ terminate ☐ be modified to "Informal" status upon _____.

ADDENDUMS

☐ Penal Code 1210 with Disclosure ☐ DEJ Addendum ☐ DUI Court
☐ Gang Terms ☐ Tagger/Graffiti Terms ☐ Street Terms
☐ _____

REPORT ☐ forthwith ☐ by stay date to: _____
☒ Collections ☐ Clerk's Office ☐ Probation
☐ OneOC ☐ Alcohol Liaison ☐ _____
☐ District Attorney ☐ Victim Witness

OTHER: _____

NOTICE TO DEFENDANT: After successful completion of probation, or if not placed on probation, any time after the lapse of one year from the date of pronouncement of judgment, you may petition the court to dismiss the charges under Penal Code 1203.4. This notice does not apply to any protective orders.

I have read, I understand, and I accept these terms and conditions of probation.

Date: 10/12/22 Defendant's Signature: _____ D.A. / C.A. Signature: _____

Defense Counsel Signature: _____

AGENDA ITEM REPORT

Title: POST2300809 - DILLON FUSTON (POST ID: C71-S10)
LAST EMPLOYING AGENCY: SAN DIEGO POLICE DEPARTMENT

REPORT PROFILE

MEETING DATE 03/21/2024	**BUREAU SUBMITTING THE REPORT** Professional Conduct Southern Bureau	
RESEARCHED BY Mark Nagel	**REVIEWED BY** Christine Ford	
REPORT DATE 02/29/2024	**APPROVED BY** Annemarie Del Mugnaio	**DATE APPROVED**
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

The matter is before the Peace Officer Standards Accountability Advisory Board (POSAAB) for review and recommendation regarding the subject peace officer's certification status.

BACKGROUND:

The Respondent began his employment with the San Diego Police Department on September 4, 2018. He was promoted to a fulltime peace officer after graduating from the San Diego Regional Training Academy on February 21, 2019. At the time of this incident before POSAAB, the Respondent was employed as a Peace Officer with the San Diego Police Department. On September 22, 2022, he resigned from the San Diego Police Department and was hired as a Deputy with the San Diego Sheriff's Department on September 23, 2022.

This position is a peace officer position as defined under California Penal Code §830.1(a) and is required to be certified pursuant to California Penal Code §13510.1(a).

Video Evidence Links:

POST2300809 Fuston, Dillon BWC Redacted

ANALYSIS:

The Division found that the clear and convincing evidence substantiated that Respondent violated California Penal Code § 13510.8(b)(1), in that the Respondent was dishonest relating to the reporting of a crime. Specifically, the Respondent was dishonest in documenting that a suspect had immediate

access to a weapon during an initial contact, was dishonest in reporting that he used half-second paused distraction blows to secure a suspect's arm, and was dishonest in reporting that he guided a suspect to the ground after a leg sweep. Finally, Respondent incorrectly reported the amount of time a suspect was unconscious following the Respondent's use of an unapproved leg sweep.

RECOMMENDATION: The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigation presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

ATTACHMENT(S):
BR1 - POST2300809 - Fuston_ Dillon - ISF.pdf

INVESTIGATIVE SUMMARY AND FINDINGS

PEACE OFFICER NAME: Dillon Fuston

POST ID NUMBER: C71-S10

EMPLOYING AGENCY: San Diego Police Department

POST CASE NUMBER: POST2300809

WRITTEN BY: Mark Nagel

DATE: 11/8/2023

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I. Executive Summary

On April 10, 2020, San Diego Police Officer Dillon Fuston (hereinafter "Respondent") and his partner responded to a domestic violence call. After speaking with the reporting party, the Respondent and his partner determined that probable cause existed to make an arrest on the male suspect and entered the apartment to take him into custody. Upon locating the suspect lying on his bed, the Respondent and his partner attempted to handcuff the suspect and a struggle ensued because the suspect would not follow commands to remove his arms from under his body. The Respondent punched the suspect six times in the back with a closed fist prior to applying the handcuffs.

The Respondent escorted the handcuffed suspect to the hallway outside of the apartment and stayed with the suspect while the Respondent's partner spoke with the victim. While the suspect was handcuffed in the hallway, the Respondent felt that the suspect attempted to kick him, resulting in the Respondent using force by leg sweeping the handcuffed suspect causing him to hit his head on the floor. As a result of hitting the floor, the suspect immediately lost consciousness and remained unconscious for approximately two minutes and fifty-eight seconds.

As described above, there are two use of force events that occurred in the arrest of the suspect. The first use of force was used during the initial contact and apprehension of the suspect in the apartment. The second use of force occurred in the hallway. Both events involved the Respondent using force that was ultimately deemed excessive and resulted in sustained findings by the employing agency. Additionally, the agency sustained findings that the Respondent failed to accurately document all the facts and circumstances surrounding the force used during the arrest of the suspect.

As will be discussed in greater detail below, the sustained excessive use of force findings are not actionable for purposes of a decertification action due to the date of this incident. However, the Respondent engaged in multiple acts of dishonesty relating to this matter, which are actionable. Specifically, the Respondent stated in his report that, during the initial contact, the suspect had immediate access to weapons. That statement is unsupported by the facts and was found to be unfounded in the agency's Internal Affairs (IA) investigation. For example, the IA found that the only weapon in sight was not in the suspect's reach, the Respondent did not check the bed for weapons prior to waking the suspect, and neither officer performed a pat down of the bed or surrounding area once the suspect was taken into custody. As for the six punches to the suspect's back, the Respondent described these as distraction blows in his IA interview, stating that he gave the suspect commands each time to give up his arm and waited about a half of a second before taking the next strike. However, the IA found that the injuries sustained by the suspect were not consistent with distraction blows and review of the body worn camera footage shows that the Respondent did not pause each time before taking his next strike. The Respondent described the leg sweep takedown as controlled, claiming that he guided the suspect's body to the ground with both hands. However, review of the Respondent's body worn camera footage demonstrates that the suspect's fall was not controlled, resulting in the suspect hitting the ground without any

way to lessen the impact of the fall. And the Respondent provided false statements to dispatch and responding medical personnel as to the amount of time the suspect remained unconscious. Specifically, the Respondent stated that the suspect was unconscious for 2 to 3 seconds when body worn camera footage shows the suspect was unconscious for two minutes and fifty-eight seconds. Body worn camera footage also shows the Respondent next to the suspect while he is unconscious, rubbing the suspect's sternum and telling him to wake up, demonstrating the Respondent knew the suspect had been unconscious for far more than 2 to 3 seconds. The Respondent then documented in his police report the suspect was unconscious for 2 to 3 seconds. The suspect was subsequently arrested on two criminal charges: Penal Code section 273.5(a) (Inflict Corporal Injury on a Spouse) and Penal Code section 148(a)(1) (Resisting/Delay Peace Officer).

Penal Code section 13510.8(b)(1) establishes that a certified peace officer shall have their certification revoked if the person has engaged in dishonesty relating to the reporting, investigation, or prosecution of a crime. Here, clear and convincing evidence exists to establish that the Respondent was dishonest in the reporting of a crime (PC 148(a)(1)) when he falsely stated in his police report:

- The suspect had immediate access to a weapon during initial contact.
- That he used distraction blows to secure the suspect's arm while pausing a half of a second between each strike.
- That he held onto the suspect's upper body with both hands to guide the suspect to the ground after the leg sweep.
- That the suspect was unconscious for 2 to 3 seconds.

Notably, when asked in his internal affairs interview "Do you think you were accurate is saying he was unconscious for 2 to 3 seconds?" the Respondent stated: "No. I think it's pretty cut and dry." This false statement and other statements made in the report, directly relate to the Respondent's reporting of the resisting arrest charge and were a clear attempt to mitigate the extent of the suspect's injury by falsely stating the suspect had immediate access to weapons, used distraction blows to secure an arm, guided the suspect to the ground after the leg sweep and the length of time the suspect was unconscious.

II. Background Information

a. Identity of Respondent

At the time of the events at issue, the Respondent was employed as a Peace Officer with the San Diego Police Department. On September 22, 2022, he resigned from the San Diego Police Department and was hired as a Deputy with the San Diego Sheriff's Department on September 23, 2022.

b. Respondent's Service Record, Relevant Training, and Prior Complaints and Discipline

Training

Advanced Officer Course – San Diego PD – October 28, 2021

Prior Complaints

The following complaints have been submitted to POST:

POST2306045 – San Diego Sheriff's Office – October 20, 2022

Claim: Physical Abuse/Excessive Use of Force – not sustained by the agency. Complainant alleged that she suffered a facial fracture and numerous body wounds on October 20, 2022, resulting from an encounter with San Diego County Sheriff's Deputies (which included Respondent). The incident and subsequent use of force was documented and investigated to include BWC review. The use of force was determined to be within department policy and law and was found to have been justified.

POST2300507 – San Diego Police Department – October 27, 2019

Claim: Physical Abuse/Excessive Use of Force and Acts that Violate the Law – exonerated by the agency.
San Diego Police Department officers responded to a male who was intoxicated. During the arrest, the suspect resisted by pulling away from the officers and attempted to evade arrest. The suspect was subsequently arrested for narcotics charges and resisting arrest. The suspect claimed that the officers (which included Respondent) used excessive force against him. The agency Internal Affairs investigation concluded minimal force was used and was reasonable, justified, and necessary. The allegation of excessive use of force was not sustained.

POST2300192 – San Diego Police Department – December 14, 2019

Claim: Physical Abuse/Excessive Use of Force and Demonstrating Bias – sustained by agency. This matter was closed by POST as a non-actionable report.
On December 14, 2019, San Diego Police Department officers contacted a suspect who matched the description of a person wanted for vandalism. The suspect did not comply with verbal commands and physically resisted officers and headbutted an officer, who sustained a laceration on his eyebrow. The Respondent subdued the suspect via a carotid hold. The suspect alleged officers used excessive force and discriminated against him because of his race.

The Respondent was found by the agency to have violated their Use of Force and Carotid Restraint procedures when he applied a non-departmental approved/modified carotid restraint or neck restraint. The Respondent was also

found to have violated the Use of Force and Carotid Restraint procedures when he exceeded the carotid restraint duration hold of 15 seconds.

The agency found the Respondent had reasonable suspicion to stop and detain the suspect based on the description of the vandalism suspect and ultimately arrested him after he violently resisted the officers. A curbside lineup was later conducted, and the witness positively identified the suspect as the vandalism suspect. There was no evidence demonstrating the Respondent inappropriately factored race for detaining and arresting him. The discrimination allegation was therefore unfounded. As for the excessive use of force claim, POST closed this matter as non-actionable because the events took place in December 2019, prior to the January 1, 2022, effective date of Senate Bill 2 and Penal Code section 13510.8(b)(3).[1]

c. Prior Employment History

The Respondent was employed by the San Diego Police Department from September 4, 2018, to September 22, 2022, as a Police Officer. The Respondent then resigned from the San Deigo Police Department and has been working as a Deputy with the San Diego Sheriff's Department since September 23, 2022.

d. Peace Officer Certification

The Respondent is assigned POST ID C71-S10. He received the following peace officer certificates from the Peace Officer Standards and Training (POST):

- Basic (Awarded February 26, 2020)
- Intermediate (Awarded February 24, 2021)

e. The Present Allegations of Serious Misconduct

1. Reported to POST on January 20, 2023. The Incident occurred on April 10, 2020.

2. The San Diego Police Department sustained allegations for failing to accurately document all the facts and circumstances surrounding the force Respondent used during the arrest.

III. Investigative Methodology

[1] The suspect in this case filed a civil lawsuit against Respondent (and other defendants) on July 20, 2020, asserting the following claims: 42 U.S.C. §1983, Unreasonable Seizure; 42 U.S.C. §1983, Excessive Use of Force; Civil Code section 51.7, the Ralph Act; Civil Code section 52.1, the Bane Act; Assault; Battery; False Arrest; False Imprisonment; Intentional Infliction of Emotional Distress; and Negligence. The case is pending in the United States District Court, Southern District. *Shine v. Fuston et al*, 3:20-cv-2036.

This report summarizes the findings related to allegations of serious misconduct. This investigation was conducted in accordance with the regulations and policies of POST. The investigation included a review of the San Diego Police Department's administrative investigation, which included an interview of the suspect, body worn camera footage, arrest report, Computer Aided Dispatch ("CAD") report, photographs of the suspect's injuries, a use of force expert review, and witness interviews. The video recording of the incident was analyzed and compared to the written documentation completed by Respondent in his official report.

Information obtained was analyzed using the clear and convincing evidence standard. For purposes of this report, clear and convincing evidence means evidence of a charge is clear and convincing so long as there is a high probability that the charge is true. The evidence need not establish a fact beyond a reasonable doubt.

This report is summary in nature and does not include every fact or issue that might be found in the underlying investigation and attachments. It does, however, contain reference to the evidence that I believe establishes the requisite facts, and proves the serious misconduct charged, by clear and convincing evidence.

IV. Factual Summary

For clarification of this report, any action recommended regarding the Respondent shall be for the act of dishonesty in the reporting of a crime. The excessive use of force claim is not actionable by statute because the date of the incident predates the implementation of Penal Code section 13510.8(b)(3). However, the facts relating to the force used by Respondent are relevant to support the dishonesty, which is covered under Penal Code section 13510.8(b)(1) and (g)(1)(A).

In reviewing the body worn camera ("BWC") evidence, a total of six BWC videos were obtained regarding this incident. Respondent's BWC and his partner's BWC video are the only two videos that captured the force used on the suspect and the events relating to the Respondent's dishonesty. The Respondent's BWC shows the first interaction with the suspect when officers attempted to facilitate his arrest. The video showed the suspect lying on his stomach with his left arm underneath his body. The Respondent had the suspect's right arm behind his back and applied downward pressure with both hands. The Respondent told the suspect several times, "Give us your arm." The Respondent then used his right fist to punch the suspect six times in his back rib area to gain control of the suspect's arm.

During the Respondent's interview, he stated the suspect did not, or was not able to, remove his left arm from underneath his body. Since the suspect did not comply with his orders, the Respondent punched the suspect with six closed fists blows to the back rib area. The Respondent also stated in his administrative interview that he was concerned about the possibility of the suspect possessing unseen weapons. The agency determined the Respondent's statement about potential weapons was not

supported by specific articulable facts that would lead a reasonable officer to believe suspect had or was reaching for a weapon at the time the Respondent punched him six times to secure his arm.

The San Diego Police Department's use of force expert, Officer Rhoten, reviewed the six closed fist strikes to the suspect's back and determined, "The closed fists strikes to suspect's back and ribs by the Respondent are not in line with what is taught at the San Diego Regional academy and during Advanced Officer Training. The Respondent's use of closed fist strikes to the back and ribs of suspect are also not in accordance with SDPD Policy and Procedures." The IA also found that the injuries sustained by the suspect were not consistent with distraction blows.

While in the hallway, the Respondent stood behind the suspect who was positioned facing the wall. The Respondent claimed he thought the handcuffed suspect was going to kick him while being pushed against the wall. In support of this claim, the Respondent stated the suspect lifted his foot off the ground by 1 to 2 inches. I reviewed the relevant portion of Respondent's BWC video and found that there was no sudden movement of the Respondent away from the suspect, nor any sudden movement by the suspect that would indicate he tried to kick the Respondent. The Respondent stated in his administrative interview he used his "right leg and kicked his right leg also hitting his left leg" causing the suspect to fall to the ground. The Respondent did not use an approved takedown taught by the San Diego Regional Academy or Advanced Officer Training and failed to control the suspect's head to the ground. By using an unapproved leg sweep, the Respondent did not use caution in the takedown of a handcuffed prisoner which resulted in the suspect being rendered unconscious.

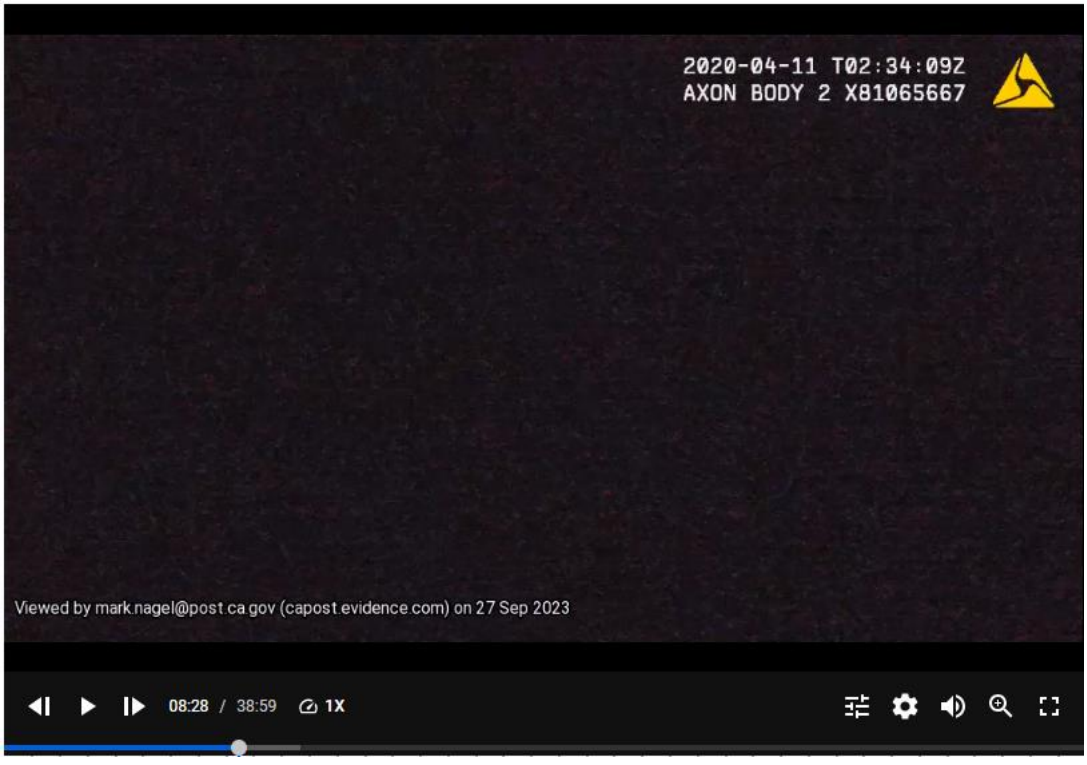
At 8:00 of the BWC video, Respondent uses his microphone asking for an ambulance and states "the suspect tried to kick me, I took him to the ground."



At 8:07 of the BWC video, the suspect is clearly unconscious (eyes are closed, not responding to commands, no body movement) and placed in a recovery position.



At 8:28 of the BWC video, Respondent uses his microphone saying, “Loss of consciousness 2 seconds.”



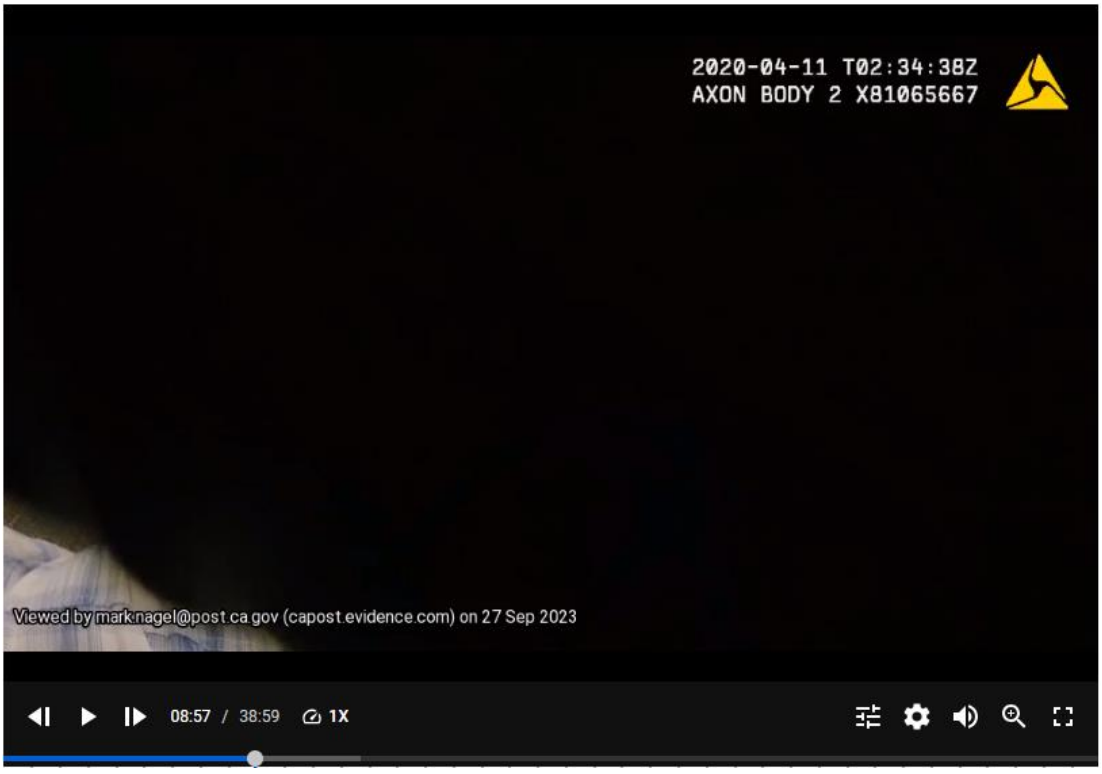
At 8:38 to 8:47 of the BWC video, Respondent gives the suspect a sternum rub.



At 8:42 of the BWC video, Respondent says, "Wake up (suspect name redacted – referred to hereafter as "S1"), wake up."



At 8:57 of the BWC video, Respondent advises dispatch “Conscious and breathing, 59-year-old male.”



At 9:49 of the BWC video, Respondent says, “Wake up bud. Wake up, you are ok. You just tried to kick the police. You shouldn’t do that.” Suspect is still snoring and unconscious.



At 10:26 of the BWC video, Respondent says, “S1 wake up.” Suspect is still unconscious.



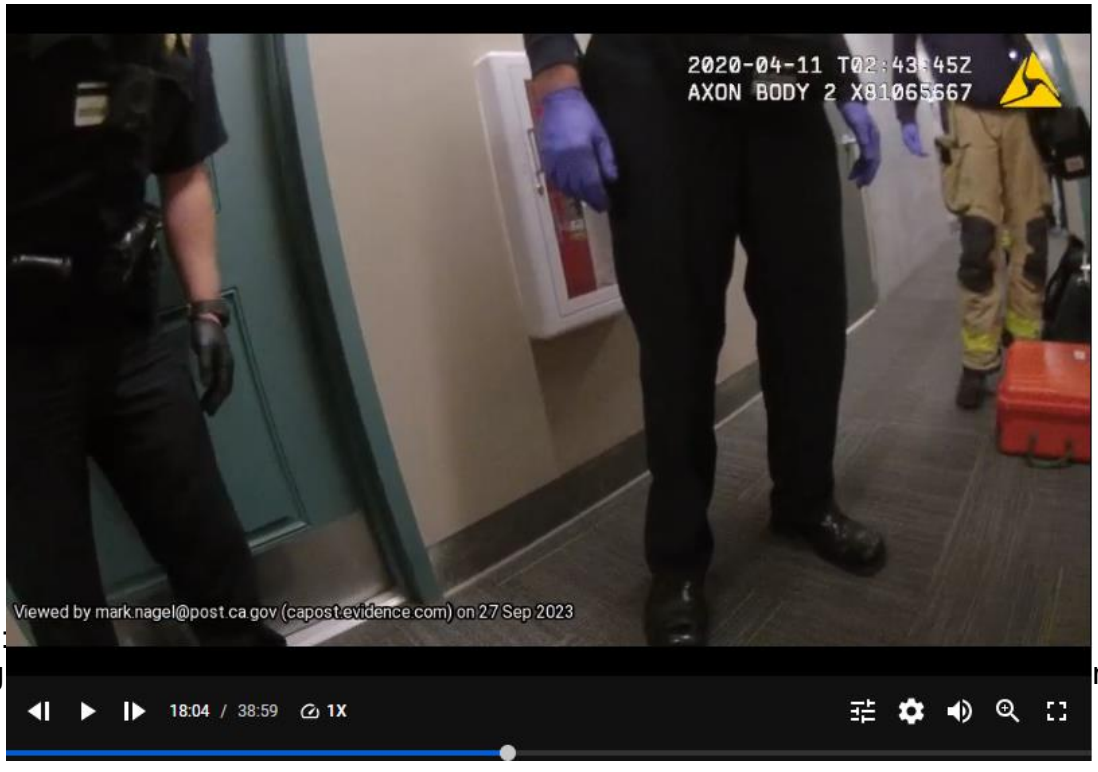
At 10:40 of the BWC video, the suspect’s eyes open and he looks up.



At 10:45 of the BWC video, Respondent rubs the suspect's chest and says "Wake up buddy. You feel alright."



At 18:04 of the BWC video, Respondent tells San Diego Fire personnel, "He lost consciousness for 2 to 3 seconds."



At 25: m to trying

13

the ground, ended up smacking his head pretty good. Loss of consciousness 2 to 3 seconds."



The Respondent provided statements during his administrative interview regarding the leg sweep and observations of the suspect being unconscious. He stated the following: "I saw the pre-assaultive cue of S1 cocking his right knee up. His foot lifted 1 to 2 inches off of the ground. I perceived his cocked knee as an attempt to kick me. I used my right leg and kicked his right leg also hitting his left leg. I thought I would be able to gain my balance in a timely fashion to take him to the ground. My plan was to keep my left hand on his left arm and use my right hand to control his body to the ground. I did not necessarily control him [emphasis added]. S1 fell to the ground and hit his head." **(Page 40 of IA Report)**

"I have additional training in judo, taekwondo, high school wrestling and the Marines. I was taught three or four different movements to block a leg kick in judo. I was taught a lot of movements to block a leg kick in wrestling. I was taught a few ways to block a leg kick in taekwondo. Also, I was taught ways to block a leg kick in the Marines." (Page 40 of IA Report)

"I aired S1 was unconscious for 2 to 3 seconds. I took S1 snoring and seeing his eyes flutter as a sign of consciousness. I also felt S1 move a little. I think more importantly, it was a sign that he was alive. I misspoke and used the wrong word. Basically, saying that he lost consciousness for 2 to 3 seconds was a wrong time assessment on my part. He was alive but as far as awake and alert, no." **(Page 41 of IA Report)**

"I took S1's pulse and applied a stern rub 1 minute and 1 second after he hit the ground. This is an effective way of waking someone up and or keeping them awake. At this time, I knew S1 was asleep." (Page 41 of IA Report)

"At 1 minute and 47 seconds after S1 hit the ground I checked his pulse. At 2 minutes and 47 seconds after S1 hit the ground, I told him to wake up. I could feel him moving and breathing." (Page 41 of IA Report)

"About 10 minutes after S1 hit the ground, I told fire personnel that S1 was unconscious for two to three seconds. That was my assessment from when he started snoring and showing me, he was still alive. About 18 minutes later, medics showed up and I told them S1 was unconscious for 2 to 3 seconds." (Page 41 of IA Report)

More importantly, the Respondent admitted in his administrative interview that he was inaccurate in his reporting of this event. This is demonstrated in the following exchange with the internal affairs investigator:

Internal Affairs Investigator: "In hindsight after talking about all of this, do you think you violated Department Policy 9.28, which is accurately reporting." There was a short pause while I shuffled paper to grab a printout of the policy and Sergeant Adair asked, "Do you think you were accurate is saying he was unconscious for 2 to 3 seconds?" (Page 41 of IA Report)

Respondent: "No. I think it's pretty cut and dry." **(Page 41 of IA Report)**

The specific dishonest statement can be found in the Respondent's report number 20408, dated April 10, 2020. The following is an excerpt from the Respondent's report:

"I walked S1 outside to ensure he was away from (victim name redacted – referred to hereafter as "V1") and did not have any access to the numerous knives in the apartment. I pushed S1 into the wall and held him there with both hands. S1 began to yell at me and become aggravated that I had struck him. S1 tensed his muscles up and tried to push off the wall by puffing his chest out. S1 said that he wanted to turn around and I told him not to. S1 cocked his right knee upward. Fearing S1 was attempting to kick me in the groin to incapacitate me I kicked his feet out from underneath him using my right leg. I knew that a kick from that distance to my groin or a joint has the ability to cause severe injury to me. I knew that S1 was in handcuffs and was unable to control himself during a fall so I held onto his upper body with both of my hands to guide him to the ground where he could no longer kick me. While guiding S1 to the ground he fell awkwardly due to his level of intoxication and struck the side of his head on the ground ***causing him to lose consciousness for approximately 2-3 seconds***." **(Page 2 of Respondent's report)**

As will be discussed in greater detail below, this statement is false and grossly misstates the time the suspect was unconscious. As previously stated, the suspect was

rendered unconscious for approximately 2 minutes and 58 seconds and was unconscious due to the unauthorized leg sweep of a handcuffed suspect.

V. Analysis and Findings

a. Does the alleged conduct violate California Regulation 1205(a)(1) – Dishonesty?

The statutory definition of Dishonesty in California Regulation 1205(a)(1) states:

Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to, false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct. For purposes of this subsection, in considering whether a suspension or revocation of certification is proper, the Commission will consider the extent to which the dishonesty related to a material or significant fact in the context of the statement or omission alleged to be dishonest and will also consider whether the dishonesty appears to have been done willfully or intentionally, with the intent to deceive.

Clear and convincing evidence establishes the Respondent was dishonest relating to the reporting of a crime. Specifically, the Respondent was dishonest in documenting that the suspect had immediate access to a weapon during the initial contact, was dishonest in reporting that he used half-second paused distraction blows to secure the suspect's arm, was dishonest in reporting that he guided the suspect to the ground after the leg sweep, and incorrectly reported the amount of time the suspect was unconscious following the Respondent's use of an unapproved leg sweep. These dishonest statements directly relate to the Respondent's reporting of the resisting arrest charge and were a clear attempt to mitigate the extent of the suspect's injury by falsely stating the suspect had access to immediate weapons, used distraction blows to secure an arm, guided the suspect to the ground and the length of time the suspect was unconscious.

Use of Force in Apartment

Dishonest act #1. The Respondent's statement that the suspect had immediate access to a weapon during the initial contact.

The report authored by Respondent:

"Suspect forced his left-hand underneath him towards his waistband. Knowing that I had seen several large knives in the apartment and that they were spread out randomly throughout the apartment I feared there may be another knife in the

bed with Suspect. I also had not been able to check if Suspect had a weapon on his person."

From IA Investigation (Page 53 of IA Report)

- On the notes of the radio call there was no mention of a weapon.
- The victim did not mention any weapons were used when she spoke with officers.
- The steak knife on the kitchen table was a few feet away from the kitchen and it was no longer in the suspect's reach once Officers moved the table.
- Officers did not check the bed for weapons prior to waking the suspect.
- The officers rolled the suspect onto his back and had a clear view of his waistband for several seconds.
- During the Respondent's verbal commands to the suspect, there was no mention of weapons or statements indicating the suspect was believed to be armed.
- The Respondent or the partner did not pat down the suspect until he was taken outside the apartment into the hallway.
- Neither officer performed a pat down of the bed or the surrounding area once the suspect was taken into custody.
- Neither officer made note of a specific weapon in their report, besides the steak knife on the kitchen table.

IA Findings

The Respondent's statement that he believed the suspect had immediate access to a deadly weapon is not supported by specific articulable facts that would lead a reasonable officer to believe the suspect had or was reaching for a weapon at the time the Respondent punched him six times.

Dishonest act #2. The Respondent's statement that he used distraction blows to secure the suspect's arm while pausing a half of a second between each strike.

The report Authored by Respondent

"I struck S1 with a closed fist six times in his right back rib area telling him to give us his arm each time. S1 complied after the sixth closed fist strike and he was handcuffed by the partner Officer Campante."

IA Interview – 35:40

"I executed distraction blows in order to basically get him to comply with our commands as well as get his arm up."

51:15 “In your assessment, in your…you said you gave him a half second to comply with between each one?”

51:23 “Um..”

51:24 “Thereabouts.”

51:25 “About. Yes sir. I was watching his arm the entire time I was striking him.”

51:29 “You mentioned the adrenaline is flowing I get that 100%. Did it occur to you or cross your mind his arm is possibly trapped? By blanket and body weight?”

51:38 “No sir. My assessment at the time is he was pulling his arm towards his waist band because if his arm would have been trapped his muscles would have been relaxed. They were not relaxed. I could visually see his muscles were tense and pulling towards his waist band.”

51:51 “But you weren’t holding that arm?”

51:52 “No sir.”

51:55 “How could you tell they were tense?”

51:56 “Because I could see the striations of his muscles flexing sir. I was close enough to see that.”

53:07 “Do you think a half second was enough time for a drunk to understand what you are telling him to do and comply?”

53:13 “After four commands without strikes, yes sir.”

53:20 “Not the first command, the half second was in between the strikes. Do you think a half second was enough time for him to comply, to process that in his state of inebriation and comply with you?”

53:28 “There was enough time for him to show… My assessment on scene was that the time I was giving him between strikes was enough time for him to show some sort of um, you know, level of compliance which he was not doing. And after four verbal commands, you know, with several seconds in between my first verbal command and first strike he had, in my mind, every opportunity to comply with us.”

IA Findings (Page 54 of IA Report)

The Respondent said he struck the suspect with six closed fist “distraction blows” to the back rib area. These strikes resulted in the suspect sustaining closed fractures to multiple ribs. These injuries are not consistent with distraction blows. Furthermore, the use of closed fist strikes as distraction techniques is not authorized per Department Procedure 1.04.

The Respondent said he hit the suspect with six distractions blows to the back rib area. Distraction blows target the lower body and are defined as open handed lesser controlling strike, using a lower level of force. Therefore, the manner (closed fist) and force, in which the Respondent delivered what he considered distraction blows is not within policy. The Respondent said he believed the suspect was armed with a weapon. However, he could not articulate specific or articulable facts to support his belief that the suspect was armed or had immediate access to a weapon at the time he punched the suspect multiple times. The Respondent said he believed the suspect was reaching for a weapon in his waistband, but BWC evidence showed the suspect’s left arm was pinned underneath him. The Respondent was applying downward pressure and using his own body weight to push on the suspect’s back. This made it extremely difficult for the suspect, who was intoxicated, awaking from being passed out or asleep and 30 years older than the Respondent to have the physical strength to pull his left arm out from underneath his body when pinned down by a 270 lbs. officer.

Use of Force in Hallway

Dishonest act #3. The Respondent’s statement that he held onto the suspect’s upper body with both hands to guide the suspect to the ground after the leg sweep.

From the report authored by the Respondent.

“Suspect tensed his muscles up and tried to push off the wall by puffing his chest out. Suspect said that he wanted to turn around and I told him not to. *Suspect cocked his right knee upward* [emphasis added]. Fearing Suspect was attempting to kick me in the groin to incapacitate me I kicked his feet out from underneath him using my right leg. I knew that a kick from that distance to my groin or a joint has the ability to cause severe injury to me. I knew that Suspect was in handcuffs and was unable to control himself during a fall *so I held onto his upper body with both of my hands to guide him to the ground where he could no longer kick me. While guiding Suspect to the ground* [emphasis added] he fell awkwardly due to his level of intoxication and struck the side of his head on the ground causing him to lose consciousness for approximately 2-3 seconds.”

From the IA Report (Page 56 of IA Report)

Officers should use caution when using a takedown technique on a handcuffed prisoner. There is potential for injury since the prisoner's hands are behind his or her back, and they have no way of breaking his or her fall. If possible, when the person is handcuffed, officers should consider other controlling methods prior to a takedown.

From the IA Report (Page 57 of IA Report)

Suspect turned his upper body to his left away from the wall. Respondent still had control of the Suspect. Respondent had his left hand around Suspect's left bicep and his right arm pressed against Suspect's upper back. Suspect's right shoulder was against the wall and his left shoulder was bladed towards Respondent. Respondent was positioned to Suspect's left side and was standing slightly behind Suspect when Respondent swept Suspect's legs out from underneath him and forced him to his right side. As Suspect was being forced to the ground, *Respondent only controlled his fall by holding his left shirt sleeve with his left hand. Respondent's right hand was not touching Suspect. Suspect's head was not controlled, thus, resulting in Suspect's head colliding against the concrete floor* [emphasis added].



7:41

The Respondent has extensive close combat training. Respondent's close combat training includes judo, taekwondo, high school wrestling and defensive tactics taught through the United States Marine Corps. This is all an addition to the training he has received from the San Diego Regional Academy. In addition, the Respondent outweighed the suspect by over 100 pounds and is over 30

years younger than the suspect. Nevertheless, the Respondent chose to kick the suspect's legs out from underneath him, while he was handcuffed, and without any plan or way to brace his fall. The Respondent did not try any other controlling methods prior to taking the suspect to the ground or call for assistance from the partner, who was within earshot, and close by in the apartment.

The Respondent executed poor judgement when he thought he would be able to control the fall of an intoxicated male to the ground who weighs 170 pounds and was standing on one leg. The Respondent's left hand was on the suspect's left arm and the suspect fell to the right making it unlikely his left arm would help control the suspect to the ground. Therefore, the Respondent was standing on one leg, and he tried to control a 170-pound male falling to the ground with only his right hand. After performing a leg sweep on a handcuffed male, the suspect struck the concrete floor, he was instantly knocked unconscious for approximately 2 minutes and 58 seconds.

In this incident, it's clear the Respondent failed to control the suspect as he fell to the ground because of the Respondent sweeping his legs out from underneath him. The suspect raised his leg 1 to 2 inches off the ground triggering the Respondent to sweep both of the suspect's legs out from underneath him. The suspect lifting his leg 1 to 2 inches off the ground does not create an exigency or rise to the level of assaultive behavior because the suspect may have been adjusting his stance to gain his balance due to his intoxication level or the pain and discomfort from having multiple ribs fractured from the punches the Respondent delivered minutes earlier. Therefore, the Respondent assumed the suspect was going to kick him was not reasonable given the totality of the circumstances.

Dishonest act #4. That the suspect was unconscious for 2 to 3 seconds

From the report authored by the Respondent.

"While guiding Suspect to the ground he fell awkwardly due to his level of intoxication and struck the side of his head on the ground *causing him to lose consciousness for approximately 2-3 seconds* [emphasis added]."

IA finding (page 63 of IA Report)

The Respondent violated Department Procedure 1.04, Section VI, B, when he failed to accurately document all the facts and circumstances surrounding the force he used during the arrest of the suspect.

The Partner and Respondent placed the suspect under arrest and escorted him outside of his apartment. The suspect was handcuffed behind his back. The Respondent used an unapproved takedown technique on the suspect when he swept his legs out from underneath him. This resulted in the suspect falling to the

ground, while handcuffed, causing the suspect to be rendered unconscious for at least 2 minutes and 58 seconds.

The Respondent's BWC showed the Respondent go onto his knees as the suspect hits the ground. The Respondent keyed his radio and asked SDPD communication to send medics 11 seconds after the suspect hit the ground. 48 seconds after the suspect hit the ground, the Respondent keyed his mic and advised the suspect lost consciousness for 2 to 3 seconds. 1 minute after suspect hit the ground, the Respondent gave the suspect a sternum rub and told the suspect to "wake up." 1 minute and 5 seconds after the suspect hit the ground, the Respondent checked the suspect's pulse. 1 minute and 47 seconds after the suspect hit the ground, the Respondent checked the suspect's pulse while the suspect can be heard snoring. 2 minutes and 58 seconds after the suspect hit the ground, the Respondent's BWC beeped, and the suspect moved his head for the first time since contacting the ground.

Approximately ten minutes after the suspect hit the ground, San Diego Fire personnel arrived in the hallway. The Respondent told Fire personnel the suspect was unconscious for, "2 to 3 seconds." Approximately eighteen minutes after the suspect hit the ground, paramedics arrived on scene. The Respondent told paramedics the suspect was unconscious for, "2 to 3 seconds."

In the Respondent's report, he wrote, "While guiding the suspect to the ground he fell awkwardly due to his level of intoxication and struck the side of his head on the ground causing him to lose consciousness for approximately 2-3 seconds." This statement is factually incorrect and grossly misstates the time the suspect was unconscious. As stated above, the suspect was rendered unconscious for approximately 2 minutes and 58 seconds.

During the Respondent's interview, he said he observed the suspect snoring and saw his eyes flutter as a sign the suspect was conscious. The Respondent clarified his statement and said he misspoke. He said his time assessment was wrong when he said the suspect was unconscious for 2 to 3 seconds. Clearly, the suspect is unconscious for longer than 2 to 3 seconds. The Respondent said, "The Suspect was alive but as far as awake and alert, no." The Respondent was asked if he was accurate in his report. The Respondent responded, "No. I think it's pretty clear."

The Respondent's lack of a feasible, safe plan to take the suspect to the ground after he performed an unauthorized leg sweep takedown on a handcuffed prisoner resulted in the suspect being knocked unconscious. The Respondent told medics and fire personnel; the suspect was unconscious for 2 to 3 seconds. The suspect was unconscious for approximately 2 minutes and 58 seconds. The Respondent had a duty to the care and wellbeing of the suspect who was in his custody, but instead provided medical personnel with inaccurate information as to how long the suspect was unconscious. The Respondent admitted to being

wrong in his time assessment of the suspect being unconscious, thus, providing a wrong injury assessment to medical personnel for an injury he caused.

From the IA interview

1:24:40 “So if someone is snoring, you classify that as consciousness? No, sir.”

1:25:00 “I believe I misspoke on consciousness.”

1:36:01 “Did you review your BWC before you wrote your report?” “Uh, yes sir.” Then… “Parts of it sir, yes sir.” “The strikes where I was striking him” “His cues and everything.” “Generally, I probably watched the whole thing. But I can’t say for sure that I watched every single second with 100 percent focus.” “So now after watching it…”

1:36:46 “I would air it differently.” “I would air it that he’s been unconscious for roughly 2 minutes.”

1:37:21 – they hit him with, if you watched the BWC before writing your report, why didn’t you report that he was unconscious for longer?

1:37:59 – “Did you watch the video in relation to him being knocked unconscious? And the 3 minutes after he hit the ground?” “No, not that I remember sir.” “Specifically, what I remember watching for was my use of force.”

1:39:33 – “Do you think you were accurate in saying he was unconscious for 2 to 3 seconds?” “No. It’s pretty cut and dry.”

The suspect was arrested for resisting/delaying a peace officer. The Respondent had a duty to report the facts relating truthfully and accurately to this offense. Instead, the Respondent mitigated the harm to the suspect by stating in his police report that the suspect the suspect had immediate access to a weapon during initial contact, used distraction blows to secure an arm, guided the suspect to the ground after the leg sweep and stating in the report and to medical providers the suspect was unconscious for 2 to 3 seconds.

When asked in his administrative interview, the Respondent admitted to being wrong in his time assessment of the suspect being unconscious. Based on my review of the BWC footage, relevant arrest reports, and Respondent’s interview, I therefore find that clear and convincing evidence exists to show that Respondent engaged in dishonesty relating to the reporting of a crime.

VI. Supporting Evidence and Documentation

- Attachment A – The Respondent's police report, dated April 10, 2020
- Attachment B – Page 40 of Internal Affairs Report
- Attachment C – Page 41 of Internal Affairs Report
- Attachment D – Page 53 of Internal Affairs Report
- Attachment E – Page 54 of Internal Affairs Report
- Attachment F – Page 56 of Internal Affairs Report
- Attachment G – Page 57 of Internal Affairs Report
- Attachment H – Page 63 of Internal Affairs Report
- Attachment I – The Respondent's Body Worn Camera Footage

VII. Findings

Reasonable grounds exist to submit the case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation pursuant to Penal Code 13510.8.

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arm to push down on S1's right side with about 40% of my body weight. By pushing down on his right side, more space was created on his left side pull his left arm out from underneath him. This also gave my partner more room to pull S1's left arm out from underneath him. S1 did not comply with my commands to give us his hand.

While still having control of S1 right arm with my left hand, I used my fist and hit S1 with 6 distraction blows. I struck S1 with a closed fist 6 times on the back rib area. I was targeting the soft area to minimize injury. My intent in striking S1 was to have him comply and give us his hand to prevent any further injury. After each strike, I gave S1 commands and visually inspected to see if he gave us his left arm. In between each strike, I gave S1 about half of a second to comply. I believe this was enough time between each strike to show compliance. I stopped striking S1 as soon as he took his left arm out from underneath his body and put it behind his back. When both of S1's hands were behind his back, S1 was handcuffed.

I walked S1 through the apartment and into the hallway. S1 appeared to be drunk and needed my assistance to walk. In the hallway, S1 was able to stand on his own. I never tried to sit S1 on the ground. I told my partner to go inside so he could get all the information needed to complete the report. I wanted to clear the scene as soon as possible because we were at an apartment on the seventh floor and security has to use a key fob to let you into the building. If we needed cover it would take a long time for cover to assist us. With us being on the seventh floor, it was going to take a while for us to get down to our vehicles. I wanted to get to a "sanitized," safe environment. The hallway is not as safe as my patrol car or jail.

In the hallway, S1 became aggressive towards me when I was "subduing" him. He was shifting his weight, puffing his chest off the wall, pushing up against me and yelling at me. He called me an "m-fer" several times. I used my physical strength to press S1 against the wall. I had my left hand on his left arm and my right hand on his right hip.

I saw the pre-assaultive cue of S1's cocking his right knee up. His foot lifted 1 to 2 inches off of the ground. I perceived his cocked knee as an attempt to kick me. I used my right leg and kicked his right leg also hitting his left leg. I thought I would be able to gain my balance in a timely fashion to take him to the ground. My plan was to keep my left hand on his left arm and use my right hand to control his body to the ground. I did not necessarily control him. fell to the ground and hit his head.

I have additional training in judo, taekwondo, high school wrestling and the Marines. I was taught three or four different movements to block a leg kick in judo. I was taught a lot of movements to block a leg kick in wrestling. I was taught a few ways to block a leg kick in taekwondo. Also, I was taught ways to block a leg kick in the Marines.

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I aired S1 was unconscious for 2 to 3 seconds. I took S1 snoring and seeing his eyes flutter as a sign of consciousness. I also felt S1 move a little. I think more importantly, it was a sign that he was alive. I misspoke and used the wrong word. Basically, saying that he lost consciousness for 2 to 3 seconds was a wrong time assessment on my part. He was alive but as far as awake and alert, no.

I took S1 pulse and applied a stern rub 1 minute and 1 second after he hit the ground. This is an effective way of waking someone up and or keeping them awake. At this time, I knew S1 was asleep.

At 1 minute and 47 seconds after S1 hit the ground I checked his pulse. At 2 minutes and 47 seconds after S1 hit the ground I told him to wake up. I could feel him moving and breathing.

About 10 minutes after S1 hit the ground, I told fire personnel that S1 was unconscious for two to three seconds. That was my assessment from when he started snoring and showing me he was still alive. About 18 minutes later, medics showed up and I told them S1 was unconscious for 2 to 3 seconds.

I am not sure why my BWC only has 35 seconds of buffer mode. I might have reset it when I got into the building or I might have had it off because I was eating or going to the bathroom. I can't tell you why, specifically. I reviewed parts of my BWC prior to writing my report. If I had to air this again, I would air it differently. I would say he was roughly unconscious for 2 minutes.

I asked Officer Fuston, "In hindsight after talking about all of this, do you think you violated Department Policy 9.28, which is accurately reporting." There was a short pause while I shuffled paper to grab a print out of the policy and Sergeant Adair asked, "Do you think you were accurate is saying he was unconscious for 2 to 3 seconds?"

No. I think it's pretty cut and dry.

I asked Officer Fuston, "Do you think you were less then truthful when you told medics and the Sgt. on scene how long S1 was unconscious?"

Not in the moment. Being on scene and what I said at the time was a 100% the truth of what I felt at the time.

If I could do it differently, I would have S1 sit down in the hallway. My intentions going to every call is to preserve life over anything else. I never want to hurt anyone. I had no intentions of deceiving anyone when I said S1 was unconsciousness for 2 to 3 seconds.

The interview concluded at 1635 hours.

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San Diego Police Dept
Officer Report

CAD Event No. **E20040016440**

Case No. **20019975**

Report No. **20408**

GENERAL CASE INFORMATION

Special Studies:			Related Cases:
Location, City, State, ZIP: [redacted]			Occurred On: 4/10/2020 7:21:13 PM (Friday)
Jurisdiction: [redacted]	Beat: 524	Call Source:	(and Between):

INDIVIDUAL/S

Name: S1 [redacted]					Person Code:			Interpreter Language:
ALIAS / AKA / NICKNAME / MONIKER:								
Home Address, City, State, ZIP: [redacted]					Res. Country: [redacted]		County Residence:	Undocumented:
Race: [redacted]	Sex: [redacted]	Date of Birth / Age: [redacted]	Height:	Weight:	Hair Color:	Eye Color:	Facial Hair:	Complexion:
Employment Status:		Occupation/Grade:		Employer/School:			Employer Address, City, State, ZIP:	
CONTACT INFORMATION								
IDENTIFICATION:								

Attire:	Injury:	Extent Of Treatment:	Violent Crime Circumstances:
Subject Injury Description:			
Officer Injury Description:			

REPORT NARRATIVE

On 04/10/2020 at 1908 hours, I was on duty in full uniform, and driving a marked police vehicle when I responded to investigate a domestic violence occurring at INCIDENT ADDRESS [redacted]. The reporting party V1 [redacted] stated her boyfriend, later identified as S1 [redacted] by a recent booking photograph, hat hit her in the face. I arrived on scene at approximately 1920 hours with Officer Campante #7831. V1 answered the door to INCIDENT ADDRESS [redacted].

I noticed V1 had several abrasions on her face, a large bruise on her left hand, and a bruise on the bridge of her nose. I heard V1 tell Officer Campante that S1 was drinking all day and at one point started "pounding on her". From prior contacts with V1 I know she has several medical issues and there is a history of domestic violence incidents between her and S1 [redacted].

I walked into V1 apartment where S1 was sleeping on her bed. I noticed when I walked into the apartment there were several large knives in the vicinity of the bed where S1 was sleeping. I moved one knife to ensure S1 would not have access to it. From past domestic violence incidents at this location I know that S1 is often violent with police and has a tendency to become aggressive when he has consumed alcohol.

I noticed a heavy smell of an alcoholic beverage as I approached S1 sleeping. I attempted to wake S1 gently to ensure he did not become violent by being startled. After several attempts to wake S1 he finely woke up and began to speak to me. I told S1 that we needed to take his statement about the event. S1 was slurring his speech and seemed disoriented. I identified myself as a San Diego Police Officer to S1 [redacted].

I attempted to aid S1 to his feet so we could speak to him and determine the dominant aggressor in the situation. S1 tensed his arms and pulled them away from me. He also cocked his right leg into a kicking position. Fearing he would kick me I rolled S1 onto his face and placed his right arm into a rear wrist lock to gain his compliance and prevent him from hurting me or Officer Campante. I applied enough pressure on his wrist to control it and held his right elbow to prevent him from hitting me or Officer Campante. I could feel that S1's muscles were extremely tense and he was thrashing right and left to try and get up. S1 forced his left hand underneath him towards his waistband. Knowing that I had seen several large knives in the apartment and that they were spread out randomly throughout the apartment I feared there may be another knife in the bed with S1 [redacted]. I also had not been able to check if S1 had a weapon on his person.

I could see that Officer Campante was fighting to get S1 arm from underneath his body. I instructed S1 to give us his arm. S1 continued to resist and reach towards his waistband. I struck S1 with a closed fist six times in his right

Reporting Officer	Division / Organization	Reviewed By
SD7878 - FUSTON, DILLON C	CEPAT / CENTD - Central	SD4593 - MCANNALLY, DAVID J
Report Date	**Detective Assigned**	**Reviewed Date**
4/10/2020 10:19:29 PM		4/10/2020 10:44:00 PM 066

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back rib area telling him to give us his arm each time. S1 complied after the sixth closed fist strike and he was handcuffed by Officer Campante.

I walked S1 outside to ensure he was away from V1 and did not have any access to the numerous knives in the apartment. I pushed S1 into the wall and held him there with both hands. S1 began to yell at me and become aggravated that I had struck him. S1 tensed his muscles up and tried to push off the wall by puffing his chest out. S1 said that he wanted to turn around and I told him not to. S1 cocked his right knee upward. Fearing S1 was attempting to kick me in the groin to incapacitate me I kicked his feet out from underneath him using my right leg. I knew that a kick from that distance to my groin or a joint has the ability to cause severe injury to me. I knew that S1 was in handcuffs and was unable to control himself during a fall so I held onto his upper body with both of my hands to guide him to the ground where he could no longer kick me. While guiding S1 to the ground he fell awkwardly due to his level of intoxication and struck the side of his head on the ground causing him to lose consciousness for approximately 2-3 seconds.

I immediately called for an ambulance and checked S1's pulse. I could hear that S1 was still breathing. I continued to talk to S1 and held him in the recovery position to ensure he was stable until medics arrived. S1 was transported to UCSD hospital for further treatment due to his loss of consciousness.
See Officer Campante # 7381 arrest report for further.

Approved by: Sgt. J. McAnnally #4593

throughout the apartment I feared there may be another knife in the bed with S1) While Officer Fuston may have thought S1 was reaching for his waistband, his reasoning is based on an unsubstantiated threat or unreasonable belief that everyone is armed until he pats them down. When Officer Fuston pushed S1 onto the bed, S1 left arm was in front of his body. From Officer Fuston's BWC and statement, Officer Fuston pulled S1 right arm behind his back and applied downward pressure to S1 back, thus, pushing S1 onto his stomach on top of his left arm. This essentially trapped S1 left arm underneath his body on a soft bed with downward pressure from Officer Fuston, who weighs 270 lbs.

Although it's appropriate for Officer Fuston to consider the possibility a person could have a weapon, as a factor for using force, his statement that it's his belief that everyone has a weapon until he pats them down is not practical or reasonable. An officer needs to S1 clear and specific facts as to why he believes a person is armed with a weapon in order to perform a "pat down," unless consent is given. Officer Fuston's belief S1 was armed with a deadly weapon is not supported by the details related to this radio call or his report. The facts of this radio call and the events preceding Officer Fuston delivering six punches to S1's back are as follows:

- On the notes of the radio call there was no mention of a weapon.
- Tait did not mention any weapons were used when she spoke with officers.
- The steak knife on the kitchen table was a few feet away from the kitchen and it was no longer in S1 reach once Officer Fuston moved the table.
- Officers did not check the bed for weapons prior to waking S1.
- The officers rolled S1 onto his back and had a clear view of S1 waistband for several seconds.
- During Officer Fuston's verbal commands to S1, there was no mention of weapons or statements indicating S1 was believed to be armed.
- Officer Fuston or Officer Campante did not pat down S1 until he was taken outside the apartment into the hallway.
- Neither officer performed a pat down of the bed or the surrounding area once S1 was taken into custody.
- Neither officer made note of a specific weapon in their report, besides the steak knife on the kitchen table.

Therefore, Officer Fuston's statement that he believed S1 had immediate access to a deadly weapon is not supported by specific articulable facts that would lead a reasonable officer to believe S1 had or was reaching for a weapon at the time Officer Fuston punched him six times.

From Department Procedure **1.04 USE OF FORCE, IV, H**

> Distraction Techniques - acts used to divert or redirect a subject's focus away from resistive behavior in order to assist the officer in gaining control of the individual. Distraction techniques may include an open-handed strike and/or knee strikes that specifically target the lower body, such as the buttock or thigh area. These are controlled strikes, using a lower level of force. These lower level types of strikes are not intended, nor likely to cause serious injury. Personal body weapons may be used under these constraints, when lesser controlling force has not been effective, or the officer reasonably believes lesser controlling force will not be effective. If a distraction technique proves ineffective, a different distraction technique or force option should be considered.

Officer Fuston said he struck S1 with six closed fist "distraction blows" to the back rib area. These strikes resulted in S1 sustaining closed fractures to multiple ribs. These injuries are not consistent with distraction blows. Furthermore, the use of closed fist strikes as distraction techniques is not authorized per Department Procedure 1.04.

In conclusion, Officer Fuston said he hit S1 with six distractions blows to the back rib area. Distraction blows target the lower body and are defined as open handed lesser controlling strike, using a lower level of force. Therefore, the manner (closed fist) and force, in which Officer Fuston delivered what he considered distraction blows is not within policy. Officer Fuston said he believed S1 was armed with a weapon. However, he could not articulate specific or articulable facts to support his belief that S1 was armed or had immediate access to a weapon at the time he punched S1 multiple times. Officer Fuston said he believed S1 was reaching for a weapon in his waistband, but BWC evidence showed S1 's left arm was pinned underneath him. Officer Fuston was applying downward pressure and using his own body weight to push on S1'S back. This made it extremely difficult for S1, who was intoxicated, awaking from being passed out or asleep and 30 years older than Officer Fuston to have the physical strength to pull his left arm out from underneath his body when pinned down by a 270 lbs. officer.

Use of Force Expert, Officer Rhoten, reviewed the six closed fist strikes to S1 back and said, "The closed fists strikes to S1's back and ribs by Officer Fuston are not in line with what is taught at the San Diego Regional academy and during AOT. Officer Fuston's use of closed fist strikes to the back and ribs of S1 are also not in accordance with San Diego Police Department Policy and Procedures." Lastly, Officer Campante who was on scene with Officer Fuston said he did not believe it was necessary for Officer Fuston to punch S1. Officer Campante said S1 was elderly, intoxicated and with a little patience, S1 would have complied. For Officer Fuston's to deliver six full force punches as distraction blows to S1'S back were not reasonable based on the totality of the situation and S1 level of resistance at that time. Therefore, this allegation is **SUSTAINED**.

Reporting Officer:	Robert Davis, Detective Sergeant	ID:	6781	Division	Internal Affairs
Approved by:	Stephen Shebloski, Lieutenant	Date of Report:	December 15, 2020		

section 5150 into protective custody. Additionally, officers shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

The U.S. Supreme Court in *Graham v. Connor,* 490 U.S. 386 (1989), acknowledged that the "reasonableness" test in analyzing the use of force is "not capable of precise definition or mechanical application." For that reason, in determining whether an officer's use of force is reasonable in a particular case, it is necessary to evaluate the facts and circumstances confronting the officer at the time that force was used. All of the surrounding circumstances will be considered, including whether the subject posed an imminent threat to the safety of the officer or others, the severity of the crime at issue, and whether the suspect actively resisted arrest or attempted to flee.

IV. DEFINITIONS

A. Active Resistance – Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

B. Assaultive Behavior - behavior that consists of aggressive physical opposition to being physically controlled and conveys a threat of injury to the officer; or, behavior that consists of a threat of attack conveyed through aggressive physical actions or aggressive physical actions coupled with verbal threats. Verbal threats alone do not constitute assaultive behavior. Assaultive behavior can be directed at the officer or others.

G. Defending Force - the force needed to stop assaultive behavior against an officer or another person. This level of force generally involves impact strikes by the officer. Impact strikes can be delivered either by personal body weapons (e.g., hands, feet, knees, etc.) or impact weapons (e.g., PR-24, OPN, Baton, Flashlight). Due to the potential for serious injury, intentional strikes with an impact weapon are prohibited from being directed at the head, face or throat of the subject unless the subject's actions and behavior pose an imminent threat of death or serious bodily injury to the officer or others.

V. PROCEDURES

B. Officers should use caution when using a takedown technique on a handcuffed prisoner. There is potential for injury since the prisoner's hands are behind his or her back, and they have no way of breaking his or her fall. If possible, when the person is handcuffed, officers should consider other controlling methods prior to a takedown.

As stated in the two previous allegations, Officer Campante and Officer Fuston entered the apartment with the intention of placing S1 under arrest for felony domestic violence. After a struggle, Officer Campante placed S1 in handcuffs. Officer Campante and Officer Fuston walked S1 out of the apartment and into the hallway. Officer Campante went inside the apartment to finish gathering details for V1 's statement.

Officer Fuston's BWC video shows him in the hallway with S1 for approximately 1 minute and 10 seconds prior to S1 being taken to the ground. Officer Fuston is standing close to S1, therefore, the camera view is narrow and mostly captured S1 upper body. S1 was handcuffed with his hands behind his back.

While Officer Fuston searched S1's pockets, Officer Fuston used his off hand to apply pressure to S1 s back forcing S1's chest against the wall. S1 tried to move his upper body several times, but Officer Fuston pushed S1 against the wall. Officer Fuston told S1'S to "stop" several times. S1 called Officer Fuston a, "Chicken mother fucker." S1 appeared to be intoxicated as he complained about Officer Fuston punching him in the ribs.

S1 turned his upper body to his left away from the wall. Officer Fuston still had control of S1. Officer Fuston had his left hand around S1 's left bicep and his right arm pressed against S1 upper back. S1's right shoulder was against the wall and his left shoulder was bladed towards Officer Fuston. Officer Fuston was positioned to S1 left side and was standing slightly behind S1 when Officer Fuston swept S1 's legs out from underneath him and forced him to his right side. As S1 was being forced to the ground, Officer Fuston only controlled his fall by holding his left shirt sleeve with his left hand. Officer Fuston's right hand was not touching S1. S1 's head was not controlled, thus, resulting in S1 s head colliding against the concrete floor.

During Officer Fuston's interview, Officer Fuston said S1 appeared drunk and needed his assistance to walk through the apartment into the hallway. Per Officer Fuston, S1 became aggressive and did the following: shifted his weight back and forth, puffed his chest off the wall, pushed up against Officer Fuston and yelled at him. Officer Fuston used physical strength to press S1 against the wall. While Officer Fuston had his left hand on S1's left arm and his right hand on S1's right hip, S1 lifted his foot 1 to 2 inches off of the ground. Officer Fuston took this as a pre-assaultive cue. Officer Fuston responded by, using his right leg to kick S1's right leg out from underneath him. This leg sweep also kicked S1's left leg out from underneath his body. Officer Fuston thought he would be able to gain his balance in a timely fashion to safely control S1 to the ground. Officer Fuston's plan was to keep his left hand on S1 's left arm and use his right hand to control S1 's body to the ground.

While in the hallway with S1, Officer Campante was inside the apartment when S1 was taken to the ground. Officer Campante was less than ten yards form Officer Fuston and S1. During the 1

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OTHER FINDINGS:

3. PROCEDURE-SUSTAINED

Officer Fuston violated Department Procedure 1.04, Section VI, B, when he failed to accurately document all the facts and circumstances surrounding the force he used during the arrest of S1.

On April 10, 2020, at 1908 hours, Officer Fuston and Officer Campante responded to a domestic violence radio call located at INCIDENT ADDRESS. The reporting party, V1, called San Diego Police to report her boyfriend, S1, hit her in the face an hour ago. V1 informed SDPD dispatch that S1 was asleep inside the apartment.

From Department Procedure **1.04 USE OF FORCE (February 28, 2020)**

VI. REPORTING THE USE OF FORCE

B. Officers who use force shall ensure that detailed, accurate reports (arrest, detention, or ARJIS-9) describing the force used and all the circumstances and facts surrounding the use of that force are prepared, including, but not limited to, factors listed in the Force Matrix section of this procedure. In addition, force effectiveness statistical data is also collected whenever force is used. To facilitate this, officers will complete a Use of Force, Blue Team entry.

From Department Procedure **6.01 HANDCUFFING, RESTRAINNING, SEARCHING AND TRANSPORTING PROCEDURES (January 23, 2019)**

III. BACKGROUND

Officers are responsible for the safety and wellbeing of all subjects who are taken into custody. It is an officer's duty to keep prisoners safe from harm and prevent their escape, while also protecting others and preserving evidence.

As stated in allegation 3, Officer Campante and Officer Fuston placed S1 under arrest and escorted him outside of his apartment. S1 was handcuffed behind his back. Officer Fuston used an unapproved takedown technique on S1 when he swept his legs out from underneath him. This resulted in S1 falling to the ground, while handcuffed, causing S1 to be rendered unconscious for at least 2 minutes and 58 seconds.

Officer Fuston's BWC showed Officer Fuston go onto his knees as S1 hits the ground. Officer Fuston keyed his radio and asked SDPD communication to send medics 11 seconds after S1 hit the ground. 48 seconds after S1 hit the ground, Officer Fuston keyed his mic and advised S1 lost consciousness for 2 to 3 seconds. 1 minute after S1 hit the ground, Officer Fuston gave S1 a

AGENDA ITEM REPORT

Title: POST2300204 - DAVID WESLEY HUBBARD (POST ID: C15-B77)
LAST EMPLOYING AGENCY: KERN COUNTY DISTRICT ATTORNEY'S OFFICE

REPORT PROFILE

MEETING DATE 03/21/2024	**BUREAU SUBMITTING THE REPORT** Professional Conduct Central Bureau	
RESEARCHED BY Kevin Sherburne	**REVIEWED BY** Brian South	
REPORT DATE 02/29/2024	**APPROVED BY** Annemarie Del Mugnaio	**DATE APPROVED**
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

The matter is before the Peace Officer Standards Accountability Advisory Board (POSAAB) for review and recommendation regarding the subject peace officer's certification status.

BACKGROUND:

The Respondent became a Deputy Sheriff with the Kern County Sheriff's Office on October 6, 2007, and ultimately promoted to the rank of Lieutenant on December 19, 2020. He served as a Lieutenant of the Detective Section from December 19, 2020 through March 13, 2021. At the time of the matter before POSAAB, Respondent served as a Lieutenant in charge of Internal Affairs (March 13, 2021-May 8, 2021) and later of the Professional Standards Unit (May 8, 2021-December 4, 2021). After an administrative investigation, Kern County Sheriff's Office terminated Respondent. Respondent obtained employment at the Kern County District Attorney's Office, where he is employed as a peace officer. He is currently subject to an Immediate Temporary Suspension of his peace officer certificate, which became effective on March 9, 2023, pursuant to California Penal Code § 13510.8(d).

Respondent's position at Kern County Sheriff's Office and Kern County District Attorney's Office are peace officer positions as defined under California Penal Code § 830.1(a), and he is required to be certified pursuant to California Penal Code

§13510.1(a).

Video Evidence Links:

POST2300204 - David Wesley Hubbard IA Interview

ANALYSIS:

The Division found that the clear and convincing evidence substantiated that Respondent violated California Penal Code §13510.8(b)(2), in that Respondent abused his power when his personal interests clouded his professional obligations.

The Division found that the clear and convincing evidence substantiated that Respondent violated California Penal Code § 13510.8(b)(1), in that Respondent was dishonest when he deleted evidence from his work cell phone. Further, the clear and convincing evidence substantiated that Respondent had an affirmative obligation to disclose material information to the Criminal and Internal Affairs investigators and that he intentionally withheld information from them. Respondent's lack of candor constituted dishonesty.

RECOMMENDATION:

The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigation presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

ATTACHMENT(S):

BR1_POST2300204_Hubbard_David_Redacted_Hubbard_Final_ISF.pdf
BR2_POST2300204_Hubbard_David_Redacted_Attachment_A_Carpenter_Final_ROI.pdf
BR3_POST2300204_Hubbard_David_Redacted_Attachment_B_EDI_DavidHubbard_ProfileRe
BR4_POST2300204_Hubbard_David_Redacted_Attachment_C_12_6-DRB-Hubbard.pdf
BR5_POST2300204_Hubbard_David_Redacted_Attachment_D_1_1-Admin_Leave.pdf
BR6_POST2300204_Hubbard_David_Redacted_Attachment_E_6_3a-Hubbard-Final_Refused_to_Sign_.pdf
BR7_POST2300204_Hubbard_David_Redacted_Attachment_F_Weidenkopf_Final_ROI.pdf
BR8_POST2300204_Hubbard_David_Redacted_Attachment_G_Hubbard_FinalROI.pdf
BR9_POST2300204_Hubbard_David_Redacted_Attachment_H_Hubbard_IA_Report.pdf
BR10_POST2300204_Hubbard_David_Redacted_Attachment_I_2_Hubbard_and_V1_Assignr

BR11_POST2300204_Hubbard_David_Redacted_Attachment_J_Nord_Final_ROI.pdf
BR12_POST2300204_Hubbard_David_Redacted_Attachment_K_Levig_Final_ROI.pdf
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INVESTIGATIVE SUMMARY AND FINDINGS

David Wesley Hubbard

POST ID C15-B77

Kern County Sheriff's Office (former)

Kern County District Attorney's Office (current)

POST2300204

WRITTEN BY: Kevin P. Sherburne

January 10, 2024

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I. Executive Summary

On December 6, 2021, Kern County Sheriff's Office ("KCSO") authorized an Internal Affairs investigation of David Wesley Hubbard (POST ID C15-B77) (hereafter "Respondent"), who was then a Lieutenant with KCSO, based on allegations that Respondent had an inappropriate sexual relationship with a Sheriff's Aide (hereafter "Victim 1") who directly reported to him. During the investigation, KCSO also found evidence that Respondent had interfered with criminal and Internal Affairs investigations for personal reasons and improperly shared confidential information with the Sheriff's Aide. KCSO's Internal Affairs investigation sustained the evidence of these allegations by a preponderance of the evidence.

On January 6, 2023, KCSO submitted a report to the California Commission on Peace Officer Standards and Training ("POST") that Respondent may have committed serious misconduct. On February 9, 2023, I was charged to conduct an investigation of serious misconduct. I conducted an investigation and reviewed evidence of the following allegations. I make the following findings in this Investigative Summary and Findings:

1. Did Respondent commit "sexual assault" against Victim 1 as that term is defined by California Penal Code Section 13510.8(b)(4) or POST Regulation 1205(a)(4)? If so, did Respondent's actions constitute Sexual Assault and therefore violate California Penal Code Section 13510.8(b)(4) or POST Regulation 1205(a)(4)?

    a. ***Finding***: I find that the clear and convincing evidence did not substantiate that Respondent violated California Penal Code Section 13510.8(b)(4) or POST Regulation 1205(a)(4). Although the clear and convincing evidence substantiated that Respondent engaged in sexual intercourse with Victim 1, who was his direct subordinate, on November 20, and November 21, 2021, while he was on duty acting as the highest law enforcement official in Kern County, I find that Respondent did not violate California Penal Code Section 13510.8(b)(4) or POST Regulation 1205(a)(4). Section 13510.8(b)(4) incorporates California Penal Code Section 832.7(b)'s definition of sexual assault, which defines sexual assault to mean situations where a peace officer engages in sexual acts with "a member of the public." Because Victim 1 was not a member of the public and POST Regulation 1205(a)(4) was not in effect at the time, I do not find clear and convincing evidence of a violation of Section 13510.8(b)(4). When it adopted Regulation 1205(a)(4) on January 1, 2023, the Commission on POST clarified the definition of sexual assault to include "acts committed amongst members of any law enforcement agency." I find that POST Regulation 1205(a)(4) is not applicable

because it became effective January 1, 2023, and does not apply to events that occurred in 2021. Respondent's sexual relationship with Victim 1 and his other actions emanating from that relationship, however, did constitute an abuse of power and dishonesty in violation of California Penal Code sections 13510.8 (b)(1) and (b)(2), as explained further below.

2. Did Respondent's personal interests and relationship with Victim 1 compromise his judgment and professional obligations as a peace officer? If so, did Respondent's actions constitute abuse of power and therefore violate California Penal Code Section 13510.8(b)(2)?

    a. ***Finding***: I find that the clear and convincing evidence substantiated that Respondent violated California Penal Code Section 13510.8(b)(2). The clear and convincing evidence substantiated that Respondent abused his power when his personal interests clouded his professional obligations.

3. Was Respondent dishonest when he deleted evidence from his work cell phone and when he failed to disclose material information when he intentionally concealed his relationship with the victim in a sexual assault investigation from the criminal and Internal Affairs investigators? If so, did Respondent's actions constitute dishonesty and therefore violate California Penal Code Section 13510.8(b)(1)?

    a. ***Finding****:* I find that the clear and convincing evidence substantiated that Respondent violated California Penal Code Section 13510.8(b)(1). The clear and convincing evidence substantiated that Respondent was dishonest when he deleted evidence from his work cell phone. Further, the clear and convincing evidence substantiated that Respondent had an affirmative obligation to disclose material information to the criminal and Internal Affairs investigators and that he intentionally withheld information from them. Respondent's lack of candor constituted dishonesty.

Based upon the evidence presented in the KCSO Internal Affairs investigation report and my investigation, I find that reasonable grounds exist for revocation of Respondent's peace officer certifications pursuant to California Penal Code Section 13510.85(a)(1).

II. Background

KCSO's chain of command runs from the Sheriff to Undersheriff to four Bureau Chiefs, which are led by Chief Deputies. Within each Bureau is a Division, which is led

by a Commander. Within a Division is a Section, which is led by a lieutenant. Within a Section is a Unit, which is led by a sergeant.[1]

From December 19, 2020, to March 13, 2021, Respondent served as lieutenant of the Detective Section. Sheriff's Aide Victim 1 and Senior Deputy Suspect 1 reported to Respondent. Suspect 1 was a detective specializing in conducting sex crimes investigations. In February 2021, Victim 1 was assigned as a Sheriff's Aide assigned to the Detective Section.

From March 13, 2021, to May 8, 2021, Respondent served as lieutenant in charge of the Internal Affairs Section (also referred to as Internal Affairs Unit or "IAU"). In this role, he reported to then-Chief Deputy Damian Nord.

On April 19, 2021, Victim 1 alleged that Suspect 1 sexually assaulted her in late February 2021, while both were assigned to the Detective Section.[2] Respondent was the lieutenant in charge of the Detective Section in late February 2021. On April 21, 2021, the Professional Standards Unit ("PSU") initiated a criminal investigation into the allegations against Suspect 1. Sergeant Justin Weidenkopf was the lead investigator. He reported to then-Lieutenant Juan Trevino. Because one of the roles of PSU was to conduct criminal investigations of KCSO employees, Lieutenant Trevino reported directly to the Undersheriff, in addition to the Personnel Division Commander. The Undersheriff was then Doug Jauch and the Commander was Erik Levig.

From March 13, 2021 to May 8, 2021, Respondent served as lieutenant of IAU. He reported to then-Chief Deputy Damian Nord.

In 2021, PSU and IAU had discrete roles at KCSO. PSU conducted criminal investigations. During the pendency of a criminal investigation, IAU's role was limited to initiating administrative leave of the subject employee. IAU could not conduct its investigation until the criminal investigation was concluded.

On May 4, 2021, the criminal investigation of Suspect 1 concluded and Sergeant Weidenkopf submitted his report to the Kern County District Attorney's Office for a prosecutive decision. In June-July 2021, Deputy District Attorney Ken Russell declined prosecution of Suspect 1. On June 8, 2021, and upon conclusion of the criminal investigation into Suspect 1, then-Sergeant Danny Perez opened the Internal Affairs investigation into Suspect 1.

From May 8, 2021, to December 4, 2021, Respondent served as lieutenant in charge of the PSU. He reported to then-Commander Levig.

[1] Attachment A (Carpenter Report of Interview at 1-2).

[2] Suspect 1 is the subject of an investigation of serious misconduct (POST2300193).

The timeline below summarizes the organizational chart and key events described above.

Date(s)	Summary of Events
12/19/2020-3/13/2021	Respondent was Lieutenant of Detectives Section
2/2021	Victim 1 and Suspect 1 were assigned to Detectives Section.
3/13/2021-5/8/2021	Respondent was Lieutenant of Internal Affairs Unit
4/19/2021	Victim 1 reported that Suspect 1 sexually assaulted her in February 2021.
4/21/2021	Sergeant Weidenkopf was assigned as the lead investigator of the criminal case against Suspect 1. He was assigned to Professional Standards Section.
5/4/2021	Sergeant Weidenkopf completed his criminal investigation of Suspect 1.
5/8/2021-12/4/2021	Respondent was Lieutenant of Professional Standards Section.
June – July 2021	Kern County District Attorney's Office declined prosecution of Suspect 1.
6/8/2021	KCSO opened its Internal Affairs investigation into Suspect 1.

III. Methodology/Investigative Process

A. Methodology and Standard of Proof

This report summarizes the findings related to allegations of serious misconduct. I conducted this investigation in accordance with the regulations and policies of POST. During my investigation, I reviewed the Internal Affairs investigation, which included interviews of 18 witnesses and Respondent. I also conducted an independent investigation, which included interviews of ten witnesses, including Respondent.

Based on my review of the entire record of the administrative investigation, including the statements of the witnesses, evidence collected during the administrative investigation, the written investigative report, and my own independent investigation, I find that the administrative investigation findings were supported by reasonable grounds.

I analyzed the information in this case under the clear and convincing evidence standard. For purposes of this report, clear and convincing evidence means "evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. The evidence need not establish a fact beyond a reasonable doubt." Based on the statements of the witnesses, as well as the documentary evidence

available, there was sufficient information to reach a fair and reasoned conclusion using the clear and convincing evidence standard.[3]

B. Employment History and Peace Officer Certifications

POST issued the following professional certifications to Respondent:

Certificate Type	***Certificate Number***	***Date Issued***
Basic	135727	3/12/2009
Intermediate	103800	10/24/2011
Advanced	109559	10/13/2015
Supervisory	87984	6/15/2018

Respondent began work as a Kern County Deputy on October 6, 2007. On September 19, 2015, he was promoted to the rank of sergeant. On December 19, 2020, he was promoted to the rank of lieutenant. On August 15, 2022, KCSO terminated his employment, after sustaining policy violations in connection with the allegations reviewed in this Investigative Summary.

The Kern County District Attorney's Office reported that it hired Respondent as a Senior District Attorney Investigator, effective August 13, 2022.[4]

On March 9, 2023, POST Executive Director Manuel Alvarez Jr. signed an Order of Immediate Temporary Suspension of Respondent's POST Certificates pursuant to California Penal Code Section 13510.8(d). As of the date of this Investigative Summary and Findings, the Order remains in place.

C. Other Allegations of Serious Misconduct

On June 23, 2023, KCSO submitted an allegation that Respondent demonstrated bias in violation of California Penal Code Section 13510.8(b)(5) when he created a hostile work environment during a promotional interview panel on September

[3] In matters such as this, where there are conflicting reports from parties, weighing credibility is essential. I considered several factors to assess the credibility of witnesses when there were factual disputes: (1) corroboration with other evidence, or lack thereof; (2) inherent plausibility; (3) past record of similar conduct; (4) motive to lie or fabricate; (5) opportunity and capacity to observe conduct; (6) reputation for honesty or deceit; (7) evidence of bias; (8) consistent or inconsistent statements; (9) admission of untruthfulness; and (10) demeanor. Because a witness' demeanor during an interview can be affected by many factors, such as nervousness, stress, or emotion, I did not solely rely on demeanor as a determinative factor in assessing credibility.

[4] Attachment B (Respondent's EDI Profile).

22, 2021. An investigation of the complaints found that the evidence did not sustain the allegations against Respondent by a preponderance of the evidence.[5]

D. Summary of Investigations Relating to the Allegations in This Case

1. IA Case DIIA2021-0036 Administrative Process

On December 6, 2021, KCSO initiated an Internal Affairs investigation (IA Case DIIA2021-0036)(hereafter "Respondent IA Case") of Respondent stemming from allegations that Respondent engaged in an inappropriate sexual relationship with Victim 1, who directly reported to Respondent at the time, and that Respondent obtained information from then-ongoing criminal and Internal Affairs investigations and shared that information with Victim 1. On April 8, 2022, Commander John Carpenter, the investigator, submitted his 27-page investigative report in the Respondent IA Case, which included witness summaries and 18 attachments of documentary evidence.

During the Respondent IA Case, both Respondent and Victim 1[6] admitted having sexual intercourse in Respondent's office on November 20, 2021, and November 21, 2021, while Respondent was on duty. Respondent was assigned as the Watch Lieutenant that weekend, which meant that he was the highest ranking law enforcement officer on duty at the time. In addition, both Respondent and Victim 1 admitted that Respondent obtained information from the Suspect 1 Criminal and Internal Affairs Investigations and shared that information with Victim 1, who was a victim of the subject of that investigation, Suspect 1.

Under KCSO policy, the Internal Affairs investigator collected evidence and deferred decision-making to a First Review panel to decide whether the preponderance of the evidence sustained the allegations. On April 11, 2022, KCSO conducted a First Review of the Respondent IA Case and sustained eight policy violations of KCSO Departmental Policies and Procedures Manual ("DPPM") and Kern County Rules of the Civil Service Commission ("CSR") provisions by a preponderance of the evidence. The First Review panel, therefore, recommended moving the case to the Disciplinary Review Board. On April 26, 2022, the Disciplinary Review Board recommended termination of Respondent's employment with KCSO.[7] On August 8, 2022, Kern

[5] The investigator submitted her report on March 2, 2023. On March 16, 2023, KCSO sent Respondent a letter notifying him of the finding of "not sustained."

[6] Victim 1 was also a subject of the Respondent IA Case. KCSO disciplined Victim 1 based upon sustained findings against her.

[7] Attachment C (Disciplinary Review Board). KCSO also placed Respondent on administrative leave on April 26, 2022. Attachment D (Letter entitled "Notice of Administrative Leave/Revocation of Peace Officer Powers," from Larry McCurtain, Chief Deputy, to Respondent). The Notice of Administrative Leave/Revocation of Peace Officer Powers included a provision that Respondent was to make himself available to Lieutenant Jason Colbert and/or internal affairs investigators each weekday between the hours of 8:00 a.m. and 4:00 p.m.

County Sheriff Donny Youngblood held a *Skelly* hearing for Respondent. In a letter to Respondent from Sheriff Youngblood dated August 15, 2022, entitled "Notice of Disciplinary Action – Termination," Sheriff Youngblood upheld the termination.[8]

IV. Findings of Fact and Analysis

Although Respondent's conduct occurred prior to January 1, 2022, the Commission may initiate proceedings to revoke Respondent's certifications pursuant to California Penal Code Section 13510.8(g)(1)(B) because KCSO made "a final determination regarding its investigation of the misconduct after January 1, 2022." Therefore, I will review four allegations of Respondent's conduct below.

The table below sets forth a summary timeline of key events discussed in this Investigative Summary and Findings that are relevant to serious misconduct allegations of Dishonesty, Abuse of Power, and Acts that Violate the Law.

Date	***Event Summary***
January 2021	Respondent's wife provided childcare to Victim 1 from January 2021 through June 2021.
Late February 2021	Suspect 1 allegedly sexually assaulted Victim 1. At the time, Suspect 1 was a sex crimes detective in the Detectives Section, where Respondent was the lieutenant and Victim 1 was a Sheriff's Aide.
3/13/2021	Respondent assumed command of the Internal Affairs Unit as lieutenant.
4/21/2021	PSU initiated a criminal investigation into allegations that Suspect 1 sexually assaulted Victim 1. Sergeant Weidenkopf was the lead investigator and reported to then-Lieutenant Juan Trevino.
Late April 2021	Respondent complained to KCSO command staff about the quality of the criminal investigation of Suspect 1. At the time, Respondent was the lieutenant in charge of Internal Affairs and did not have any role or authority in connection with the criminal case.
April to May 2021	Respondent sought updates from the criminal investigators about Suspect 1's case. Again, during this time, Respondent was the lieutenant in charge of Internal Affairs and did not have any role or authority in connection with the criminal case.
5/4/2021	PSU sent the criminal case against Suspect 1 to the Kern County District Attorney's Office for prosecutorial review and decision.

[8] Attachment E (Letter entitled "Notice of Disciplinary Action – Termination," from Sheriff Donny Youngblood to Respondent). On August 15, 2022, at approximately 3:10 p.m., Lieutenant Jason Colbert and Commander Carpenter called Respondent and ordered him to return to the office. Respondent refused to be served and stated that he had started working for the Kern County District Attorney's Office.

Date	***Event Summary***
5/8/2021	Four days after PSU sent the criminal case to the Kern County District Attorney's Office, Respondent assumed command of PSU as lieutenant.
5/20/2021	Respondent effectuated a temporary transfer of Victim 1, the alleged victim in the criminal case against Suspect 1, to PSU. She began reporting to both Sergeant Weidenkopf and Respondent.
June 2021	Respondent's wife stopped providing childcare to Victim 1 because she was suspicious of Victim 1's close relationship with Respondent.
Early June 2021	Respondent accompanied Victim 1 to a meeting with Kern County District Attorney's Office. At the time, Respondent was the lieutenant of PSU – the unit that had previously conducted the Suspect 1 Criminal investigation. The lead investigator, Sergeant Weidenkopf, did not attend this meeting.
6/8/2021	KCSO authorized an Internal Affairs investigation of Suspect 1.
6/28/2021	Respondent effectuated a permanent transfer of Victim 1 to PSU.
August-November 2021	Multiple witnesses reported that Respondent and Victim 1 engaged in flirtatious behavior in the workplace.
August-September 2021	Respondent became the direct supervisor of Victim 1 and told Sergeant Weidenkopf that Sergeant Weidenkopf was no longer going to supervise Victim 1.
Early- to Mid-October 2021	Respondent provided significant input to Sergeant Perez about the investigative strategy and interview questions for Suspect 1 in connection with the Internal Affairs investigation of Suspect 1 concerning the allegations that Suspect 1 sexually assaulted Victim 1. At the time, Respondent was lieutenant of PSU and did not have an active role or any authority over Internal Affairs investigations.
Mid-October 2021	Respondent asked Sergeant Perez if he could attend Victim 1's interview in the Internal Affairs case against Suspect 1 as Victim 1's personal representative and attended a meeting with Sergeant Perez and Victim 1 to discuss the Internal Affairs investigation.
10/15/2021	Sergeant Perez interviewed Victim 1 in the Internal Affairs investigation concerning Suspect 1. Respondent served as the personal representative of Victim 1 during the interview. At the time, Respondent was the lieutenant in charge of PSU.
Early- to Mid-November 2021	Evidence established that Respondent and Victim 1 flirt, kiss, and hold hands in the workplace.
11/5/2021	Respondent and Victim 1 acknowledged having feelings for each other.

Date	***Event Summary***
Mid-November 2021	Respondent asked Sergeant Perez when Suspect 1 was going to be interviewed in the Internal Affairs case against Suspect 1 and then shared that information with Victim 1.
11/20/2021	Respondent and Victim 1 had sexual intercourse in Respondent's office while he is on duty as Watch Lieutenant (the highest ranking law enforcement officer in Kern County at the time).
11/21/2021	Respondent and Victim 1 had sexual intercourse in Respondent's office for a second time while he is on duty as Watch Lieutenant.
11/22/2021	Sergeant Perez interviewed Suspect 1 in connection with his Internal Affairs investigation.
11/23/2021	Respondent entered Sergeant Perez's office and sought information regarding the interview with Suspect 1. Sergent Perez disclosed, among other information, that Suspect 1 accused Respondent of having an affair with Victim 1. Sergent Perez advised Respondent that he may need to interview Respondent and also Victim 1 again, in light of Suspect 1's statements. Respondent did not disclose that he had sexual intercourse with Victim 1 on two occasions on 11/20/2021 and 11/21/2021.
11/23-24/2021	Respondent disclosed to Victim 1 what Suspect 1 said during his Internal Affairs interview. [9]
Late-November to Early-December 2021	Respondent and Victim 1 kissed in the workplace at some point after 11/21/2021.
Late November 2021	Sergeant Weidenkopf observed visible changes in Respondent's demeanor and asked Respondent about the change in his demeanor.
Late November 2021	After learning that Suspect 1 accused Respondent of having an affair with Victim 1, Respondent deleted text and phone call records from his work cell phone. The following gaps in Respondent's work phone records are found: For text messages: 11/8/2021-11/17/2021 and 11/22/2021-11/30/2021. For phone call logs: 11/5/2021 to 11/30/2021.
12/3/2021	Victim 1's boyfriend reported the affair with Respondent to the boyfriend's supervisor.
12/4/2021	Respondent reported the affair with Victim 1 to his supervisor.

[9] Victim 1 stated to me that Respondent told her the confidential information before Thanksgiving. In 2021, Thanksgiving Day was on November 25, 2021. This means that Respondent told her either the same day he learned the information from Sergeant Perez (November 23, 2021) or the following day (November 24, 2021).

Respondent Continued to Seek Updates About the Criminal Investigation of Suspect 1 When He Was Not Authorized to Receive Updates

The clear and convincing evidence substantiated that Respondent continued to seek updates about the criminal investigation after he complained about the quality of the investigation.[10] The clear and convincing evidence – including Respondent's statements[11] to me – showed that, several days after the start of the PSU investigation of Suspect 1, Respondent complained to KCSO Command Staff, including then-Chief Deputy Damian Nord, about the quality of PSU's investigation.[12] At the time, in late April 2021, Respondent was not authorized to have a role in the criminal case.[13] When the criminal case was initiated on April 21, 2021, Respondent was the lieutenant of IAU and the case was assigned to PSU.[14] In accordance with KCSO policies and internal procedures, any role Respondent had in the criminal investigation was limited to waiting for the conclusion of the criminal case because IAU's investigations were tolled pending a decision by the District Attorney's Office whether to prosecute.

Respondent Accompanied Victim 1 to the District Attorney's Office Without Informing the Criminal Case Investigators

The clear and convincing evidence substantiated that Respondent accompanied Victim 1 to the District Attorney's Office for a meeting with Deputy District Attorney Ken Russell without informing the criminal case investigators. Respondent's attendance was unusual because Respondent lacked the investigative team's level of knowledge about the substantive details of the investigation and it deprived the criminal investigators of an important opportunity to present effectively their investigative findings to the Deputy District Attorney. Additionally, Respondent's decision to accompany Victim 1 to the Deputy District Attorney's office without the criminal investigators demonstrated undue influence and behavior that was outside the normal practice for KCSO's PSU lieutenant.

Respondent, Sergeant Weidenkopf, Victim 1, and Chief Deputy Levig provided me with information about Respondent's meeting with Mr. Russell. Respondent and Sergeant Weidenkopf also provided information about the meeting during Respondent's Internal Affairs investigation.

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[10] Attachment F (Weidenkopf Report of Interview).

[11] Attachment G (Respondent Report of Interview at 4).

[12] Attachment H (Respondent IA Case at 8, 22); Attachment G (Respondent Report of Interview at 4).

[13] Attachment A (Carpenter Report of Interview at 2).

[14] Attachment I (Respondent's Assignments). Respondent served as the commander of the Kern County Sheriff's Office Internal Affairs Unit ("IAU") from March 13, 2021, through May 8, 2021, and commander of the Professional Standards Unit ("PSU") from May 8, 2021, through December 4, 2021.

Respondent transferred from IAU to PSU on May 21, 2021. In his new role, Respondent oversaw criminal investigations and supervised Sergeant Weidenkopf. On May 4, 2021, Sergeant Weidenkopf referred the Suspect 1 case to the Kern County District Attorney's Office for a decision whether to prosecute. In a memorandum Sergeant Weidenkopf prepared in connection with Respondent's Internal Affairs investigation, he stated the process relating to PSU's submissions of cases to the prosecutor:

> PSU cases are filed directly with Supervising Deputy District Attorney Ken Russell. This process involves my investigators and I meeting with Russell, briefing him on the investigation, and then hand delivering the complaint package to him. [Victim 1's] sexually [sic] battery case was no exception.

PSU investigators met with prosecutors and the standard PSU practice up to May-June 2021 was that there was no instance where the PSU lieutenant met a prosecutor without involving or notifying the investigators. The standard practice was that the sergeant and detective met the prosecutor, not the lieutenant. There was one instance where the PSU lieutenant attended a meeting with the investigators. In that instance, the lieutenant sat in the corner and did not say anything.[15] In addition, although it was common for PSU personnel to meet with Mr. Russell, it was not common for the victim to attend meetings with Mr. Russell.[16]

At some point in early June 2021, Respondent stated that Deputy District Attorney Ken Russell called Respondent to let him know that he heard he oversaw PSU, and requested to meet with Victim 1 regarding the case.[17] Respondent stated to me that he did not recall informing the investigators about the meeting, but was "pretty sure" that he did.[18] Sergeant Weidenkopf, on the other hand, stated in a memorandum he prepared on December 10, 2021, during Respondent's Internal Affairs investigation that Respondent "took [Victim 1] to the DA's office to meet with Russell without involving me, my lead investigator, or PSU staff who were involved in the investigation." In addition, Sergeant Weidenkopf stated that Respondent "did so without [Sergeant Weidenkopf's] knowledge" and learned about Respondent's attendance at the meeting only weeks or months later.[19]

Victim 1 stated that she did not want to attend the meeting with Mr. Russell alone and asked Respondent to attend with her. She stated that she did not know in

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[15] Attachment F (Weidenkopf Report of Interview at 3); Attachment J (Nord Report of Interview at 2); Attachment K (Levig Report of Interview at 2).
[16] Attachment K (Levig Report of Interview at 2).
[17] Attachment G (Respondent Report of Interview at 5).
[18] Attachment G (Respondent Report of Interview at 5).
[19] Attachment L (Weidenkopf Memorandum at 2).

what capacity Respondent attended the meeting, whether it was as her personal representative or as the PSU lieutenant.

During the Respondent IA case, Commander Carpenter asked Respondent if he felt that accompanying Victim 1 to the meeting with Mr. Russell was within the scope of his job at PSU. Respondent stated that he believed it was.[20] Respondent told me that he was at the meeting in his professional capacity.[21]

The information Respondent and Sergeant Weidenkopf provided about whether Respondent told the criminal investigators at PSU about the meeting is in conflict.

I find that there is a high probability that Respondent accompanied Victim 1 to the meeting with Mr. Russell without informing the PSU investigators and in his personal capacity based on the following:

- the practice of PSU up to that time was that the lieutenant did not attend meetings with the prosecutors;
- the practice of PSU was that the investigators provided case information to the prosecutor directly because they knew the case details in the event the prosecutors had questions;
- Sergeant Weidenkopf's statements relating to the meeting in both my interview and in his memorandum had a level of specificity that stands in direct contrast to Respondent's vague statements that he did not recall but was "pretty sure" he told the investigators in advance of the meeting;
- Respondent lacked direct recollection of the meeting;
- Respondent's statement that he attended the meeting in his professional capacity is not plausible. He lacked knowledge of the investigative details and would not have been able to answer any substantive questions from Mr. Russell. Had he told the investigators, they would likely have attended the meeting;
- Respondent's previous actions and level of personal interest in Victim 1's case is consistent with his attendance at the meeting and not informing the investigators;
- Victim 1 stated that she – not Mr. Russell – asked Respondent to attend the meeting[22] – which also demonstrated with a high degree of probability that Respondent did not attend the meeting in his professional capacity.

Respondent Engaged in a Personal and Intimate Relationship with Victim 1 While Being Significantly Involved in the Suspect 1 Criminal

[20] Attachment H (Respondent IA Case Report at 22).
[21] Attachment G (Respondent Report of Interview at 5).
[22] Attachment M (Victim 1 Report of Interview at 2).

and Internal Affairs Investigations and He Failed to Inform the Investigators of the Relationship

The clear and convincing evidence substantiated that Respondent engaged in a personal and intimate relationship with Victim 1 while simultaneously being significantly involved in the Suspect 1 criminal and Internal Affairs investigations. The clear and convincing evidence also substantiated that Respondent failed to inform the investigator of his relationship with Victim 1.

In late April to early May 2021, Respondent persuaded Victim 1 to wear a wire during the initial stages of the criminal investigation of Suspect 1.[23]

In April to May 2021, Respondent sought updates from Sergeant Weidenkopf about the progress of the criminal investigation. In early June 2021, Respondent accompanied Victim 1 to a meeting with the prosecutor in his personal capacity.

As early as June 2021, Respondent's and Victim 1's relationship progressed to something more personal. According to Respondent, his wife was suspicious of Respondent's relationship with Victim 1. He provided his wife with the code to his work cell phone.[24] Further, Respondent's wife, who had provided childcare to Victim 1's children beginning in approximately January 2021, stopped providing childcare in approximately June 2021. Respondent stated that his wife felt the relationship between Victim 1 and Respondent was too close and too casual.[25]

Shortly after Victim 1 asserted allegations against Suspect 1, Respondent effectuated her transfer to his unit. Initially after alleging that Suspect 1 sexually assaulted her, Victim 1 chose to remain assigned to the Detective Unit. After a short period of time, however, she felt uncomfortable remaining there and asked Respondent for a transfer to PSU.[26] Respondent effectuated a temporary transfer of Victim 1 to PSU in late May 2021 and a permanent transfer to PSU on June 28, 2021. In PSU, she reported to Sergeant Weidenkopf and also performed work tasks for Respondent in his capacity as lieutenant. The work she performed for Sergeant Weidenkopf was different than the type of work she performed for Respondent.

As early as August 2021, witnesses stated that Respondent and Victim 1 engaged in inappropriately flirtatious behavior in the office. Sheriff's Support Technician ("SST") W1 stated to me that she first noticed flirtatious behavior

[23] Attachment J (Nord Report of Interview at 2); Attachment G (Respondent Report of Interview at 3).
[24] According to Chief Deputy Levig, it was unusual for Respondent to have given his wife the passcode to his work cell phone. Chief Deputy Levig stated that employees are supposed to keep passcodes confidential and have gotten into trouble for sharing their information. Attachment K (Levig Report of Interview at 2).
[25] Attachment G (Respondent Report of Interview at 3).
[26] Attachment G (Respondent Report of Interview at 2-4).

within a few weeks of being assigned to PSU in August 2021.[27] SST W1, SST R2, and Detentions Senior Deputy Jose Hinojosa also each saw them spend long periods of time in Respondent's office with the door closed.[28]

By August 2021, Respondent told Sergeant Weidenkopf that he was assuming direct supervision of Victim 1 and that he was removing Sergeant Weidenkopf as Victim 1's supervisor.[29] The normal practice at KCSO was that a Sheriff's Aide like Victim 1 would report to a sergeant and the sergeant reported to a lieutenant. For Victim 1 to report directly to Respondent was aberrational.

Between August 2021 and November 2021, Respondent and Victim 1 openly flirted in the office. After expressing feelings for each other in early November, the relationship progressed to sexual intimacy by late November.

When she first started working in PSU in October 2021, Senior Deputy Rutter was suspicious that Respondent and Victim 1 were having an affair. She thought their relationship might have crossed a line. She observed Respondent and Victim 1 speaking closely and whispering to each other. She also observed Respondent enter Victim 1's cubicle and spend 15-30 minutes inside the cubicle at least once a week.[30]

As early as October 1, 2021, Respondent provided input to Sergeant Perez, the Internal Affairs investigator, while Sergeant Perez was developing questions to ask Suspect 1.[31] Respondent and Sergeant Perez each stated that Respondent provided input on questions that Sergeant Perez intended to ask Suspect 1 on November 23, 2021. Sergeant Perez stated that Respondent initiated contact with Sergeant Perez prior to Suspect 1's interview and asked if Sergeant Perez had drafted questions for Suspect 1. Sergeant Perez showed Respondent a list of questions and asked Respondent for input. Respondent suggested adding a question.[32] Respondent stated that he reviewed Sergeant Perez's questions for Suspect 1 because Sergeant Perez asked for input how to "'game plan'" the interview.

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[27] Attachment N (W1 Report of Interview at 2); Attachment H (Respondent IA Case Report at 13).

[28] Attachment H (Respondent IA Case Report at 11, 13, 14). In addition, Victim 1 had well-known medical issues that caused her to faint frequently. KCSO personnel, including Respondent, took steps to ensure her safety when she fainted. Witnesses reported that Respondent carried Victim 1 on a couple of occasions over a time period dating to approximately 2019. Respondent stated that he carried her. Attachment G (Respondent Report of Interview at 2). Although Respondent stated that other people also carried Victim 1, I was not able to identify any other KCSO personnel who carried her. Sergeant Perez stated to me that he helped her by wheeling her in a desk chair. Attachment O (Perez Report of Interview at 3). Although Respondent's carrying Victim 1 preceded their intimate relationship by a number of years, I did find that Respondent's actions and behavior toward Victim 1 exhibited an inappropriate aspect of workplace relationships.

[29] Attachment F (Weidenkopf Report of Interview at 3); Attachment G (Respondent Report of Interview at 4).

[30] Attachment H (Respondent IA Case Report at 11). Victim 1 had erected makeshift doors on her cubicle and Senior Deputy Rutter's cubicle was directly across from Victim 1's cubicle.

[31] Attachment O (Perez Report of Interview at 3).

[32] Attachment H (Respondent IA Case Report at 12-13).

I find that Respondent and Sergeant Perez's information was consistent in that both confirmed that Respondent provided input on Suspect 1's interview on November 23, 2021. Respondent saw himself as, and Sergeant Perez perceived Respondent to be, Sergeant Perez's mentor.

About two weeks after helping Sergeant Perez formulate interview questions and an investigative strategy, on October 15, 2021, Respondent served as Victim 1's personal representative during her interview in the Suspect 1 Internal Affairs investigation.

By early November 2021, Respondent's and Victim 1's relationship had progressed to being physical and they openly acknowledged to each other having feelings for each other.[33] They held hands and kissed. Over the weekend of November 20, 2021, and November 21, 2021, they had sexual intercourse in Respondent's office. Senior Deputy Rutter was in the office over that weekend and saw the light on in Respondent's office. Based on her suspicions of an affair, she said she wanted to get out of the office as fast as possible.[34]

On November 23, 2021 – two days after the last sexual encounter between Respondent and Victim 1 – Respondent proactively sought information from Sergeant Perez about what Suspect 1 said during his interview. Sergeant Perez told Respondent that, among other things, Suspect 1 alleged that Respondent and Victim 1 were having an affair. Sergeant Perez further advised Respondent that Sergeant Perez may need to interview Respondent and re-interview Victim 1 in light of Suspect 1's allegation. During his conversation with Sergeant Perez, Respondent did not inform Sergeant Perez that he and Victim 1 had sexual intercourse over the previous weekend. Sergeant Perez stated that, if he had known that Respondent and Victim 1 were having an affair, he would not have allowed Respondent to have become involved in the Internal Affairs investigation of Suspect 1.[35]

After Learning that Suspect 1 Alleged that Respondent Had an Affair with Victim 1, Respondent Deleted Relevant Evidence

[33] Attachment G (Respondent Report of Interview at 4); Attachment M (Victim 1 Report of Interview at 3).
[34] Attachment P (Rutter Report of Interview at 2).
[35] Attachment O (Perez Report of Interview at 4).

The clear and convincing evidence established that Respondent deleted relevant information from his work cell phone after learning on November 23, 2021, that Suspect 1 alleged that Respondent and Victim 1 were having an affair. The clear and convincing evidence substantiated that Respondent deleted the following information:[36]

Dates	***Type of Deleted Data***
11/5/2021-11/17/2021	Calls
11/8/2021-11/17/2021	Texts
11/17/2021-11/30/2021	Calls
11/22/2021-11/30/2021	Texts

Respondent's statements to me during his Internal Affairs investigation that he did not delete any information after he was notified that he had to relinquish his work cell phone during the Internal Affairs investigation into the allegation are misleading. The relevant inquiry for me is whether Respondent had knowledge of the potential that the information was evidence in Sergeant Perez's investigation. Respondent did not inform his supervisor of the affair until December 4, 2021,[37] the day after Victim 1's boyfriend already reported the affair to KCSO. KCSO did not initiate the Internal Affairs investigation until December 6, 2021. If Respondent's statements are true, then Respondent deleted some or all of his work cell phone logs and texts at some point during the two-week period after he learned that Suspect 1 had alleged an affair between Respondent and Victim 1, and that Sergeant Perez may need to interview both Respondent and Victim 1 as part of the Suspect 1 Internal Affairs investigation.

The evidence showed that Respondent was an experienced investigator and ranking officer at KCSO who knew the significance of the data that he deleted and that he was likely to be asked to produce his work cell phone. Respondent had just learned that Suspect 1 accused Respondent of having an affair with Victim 1 and knew that any telephone logs and text messages between Respondent and Victim 1 could corroborate Suspect 1's claims. I find that there is a high probability that Respondent knew that the data from his work cell phone would be evidence in both the Internal Affairs investigation into Suspect 1's conduct and a likely future investigation into Respondent's own conduct due to the probative value the allegation had for Suspect 1's defense to Victim 1's allegations, as well as in the inevitable Internal Affairs investigation into Suspect 1's allegations and that he deleted the data intentionally to hide it from the Internal Affairs investigator.

[36] Attachment H (Respondent IA Case Report at 20).

[37] Victim 1 told her partner that she had an affair with Respondent on December 3, 2021.

A. Did Respondent Commit "Sexual Assault" against Victim 1 as that Term is Defined by California Penal Code Section 13510.8(b)(4) or POST Regulation 1205(a)(4)? If so, Did Respondent's Actions Constitute Sexual Assault and Therefore Violate California Penal Code Section 13510.8(b)(4) or POST Regulation 1205(a)(4)?

The clear and convincing evidence substantiated that Respondent engaged in sexual intercourse on November 20, 2021, and November 21, 2021, with an employee who was his direct subordinate while he was on duty.

Respondent and Victim 1 each stated that they engaged in sexual intercourse on November 20, 2021, and November 21, 2021 while Respondent was serving as Watch Lieutenant of KCSO and that they had sexual intercourse in Respondent's office.[38] Other evidence corroborated their admissions, including gate access records showing Victim 1's entry to the KCSO property, surveillance camera footage, and timecards.[39]

I find that there is not clear and convincing evidence that Respondent's actions in having sexual intercourse on November 20, 2021, and November 21, 2021, with an employee who was his direct subordinate while he was on duty violated California Penal Code Section 13510.8(b)(4).[40]

Section 13510.8(b)(4) defines serious misconduct to be "[s]exual assault, as described in subdivision (b) of Section 832.7." California Penal Code Section 832.7(b) states that "sexual assault" means:

> [t]he commission or attempted initiation of a sexual act **with a member of the public** by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault. (emphasis supplied)

My finding that there was not clear and convincing evidence of a violation of Section 13510.8(b)(4) is primarily based on the reason that the state of the law at the time of the acts was unclear as to whether Victim 1 was "a member of the public," as required by that section. Victim 1 was an employee of KCSO at the time.

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[38] Attachment H (Respondent IA Case at 8, 16, 19).

[39] Attachment H (Respondent IA Case at 26-27).

[40] Section 13510.8(b)(4) authorized me to conduct an analysis of the sexual assault allegations pursuant to California Penal Code Section 13510.8(g)(1)(A) and Section 13510.8(g)(1)(B)'s lookback provisions, which allow POST's initiation of proceedings to revoke or suspend a peace officer's certification for conduct that occurred prior to January 1, 2022, where the serious misconduct is sexual assault or if the employing agency makes a final determination regarding its investigation after January 1, 2022.

POST Regulation 1205(a)(4) became effective January 1, 2023, and does not apply to events occurring in 2021. The Regulation clarified California Penal Code Section 13510.8(b)(4) by adding the following language to Section 13510.8(b)(4)'s definition of sexual assault, which now specifies that Serious Misconduct includes: "Sexual assault, as described in subdivision (b) of Section 832.7, **and shall extend to acts committed amongst members of any law enforcement agency**." (emphasis supplied).

Therefore, I find that, although the clear and convincing evidence substantiated that Respondent and Victim 1 had sexual intercourse while Respondent was on duty, the evidence did not substantiate by clear and convincing evidence a violation of California Penal Code Section 13510.8(b)(4) at the time of Respondent's actions.

B. Did Respondent's Personal Interests and Relationship with Victim 1 Compromise His Judgment and Professional Obligations as a Peace Officer? If So, Did Respondent's Actions Constitute Abuse of Power and Therefore Violate California Penal Code Section 13510.8(b)(2)?

A peace officer's malfeasance in the performance of wrongful acts stems from the authority and power granted as a peace officer. Abuse of power occurs when a peace officer misuses the "position of power to take unjust advantage of individuals, organizations, or governments."[41] Abuse of power can take various forms and includes a single incident or acts that are part of a complex scheme of events. Acts of abuse of power depend on the particular circumstances and the responsibilities of the peace officer. A common theme among many forms of abuse of power is deceit. Where a peace officer acts knowingly – that is, being practically certain that his acts would cause a certain result – adds to the egregious nature of the abuse of power.

KCSO Policy C-100 sets boundaries on its peace officers' actions and defines the outer limits of wrongful actions: "I will never . . . permit personal feelings, prejudices, animosities, or friendships to influence my decisions."[42] The policy further states, "Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary, in the

[41] Bernard Auchter, Jonathan Katz, and Mary Graham, "Crime and the Abuse of Power – Offenses and Offenders Beyond the Reach of Law?" at 3, United States Discussion Paper for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (National Institute of Justice 1980).

[42] Other jurisdictions follow KCSO and recognize conflict of interest as a core value of policing. *E.g.*, Attachment Q ("A Practical Guide to the Conflict of Interest Law for Police Officers," Massachusetts State Ethics Commission (3/23/1990)); Attachment R ("Conflict of Interest Policy," Office of the Police and Crime Commissioner Gloucestershire (v1.1, 2/27/2020)); Attachment S ("Conflict of Interest Policy," Office of the Police Ombudsman for Northern Ireland (3/2013)); Attachment T ("Corruption Prevention Concepts: Conflicts of Interest," Australian Commission for Law Enforcement Integrity).

performance of my duty."[43] KCSO's core values further provide that that "[h]onesty, credibility and ethical conduct should describe who we are and nothing less is acceptable."[44] Respondent himself acknowledged his awareness of these rules.[45]

The clear and convincing evidence substantiated that Respondent violated California Penal Code Section 13510.8(b)(2)'s proscription of Abuse of Power when he:

- Had sexual intercourse with Victim 1 while on duty and in his KCSO-assigned office while he served as Watch Lieutenant at KCSO on November 20 and 21, 2021;
- Contacted Sergeant Perez after having sex with Victim 1 and sought confidential information from Sergeant Perez about the Internal Affairs interview of Suspect 1's alleged sexual assault of Victim 1, and did not first disclose to Sergeant Perez his sexual relationship with Victim 1;
- Wrongfully acted based on information that Sergeant Perez told him about Suspect 1's Internal Affairs interview when he shared confidential information with Victim 1 that Respondent learned from Sergeant Perez concerning the statements Suspect 1 made during his Internal Affairs interview;
- Wrongfully acted based on information that Sergeant Perez told him about Suspect 1's Internal Affairs interview when he deleted work phone text messages and phone log records of communications between Respondent and

[43] POST Regulation 1013 also recognizes that peace officers will not "permit personal feelings, prejudices, . . . or friendships to influence . . . decisions." KCSO policy, therefore, mirrors the Law Enforcement Code of Ethics rule in POST Regulation 1013.

[44] Kern County Ordinance 2.02.010 applied to Respondent as "an appointed officer or employee of the county of Kern," the Ordinance applied to Respondent. The penalties of Kern County Ordinance 2.01.010 provide insight on how impactful violation of the ordinance is. The ordinance states that its violation is "sufficient grounds for immediate dismissal, suspension or reduction in rank or compensation of any appointed officer or employee of the county."

[45] Respondent signed a letter of expectations each year during his annual performance review that spelled out what KCSO expected of him in his position. Attachment U (Sheriff's Expectations Letters). By signing the letter, Respondent acknowledged receipt of the Sheriff's Expectations "which outline the conduct expected of all Sheriff's Office employees [and] I understand that I will be held accountable for my actions." Respondent signed the acknowledgement each year he from the time he was promoted to sergeant (2016-21). Respondent's role as a lieutenant meant that he was a ranking officer responsible for programmatic oversight of a section, management of personnel, and to ensure compliance with laws and policies. Respondent's role over the weekend of November 20, 2021, and November 21, 2021, as the Watch Lieutenant meant that he was the most senior law enforcement officer on duty in Kern County responsible in the event of a critical incident, major crime, or other significant event. A key element of Respondent's roles as a ranking officer was to ensure that investigations conducted in IAU and PSU were free of conflict of interest. A fundamental concept in policing is that supervisors should "never investigate sexual or other serious complaints against staff under their direct supervision." Attachment V ("Managing Conflicts of Interest," New Zealand Police Instructions at 9 (6/14/2022)).

Victim 1 after learning what Suspect 1 said about Respondent and Victim 1's relationship; and

- Interfered with the Internal Affairs investigation of Suspect 1 by providing input on the investigative strategy and interview questions of Suspect 1 while simultaneously serving as the personal representative to Victim 1 during her interview in the same Internal Affairs investigation.

Based on Respondent's level of experience, his rank, and his training, I find that Respondent reasonably knew that his actions were egregious. When I interviewed him, Respondent stated that he had "exponentially" more experience conducting investigations.[46] According to Respondent, he was the youngest sergeant at KCSO, the youngest lieutenant at KCSO, and his career was fast. According to then-Chief Deputy Nord, Respondent's appointment as lieutenant of IAU and PSU meant that he was a "shooting star" and had "made it" at KCSO. The next step after being a lieutenant at PSU was promotion to commander.[47] Commander Carpenter and Lieutenant Colbert corroborated then-Chief Deputy Nord's statements about Respondent's prestige at KCSO. Lieutenant Colbert stated that being lieutenant in IAU is considered a "steppingstone" to bigger things.[48] It was precisely because Respondent and his peers at KCSO saw Respondent as a strong candidate for upward advancement that Respondent was able to project his influence on the criminal and Internal Affairs investigations of Suspect 1 and further his personal interest in Victim 1.

1. Sex On Duty as Abuse of Power.

The clear and convincing evidence substantiated that Respondent was the Watch Lieutenant during the weekend of November 20 and 21, 2021. In this capacity, Respondent was the highest ranking law enforcement officer on duty at the time. It is undisputed that Respondent and Victim 1 had sexual intercourse twice in Respondent's office while he was on duty. Therefore, Respondent abused his power.

It is not disputed that engaging in sexual activities in a peace officer's work-assigned office during a time that officer is assigned to serve as Watch Lieutenant is an abuse of the powers assigned to that officer. Indeed, when Lieutenant Carpenter asked whether being involved in a sexual encounter while on duty would take Respondent away from his duties, Respondent equivocally stated:

> [T]he obvious answer is yes, as terrible as it sounds. I had my radio on. Um. I had my phones on. I was available, as needed. I was covering as a Watch Lieutenant. Um, so I would have been in my office anyways. It wasn't a normal day for me to work. I had

[46] Attachment H (Respondent IA Case at 22); Attachment G (Respondent Report of Interview at 4).
[47] Attachment I (Nord Report of Interview at 2).
[48] Attachment W (Colbert Report of Interview at 1); Attachment A (Carpenter Report of Interview at 2).

> already worked all of my time for that week and was working all of my time for the next week, so I was volunteering to be there. Um, I feel like I was, um, able to respond if anything, um, required my attention. Um, however, just purely by the nature of what was occurring, that is correct.[49]

Following Respondent's answer, Lieutenant Carpenter then pressed Respondent and asked whether Respondent was able to effectively manage KCSO operations as the ranking member at the time he was engaged in sexual intercourse with Victim 1 on November 20 and 21, to which Respondent stated:

> I feel like I was, um, able to respond to any situation which required my situation. However, I was not actively monitoring KCSO operations for the county at that time.[50]

The evidence showed the high probability that Respondent had cultivated a relationship with Victim 1 over a period of months leading up to November 20-21, 2021, and that Victim 1 was particularly vulnerable in the days before Suspect 1's Internal Affairs interview on November 22, 2021. As a result of Respondent's abuse of power, Respondent took unjust advantage of Victim 1 and her situation, even taking into account that both Respondent and Victim 1 stated it was consensual. For instance, when Respondent met with Victim 1 over the weekend of November 20, 2021, and November 21, 2021, he stated that she asked to speak with him and that he knew that having sex with Victim 1 was a possibility but not his intent.[51]

Respondent also stated that he was aware that Suspect 1 was going to be interviewed the Monday following the weekend he had sex with Victim 1.[52] I conclude that Respondent's relationship with Victim 1 not only directly compromised the job responsibilities KCSO assigned Respondent to perform, it constituted an abuse of the powers Respondent was given as a result of those responsibilities, and precluded his objective behavior as a peace officer.

2. Failure to Disclose Material Information as Abuse of Power.

The clear and convincing evidence also substantiated that Respondent abused his power when he sought and obtained information from Sergeant Perez about Suspect 1's Internal Affairs interview without first disclosing to Sergeant Perez that he and Victim 1 had a sexual relationship. Respondent had an affirmative obligation to disclose information material to an investigation pursuant to KCSO Policy No. C-100

[49] Attachment Z (Respondent IA Interview at 12:20-13:04).
[50] Attachment Z (Respondent IA Interview at 13:04-13:40).
[51] Attachment H (Respondent IA Case Report at 19).
[52] Attachment H (Respondent IA Case Report at 19).

(5/15/2020), which states: "Deputies will . . . not withhold information pertinent to effective law enforcement." In fact, had Sergeant Perez known that Respondent and Victim 1 were having an affair, Sergeant Perez would not have continued to involve Respondent in the investigation.[53] Respondent's failure to disclose information about his sexual relationship with Victim 1 impacted Sergeant Perez's decision to reveal information to Respondent. Respondent abused his position as the then-PSU Lieutenant within KCSO, and also his mentor-mentee relationship with Sergeant Perez when obtaining confidential investigative information without disclosing his sexual relationship with Victim 1, thereby threatening the quality and integrity of the investigation of Suspect 1.

3. Wrongfully Sharing Confidential Information as Abuse of Power.

The clear and convincing evidence substantiated that Respondent wrongfully acted based on information that Sergeant Perez told him about Suspect 1's Internal Affairs interview when he shared information with Victim 1 that Respondent learned from Sergeant Perez concerning the statements Suspect 1 made during his Internal Affairs interview and deleted work phone text messages and phone log records of communications between Respondent and Victim 1 after learning what Suspect 1 said about Respondent and Victim 1's relationship. Respondent, who was a superior officer within the KCSO organization, was able to obtain this information from Sergeant Perez because Sergeant Perez saw Respondent as a mentor.[54] It was because of Respondent's position of authority and his status as a mentor that Respondent gained access to confidential information. He abused that status by obtaining and then disclosing that same information to the Victim in the same investigation.

Respondent's disclosures to Victim 1 about Suspect 1's Internal Affairs interview also violated California Penal Code Section 832.7.[55] California Penal Code Section 832.7(b)(1) states that a peace officer's personnel records and other records maintained by KCSO pursuant to California Penal Code Section 823.5 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."[56] KCSO policies also recognized that Respondent was bound by confidentiality. KCSO Policy No. C-100 (5/15/2020) states: "Members of the Sheriff's Office will . . . treat as confidential the official business, reports and records of the Sheriff's Office in accordance with

[53] Attachment O (Perez Report of Interview at 4).

[54] Attachment O (Perez Report of Interview at 1).

[55] This also constituted serious misconduct as "acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with" Respondent's "obligation to uphold the law . . . ." California Penal Code Section 13510.8(b)(6).

[56] The California Attorney General and the California Court of Appeal have issued opinions that stand for the proposition that violation of Section 832.7's confidentiality provisions is a misdemeanor pursuant to California Government Code Section 1222. *Towner v. County of Ventura*, 63 Cal. App. 5th 761 (2021) The *Honorable Marsha Jones Moutrie*, 82 Ops. Cal. Atty. Gen 246 (1999).

applicable law." The policy further states that members of the department shall not "impart any confidential information regarding Sheriff's Office business to any person or entity unless directed by competent authority or legal process."

KCSO's Internal Affairs investigative records of allegations that Suspect 1 sexually assaulted Victim 1, including Suspect 1's statements made during his Internal Affairs interview, are records subject to Section 832.7(b)'s confidentiality protections.

Respondent acknowledged each year during his performance review that he had access to confidential law enforcement information by signing a "Kern County Sheriff's Department Employee Statement Form."[57] As noted above, California's Law Enforcement Code of Ethics rule provides, in part, that "[w]hatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty." The clear and convincing evidence also substantiated that Respondent had a legal obligation to maintain confidentiality of the Suspect 1 interview information he learned from Sergeant Perez and that Respondent willfully disclosed to Victim 1 what Suspect 1 said during his Internal Affairs interview.

Respondent stated to me that he told Victim 1 what Suspect 1 said during his Internal Affairs interview. Specifically, Respondent told Victim 1 that Suspect 1 alleged that (1) Respondent and Victim 1 had an affair; (2) Victim 1 was crazy; and (3) Victim 1 had come onto Suspect 1. Respondent stated that he told Victim 1 shortly after he heard the information from Sergeant Perez on November 23, 2021.[58] Respondent stated during his Internal Affairs interview that the information he told Victim 1 was confidential and his release of information was outside the proper channels.[59] Victim 1 corroborated Respondent's statements.[60] Victim 1 also stated that Respondent told her at the time that he could not share the information with her because it was confidential.[61]

During both the Internal Affairs interview and my interview, Respondent stated that he did not have the intent to obtain or provide confidential information to Victim 1. He further stated that it was "splitting hairs" to take a certification action against him for what he told Victim 1 about what Suspect 1 said because he had previously represented Victim 1 during her interview, he would learn it anyway during any subsequent interview of Victim 1 in connection with Suspect 1's Internal Affairs

[57] The form (Attachment X) includes a statement that disseminating confidential information to any unauthorized party is a violation of the law.
[58] Attachment G (Respondent Report of Interview at 6); Attachment H (Respondent IA Case Report at 24-25).
[59] Attachment H (Respondent IA Case Report at 25).
[60] Attachment M (Victim 1 Report of Interview at 1-2).
[61] Attachment M (Victim 1 Report of Interview at 2).

investigation, and he disclosed the information to "support" her.[62] Respondent stated that he was in a state of panic and despair. I reject Respondent's statements that he did not have the intent to obtain information as irrelevant.[63]

I find that the clear and convincing evidence showed that Respondent's actions in sharing confidential information in violation of California Penal Code Section 832.7 were an abuse of power.[64] Further, that Respondent did so intentionally, knowing that sharing the information was wrong, supports the conclusion that his actions were the result of an abuse of power.

4. Wrongfully Deleting Evidence as Abuse of Power.

The clear and convincing evidence substantiated that Respondent's deletions of phone text messages and cell phone log records was an abuse of power. After Sergeant Perez revealed to Respondent that Suspect 1 alleged that Respondent and Victim 1 were having an affair, Respondent knew that the text messages and cell phone log records were relevant and material to Suspect 1's defense and the Internal Affairs investigation of Suspect 1. Yet, he deleted the evidence before Sergeant Perez could review it and analyze it in Suspect 1's Internal Affairs investigation and before the investigator in his own Internal Affairs investigation could review it and analyze it.

5. Insertion in Internal Affairs Investigation as Abuse of Power.

The clear and convincing evidence substantiated that Respondent interfered with the Internal Affairs investigation of Suspect 1 by providing input on the investigative strategy and interview questions of Suspect 1 while simultaneously serving as the personal representative to Victim 1 during her interview in the same Internal Affairs investigation. Respondent took advantage of his position of authority at KCSO as a lieutenant and mentor to Sergeant Perez. As a result of Respondent's abuse of power, he played two incompatible roles at the same instant: KCSO investigative team member and Victim 1's personal representative.

Respondent's insertion in Suspect 1's Internal Affairs investigation was an abuse of power because it was outside his responsibilities and authority as lieutenant of PSU and because he inserted himself in the investigation to benefit his personal relationship with Victim 1. In mid-October 2021, Respondent provided significant input to Sergeant Perez about the investigative strategy and interview questions. At the same time that Respondent provided advice and guidance to Sergeant Perez,

[62] Attachment H (Respondent IA Case Report at 25).
[63] Even if Respondent's intent were relevant, I did not find him to be credible on this issue: on one hand, he stated that he knew that he could not share the information because it was confidential; on the other hand, he stated that he did not have the intent to obtain the information.
[64] The exceptions stated in Section 832.7(b) do not apply to the evidence in this case.

Respondent also served as Victim 1's personal representative during her Internal Affairs interview. As early as June 2021, Respondent's and Victim 1's relationship had progressed to a highly personal level. Respondent's wife stopped providing childcare to Victim 1, stating to Respondent that the relationship was too close and too casual.[65] In August 2021, witnesses stated that Respondent and Victim 1 engaged in inappropriate flirting in the office, which continued through November 2021.

C. Did Respondent Fail to Disclose Material Information Related to Criminal and Internal Affairs Investigations about Suspect 1? If So, Did Respondent's Actions Constitute Dishonesty and Therefore Violate California Penal Code Section 13510.8(b)(1)?

The allegation that Respondent committed dishonesty is subject to my review and potential regulatory action by the Commission pursuant to California Penal Code Section 13510.8(g)(1)(B).[66]

The clear and convincing evidence substantiated that Respondent violated Section 13510.8(b)(1). Section 13510.8(b)(1) defines dishonesty as:

> Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to, false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct.

Solely for purposes of deciding whether suspension or revocation is the appropriate action in this case, POST Regulation 1205(a)(1) directs the Commission to consider whether Respondent acted willfully, not based on mistake or accident. It is important to note that the question of willfulness is only relevant to the Commission's revocation or suspension decision; the question of willfulness is not relevant to the question of whether Respondent engaged in serious misconduct (*i.e*., dishonesty).

Evidence that Respondent would have been practically certain that his acts would cause a certain result is sufficient to establish that he acted knowingly. It is not

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[65] Attachment G (Respondent Report of Interview at 3).

[66] Pursuant to California Penal Code Section 13510.8(g)(1)(B), if an employing agency made a final determination regarding its investigation of serious misconduct after January 1, 2022, the POST Commission may initiate proceedings to revoke or suspend a peace officer's certification for dishonest conduct that occurred prior to January 1, 2022. In the instant case, Respondent is alleged to have engaged in conduct in 2021, and KCSO made its final determination of serious misconduct after January 1, 2022. In addition, California Penal Code Section 13510.8(g)(1)(A) provides that Dishonesty that occurred prior to January 1, 2022, is also subject to revocation proceedings.

necessary to establish that Respondent acted with evil intent or with a harmful motive in order to conclude that revocation is the proper action in this case.

Respondent's dishonesty manifested itself when he deleted text and phone call logs after knowing that it might be evidence in Suspect 1's Internal Affairs investigation and when he failed to inform KCSO command staff that his personal relationship with Victim 1 could be material to the criminal and Internal Affairs investigations in which he was becoming involved.

1. Destroying or Concealing Evidence: Respondent's Deletion of Text Messages and Phone Call Logs.

The clear and convincing evidence substantiated that Respondent was aware that text message and phone call logs could be evidence in Suspect 1's Internal Affairs investigation and that Respondent deleted those text messages and phone call logs. Sergeant Perez told Respondent that he may have to interview him and re-interview Victim 1 in connection with Suspect 1's Internal Affairs investigation based on Suspect 1's statements during his interview.

Respondent's deleted text messages and phone call logs were directly relevant to Suspect 1's statements during his Internal Affairs interview. The deleted text messages and phone calls cover the timeframe from 11/5/2021-11/30/2021. Respondent and Victim 1 stated that they spoke by phone on November 5, 2021, when she was in Florida. The phone conversation was one of the first times that they acknowledged that they had feelings for each other. Sergeant Perez interviewed Suspect 1 on November 22, 2021. Respondent and Victim 1 arranged prior to the weekend of November 20-21, 2021 – the weekend that they had sexual intercourse in Respondent's office – for her not to be in the office on November 22, 2021, due to her fragile state of mind leading up to Suspect 1's Internal Affairs interview. The clear and convincing evidence substantiated that Respondent was purposeful in deleting data that he knew was incriminating against him relevant to the investigation of Suspect 1 and also relevant to a future investigation into his own misconduct.

The clear and convincing evidence further substantiated that Respondent's deletion of data and failure to inform Sergeant Perez that he had an intimate relationship with Victim 1 materially impacted Sergeant Perez's Internal Affairs investigation of Suspect 1. On November 23 or 24, 2021, Sergeant Perez told Respondent that he might have to interview Respondent. Yet, not only did Respondent intentionally fail to disclose his relationship with Victim 1 to Sergeant Perez, he deleted data from his work phone directly relevant to his relationship with Victim 1. Sergeant Perez in fact conducted additional investigation after his interview of Suspect 1. I find that Respondent – knowing the evidence on his work cell phone was material to the Suspect 1 Internal Affairs investigation – destroyed relevant evidence. I further find

that Respondent waited from November 23 or 24, 2021, until December 4, 2021 to report the affair, substantiating the high probability that Respondent intentionally concealed information that his own department policy mandated he provide.

2. Respondent's Lack of Candor.

Lack of candor is a vital component of any criminal or Internal Affairs investigation. It is more than mere deceit; it is deceit by omission where the truth is intentionally concealed. Where there is a lack of candor by officers, witnesses, or other participants in an investigation, the investigation and/or its outcome may be corrupted. KCSO policy incorporates the important concept of candor: "Deputies will . . . not withhold information to pertinent effective law enforcement."[67] Under KCSO policy, Respondent was obligated to have candor while he was employed at KCSO.

The clear and convincing evidence substantiated that Respondent failed to disclose his personal relationship with Victim 1 to either the criminal or Internal Affairs investigators. The clear and convincing evidence further substantiated that Respondent engaged in lack of candor when he failed to disclose material information about his personal and intimate relationship with the victim while becoming involved in the criminal and Internal Affairs investigations. KCSO Policy No. C-100 obligated Respondent to have provided information that his personal relationship with Victim 1 was such that his failure to disclose it prevented effective law enforcement in connection with both the criminal and Internal Affairs investigations of Suspect 1.

Respondent's insertion in the criminal investigation was contrary to KCSO's policy and practice, as stated above. Further, his insertion in the Internal Affairs investigation was similarly contrary to KCSO practice. According to Sergeant Perez, Respondent did not become involved in other Internal Affairs investigations. Sergeant Perez stated that the investigation of Suspect 1's sexual assault of Victim 1 was the only case in which Respondent became involved.[68] Commander Carpenter also stated that Respondent did not insert himself in other cases even if there was no Internal Affairs investigation and did not insert himself in other criminal investigations while he was lieutenant of IAU.[69]

As a lieutenant, Respondent knew or reasonably should have known that his relationship with Victim 1 would matter to command staff and the investigators. As an investigator, Respondent knew or reasonably should have known that his relationship with Victim 1 would matter to the investigators.

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[67] KCSO Policies and Procedures, Rules of Conduct – Law Enforcement Personnel, No. C-100 (revised 3/1/2007)).
[68] Attachment O (Perez Report of Interview at 4).
[69] Attachment A (Carpenter Report of Interview at 3).

Both Respondent and Sergeant Weidenkopf stated that Respondent was visibly upset after learning that Suspect 1 had alleged to Sergeant Perez that Respondent and Victim 1 were having an affair.[70] Respondent's state of mind during and immediately after his meeting with Sergeant Perez showed me that he was aware of the impact of his relationship with Victim 1 on Suspect 1's Internal Affairs investigation. Even if Respondent's relationship with Victim 1 prior to November 2021 was platonic, after he had sexual intercourse with her twice over the weekend of November 20, 2021 and November 21, 2021, I find that he had an affirmative obligation to have told Sergeant Perez or at least stop Sergeant Perez from continuing to tell him information on November 23, 2021 about what Suspect 1 alleged about Respondent and that Respondent knowingly failed to disclose his relationship.

I find that Respondent should have disclosed the information for completeness, even if not directly questioned or asked about it.[71] At various points throughout his involvement in the criminal and Internal Affairs investigations, Respondent had opportunities to reveal his relationship and did not.

Had KCSO command staff known of Respondent's relationship with Victim 1, they would likely have taken more formal steps to ensure that Respondent was walled off from the cases in a formal fashion. Had Sergeant Perez known of Respondent's relationship with Victim 1, he would not likely have asked for help in developing questions for Suspect 1's interview, would not likely have allowed Respondent to serve as Victim 1's personal representative during her interview, and would not likely have continued to discuss Suspect 1's allegations against Respondent. Without the benefit of this information, Sergeant Perez was not able to develop alternate investigative strategies how to conduct the Internal Affairs investigation of Suspect 1. Instead, Respondent continued to gain access to the investigations and took advantage of his co-workers, his supervisors, and his subordinate. Therefore, I find that the clear and convincing evidence substantiated that Respondent committed dishonesty when he failed to inform KCSO command staff, Sergeant Weidenkopf, and Sergeant Perez of his personal relationship with Victim 1.

V. Supporting Evidence and Documentation

Evidence	**Attachment**
Commander John Carpenter, Report of Interview	A
EDI Profile of David Wesley Hubbard, Respondent	B

[70] Attachment F (Weidenkopf Report of Interview at 4); Attachment G (Respondent Report of Interview at 6).
[71] KCSO Policy No. C-100 (5/15/2020) states: "Deputies will . . . not withhold information pertinent to effective law enforcement."

Evidence	Attachment
Kern County Disciplinary Review Board	C
Letter entitled “Notice of Administrative Leave/Revocation of Peace Officer Powers, from Larry McCurtain, Chief Deputy, to David Hubbard	D
Letter entitled “Notice of Disciplinary Action – Termination,” from Sheriff Donny Youngblood to David Hubbard	E
Sergeant Justin Weidenkopf, Report of Interview	F
David Hubbard (Respondent), Report of Interview	G
Kern County Sheriff’s Office Internal Affairs Investigation Report	H
Hubbard (Respondent) Assignments	I
Then-Chief Deputy Damian Nord, Report of Interview	J
Chief Deputy Erik Levig, Report of Interview	K
Memorandum entitled Staff Misconduct, from Sergeant Justin Weidenkopf to Lieutenant John Carpenter (12/10/2021)	L
Victim 1, Report of Interview	M
W1 [redacted] Report of Interview	N
Sergeant Danny Perez, Report of Interview	O
Senior Deputy Bess Rutter, Report of Interview	P
A Practical Guide to the Conflict of Interest Law for Police Officers, Massachusetts State Ethics Commission (3/23/1990)	Q
Conflict of Interest Policy, Office of the Police and Crime Commissioner Gloucestershire (v1.1, 2/27/2020)	R
Conflict of Interest Policy, Office of the Police Ombudsman for Northern Ireland (3/2013)	S
Corruption Prevention Concepts: Conflicts of Interest, Australian Commission for Law Enforcement Integrity	T

Evidence	Attachment
Kern County Sheriff's Department Employee Statement Forms (9/9/2016; 9/18/2017; 9/11/2018; 9/25/2019; 8/6/2020; 12/1/2021)	U
New Zealand Police Instructions	V
Lieutenant Jason Colbert, Report of Interview	W
Kern County Sheriff's Department Employee Statement Form	X
POST Management Course Expanded Course Outline, Module B	Y
Respondent Internal Affairs Interview	Z

VI. Conclusion

Reasonable grounds exist to submit this case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation pursuant to Penal Code Section 13510.8.

Commission on Peace Officer Standards and Training
860 Stillwater Road
West Sacramento, CA 95605-1603
www.post.ca.gov

On May 1, 2023, John Carpenter was interviewed in a conference room located at the California Department of Consumer Affairs, Bureau of Automotive Repair, 3331 North Sillect Avenue, Bakersfield, California by Kevin Sherburne and Darryl Elliott, Law Enforcement Consultants at the California Commission on Peace Officer Standards and Training ("POST"). Communications by the parties during the interview were electronically recorded. The recording will serve as the true and accurate record of the statements made by Carpenter. After being advised of the identity of the interviewers and the purpose of the interview, that being to obtain information related to allegations of serious misconduct, Carpenter provided the following information:

At the time of Hubbard's Internal Affairs ("IA") investigation, Carpenter was the lieutenant of the Human Resources ("HR") section, which was the result of a previous reorganization of the IA section. Carpenter supervised the Hubbard IA case. If there was a ranking member of the Kern County Sheriff's Office ("KCSO"), they tried to put the highest ranking member of IA on the case. During the reorganization, Carpenter gained responsibilities and added a Commander of Personnel. KCSO does not have the rank of captain. Carpenter reports to a chief deputy.

At the time, Danny Perez reported to Carpenter. Weidenkopf was assigned to Professional Standards Unit ("PSU") and is a sergeant. PSU conducts criminal investigations.

At the time of the S1 investigation, Carpenter was a lieutenant in detectives and had not yet transferred to IA. Hubbard was the lieutenant of IA at the time the S1 allegations surfaced. The criminal portion of the case was handled by PSU and Weidenkopf was the sergeant. Weidenkopf reported to Lieutenant Juan Trevino, who promoted to Personnel Division Commander. Erik Levig might have been a commander. He's now a chief deputy. IA reported to Damian Nord.

At KCSO, the rank structure goes like this. The Sheriff, Undersheriff, four bureau chiefs (each run by chief deputies). Within each bureau is a division, which is run by a commander. Within a division is a section, which is run by a lieutenant. Sections have units, which are run by sergeants.

Hubbard is a very smart guy and spent a lot of time in detectives. Carpenter did not know about his friendships or whether he or Nord hung out with anyone after work. Hubbard and Levig were close. When Philip Campos was killed, Hubbard was interviewed and Levig served as Hubbard's personal representative during the officer involved shooting investigation. At the time of Hubbard's interview, Levig supervised Hubbard.

Shown a document outlining work assignment histories of Hubbard and [redacted], Carpenter stated that the document showed that Hubbard was in IA from March 13, 2021 to May 8, 2021 and PSU from May 8, 2021 to December 4, 2021. The document showed that [redacted] was in the complaint unit from August 19, 2017 to June 28, 2021 and TDY to PSU from May 20, 2021 to December 11, 2021.

KCSO saw something in Hubbard that he would promote and transferred him from IA to PSU. They wanted him to develop an additional facet of his skill set because he had a lot of criminal experience, but not much administrative experience, so they moved him to IA for career development. Carpenter did not know the ultimate reason for the decision to move Hubbard to PSU, but maybe they felt that someone with more investigative experience like Hubbard would be a good fit. Plus, KCSO was under a stipulated judgment and PSU had oversight of some of the components of that judgment. Carpenter did not think that Hubbard's move had to do with the [redacted] investigation. By that time, the case had been sent to the District Attorney.

When the [redacted] criminal case first started, Hubbard went to Nord and some others, but Carpenter did not know exactly to whom he went. IA doesn't really care about the criminal case progress. Hubbard talked about investigative updates, but Carpenter has never once requested an investigative update in his time in IA. IA has a one year timeframe to complete an investigation.

People saw that Hubbard and [redacted] were very close. Hubbard was likely motivated to intervene in the [redacted] criminal case because of their relationship. They may not have been romantic at the time the [redacted] criminal case started, but Hubbard took the sexual assault personally because it occurred under his watch when he was lieutenant of detectives. Hubbard's relationship with [redacted] was a little too close. Carpenter was caught by surprise when he learned they had a romantic relationship. Hubbard was protecting [redacted] in a lot of ways. He was not doing her any good. The level of comfort was so close that she was not developing professionally by only working for him. This was especially evident when he moved her from detectives to PSU. She was comfortable with his style of leadership.

Carpenter only spoke with Hubbard's wife on one occasion. Hubbard had said his wife was a little suspicious but did not provide a timeframe. Hubbard's wife was a stay-at-home wife. She must have had some trust issues for him to give his passcode to his work phone to her. His wife had become suspicious of his relationship with [redacted] and was trying to sever ties with [redacted], so stopped babysitting.

Carpenter did not know [redacted]s highest level of education. At least high school, he surmised. Hubbard had a bachelor's degree. The dress code in the office was casual.

Shown a copy of the Kern County ordinance on conflict of interest, Carpenter stated that county policy applied to KCSO. Generally, in IA cases, KCSO did not use county policies. Most often, KCSO relied on department policies and civil service rules. Carpenter just wrote a conflict of interest policy. It's in draft form and he is willing to share it once it's been officially signed into place. Employees have to sign and acknowledge some policies every rating period, but Carpenter did not know if a conflict of interest policy is one of those required acknowledgments.

Had the draft policy been in place in 2021, it would not have addressed situations when Hubbard would have had to disclose his relationship with V1 KCSO may not have a policy on the release of confidential information that is otherwise prohibited by California Penal Code Section 832.7. There was never a charge that focused on that allegation. The fact pattern fell within the KCSO policy covering conduct unbecoming an officer. The question was whether Hubbard took advantage. The Disciplinary Review Board ("DRB") raised the issue whether Hubbard had been grooming V1 in a manipulative way. As an observation, it really appears that it looks like she could have been groomed then taken advantage of. V1 still works for KCSO. She left KCSO then returned while her IA case was pending. When she transferred back to KCSO, KCSO completed the IA case, made findings of policy violations, and gave her a written reprimand. V1 did not sue KCSO for sexual harassment or claim sexual harassment. She is currently a Sheriff's Aide at the jail.

Hubbard took advantage of his relationship with Perez. Had Carpenter found out earlier what Hubbard was doing, he would have stopped Perez.

Hubbard did not insert himself into other criminal investigations while he was lieutenant of IA. Hubbard did not insert himself in other cases even if there was no IA.

V1 had medical issues that included fainting episodes. Carpenter did not know if Hubbard picked her up and carried her to his office.

PSU reported to the Undersheriff directly, so he would have facilitated the investigation of the release of information. The IA of Hubbard had progressed to such a point that it may not have made sense to add that allegation to the IA. Doug Jauch was the Undersheriff. Jauch and Hubbard had a professional relationship. It wasn't like Jauch did not open the IA on the release of information allegation to protect Hubbard. Jauch was one of the First Reviewers of the IA report. It takes two First Reviewers to make a finding and Jauch was one of them.

Carpenter did not know who told Hubbard that V1 did not want to wear a wire. PSU has two senior deputies to do investigative work for Weidenkopf.

Approval of overtime is at the discretion of the supervisor who should be keeping track of the overtime budget. Hubbard allowed people to flex their time.

With [redacted], her tardiness in showing up to work was common and it bothered Weidenkopf.

POST PROFILE NAME:

HUBBARD, DAVID WESLEY

CALIFORNIA COMMISSION ON **POST**

Certification Status: Temporary Suspension

AKA: N/A

DATE: 07/17/2023

PERSONAL IDENTIFICATION

POST I.D.	Agency	Birth Date	Gender	Race/Ethnicity
C15-B77	KERN CO DA	[redacted]		

CERTIFICATES AWARDED

Cert No.	Type	Awarded	Education	T	T+	Comments
135727	B	03/12/2009	[redacted]	[redacted]		
103800	I	10/24/2011				
109559	A	10/13/2015				
87984	S	06/15/2018				

Total Number of Certificates: 4

EMPLOYMENT

Hired From	To	R*	Rank	Rank Date	Agency	Agency Name	F/P	P/U	Seas
10/06/2007	09/19/2015	7	DPTY	10/06/2007	15000	KERN COUNTY SO	F	P	
10/06/2007	12/19/2020	7	SGT	09/19/2015	15000	KERN COUNTY SO	F	P	
10/06/2007	08/15/2022	2	LT	12/19/2020	15000	KERN COUNTY SO	F	P	
08/13/2022			INV	08/13/2022	15920	KERN CO DA	F	P	

***Reason for Separation: 2 = Discharge, 7 = Promotion/Demotion**

POST CERTIFIED TRAINING

Comp Date	Cat	CCN	Hrs	Rmb	Cmp	Agency	School	*	Course Name
06/08/2007	K	4890-23272-06-125	8		Y	15000	M TOLERNCE		CULT. DIV.-TOOLS FOR TOLERANCE (MOT ONLY)
10/06/2007	A	1990-00100-06-002	1007		Y	15000	KCSO		BASIC COURSE-INTENSIVE
10/10/2007	K	1990-23090-07-001	10	X	Y	15000	KCSO		ELECTRONIC WEAPONS
10/12/2007	K	1990-21261-07-001	4		Y	15000	KCSO		BATON/IMPACT WEAPONS
02/12/2008	K	1990-30780-07-003	8		Y	15000	KCSO		COURT & TEMPORARY HOLDING FACL
12/04/2008	K	1990-22220-08-003	32		Y	15000	KCSO		DRUG INFLUENCE - 11550 H&S
12/09/2008	K	1990-24240-08-001	4	X	Y	15000	KCSO		COMPUTERIZED INFO SOURCES
12/11/2008	K	9180-25554-08-164	2	X	Y	15000	POST	*	COMMUNICATION: KEEPING YOUR EDGE (WEB)
12/11/2008	K	9180-25560-08-164	1	X	Y	15000	POST		OFFICER SAFETY: HOT OR NOT (WEB)
12/25/2008	K	9180-25555-08-178	2	X	Y	15000	POST		LEARNERS FIRST: FACILITATION SKILLS (WEB)
12/26/2008	K	9180-25557-08-179	2	X	Y	15000	POST		BEST PRACTICES OF GOOD TRAINING (WEB)
03/08/2009	K	9180-25556-08-251	8	X	Y	15000	POST		TERRORISM/L.E. RESPONSE (WEB)
03/20/2009	K	1270-20290-08-021	16		Y	15000	CHP		DUI DETECTION-FIELD SOBRIETY
03/31/2009	K	9180-25562-08-274	4	X	Y	15000	POST		TARGET YOUR TEACHING (WEB)
05/29/2009	K	1990-29506-08-018	8	X	Y	15000	KCSO	*	ARSTCTL/FIREARM(PSP)
06/18/2009	K	9180-25563-08-353	2	X	Y	15000	POST		ENVIRONMENTAL CRIMES INVESTIGATIONS OVERVIEW (WEB)
08/21/2009	K	1990-31800-09-001	32		Y	15000	KCSO		FIREARMS INSTRUCTOR/SEMI-AUTO
08/26/2009	K	1990-32065-09-001	24		Y	15000	KCSO	*	FIREARMS/TCTL HANDGUN ADV
10/07/2009	N	9180-13200-09-041	2	X	Y	15000	POST		PC 832 PROCTOR TRAINING
10/25/2009	K	9180-25575-09-117	3	X	Y	15000	POST		SEARCH WARRANT FUNDAMENTALS (WEB)
11/06/2009	K	1990-32092-09-001	32		Y	15000	KCSO	*	FIREARMS-SHOTGUN TACT. INSTR.
11/11/2009	K	1990-21771-09-022	8	X	Y	15000	KCSO		FIRST AID/CPR REFRESHER
02/05/2010	K	1990-31801-09-001	32		Y	15000	KCSO		FIREARMS-LONG RIFLE INSTRUCTOR
02/18/2010	K	1990-20985-09-019	4		Y	15000	KCSO	*	DRIVER TRAINING-SIMULATOR

POST CERTIFIED TRAINING *continued*

Comp Date	Cat	CCN	Hrs	Rmb	Cmp	Agency	School	*	Course Name
02/18/2010	K	1990-21065-09-020	4		Y	15000	KCSO	*	FORCE OPTION-SIMULATOR
03/31/2010	K	1990-30780-09-004	8		Y	15000	KCSO		COURT & TEMPORARY HOLDING FACL
05/19/2010	K	1990-29503-09-001	8		Y	15000	KCSO	*	ARSTCTL(PSP)
10/25/2010	K	9180-25577-10-117	2	X	Y	15000	POST		OFFICER SAFETY: MAKE THE RIGHT CHOICE (WEB)
11/01/2010	K	1990-29504-10-013	4	X	Y	15000	KCSO	*	TACCOM(PSP)
11/01/2010	K	1990-22273-10-013	4	X	Y	15000	KCSO		SEARCH & SEIZURE UPD.
11/07/2010	K	9180-25579-10-130	3	X	Y	15000	POST		GANGS: PC 186.22 FOR PATROL (WEB)
11/17/2010	K	1990-32081-10-001	24		Y	15000	KCSO		FIREARMS/BASIC RIFLE/CARBINE RIFLE REFRESHER
03/10/2011	K	1990-29506-10-003	8	X	Y	15000	KCSO	*	ARSTCTL/FIREARM(PSP)
03/16/2011	K	1990-22484-10-003	4		Y	15000	KCSO		COPPS UPDATE
03/16/2011	K	1990-22703-10-003	4	X	Y	15000	KCSO		REPORT WRITING UPDATE
03/29/2011	K	9070-32345-10-003	8		Y	15000	GTA		DOMESTIC VIOLENCE/1ST RESPONDER
03/30/2011	K	9070-33433-10-003	8		Y	15000	GTA		SEXUAL ASLT. INV-1ST RESPONDER
04/11/2011	K	9180-25578-10-285	5	X	Y	15000	POST		IDENTITY THEFT FOR PATROL (WEB)
04/12/2011	K	9180-25576-10-286	3	X	Y	15000	POST		STUDENT LEARNING OUTCOMES (WEB)
05/13/2011	K	1126-31445-10-005	24		Y	15000	3RD DEGREE		INTERVIEW & INTERROGATION
11/18/2011	K	1990-31725-11-001	40		Y	15000	KCSO		FIELD TRAINING OFFICER
04/19/2012	K	1990-31552-11-028	4		Y	15000	KCSO		EVIDENCE COLLECTION
04/19/2012	K	1990-29504-11-027	4	X	Y	15000	KCSO	*	TACCOM(PSP)
06/07/2012	K	1990-32075-11-001	32		Y	15000	KCSO		FIREARMS/TACTICAL RIFLE
06/29/2012	K	9070-24261-11-003	10		Y	15000	GTA		SEARCH WARRANT-PATROL
09/14/2012	K	3950-20280-12-001	36	R	Y	15000	CAV/ASSOC		DUI-DRIVING UNDER INFLUENCE
11/12/2012	K	1990-30780-12-002	8		Y	15000	KCSO		COURT & TEMPORARY HOLDING FACL
12/12/2012	K	1990-21771-12-039	4	X	Y	15000	KCSO		FIRST AID/CPR REFRESHER
12/12/2012	K	1990-29502-12-034	4		Y	15000	KCSO	*	DRIVING(PSP)
03/05/2013	K	1990-29503-12-008	4		Y	15000	KCSO	*	ARSTCTL(PSP)
03/05/2013	K	1990-29000-12-159	2	X	Y	15000	KCSO		PURSUIT DRIVING UPDATE
03/12/2013	K	1126-31459-12-003	16		Y	15000	3RD DEGREE		FORENSIC INTVWG/CHILD VICTIMS
04/01/2013	K	1990-22306-12-002	8		Y	15000	KCSO		ACTIVE SHOOTER RESPONSE
05/03/2013	K	1990-33435-12-003	40		Y	15000	KCSO		SEXUAL ASSAULT INV
08/05/2013	K	9070-21517-13-002	8	X	Y	15000	GTA		HUMAN TRAFFICKING-MINORS
09/20/2013	K	9680-30071-13-001	40	R	Y	15000	FBI-SACTO		EXPLOSIVES-POST INVESTIGATION
11/05/2013	K	1126-31240-13-001	16		Y	15000	3RD DEGREE		DEATH INVESTIGATION
11/11/2013	K	1990-29501-13-014	8		Y	15000	KCSO	*	FIREARM(PSP)
11/15/2013	K	9260-22020-13-017	8		Y	15000	DOJ		ELECTRONIC SURVEILLANCE
05/21/2014	K	1990-20985-13-035	4		Y	15000	KCSO	*	DRIVER TRAINING-SIMULATOR
05/21/2014	K	1990-21065-13-071	4		Y	15000	KCSO	*	FORCE OPTION-SIMULATOR
06/04/2014	K	1990-29000-13-161	2	X	Y	15000	KCSO	*	TACTICAL COMMUNICATIONS
10/03/2014	K	1990-21771-14-016	4	X	Y	15000	KCSO		FIRST AID/CPR REFRESHER
10/03/2014	K	1990-29503-14-016	4		Y	15000	KCSO	*	ARSTCTL(PSP)
12/12/2014	K	2540-31921-14-003	80	R	Y	15000	SOBAYRTC		HOMICIDE INVESTIGATION (ICI)
02/17/2015	K	1990-29000-14-258	2	X	Y	15000	KCSO		HUMAN TRAFFICKING: IDENTIFY & RESPOND
05/15/2015	K	1990-29504-14-029	2	X	Y	15000	KCSO	*	TACCOM(PSP)
05/15/2015	K	1990-22707-14-029	4	X	Y	15000	KCSO		REPORT WRITING/USE OF FORCE
05/15/2015	K	1990-32241-14-029	2	X	Y	15000	KCSO		IN-CUSTODY DEATH/EXCITED DELIRIUM
09/11/2015	K	1095-22419-15-002	24	R	Y	15000	CTI		OFFICER SAFETY/FORCE ENCOUNTERS ANALYSIS
12/08/2015	K	1990-29501-15-028	8		Y	15000	KCSO	*	FIREARM(PSP)

POST CERTIFIED TRAINING *continued*

Comp Date	Cat	CCN	Hrs	Rmb	Cmp	Agency	School	*	Course Name
12/25/2015	K	1990-29000-15-230	2	X	Y	15000	KCSO		HIGH TECHNOLOGY CRIMES AND DIGITAL EVIDENCE
01/18/2016	D	3550-00400-15-003	80		Y	15000	FRESNO C C		SUPERVISORY COURSE
06/15/2016	K	1990-29502-15-037	4		Y	15000	KCSO	*	DRIVING(PSP)
06/15/2016	K	1990-29000-15-260	2	X	Y	15000	KCSO		BIAS BASED POLICING: REMAINING FAIR & IMPARTIAL
10/27/2016	K	1990-21798-16-023	16		Y	15000	KCSO		FIRST AID/CPR UPDATE
10/27/2016	K	1990-29503-16-022	4		Y	15000	KCSO	*	ARSTCTL(PSP)
02/22/2017	K	1990-23601-16-001	4	X	Y	15000	KCSO		SCENARIO EVALUATOR TRAINING
03/03/2017	K	5270-21705-16-004	40	R	Y	15000	CSU-LNGBCH		ACADEMY INSTRUCTOR CERTIFICATION COURSE (AICC)
05/03/2017	K	1990-29504-16-017	4	X	Y	15000	KCSO	*	TACCOM(PSP)
05/03/2017	K	1990-23215-16-017	4	X	Y	15000	KCSO		GANG AWARENESS UPDATE
11/29/2017	K	1990-29501-17-017	8		Y	15000	KCSO	*	FIREARM(PSP)
07/11/2018	K	1990-21797-18-004	8	X	Y	15000	KCSO		FIRST AID/CPR/AED REFRESHER
10/03/2018	K	1990-29503-18-003	4		Y	15000	KCSO	*	ARSTCTL(PSP)
10/03/2018	K	1990-29502-18-003	4		Y	15000	KCSO	*	DRIVING(PSP)
10/17/2018	K	1095-22419-18-014	24	X	Y	15000	CTI		OFFICER SAFETY/FORCE ENCOUNTERS ANALYSIS
06/18/2019	K	1279-43155-18-009	8	X	Y	15000	STAS		AUTOMATED LICENSE PLATE READER (LPR)
07/03/2019	K	1990-22707-19-002	4	X	Y	15000	KCSO		REPORT WRITING/USE OF FORCE
07/03/2019	K	1990-29504-19-002	2	X	Y	15000	KCSO	*	TACCOM(PSP)
09/17/2019	K	9260-22020-19-028	8		Y	15000	DOJ		ELECTRONIC SURVEILLANCE
10/01/2019	K	1990-21065-19-077	4		Y	15000	KCSO	*	FORCE OPTION-SIMULATOR
10/01/2019	K	1990-20985-19-082	4		Y	15000	KCSO	*	DRIVER TRAINING-SIMULATOR
10/10/2019	K	1126-31445-19-002	24		Y	15000	3RD DEGREE		INTERVIEW & INTERROGATION
02/13/2020	G	9180-12514-19-004	7	X	Y	15000	POST		LEGAL ISSUES
07/17/2020	K	9180-25589-20-017	2	X	Y	15000	POST		DV RESPONSE & LETHALITY ASSESSMENT (WEB)
09/24/2020	K	9180-25585-20-086	2	X	Y	15000	POST	*	TACTICAL COMMUNICATION (WEB)
10/07/2020	K	1126-32100-20-003	24		Y	15000	3RD DEGREE		INTERNAL AFFAIRS INVESTIGATION
12/09/2020	K	1990-23282-20-009	4	X	Y	15000	KCSO		RACIAL PROFILING
12/11/2020	K	1990-29503-20-016	4		Y	15000	KCSO	*	ARSTCTL(PSP)
01/15/2021	E	9070-00501-20-004	40	R	Y	15000	GTA		MANAGEMENT COURSE-MODULE A
02/04/2021	E	9070-00502-20-004	32	R	Y	15000	GTA		MANAGEMENT COURSE-MODULE B
02/25/2021	E	9070-00503-20-004	32	R	Y	15000	GTA		MANAGEMENT COURSE-MODULE C
06/08/2021	K	1239-49500-20-071	8	X	Y	15000	GS	*	USE OF FORCE AND DE-ESCALATION (DLGP)
02/21/2022	K	9180-25597-21-236	1	X	Y	15000	POST		LEGAL UPDATE: POSITIONAL ASPHYXIA-SELF PACED
12/09/2022	K	1080-29501-22-002	4		Y	15920	BAK PD	*	FIREARM(PSP)
04/21/2023	K	2540-30660-22-004	40	R	Y	15920	SOBAYRTC		DISTRICT ATTORNEY INVESTIGATOR TRANSITION
07/06/2023	K	1990-21797-23-001	8		Y	15920	KCSO		FIRST AID/CPR/AED REFRESHER

***Meets Perishable Skills**

FOOTNOTES

NO FOOTNOTE ON FILE.

PLEASE REFER TO THE ENCLOSED EXPLANATION SHEET FOR ADDITIONAL INFORMATION.

COMMISSION ON POST – PROFILE REPORT

The Profile Report contains confidential information.

EXPLANATION SHEET

PERSONAL IDENTIFICATION: Subject's personal information as indicated in POST database (EDI system)	
POST ID:	Unique identification number assigned to subject by POST.
Agency:	Indicates the agency (or one of the agencies) where subject is currently employed. An "*" indicates that the subject is employed in more than one position within the same agency.
Birth Date/Gender:	Self-explanatory.
Race/Ethnicity:	**A** = Asian **B** = African American (Black) **N** = Native American **S** = Spanish/Hispanic **W** = White **O** = Other

CERTIFICATES AWARDED	
Cert:	Certificate serial number.
Type:	**B** = Basic **I** = Intermediate **A** = Advanced **S** = Supervisory **M** = Management **E** = Executive = Reserve **D** = Public Safety Dispatcher **SX**= Specialized X (example: SA = Specialized Advanced)
Awarded:	Date certificate was issued.
Education:	Educational points or degree used for earning a certificate.
T:	Training points used for awarding the certificate.
T+:	Additional training points.
Comments:	Comments regarding training or institute(s) where subject received education.
Total Number of Certificates:	Number of certificates awarded to subject as indicated in POST database.

EMPLOYMENT: Subject's employment history as indicated in POST database	
Hired From:	Date subject was hired or sworn into the agency.
To:	Date subject left agency (if applicable).
R*:	Reason for separation as indicated by number in the Report description.
Rank / Rank Date:	Indicates rank as translated by POST database and date subject made rank.
Agency / Agency Name:	Agency code number and name where subject is currently working or previously worked.
F/P:	Time base: **F** = Full time **P** = Part time
P/U:	Wage status: **P** = Paid **U** = Unpaid
Seas:	Provisional or seasonal employment.

POST TRAINING: Courses attended or completed as indicated in POST database	
Comp Date:	Date course ended.
Cat:	General course category (for POST use only).
CCN:	Course Control Number.
Hrs:	Hours completed in course.
Rmb:	Reimbursement indicator: **R** = Reimbursed *(before FY 83/84 reimbursable agency not necessarily reimbursed)* **J** = Job specific * = Job specific, SALARY NOT PAID **Blank** = None or no data available
Cmp:	Completion indicator: **Blank or Y** = Course completed **N** = Course not completed **?** = Prior to 1979
Agency:	Agency where subject was employed at time of course enrollment.
School:	Training institute offering the course.
Course Name:	Course name as shown in POST database.

NON-CERTIFIED COURSES
This section will only appear if applicable.

FOOTNOTES
This section reserved for additional information.

Kern County Sheriff's Office
Disciplinary Review Board

Subject Employee: Lieutenant David Hubbard	**Review Date:** 4/26/2022	**Case Number:** DIIA2021-0036
Bureau: Office of the Undersheriff		**CAD ID:** 201784
Reviewers: Chief Larry McCurtain, Chief Adam Plugge, Commander Cindy Cisneros		

Sustained allegations:
CSR 1705.03 Conduct unbecoming an employee in the public service.
CSR 1705.04 Disorderly immoral conduct.
CSR 1705.09 Neglect of duty.
CSR 1705.11 Violation of lawful or reasonable regulation or order.
DPPM B-200 Duties of Personnel- Deputy Sheriffs.
DPPM B-300 Duties of Command Officer and Supervisors.
DPPM B-310 Sheriff's Office Watch Commander.
DPPM C-100 Rules of Conduct- Law Enforcement Personnel.

Proposed discipline:
Termination

Kern County Sheriff's Office
Disciplinary Review Considerations

Subject Employee:	Date of Review:	Case Number:
Lieutenant David Hubbard	4/26/2022	DIIA2021-0036

Division Commander will complete and sign during Pre-investigation if recommending a Written Reprimand or PDSA.
Bureau Chief or Division Commander will complete if Written Reprimand is authorized at First Review.
Disciplinary Review Board will complete during disciplinary hearing.

Seriousness of the offense: The seriousness of the offenses undermined the trust and leadership placed in a Lieutenant that the community, administration, and our staff expect, as well as abusing the authority entrusted to management personnel of the Sheriff's Office.

Impact or potential impact on the department: The impact on the Sheriff's Office is a complete display of behavior that is unacceptable on the part of any employee, let alone ranking staff. The example that was set by these actions creates an atmosphere of distrust in Sheriff's Office leadership from members of the department and places the Sheriff's Office and the County of Kern at risk of liability.

Impact on department members: The behavior creates a lack of trust within the Sheriff's Office. As the ranking on-duty member of the Sheriff's Office, the behavior prevented the employee from fulfilling his duties as the Watch Lieutenant.

Impact on the public: The impact on the public is a lack of trust and expectation to be available to respond to and manage emergencies and critical incidents. The public expects law enforcement officers to carry themselves with the utmost moral character and actions such as these negatively impact the public's perception and trust in law enforcement.

Employee's work history:
Last five EPRs Above Standard
2020 EPR Outstanding
Several commendations and letters of appreciation

Employee's acceptance of responsibility: The employee accepted responsibility for his actions, however, minimized the gravity of how he obtained and released confidential information, as well as the consequences his actions could have on the Sheriff's Office.

Kern County Sheriff's Office
Disciplinary Review Considerations

Employee's prior disciplinary history: No discipline in last five years

Approved

Signature:  **Print:** LARRY MCCURTAIN	**Signature:**  **Print:** ADAM W. PLUGGE
Signature:  **Print:** CINDY CISNEROS	**Signature:** **Print:**

DONNY YOUNGBLOOD
Sheriff-Coroner
Public Administrator

SHERIFF'S OFFICE
COUNTY OF KERN

Telephone (661) 391-7500

ORIGINAL

1350 Norris Road
Bakersfield, California 93308-2231

April 26, 2022

Hand Delivered

David Hubbard
[redacted]
Address

Re: **NOTICE OF ADMINISTRATIVE LEAVE/REVOCATION OF PEACE OFFICER POWERS**

Dear Lieutenant Hubbard:

Effective immediately, you are being placed on paid administrative leave, and your peace officer powers are being revoked. There is an allegation that you may have violated a California State Law and/or a rule, regulation, policy, or procedure of the Kern County Sheriff's Office. Pending the completion of the investigation or until further notice, you will remain in this status.

Due to the fact there is an allegation and related investigation, it is necessary to restrict your responsibilities and authority as follows:

1. You are immediately suspended from your duties as a lieutenant at the Kern County Sheriff's Office with pay. Your peace officer powers, per Section 830.1(a) California Penal Code, are suspended.

2. Authorization for the possession of the Kern County Sheriff's Office identification card, badge, keys/card passes, firearms, and equipment are revoked and these items are to be given to the person serving you this notice.

3. During this time period, you will not represent yourself as a member of the Kern County Sheriff's Office or as an employee of the County of Kern in any official capacity. You do not have free access to the Kern County Sheriff's Office facilities, equipment, or personnel. However, should you receive a subpoena to testify in court or give your deposition in any matter stemming from or related to your job duties or action you took in your official capacity, you are directed to contact Lieutenant Jason Colbert at (661) 391-7599 upon receipt of the subpoena. After review by Sheriff's Office executive staff, the prohibition of you not representing yourself as a member or employee of the Kern County Sheriff's Office or County of Kern may be lifted to the extent of you testifying or giving your deposition in your capacity as an employee and member of this Office.

4. Per Kern County Policy and Procedure Section 139, Subsection 6, you are to make yourself available to Lieutenant Colbert and/or Internal Affairs Investigators assigned to your case each weekday (excluding holidays), between the hours of 8:00 a.m. and 4:00 p.m., by remaining at your residence, unless other arrangements are made with Lieutenant Colbert or in the event of an emergency. Lieutenant Colbert telephone number is (661) 391-7599.

5. You are required to follow the Kern County Sheriff's Office Policies and Procedures that are established regarding any leave of absence. If you need to take personal time during the weekday (excluding holidays), between the hours of 8:00 a.m. and 4:00 p.m., you shall use the appropriate leave of absence, such as sick leave, vacation, or compensatory time off. Request for the use of personal time off will be approved by Lieutenant Colbert.

6. You are required to follow the grooming standards set forth in DPPM K-200, which apply to all members whether in uniform or not. You shall also conform to the dress regulations contained in sections DPPM K-800/K-810: Non-Uniform Dress (Male/Female). You are expected to endeavor to present well-groomed appearance and wear professional attire for any mandated court appearances, interviews, or meetings, while on-duty.

7. It is recommended you do not discuss this case with anyone other than your representative. You may be ordered to disclose the names of persons contacted about your case by you or your representative, and those individual(s) will be interviewed as a potential witness at a later time.

These restrictions will remain in effect until such time that a final decision is made on the matter by the Sheriff or his designated authority.

Sincerely,

DONNY YOUNGBLOOD, Sheriff-Coroner

By: Larry McCurtain, Chief Deputy
Support Services Bureau
/cj

By my signature below, I acknowledge receipt of this document and I understand that a copy will be placed into my personnel file.

Received By (Signature) — Date/Time: 4/26/22 1631

J. Colbert — Served By (Print name) — Date/Time: 4/26/22 1631

DONNY YOUNGBLOOD
Sheriff-Coroner
Public Administrator

SHERIFF'S OFFICE
COUNTY OF KERN

1350 Norris Road
Bakersfield, California 93308-2231

Telephone (661) 391-7500

August 15, 2022 **HAND DELIVERED**

David Hubbard
[redacted]
Address

RE: Notice of Disciplinary Action – Termination
Internal Affairs Case DIIA2021-0036

Dear Lieutenant Hubbard:

Thank you for meeting with me on August 8, 2022, to discuss the Notice of Proposed Disciplinary Action letter, dated June 2, 2022. I have carefully considered the facts and documentation in this matter, along with the statements you and your attorney, Brett Rutkowski, made during our meeting. After full consideration, I have decided to uphold the proposed disciplinary action of termination. You will be terminated from your position as a Sheriff's Lieutenant effective the date this letter is signed.

RULES

Your actions in this matter are in direct violation of the following Rules of the Kern County Civil Service Commission:

CSR 1705.03 Conduct unbecoming an employee in the public service.

CSR 1705.04 Disorderly or immoral conduct.

CSR 1705.09 Neglect of duty.

CSR 1705.11 Violation of any lawful or reasonable regulation or order made and given by a superior officer.

Specifically, you have violated the following Sheriff's Office Policies and Procedures Sections:

DPPM B-200 Duties of Personnel - Deputy Sheriffs.

DPPM B-300 Duties of Command Officers and Supervisors.

DPPM B-310 Sheriff's Office Watch Commander.

DPPM C-100 Rules of Conduct - Law Enforcement Personnel.

ALLEGATIONS

This disciplinary action is based on the following acts or omissions:

On November 20, 2021, and November 21, 2021, you were the assigned Watch Lieutenant for the Kern County Sheriff's Office and the ranking member responsible for operations of the entire department. On these dates, you had two separate inappropriate sexual encounters with a Sheriff's Aide (hereinafter referred to as Miss Jane Doe), the first occurring on November 20, 2021, and the second on November 21, 2021. The sexual encounters took place in the Professional Standards Unit (PSU) office, your home assignment at the time. Further, at the time of these incidents Miss Doe was temporarily assigned to PSU and supervised directly by you.

This sexual relationship was discovered by Miss Doe's fiancé, who is also employed by the Kern County Sheriff's Office as a Deputy Sheriff. On December 3, 2021, Miss Doe's fiancé reported the inappropriate sexual relationship to his supervisor.

On December 4, 2021, you contacted Chief Deputy Erik Levig over the phone. During this phone conversation, you informed Chief Deputy Levig that you had an affair with Miss Doe. You explained you had informed your wife and Miss Doe had informed her fiancé. You requested a transfer and were subsequently moved to the Central Receiving Facility (CRF). The Internal Affairs Unit was tasked with investigating the allegations made against you.

On May 21, 2021, you were transferred to PSU and in June, you facilitated Miss Doe's transfer to PSU. Upon Miss Doe's arrival at PSU, she fell under Sergeant Justin Weidenkopf's direct supervision. In August or September of 2021, you informed Sergeant Weidenkopf you were now Miss Doe's direct supervisor due to her working on projects related to the section and Stipulated Judgment.

During this investigation, it was discovered you interposed yourself into a criminal/personnel investigation for personal reasons. Said investigation originated from the allegation Miss Doe made against a Sheriff's Office employee, in which it was alleged that he unlawfully touched her vagina over her clothing. The criminal investigation was conducted by PSU before being assigned to the Internal Affairs Unit for the administrative investigation.

Sergeant Weidenkopf told Internal Affairs investigators after the onset of the criminal investigation into the Sheriff's Office employee, you had two (2) meetings with Miss Doe outside the presence of the PSU investigators. From March 13, 2021 to May 7, 2021, you were assigned to the Internal Affairs Section. While you were assigned to the Internal Affairs Section, you requested and received investigative updates about the criminal case from Sergeant Weidenkopf. The Internal Affairs Section normally receives investigative updates about criminal cases

involving KCSO employees when the criminal case is completed and transitioning to administrative.

During the personnel investigation into the Sheriff's Office employee, you obtained information about statements made by the employee during his Internal Affairs interview. On June 8, 2021, the personnel investigation into the Sheriff's Office employee was authorized. From May 8, 2021 to December 4, 2021, you were assigned to PSU during the Sheriff's Office employee's interview (which occurred on November 22, 2021) and therefore not privy to the information obtained during the Internal Affairs interview. Prior to November 22, 2021, you contacted Sergeant Daniel Perez, who was the lead investigator in the Internal Affairs investigation, and learned when the Sheriff's Office employee's interview was scheduled (November 22, 2021). On November 23, 2021, you approached Sergeant Perez and inquired about the Sheriff's Office employee's interview with Internal Affairs. Sergeant Perez informed you that he might need to interview you due to the allegations the Sheriff's Office employee made about you and Miss Doe having an affair. During this same conversation, Sergeant Perez told you that Sheriff's Office employee shifted all of the blame on Miss Doe and accused her of being "crazy."

When asked why he provided you with the information about Sheriff's Office employee's interview, Sergeant Perez replied that you were the Lieutenant of the Internal Affairs Unit at the onset of the investigation, and you had been a mentor to him. Sergeant Perez stated that he trusted you and felt you took advantage of your relationship with him.

During Miss Doe's interview with Internal Affairs, she informed investigators you provided her specific information regarding the Sheriff's Office employee's Internal Affairs interview based upon information you obtained from Sergeant Perez. Miss Doe confirmed you informed her that the Sheriff's Office employee accused her of "coming on" to him, and the Sheriff's Office employee called her "violent and crazy." Miss Doe admitted to knowing it was wrong for her to be provided with this information.

Investigators asked Miss Doe if her relationship with you was flirtatious and romantic at work, and, she replied, "Yes, it was." Miss Doe provided information about you and her holding hands and kissing on the mouth while at work on several different occasions before and after November 20th and 21st.

Miss Doe also confirmed that you and she had sexual intercourse inside your PSU office on November 20 (Saturday) and 21 (Sunday), 2021. Miss Doe said she went to work on November 20th, with the intent of working on the BlueTeam project and spending time with you. Miss Doe said you were on-duty, dressed in a KCSO uniform, and had your radio turned on when you both engaged in consensual sex in your office at PSU.

Miss Doe told investigators she spoke to you on November 21, 2021 and you both decided to meet again at KCSO Headquarters. Miss Doe told investigators she assumed the reason for the visit was to have sex. Miss Doe said you were on-duty, dressed in a KCSO uniform, and believed you had your radio turned on when you both engaged in consensual sex in your office at PSU.

When Miss Doe was asked if you gave her preferential treatment or treated her differently, Miss Doe replied you did. She stated that she felt like she was being "coddled" and given work assignments that would benefit her professionally and look good on a resume. Miss Doe also felt like she was being given more mentorship by you.

On March 25, 2022, you were interviewed by Commander John Carpenter and Lieutenant Augustin Moreno. During the interview, you admitted to having sexual intercourse with Miss Doe on November 20 and 21, 2021, while you were on duty as the Watch Lieutenant. You admitted both incidents occurred inside your office at KCSO Headquarters. When asked if you felt you were still able to effectively manage the KCSO operations as the ranking member (while being the Watch Lieutenant), you said you felt you were able to respond to a situation that required your attention; however, you were not actively monitoring KCSO operations at that time.

You admitted there was kissing and hand holding between you and Miss Doe while driving or in the PSU office and outside the presence of others. These displays of affection occurred prior to November 20 and 21, 2021.

You explained you did not attempt to influence the criminal and/or the administrative investigations into Miss Doe's allegations against the Sheriff's Office employee. However, you asked for, and received, updates during the criminal investigation and even expressed your concerns about the criminal investigation to Command Staff. After you were provided confidential information about statements a Sheriff's Office employee made during an Internal Affairs interview, you provided said confidential information to the complaining witness, Miss Doe.

During your interview with Commander Carpenter and Lieutenant Moreno, you explained you released information that you felt would not influence the outcome of the investigation as a means to support Miss Doe. You admitted had you not been in a close relationship with Miss Doe, you would not have released confidential information to her.

You also explained you felt Miss Doe would have been given this information in a subsequent interview with Internal Affairs, thereby becoming aware of what was said. You later conceded that this information was confidential and released outside of the normal procedure, and was not yours to release. You admitted to Commander Carpenter that you became emotionally involved in the investigation, you "f'ed up", and made a poor decision.

During the Internal Affairs investigation, Commander Carpenter discovered your assigned department vehicle was not equipped with Zonar (which is a GPS tracking system). You admitted you failed to have Zonar installed but stated you did not interpret the notice to have Zonar installed as an order.

During the interview, you stated you were accepting responsibility for your actions. You explained personal problems had a significant impact on your decision-making but these matters have been addressed and will not happen again. You asserted this incident was not an accurate reflection of your character.

CONCLUSION

On April 26, 2022, the Discipline Review Board convened and reviewed the above-described case. The Discipline Review Board considered all documents related to this case and your statements made during this investigation. After full consideration, the Discipline Review Board determined that termination from your position as a Sheriff's Lieutenant with the Kern County Sheriff's Office is an appropriate level of discipline to propose. It is clear you had an inappropriate sexual relationship with your subordinate while on-duty. You also negatively affected a serious Internal Affairs investigation by releasing confidential information to the complainant, Miss Doe, in which she alleged a Sheriff's Office employee sexually assaulted her.

The seriousness of your misconduct undermines the trust and leadership placed in a Lieutenant that the community, administration, and our staff expect. Further, you abused the authority entrusted in you as a manager of the Sheriff's Office. Your behavior creates a lack of trust within the Sheriff's Office. As the ranking on-duty member of the Sheriff's Office, your on-duty behavior prevented you from fulfilling your duties as the Watch Lieutenant. Your conduct fell short of the public's trust and expectation that while on duty you are available to respond to, and manage, emergencies and critical incidents. The public expects law enforcement officers to carry themselves with the utmost moral character. Actions, such as these, negatively influence the public's perception and trust in law enforcement.

In November 2021, after you were assigned to PSU, you took advantage of your position to get confidential information about the Internal Affairs investigation, which you then provided to your subordinate, Miss Doe, with whom you were involved in a sexual relationship. You violated the right of a Sheriff's Office employee to confidentiality during his Internal Affairs investigation into personnel matters. It is obvious you made the conscious decision to get involved in the investigation and violate the integrity of that investigation – one day after having had sex with Miss Doe, in your office, while on duty.

You accepted responsibility for your actions; however, minimized the gravity of obtaining and releasing confidential information, as well as the consequences your actions could have on the Sheriff's Office. Due to your misconduct, you have exposed the Sheriff's Office to unnecessary liability from multiple active and former members of the Sheriff's Office. You violated the right of a fellow employee to confidentiality in his Internal Affairs investigation. Additionally, you isolated a potential sexual assault victim by moving her under your control and assuming supervision of her, permitting yourself unrestricted access to pursue an intimate relationship with her while she was at work. You then engaged in an inappropriate sexual relationship with this victim, further exposing the Sheriff's Office to liability. Whether this relationship was mutual or not, it was inappropriate and one that woud be perceived as an abuse of power because you were in a position of authority over Miss Doe. Having sex with your subordinate while on duty as ***THE*** top ranking position for that day is inexcusable and is a prime example of what someone with no regard for the people he is entrusted to protect – civilians and staff – would do. To allow you to continue with your employment would condone the behavior you exhibited. Where there is power asymmetry, ie one person has actual or apparent power or authority over others, there is an absolute dependency on the integrity of the dominant party, and it is obvious you lack the required integrity

to continue in any capcity with the Sheriff's Office. As a peace officer, at any rank, you have significant power over the community you are meant to serve and protect.

Policy and procedures are developed, adopted, and practiced for many different reasons. You are considered a professional employee who represents the Kern County Sheriff's Office, and as such, you are expected to adhere to all lawful regulations, State and Federal Laws, and Sheriff's Office Policies and Procedures. Your actions in this matter do not represent sound judgment, and clearly do not reflect the professional image which is expected of a member of the Sheriff's Office. It is evident you have violated the policies and procedures of the Kern County Sheriff's Office, as well as the Rules of the Civil Service Commission of the County of Kern. Your violations of these established policies and procedures support this discipline.

ADMINISTRATIVE PROCEDURE

According to Section 1730.00 of the Rules of the Civil Service Commission, you may appeal this action to the Civil Service Commission. Specifically, you must advise Maria Murbach, the Secretary of the Civil Service Commission, within 10 business days of your receipt of this letter. Ms. Murbach may be reached at 1115 Truxtun Avenue, Bakersfield, CA 93301, in the Kern County Human Resources Division.

Should you not wish to appeal this action to the Civil Service Commission, you may still file a written response on your behalf. Pursuant to Section 3306 of the Government Code, such response must be submitted within 30 days of your receipt of this letter. A copy of any response shall then be attached to and shall accompany this Disciplinary Notice.

Sincerely,

By: Donny Youngblood, Sheriff-Coroner
County of Kern

cc: Bryan Alba, Chief Deputy County Counsel
Personnel File, Human Resources Division, Attn: Devin Brown
IA file
Department Personnel File
Payroll
Chief Deputy Erik Levig
Commander Mark Warren
/jmc

By my signature below, I acknowledge receipt of this Notice of Disciplinary Action – Termination, dated August 15, 2022, and I understand that a copy may be placed into my personnel file.

REFUSED TO SIGN

8/15/22 @ 1511 HRS

Received By

Date/Time

Served By

Date/Time

2693011.DOCX

Commission on Peace Officer Standards and Training
860 Stillwater Road
West Sacramento, CA 95605-1603
www.post.ca.gov

On May 1, 2023, Justin Weidenkopf was interviewed in a conference room located at the California Department of Consumer Affairs, Bureau of Automotive Repair, 3331 North Sillect Avenue, Bakersfield, California by Kevin Sherburne and Darryl Elliott, Law Enforcement Consultants at the California Commission on Peace Officer Standards and Training ("POST"). Communications by the parties during the interview were electronically recorded. The recording will serve as the true and accurate record of the statements made by Weidenkopf. After being advised of the identity of the interviewers and the purpose of the interview, that being to obtain information related to allegations of serious misconduct, Weidenkopf provided the following information:

At the time of the criminal investigation of S1, Weidenkopf was the sergeant supervising that investigation. The lead investigator was Ray Seibert. James Money was also working it. There was a transition period where Bess Rutter came in. Rutter worked for David Hubbard and she came over to PSU when Hubbard transferred to PSU. She would not have come to PSU until the end of summer or August 2021. Rutter came over as part of a deal to come over to PSU with Hubbard from IA.

It was unusual for someone to be in the IA position as lieutenant for such a short period of time. But Kern County Sheriff's Office ("KCSO") needed someone in PSU because the PSU lieutenant had just retired. Hubbard's background was criminal, not administrative. Weidenkopf did not know if Hubbard came to PSU as a result of Hubbard's intervention in the S1 criminal investigation. KCSO had a thing where if you were a lieutenant or higher, you did not have a right to a particular assignment and served at will. Hubbard wanted to stay in IA and was making changes there. It worked out for both the new IA lieutenant and Hubbard for Hubbard to go to PSU.

Juan Trevino was the lieutenant at PSU. As such, he reported directly to the Undersheriff. At that time, the stipulated judgment hit and KCSO needed to put together a new compliance and standards division. That was assigned to Erik Levig.

Hubbard went to this then-bureau chief, Damian Nord, to complain about the PSU investigation of S1. Nord went to Doug Jauch. Jauch called Weidenkopf and Trevino into his office. It was early in the investigation, likely late April or early May. Weidenkopf did not know if Jauch called or texted. Levig came in as PSU commander. Legiv and Trevino also met with Jauch and brought it back to Weidenkopf. They asked Weidenkopf questions to clarify what they had told Jauch and then brought Weidenkopf back up with them to meet with Jauch.

Jauch was satisfied they were not idiots. Jauch ordered them not to give updates to IA. The impression was that something was breaking down in IA, they did not know what it was and they may not have known it was Hubbard. The order was that all communications with IA would be at the sergeant level, but Weidenkopf conceded that communications with IA might have been in the hallway. Danny Perez was brand new in IA as a sergeant. Carpenter was the lead lieutenant on the S1 IA case. As sergeant, Perez supervised the investigators. Weidenkopf did not know if Perez had the IA of S1.

After V1's initial interview after she brought forward allegations against S1, she did not want to pursue it criminally. Weidenkopf's strategy was to interview everyone in detectives and lock them all into their stories. They had the same line of questioning for witnesses and looked for other possible victims. PSU met again with V1 and she again reiterated she did not want to pursue the case criminally. That's when Hubbard started questioning PSU's investigation. If he had a personal interest in protecting V1 or vindicating her, Hubbard would have been motivated to intervene in the investigation. V1 was "everyone's little sister," and was workplace friends. Weidenkopf was not aware at that time that Hubbard's wife was babysitting V1's children.

Weidenkopf did not know that Hubbard was talking to V1 and, after reviewing a memorandum he drafted in December 2021, recalled that Hubbard had talked to V1. Weidenkopf learned from V1 that she met with Hubbard twice outside the presence of PSU investigators. That was before Hubbard transferred to PSU, which occurred about May 21, 2021. It was unusual for anyone outside the unit to have contact with a victim. Had he known that Hubbard was meeting with V1, Weidenkopf would have spoken with Hubbard. Weidenkopf was in IA's offices one day and Hubbard told V1 this is going to have to happen because you deserve justice – that, if S1 did it, he needed to be held accountable.

V1's reticence was based on her desire not to have to testify. She actually did not report it directly. She told a deputy and the deputy reported it.

V1 had a laundry list of medical problems. She had Pott's disease, a syndrome where she'd faint. She would walk up stairs and faint, which happened about once a month. Between 2017 and 2021, there was an ambulance about three to four times, plus KCSO staff got her to the hospital about six times.

Weidenkopf did not know if Hubbard carried her to his office after fainting.

V1 also had allergies to everything and they had to EPI pen her. An analyst drove her to the hospital. Hubbard was not there that day. Weidenkopf would put her in a chair and roll her into the office, where she would recover. Hubbard monitored her. He went to the hospital with her one time and stayed with her, while he sent Weidenkopf's staff back to theoffice. This was in about June 2021. She got transferred over to work with Weidenkopf and Hubbard in late June/early July.

V1 was classified as a Sheriff's Aide. Hubbard and Levig were building the body worn camera ("BWC") unit. They had a room next to PSU on the second floor. There were ten aide positions, but KCSO was only going to staff five of them and leave five vacancies in the Office of the Undersheriff. V1 was assigned to the complaint unit in detectives. Carpenter complained that Hubbard just came in and took her. Things were getting hot for her in detectives after she made allegations against S1 as people were questioning which woman in the building pulled the alarm. So, Hubbard brought her to PSU to save her. Weidenkopf did not complain because V1 was a good worker. Weidenkopf had written a memo to justify an analyst role to be created and the transfer made sense. KCSO did not have any analyst positions at that time.

V1's medical episodes continued and everyone was on the lookout for her because she'd be passed out in the hallway or cubicle. In August 2021, Hubbard came in and assumed supervisory duties over V1. He came in and said he needed her file and needed her in his section. He said she was performing section responsibilities, not unit responsibilities. An "EPR" is an annual review unless an employee is probationary. Weidenkopf did not question Hubbard taking over her supervision. Weidenkopf was relieved because he was supervising a lot of important things at the time and did not want to be any part of what V1 was working.

Looking back on it, there was a chain of causation. Weidenkopf missed it at the time. Hubbard was giving special project assignments to V1. Weidenkopf did not see special treatment, that Hubbard gave her flowers and told her she was pretty.

Weidenkopf only learned of Hubbard's wife babysitting for V1's children in July 2021. V1 drove early in the morning to Hubbard's house, have coffee, and drop her children off. Weidenkopf did not know what agreement there might have been for payment. Hubbard and V1 lived about as far apart as you could in Bakersfield. Hubbard lived in Rosedale, while V1 lived out East.

In April to May 2021, while Weidenkopf was walking between buildings on KCSO campus, Hubbard stopped him and asked for an update on the PSU investigation of S1. Weidenkopf told him that was not going to happen and referred Hubbard to Weidenkopf's chain of command. Hubbard got made and gave a look or said "what the hell" or something to that effect.

The practice up to about May to June 2021 was there was no instance where a prosecutor met with the PSU lieutenant without notifying or involving the investigators. Weidenkopf's practice was that the sergeant and detective met with the prosecutor, not the lieutenant. He brought the lieutenant one time to meet the prosecutor and he sat in the corner and did not say a word. Hubbard did not really attend a meeting with Ken Russell as V1's representative. Weidenkopf had one discussion with Russell about the S1 investigation. He did not know if Russell thought Hubbard was at the meeting as V1's representative or as lieutenant of PSU. Either V1 had cold feet or Russell passed on prosecution.

There was no hard line when it came to conflicts of interest. It's always a hard question for investigators.

S1 lives in Weidenkopf's neighborhood. Two days prior to the case breaking, S1 was in Weidenkopf's driveway with a golf cart and S1's kid. To investgate S1, KCSO needed someone one rank higher than S1. Weidenkopf conflicted himself out of the interview with S1 and Trevino himself did it.

Hubbard is highly intelligence and likely the most respected investigator. He knows the most defensible thing to do is recuse himself in the event of a conflict.

Weidenkopf did not know why V1 put doors on her cubicle. The doors went up in June 2021. Weidenkopf did not see flirtation or touching and complimenting each other's appearances. Although she was in her mid-20s, she acts at times like a 2-year old and at other times like a 55-year old.

After S1's IA interview, Hubbard was visibly upset. He had to walk through Weidenkopf's office to get to his office and Weidenkopf saw his body language. Hubbard was angry for a couple of days. Weidenkopf waited a couple days and went into Hubbard's office and asked what was wrong. Hubbard said that S1 made allegations and he was dragged into this thing and may have to lawyer up. Hubbard did not tell Weidenkopf what the allegations were. Hubbard was down in IA fishing for information and they told him he was about to be a subject officer. Perez handled S1's IA and Carpenter handled Hubbard's IA.

Perez and Hubbard had a good relationship. They were a super respected duo. Perez became acting lieutenant in homicide after Hubbard and Hubbard pulled Perez into IA. They were tight.

Hubbard and S1 were never assigned as detectives at the same time. Hubbard would not have likely supervised Special Victims Unit where S1 was. Weidenkopf did not recall any drama but they were not hanging out after work.

Commission on Peace Officer Standards and Training
860 Stillwater Road
West Sacramento, CA 95605-1603
www.post.ca.gov

On May 2, 2023, David Hubbard was interviewed in a conference room located at the California Department of Consumer Affairs, Bureau of Automotive Repair, 3331 North Sillect Avenue, Bakersfield, California by Kevin Sherburne, Law Enforcement Consultant, and Christine Ford, Bureau Chief, at the California Commission on Peace Officer Standards and Training ("POST"). Communications by the parties during the interview were electronically recorded. The recording will serve as the true and accurate record of the statements made by Hubbard. After being advised of the identity of the interviewers and the purpose of the interview, that being to obtain information related to allegations of serious misconduct, Hubbard provided the following information:

Hubbard was promoted to lieutenant in 2020. He was in charge of the Internal Affairs ("IA") unit for about three or four months.. The lieutenant in the Professional Standards Unit ("PSU") promoted to commander and Hubbard was asked to take it over. Doug Jauch was the Undersheriff. It was not unusual for a lieutenant to have a two month assignment. As a lieutenant, you are at the mercy of the department. You don't bid or request to transfer. Hubbard had extensive experience in investigations and had internal investigations experience. PSU had some investigative experience, but no one had the same depth of experience as Hubbard.

PSU reported to the compliance and standards commander and also directly to the Undersheriff. Kern County Sheriff's Office ("KCSO") created a new commander position for Erik Levig. Levig's job was to work on the stipulated judgment. IA reported to Damian Nord, who was a chief deputy at the time. Nord was Hubbard's supervisor in several capacities for nearly ten years. Levig and Hubbard worked in patrol together in 2008-09 and were partners in homicide in 2015. They each became sergeants on metro patrol.

Justin Weidenkopf was a detective in the burglary unit when Hubbard was a sergeant in homicide. Weidenkopf had a good understanding of burglary/theft cases and crimes against persons. Weidekopf had a different type of experience than Hubbard. They saw things differently. Weidenkopf sees very black and white, whereas Hubbard does not. Hubbard has had different types of investigative experiences, including administrative cases, homicide, sexual assault. Financial crimes investigations can be black and white. Later, when Weidenkopf worked for Hubbard in PSU, Hubbard and he had a difference of opinion in leadership. Again, Weidenkopf is more black and white. Hubbard refers to Weidenkopf's supervision of staff. Hubbard was very lenient and laid back on comings and goings. If someone came in late for work because they had to drop their kids off at schools or a had a doctor's appointment, Hubbard was not as rigid as Weidenkopf. Weidenkopf expected his staff to be there at 8:00 a.m. sharp. He's not wrong in that, but Hubbard allowed more flexibility. The two had discussions, not arguments about leadership style.

V1 V1 was not on a performance improvement plan. Hubbard was not aware of any performance problems, but she did come in late and she made up the time on the back end of her shift. She regularly worked past her scheduled time. She was not claiming overtime – she made up the time for coming in late. She came in late because she had childcare problems and medical appointments. She has a litany of medical issues, including POTS disease, which is a cardiovascular issue. Her heart rate increases and blood pressure decreases, resulting in fainting and being unresponsive. She was taken to the hospital. She also has allergies, which also sent her to the hospital at some points.

Hubbard and a few of the people in the office carried her. The solution was to have her lie down. Everyone in the detectives unit was aware of her situation. They helped her into a chair several times. Hubbard only recalled carrying her on one occasion. Hubbard drove her home and her boyfriend at the time was not home. She could not walk all the way up the driveway and he "picked her up and carried her" from the driveway to her house because she wasn't going to make it. This was in approximately 2019. Hubbard also helped her from the ground to a chair. Hubbard is confident that he also brought her to his office, but does not recall closing the door. There is no couch in his office.

From April 2021 onward, V1 had numerous fainting spells. She was found on the stairs even. Between fainting and allergies, she was in the hospital several times. Because the office was upstairs, that aggravated her situation.

The first time that Hubbard saw her faint, he was not aware of the situation and made her go to the hospital. She told him she knew how to regulate the situation. This was in 2017 or so. Hubbard was not aware if she went to the hospital again for fainting but she did go to the hospital for allergies after being given an EPI pen. EPI injections may have happened twice.

Hubbard was in the process of creating a position in PSU. V1 was in the unit at the time doing the job. The position was for someone. It was not specifically for her. There was a decision to have someone run Blue Team analysis. She had been assigned to that role and was functioning as an analyst.

V1 came to PSU based on a call she made to Hubbard. She had been working in detectives and called Hubbard very upset about the atmosphere. She wanted out. Hubbard to the matter to Nord and the other chief deputies but he did not recall who else he spoke with about V1 transfer. Trevino was in PSU and Hubbard was still in IA when the call happened. He discussed it with the Undersheriff. The solution was that PSU would be a good spot because it required an analyst.

The atmosphere V1 described was that the detectives were judgmental of her decision to make allegations against S1 S1 and she felt isolated from her co-workers. No one really knew what happened, and some speculated that V1 had targeted S1 or lied about what happened. She felt that she was not welcome there anymore.

V1 had reported sexual assault by S1 to a co-worker and she was encouraged to report the matter to Sergeant Newell, who documented it. Hubbard was in IA at the time she reported the allegations. The allegations went to PSU. IA did not learn of the allegations right away, but shortly thereafter. Because S1 would have to be placed on administrative leave, IA had to become involved.

PSU expressed some concerns about the allegations and having trouble obtaining corroborating evidence. Trevino and possibly Weidenkopf informed Hubbard that she did not want to wear a wire. They told Hubbard the allegation and said they did not have corroborating evidence. They were unable to convince her to wear a wire. Hubbard offered to talk to V1 and he did talk to her. Hubbard knew criminal allegations like this were hard to prove. Hubbard had extensive investigative experience and had gotten victims to cooperate. Hubbard did not recall exactly how it happened that he asked V1 to wear a wire.

The day after the allegations came to light – at some point in the morning and before lunch – Hubbard and V1 met in person in Hubbard's IA office. No one else was in the room. Hubbard told her not to tell him the allegations and said to her that, if what you allege is true, we need corroboration. Hubbard explained the process of wearing a wire. She was uncomfortable with it, which is not unusual. Ultimately, she concluded that she disclosed it for a reason and she did not want S1 to get away with it. Hubbard did not have it out for S1 Hubbard was in charge of detectives when the alleged conduct occurred. S1 was an on-call detectives and did not work directly for Hubbard.

At the time of the incident, Hubbard was lieutenant in charge of detectives. V1 was a Sheriff's Aide working in the complaint unit for detectives. S1 was a sex crimes detective.

In April 2021, Hubbard and V1 were friends. Their families hung out together and celebrated birthdays. R9 R9 V1 significant other, also came to Hubbard's house. Hubbard's wife provided childcare to V1 children from January 2021 to mid-2021. She no longer wanted to provide childcare and so stopped. The Hubbards have their own children and it was too much to care for four children. In addition, Hubbard's wife had concerns about his friendship with V1 Hubbard's wife felt the relationship was too close, too casual. Hubbard denied flirting with V1 and, other than a hug here and there, no physical contact. Hubbard's wife has always had access to the passcode for his work phone. She is not a law enforcement officer, is not employed by Kern County Sheriff's Office, and never worked for a law enforcement agency. She did not have a purpose to have access to his work phone. He did not have a reason to hide things from his wife. At times, he gave the phone to her so she could reply to text messages that he dictated when they were driving.

Hubbard in detectives from 2012-15. V1 was in complaint unit doing paperwork for deputies in patrol filing complaints. In 2015-17, Hubbard was metro patrol sergeant. In about 2017, V1 went to complaint unit and that is

when Hubbard first supervised her. Hubbard first met her when he was in patrol and she was in complaint unit.

Hubbard first met V1 in 2016-17. They started kissing and holding hands in October or November 2021. She had been in Florida and they talked by phone. There was no physical relationship beyond friendship or professional relationship prior to that. Hubbard was experiencing marital problems at the end of 2020 and into 2021. He and his wife were having marital issues. In July 2021, there was a shooting and it was the first shooting he was involved in and the first time someone who died in front of him. He returned to work immediately and did not handle things as he should have. He was trying to be tough and show strength for SWAT co-workers. The investigation of the shooting was the first investigation in years that Hubbard was not involved in and the detectives had a lot of questions.

His wife was very upset. She was watching Facebook live when the shooting occurred and thought he had been killed. V1 also struggled because she and Campos worked at the jail together. Hubbard and V1 confided in each other. They started to have a closer connection after the shooting, which occurred July 15, 2021. In July 2021, Hubbard was lieutenant in PSU. Marital problems preceded July 15, 2021. Hubbard's wife did not have other reasons to suspect Hubbard was having affairs with other women.

Hubbard told Weidenkopf that he was going to supervise V1 Hubbard did not recall the date of that. No one knew what the position would look like. Hubbard built the Body Worn Camera Unit from scratch. Over time, V1 became entirely consumed with Blue Team duties and not PSU duties, which Weidenkopf supervised. V1 started receiving conflicting tasks from Hubbard and Weidenkopf. Hubbard's work was the priority and he had deadlines to meet. Hubbard spoke with Levig and Levig agreed the plan to have Hubbard supervise V1 made sense. Levig was the commander whose sole responsibility was the stipulated judgment. Technically, Levig was Hubbard's supervisor, but Levig rarely dealt with PSU. Hubbard split his time 50-50 or more in favor of the stipulated judgment as a use of force expert.

Days after the criminal investigation of S1 started, Hubbard went to Nord and met in Nord's office. He did not recall why he complained. PSU was struggling significantly. Their questioning of the detectives was vague and ambiguous and not something that would allow them to garner evidence. Hubbard did not recall exactly what he told Nord other than issues in how the investigation was going. Hubbard did not intend to be unkind or mean. Hubbard simply had 7entially more experience in investigations. No one in PSU had ever investigated sexual assaults at the detective level.

Hubbard learned of the investigation strategy through the normal course. Juan Trevino or Weidenkopf gave him updates. It was not just this case that he received updates. It was all cases. Hubbard knew that all of the cases would ultimately come to IA.

Hubbard did not recall the specifics of the conversation with Nord. Nord and Hubbard went to Jauch. Hubbard did not recall where it went from there. Hubbard did not know what Jauch did after that. Hubbard continued to receive updates throughout the investigation. Hubbard did not recall Weidenkopf refusing to provide him an update. Hubbard denied hearing any orders given that PSU was not to provide updates to Hubbard. There were no emails or text messages regarding PSU's investigative strategy.

Ken Russell was a deputy district attorney responsible for reviewing criminal allegations against law enforcement officers. Russell called Hubbard and said he heard Hubbard was over PSU, needed to talk to V1 and wanted to meet with her. Hubbard took V1 to Russell's office to meet with Russell. Russell did not give her an indication during that meeting that he was not going to proceed with prosecution – that came later. Hubbard was at the meeting in a professional capacity and the facilitator of the conversation between Russell and V1 Russell was aware that V1 worked for Hubbard in PSU. Hubbard is "pretty sure" that he told the investigators he was going to the meeting with Russell. He did not have independent recollection of it, but it was not a secret. The time between that meeting and the decision not to prosecute was about a week – it was not very long.

When V1 received notice she was to be interviewed in regards to Perez' IA investigation of S1 she asked Hubbard in person to be her personal representative. Hubbard called Danny Perez and recognized the fact that his position in PSU and his knowledge of the entire investigation could pose an issue, so he talked to Perez and Perez talked to his bosses. They decided it was OK for Hubbard to be involved. Hubbard – not V1 – told Perez he was going to represent her. It was not unusual for a representative to reach out to the investigator. Where the representative has knowledge of the case was a unique circumstance. Hubbard was making sure his involvement was OK by reaching out to Perez. Hubbard asked Perez about representing V1

Hubbard and V1 did not hold hands or kiss until after her interview. The physical contact occurred after V1 returned from Florida.

Prior to the S1 interview, Perez and Hubbard discussed the interview. They knew each other for a long time. Perez had asked Hubbard to look over questions, provide ideas about tactics, and anticipate what S1 might say. On November 23, 2021, Hubbard stopped by Perez' office after the interview and asked how it went. There was no intent to draw information from him. The timing was less than ideal after the previous weekend but Hubbard had an interest in the case from Day 1. Perez told Hubbard that S1 took a left turn during the interview and told Hubbard that S1 alleged he was having an affair and Perez might have to interview him. Hubbard did not recall if he helped Perez plan the S1 interview before or after V1 was in Florida. Hubbard did not disclose to Perez at this time that he had had an affair with V1 Hubbard denied he should have disclosed his relationship to

Perez at this time. From the moment Perez told him S1 accused Hubbard of having an affair, the "wheels start spinning" and Hubbard went into panic mode.

Perez told him that S1 had made three allegations: that Hubbard and V1 had an affair; that V1 was crazy; and that V1 had come onto S1 S1 did not provide a timeframe for the alleged affair. S1 also alleged other people had affairs with V1 Hubbard returned to his office. He felt like wheels were spinning. Weidenkopf picked up on his emotions and asked how he was doing. V1 asked Hubbard if S1 had his interview. She knew it was scheduled for November 22, 2021. Hubbard told her she might need to be interviewed again. He told her to be honest and he'd be honest, too. V1 asked him why he would need to be interviewed. He told V1 that S1 alleged they were having an affair. Later in the same conversation, Hubbard told V1 the other two allegations. She asked what else did S1 say in addition to the affair. He was in a state of panic. They did not develop a plan to tell their respective partners of the affair. V1 was upset. She did not want to be interviewed again. They knew the allegation of an affair from the past was not true.

Hubbard was hopeful that he would not have to be interviewed or tell his wife. He was concerned about his wife, his children, his job.

Hubbard did not have conflict of interest concerns about his November 23 conversation with Perez or from mid-June on. Hubbard was not aware of any conflict of interest rules. There is a county rule regarding nepotism but that did not apply. Asked whether Hubbard's personal judgments cloud his professional obligations, Hubbard denied he had any obligations to disclose his relationship with V1 He recognized a personal and professional relationship can be sticky.

Asked about timeline in looking at events and the potential that on November 23, the situation looked odd, Hubbard stated that his mindset at the time was that "someone pulled the plug out of the drain and things began to circle" and he did not seek more information and did not intend to tell V1 anything. Hubbard did not have concerns about having a conversation with Perez. They did not anticipate that S1 would say Hubbard and V1 were having an affair. Hubbard may not have really heard what Perez said after the affair allegation.

Hubbard did not know if KCSO had a conflict of interest policy. Hubbard did not recall if he signed an acknowledgement regarding conflict of interest.

Shown Kern County Ordinance 2.02.010, Hubbard stated that there were a million of these types of ordinances and believed it was the first time he saw the ordinance. Asked whether he violated the ordinance, Hubbard stated he never attempted to use his position of prestige or influence. He and Perez had a personal friendship. Hubbard denied using his influence and prestige in the office to gain information. Perez was a friend of his for yours; it wasn't a situation where a lieutenant was ordering a sergeant to give information. Besides, what Hubbard

disclosed to V1 did not impede the investigation or was detrimental to the investigation. The criminal case had ended and the IA was ongoing. There was no private gain or advantage.

When V1 came to the office on November 21, she had been out shopping and did not have her access card to enter the KCSO compound. Her access card had been stolen and she stopped carrying the card with her. It might have been V1 perception to come to the office to have sex in the office, but it was not Hubbard's perception.

Hubbard did not know specifically what S1 referred to about a past affair between Hubbard and V1 S1 made numerous allegations of affairs between V1 and other men.

PSU and IA do not require their employees to sign non-disclosure agreements.

V1 request of Hubbard to transfer out of detectives was because they were friends and he helps all of his employees any way he can, even if the issue is not under his purview. She knew she could come to him and tell him her challenges and he would do something about it. She did not feel comfortable going to her supervisor at the time.

At the conclusion of the interview, Hubbard provided additional information. He had an impeccable career for 16 years. He has not had any significant disciplinary problems. His career was fast and he was the department's youngest sergeant and lieutenant. He has always maintained good morals. He had a significant lapse in judgment on November 21 because of personal issues. The situation was purely personal.

At the conclusion of questioning, Sherburne offered Hubbard the opportunity to provide any additional information he wanted. Hubbard provided the following information:

- Dishonesty: Hubbard has been honest throughout the entire investigation and provided information to Levig. He was honest during the IA and Skelly. County Counsel Bryan Alba even stated that he had never seen anyone so honest.

- Sexual assault: This is a terminology issue and the situation involved two consenting adults.

- Acts that violate the law: It was a consensual relationship and did not violate the law. It is splitting hairs to go after him for what he told her about what S1 said during his IA interview. Hubbard did not have intent to obtain or provide information. He had previously represented V1 and was in despair.

- Abuse of power: The letter from KCSO misrepresents the relationship he had with V1 Hubbard gave many people opportunities and fostered growth.

In sum, Hubbard stated that nothing affected his ability to perform as a peace officer.

KERN COUNTY SHERIFF'S OFFICE
INTERNAL AFFAIRS UNIT
Investigative Report

Interna] Affairs Investigation **Received: December 6, 2021**

IA Case Number: DIIA2021-0036 **IA Investigator: Commander J. Carpenter**

SUBJECT OFFICER:

LIEUTENANT DAVID HUBBARD
Badge/ID: 1039/201784
Bureau: Detentions
Division: Downtown Services
Section: Central Receiving Facility

ALLEGATIONS:

CSR 1705.03	Conduct unbecoming an employee in the public service.
CSR 1705.04	Disorderly or immoral conduct.
CSR 1705.09	Neglect of duty.
CSR 1705.11	Violation of any lawful or reasonable regulation or order.
DPPM B-200	Duties of Personnel - Deputy Sheriffs.
DPPM B-300	Duties of Command Officers and Supervisors.
DPPM B-310	Sheriffs Office Watch Commander.
DPPM C-100	Rules of Conduct - Law Enforcement Personnel.

Reviewed by: Date: 4/8/2022

SUBJECT OFFICER:

(FORMER) SHERIFF'S AIDE V1 V1
Badge/ID: 201784
Office of the Undersheriff
Division: Compliance and Standards
Section: Professional Standards (TDY)

ALLEGATIONS:

CSR 1705.03	Conduct unbecoming an employee in the public service.
CSR 1705.04	Disorderly or immoral conduct.
CSR 1705.09	Neglect of duty.
CSR 1705.il	Violation of any lawful or reasonable regulation or order.
DPPM B-100	Duties of Personnel - All Members.
DPPM C-200	Rules of Conduct - Non-Sworn Personnel.

OFFICER WITNESS:

CHIEF DEPUTY ERIK LEVIG [971/201542]
Bureau: Detentions

SERGEANT JAMES NEWELL [878/201105]
Division: Investigations
Section: Detectives

SERGEANT DANIEL PEREZ [976/201545]
Division: Personnel
Section: Human Resources

SERGEANT RYAN PITCHER [1254/202394]
Division: Substations
Section: Northeast Area Substations

SERGEANT BRANDON RUTLEDGE [979/201268]
Division: Investigations
Section: Detectives

SERGEANT JUSTIN WEIDENKOPF [984/201688]
Division: Compliance and Standards
Section: Professional Standards

SENIOR DEPUTY JAMES MONEY [1201/201913]
Division: Special Investigations
Section: Special Enforcement

SENIOR DEPUTY BESS RUTTER [1210/202319]
Division: Compliance and Standards
Section: Professional Standards

SENIOR DEPUTY RAYMOND SEIBERT [1084/201917]
Division: Standards and Compliance
Section: Professional Standards

DEPUTY R9 R9 **[1311/202503]**
Division: Patrol
Section: Metro Patrol

DETENTIONS SERGEANT SCOTT HARBOUR [578/201497]
Division: Lerdo Facilities
Section: Pre-Trial

DETENTIONS SENIOR DEPUTY JAMES DUNLAP [920/202868]
Division: Compliance and Standards
Section: Professional Standards

DETENTIONS SENIOR DEPUTY JOSE HINOJOSA [467/201211]
Division: Compliance and Standards
Section: Professional Standards

SHAFTER POLICE OFFICER RACHEL CARRASCO (Former Detentions Senior Deputy)

SHERIFF'S SUPPORT TECHNICIAN [redacted] **[203548]**
Division: Compliance and Standards
Section: Professional Standards

SHERIFF'S SUPPORT TECHNICIAN [redacted] **[201837]**
Division: Investigations
Section: Detectives

ADMINISTRATIVE COORDINATORE [redacted] **[300083]**
Division: Personnel
Section: Human Resources

SHERIFF'S SENIOR SUPPORT SPECIALIST [redacted] **[203264]**
Division: Downtown Services
Section: Central Receiving Facility

ATTACHMENTS:

1. Kern County Sheriffs Office Complaint From.
2. Memorandum authored by Chief Deputy Erik Levig dated December 6, 2021.
3. Memorandums authored by Sergeant Ryan Pitcher dated December 3, 5, and 7, 2021.
4. Memorandum authored by Deputy [redacted] dated December 5, 2021.
5. Memorandum authored by Sergeant Daniel Perez dated December 10, 2021.
6. Memorandum authored by Sergeant Justin Weidenkopf dated December 10, 2021.
7. Memorandum authored by Senior Deputy Bess Rutter dated December 9, 2021.
8. Memorandum authored by SST [redacted] dated December 7, 2021.
9. Memorandum authored by SST [redacted] dated December 7, 2021.

10. Pictures of [redacted] cubicle.

11. Fleet Manager [redacted] Zonar email.

12. Commander Tim Posey and Communication Center Manager [redacted] email.

13. Technical Support Engineer II [redacted] email.

14. Sonitrol records for November 20 and 21 2021.

15. Picture of SA [redacted] at the front gate.

16. Lieutenant Hubbard and [redacted] time cards.

17. Cell Phone intent to search notification and cell phone extraction information.

18. Interview notifications and Interview Guides.

INVESTIGATIVE SUMMARY:

On December 6, 2021, Chief Deputy Adam Plugge authorized this Internal Affairs investigation (Attachment #1) after it was alleged Lieutenant David Hubbard and Sheriff s Aide [redacted] had an inappropriate sexual relationship. Hubbard is [redacted] immediate supervisor. It is further alleged the relationship took place in the Professional Standards Unit (PSU) office while Hubbard was the on-duty Watch Lieutenant.

Further investigation into this matter revealed, that Hubbard may have interjected himself into a current criminal/personnel investigation for personal reasons. This investigation involved accusations of misconduct [redacted] made against a Kern County Sheriff s Office (KCSO) employee. This investigation was conducted by PSU before being assigned to Internal Affairs.

On the evening of December 3, 2021, Deputy [redacted] called his supervisor, Sergeant Ryan Pitcher and informed him (Pitcher) he had been talking with [redacted] about their relationship. [redacted] and [redacted] were engaged to be married and have one child together. During the conversation, [redacted] disclosed to [redacted] that she had been "sleeping with" Hubbard.

On December 4, 2021, Chief Deputy Erik Levig received a text message from Hubbard, requesting a phone call. During the phone conversation, Hubbard informed Levig, that he (Hubbard) had an affair with [redacted] Hubbard explained he had informed his wife and [redacted] had informed [redacted] Hubbard requested a transfer and was subsequently moved to the Central Receiving Facility (CRF).

STATEMENTS

Officer Witness: Sergeant James Newell:

On January 12, 2022, I interviewed Sergeant James Newell at Sheriffs Office Headquarters. I told Newell he was being interviewed as a witness only and the interview was going to be recorded. Newell said he understood. I recorded the interview with a digital recorder. I transferred the digital recording to a computer file with this case number.

The following is a summary of my interview with Newell:

Prior to going on the record, I told Newell I wanted to interview him because he was assigned to detectives with both Hubbard and V1 When the interview started I asked Newell if he witnessed any inappropriate interaction between Hubbard and V1 Newell said, "No." I asked Newell, if he ever suspected they were involved in an inappropriate sexual relationship. Newell said, "No." Newell described Hubbard's relationship with V1 as "caring" due to V1 pre-existing medical conditions.

Newell had no further information to offer, I ended the interview.

Officer Witness: Sergeant Brandon Rutledge:

On January 18, 2022, 1 interviewed Sergeant Brandon Rutledge at Sheriffs Office Headquarters. I told Rutledge he was being interviewed as a witness only and the interview was going to be recorded. Rutledge said he understood. I recorded the interview with a digital recorder. I transferred the digital recording to a computer file with this case number.

The following is a summary of my interview with Rutledge:

I asked Rutledge how long he had worked with Hubbard and V1 Rutledge said he worked closely with both of them from the time he was assigned to the Detectives Section until their transfers. According to Rutledge, this would be roughly early 2019 to the date of their transfers. I asked Rutledge if he witnessed Hubbard treat V1 differently than other personnel assigned to the section. Rutledge explained, only in regards to V1 pre-existing medical condition. Rutledge told me outside of the accommodations Hubbard made for V1 medical condition, she was not treated differently. I asked Rutledge if he saw Hubbard and V1 leave the office and be gone for extended periods of time. Rutledge said, "No." I asked Rutledge if it would surprise him to learn they were involved in a sexual relationship. Rutledge said, "I was completely surprised."

Rutledge had no further information and I ended the interview.

Officer Witness: Deputy R9 R9

On December 5, 2021, R9 authored a memorandum regarding this incident (Attachment #4).

R9 documented a conversation he had with V1 where she discloses her sexual relationship with Hubbard. The majority of the memorandum documents R9 discussion with V1 about where her relationship with Hubbard took place. V1 denied the relationship took place at work.

End of summarized memorandum.

On January 13, 2022, I interviewed R9 at Sheriffs Office Headquarters. I told R9 he was being interviewed as a witness only and the interview was going to be recorded. R9 said he understood. I recorded the interview with a digital recorder. I transferred the digital recording to a computer file with this case number.

The following is a summary of my interview with R9

Prior to going on the record, I allowed R9 to review the memorandum he authored. Once on the record, I asked him if there was anything he needed to change or add. R9 told me the memorandum was accurate and the only thing he needed to add was an additional sexual encounter he was aware of between Hubbard and V1

I asked R9 how he knew Hubbard. R9 told me he met Hubbard through V1 and developed a friendship where their families would spend time together. I asked R9 if he believed the relationship between V1 and Hubbard played a role in Hubbard's wife's decision not to watch their child anymore. R9 told me he did not believe so.

I asked R9 what V1 told him about her pending sexual assault investigation. R9 said V1 was in the office alone with Senior Deputy S1 S1 when he touched her vagina over her clothing. R9 added the act was unwanted. I asked R9 if V1 transfer that Hubbard facilitated seemed odd to him. R9 told me at the time it did not and he felt they were just trying to remove her from the situation. I asked R9 if the move appears suspicious to him now. R9 told me it did.

I asked R9 if he felt the sexual encounter between V1 and Hubbard was a planned event on November 20, 2021. R9 told me he did not know and V1 told him it just happened; however, the November 21, 2021 encounter was planned. I asked R9 if he had any indication the relationship was occurring prior to November 20, 2021. R9 told me no and V1 explained to him they would talk a lot but the relationship had not become physical.

I asked R9 about November 21, 2021. R9 told me he worked that day. At some point V1 received a text message from Hubbard telling her, he missed her and wanted to see her. V1 left her children with a babysitter and then went to meet Hubbard at "work."

I asked R9 if there was any indication Hubbard was giving V1 information regarding personnel investigations she should not be privy to. R9 said, "Yes." R9 could not remember the exact date, but it was after his original memorandum. V1 informed R9 she had received information regarding S1 interview with Internal Affairs. V1 told R9 she (V1 knew things she was not supposed to know. I asked R9 what

information she was given. V1 said S1 accused her of being violent, crazy, and unstable. I asked R9 if V1 told him where she got this information. R9 told me she did not. I asked R9 if he was assuming this information came from Hubbard. R9 said, "Yes." I asked R9 if Hubbard ever talked to him about the S1 investigation. R9 said, "No." I asked R9 if the majority of the information he got about the S1 investigation was from V1 R9 said, "Yes."

R9 had nothing further to add and we concluded the interview.

Officer Witness: Chief Deputy Erik Levig:

On December 6, 2021, Levig authored a memorandum documenting a text message and phone conversation he had with Hubbard (Attachment #2).

The following is a summary of Levig's memorandum:

On December 4, 2021, Levig received a text message from Hubbard requesting a phone call. When Levig called Hubbard, he could tell Hubbard was upset. Hubbard told Levig, he (Hubbard) had "fucked up pretty bad." Hubbard told Levig he had been involved in an extramarital affair with V1 Hubbard said he was trying to salvage his marriage and requested a transfer. Hubbard was subsequently transferred to CRF. Levig's memorandum also described the circumstances that led to V1 transfer to PSU. Levig did not ask Hubbard any questions.

End of summarized memorandum.

On February 24, 2022, I spoke to Levig regarding his memorandum dated December 6, 2021. After reviewing his memorandum Levig had nothing further to add.

Officer Witness: Sergeant Justin Weidenkopf:

On December 10, 2021, Sergeant Justin Weidenkopf authored a memorandum regarding the staff misconduct between Hubbard and V1 (Attachment #6).

The following is a summary of Weidenkopf s memorandum:

Weidenkopf documents his knowledge of V1 and Hubbard's close personal relationship. In April of 2021, V1 made sexual assault allegations against S1 that led to a criminal investigation conducted by PSU, supervised by Weidenkopf. Shortly after the onset of the criminal investigation, Hubbard had two meetings with V1 outside the presence of PSU investigators. During this time Hubbard was assigned to the Internal Affairs Section. While assigned to Internal Affairs, Hubbard requested investigative updates from Weidenkopf. The quality of the investigation was then brought into question by Sheriffs Administration, prompting a meeting between PSU staff and Administration. At the conclusion of the meeting, PSU staff was ordered to provide no further updates to Hubbard. Shortly after this date, Weidenkopf saw Hubbard on KCSO grounds. Hubbard requested an investigative update that was denied by Weidenkopf.

On May 21, 2021, Hubbard was transferred to PSU, and in June facilitated V1 transfer to PSU. Upon V1 arrival at PSU, she fell under Weidenkopf s supervision. In August or September, Hubbard informed Weidenkopf he (Hubbard) would be taking over supervision of V1 due to her working on projects related to the section.

During the week of November 29, 2021, Weidenkopf observed a deterioration in V1 behavior. Weidenkopf learned V1 was having marital problems and later that day saw her enter Hubbard's office and close the door. Due to Weidenkopf s office sharing a door with Hubbard's he could overhear V1 crying.

On December 6, 2021, while preparing for a meeting with the Department of Justice, Weidenkopf learned Hubbard would not be attending. Weidenkopf contacted Hubbard via text message and learned of his affair with V1

End of summarized memorandum.

On March 1, 2022, 1 interviewed Weidenkopf at Sheriffs Office Headquarters. I told Weidenkopf he was being interviewed as a witness only and the interview was going to be recorded. Weidenkopf said he understood. I recorded the interview with a digital recorder. I transferred the digital recording to a computer file with this case number.

The following is a summary of my interview with Weidenkopf:

Weidenkopf told me his memorandum was complete and he had nothing to add. I drew Weidenkopf s attention to the portion of his memorandum where he discussed Hubbard taking over the supervisory duties of V1 I asked Weidenkopf if he felt there was anything that led to Hubbard taking over supervision of V1 Weidenkopf told me the due date of her EPR may have been getting close, but he was not sure. Weidenkopf explained that V1 was dealing with some issues and reporting to work late. Weidenkopf told me he had been addressing punctuality issues with V1 verbally. Weidenkopf felt there was a possibility Hubbard took over supervision of V1 to avoid her being punished. I asked Weidenkopf if this appeared odd to him. Weidenkopf told me it did; however, V1 was working on special projects assigned to PSU.

I asked Weidenkopf if he ever saw Hubbard and V1 hold hands in the office. Weidenkopf said, "No." I asked Weidenkopf if he ever saw Hubbard and V1 kiss in the office. Weidenkopf said, "No." I asked Weidenkopf if he ever saw Hubbard and V1 spend extended periods of time behind closed doors. Weidenkopf said, "Yes." Weidenkopf added one incident was discussed in his memorandum. Weidenkopf estimated V1 spent about one hour a day in Hubbard's office, sometimes with the door closed sometimes with it open.

I asked Weidenkopf if he was aware of any incident where Hubbard, acting in a criminal investigator capacity, had knowledge of a personnel matter involving S1 Weidenkopf told me he did. Weidenkopf explained after Internal Affairs interviewed S1 Hubbard began to act angry. Weidenkopf confronted Hubbard about his behavior and learned Hubbard was upset due to allegations S1 made against him, making him a subject officer in an Internal Affairs

investigation. Hubbard then mentioned having to call the union to obtain representation. I asked Weidenkopf if acting angry was out of character for Hubbard. Weidenkopf said, "Yeah, absolutely."

Weidenkopf had nothing further to add and we concluded the interview.

Officer Witness: Sergeant Ryan Pitcher:

On December 3, 2021, Pitcher authored the first of three memorandums regarding conversations he had with R9 (Attachment #3).

The following is a summary of Pitcher's memorandums:

On the evening of December 3, 2021, Pitcher received a phone call from R9 who informed him of the affair V1 was having with Hubbard. R9 did not know how long the relationship had been going on. Pitcher recognized the issue this presented with Hubbard supervising V1 in PSU.

On December 5, 2021, Pitcher authored an additional memorandum regarding conversations he had with R9 explained he had been talking to V1 about where the sexual interaction took place. V1 told R9 it was on her own time, but did not specify a location. R9 added that V1 would stay late at work and Hubbard was attempting to create a special position for her within PSU.

On December 7, 2021, Pitcher authored his final memorandum regarding this incident. R9 was hesitant to tell Pitcher the information because he believed the information could get the involved parties fired, and he did not want V1 to be financially unstable since they shared a child.

R9 told Pitcher he spoke with V1 again in person and recorded their conversation. Pitcher asked R9 if he recorded the conversation because the information he received was potentially criminal. R9 believed the information was criminal in nature.

R9 asked V1 for further details regarding her sexual encounter(s) with Hubbard. V1 told R9 the first sexual encounter occurred on Saturday, November 20, 2021. V1 went into work on overtime to work on the BlueTeam system. V1 told R9 she was unaware Hubbard was at work as well. V1 said she had sexual intercourse with Hubbard while at work; however, it was not her initial intention and it "just happened."

The second sexual encounter occurred the next day, Sunday, November 21, 2021. V1 told R9 she went to work (Headquarters) intending to have sexual intercourse with Hubbard. V1 said she had sexual intercourse with Hubbard again. V1 told R9 she did not charge overtime hours on this day because she knew it would be wrong.

End of summarized memorandum.

On March 2, 2022, I conducted a recorded interview with Pitcher. Pitcher was allowed to review his memorandum prior to going on the record.

Pitcher had no additional information to add and I concluded my interview.

Officer Witness: Senior Deputy Bess Rutter:

On December 9, 2021, Senior Deputy Bess Rutter authored a memorandum regarding her observations of Hubbard and V1 while assigned to PSU (Attachment #7).

The following is a summary of Rutter's memorandum:

Rutter's assigned workstation in the PSU office is directly across from V1 On numerous occasions, Rutter observed Hubbard enter V1 cubicle and begin "speaking closely and whispering to each other." Later V1 constructed a set of makeshift doors to her cubicle. Hubbard would enter the cubicle and close the doors while remaining inside for 15 to 30 minutes at least once a week. Rutter concluded her memorandum by adding she would also see V1 inside Hubbard's office with both doors and blinds shut.

End of summarized memorandum.

On March 2, 2022, I conducted a recorded interview with Rutter. Rutter was allowed to review her memorandum prior to going on the record.

Rutter had no additional information to add and I concluded my interview with her.

Officer Witness: Detentions Senior Deputy Jose Hinojosa:

On March 8, 2022, I interviewed Detentions Senior Deputy Jose Hinojosa via phone. I told Hinojosa he was being interviewed as a witness only and the interview was going to be recorded. Hinojosa said he understood. I recorded the interview with a digital recorder. I transferred the digital recording to a computer file with this case number.

The following is a summary of my interview with Hinojosa:

I asked Hinojosa if he ever witnessed anything inappropriate occur between Hubbard and V1 while he was assigned to PSU. Hinojosa told me he saw them sitting close to one another working on the computer while in Hubbard's office. Hinojosa added he also witnessed them whispering while in V1 cubicle. Hinojosa felt it was a little bit inappropriate for the workplace but did not think it was his place to say anything. I asked Hinojosa if he could see inside Hubbard's office when they were in there together. Hinojosa said normally he could, but two or three days prior to the affair being known the blinds and door were shut.

Hinojosa had no further information and I concluded my interview with him.

Officer Witness: Sergeant Daniel Perez:

On December 10, 2021, Sergeant Daniel Perez authored a memorandum regarding Hubbard's involvement in an ongoing personnel investigation he was conducting. (Attachment #5).

The following is a summary of Perez' memorandum:

Prior to October 15, 2021, Perez notified [redacted] of his intent to interview her. A short time later Perez received a phone call from Hubbard who explained [redacted] was nervous about the interview and requested to attend the interview as her "support group." Perez approved the request.

Prior to the interview, Perez met with Hubbard and [redacted] to explain the format of the interview in an attempt to alleviate her anxieties. On October 15, 2021, Perez conducted his interview with [redacted] and Hubbard attended.

Prior to November 22, 2021, Hubbard contacted Perez and requested to know the date of the subject officer interview ([redacted] for the purpose of informing [redacted] so they did not cross paths. Perez told Hubbard the date the interview was scheduled (November 22, 2021).

On November 23, 2021, Hubbard approached Perez and asked how the interview went. Perez informed Hubbard he may need to interview him due to allegations that he and [redacted] were having an affair.

End of summarized memorandum.

On March 10, 2022, I interviewed Perez at Sheriffs Office Headquarters. I told Perez he was being interviewed as a witness only and the interview was going to be recorded. Perez said he understood. I recorded the interview with a digital recorder. I transferred the digital recording to a computer file with this case number.

Prior to going on the record, I allowed Perez to review his memorandum. Perez told me the memorandum was accurate. I told Perez I had a few questions for him.

I asked Perez if Hubbard was an observer during his interview with [redacted] Perez told me he was and remembered Hubbard touching [redacted] on the elbow when he asked serious questions. Perez said Hubbard may have said something near the end of the interview but for "99%" of the time he observed. I asked Perez if [redacted] was emotional during the interview. Perez told me [redacted] paused a lot during the interview, but did not become emotional. Perez added after the interview [redacted] began to cry.

I asked Perez if he thought it was odd when Hubbard contacted him and requested the date for the subject employee interview. Perez said he did and he would expect the request to come from [redacted] I asked Perez when did he receive the call from Hubbard. Perez told me a couple of days to a week before the interview.

I asked Perez how Hubbard reacted when he was told that he may need to be interviewed. Perez told me Hubbard looked "annoyed," and made a comment about needing to bring a representative. I confirmed with Perez that he told Hubbard about the accusations of an affair between him (Hubbard) and V1 Perez said, "Yes." I confirmed with Perez that this conversation took place on November 23, 2021. Perez told me that was correct.

I asked Perez if Hubbard ever asked him about the S1 investigation on any other occasions. Perez told me Hubbard came to see him prior to the S1 interview. Perez had developed his questions for S1 interview. Perez showed the questions to Hubbard and asked for a critique. Perez said Hubbard gave him a suggestion on one question, but he did not make any changes to his line of questioning.

I asked Perez what information he gave to Hubbard on November 23, 2021. Perez said he informed Hubbard, that S1 blamed everything on V1 and accused her of having affairs with several people, one being Hubbard. S1 also accused V1 of being "crazy." I confirmed with Perez, that the only person he released this information to outside of the Internal Affairs Unit was Hubbard. Perez said, "Yes."

I asked Perez why he talked to Hubbard about this investigation. Perez told me Hubbard was the Lieutenant of Internal Affairs at the onset of the investigation and had been a mentor to him (Perez). Perez explained he was seeking advice and believed Hubbard was someone he could confide in. I asked Perez if he trusted Hubbard. Perez said, "Yes." I asked Perez how long had he worked with Hubbard in various assignments. Perez told me about four years.

I asked Perez if he felt Hubbard took advantage of their relationship. Perez told me he did and Hubbard had an emotional relationship with V1 that clouded his judgement. I asked Perez if it appeared V1 had been coached during her interview. Perez told me he found her answers to be genuine, but he could not be sure.

Perez had no further information and I concluded my interview with him.

Witness: Sheriffs Support technician W1

On December 7, 2021, Sheriffs Support Technician W1 authored a memorandum regarding her observations of Hubbard and V1 while assigned to PSU (Attachment #8).

The following is a summary of W1 memorandum:

W1 observed a flirtatious relationship develop between Hubbard and V1 W1 never observed a physical relationship between the two individuals, but did observe them spending long periods of time together behind closed doors in Hubbard's office. W1 also witnessed them both leaving headquarters together to get coffee and taking a long time to return to the office.

End of summarized memorandum.

On March 3, 2022, I conducted a recorded interview with W1 W1 was allowed to review her memorandum prior to going on the record.

W1 had no additional information to add and I concluded my interview with her.

Witness: Sheriffs Support Technician R2 R2

On December 7, 2021, Sheriff's Support Technician R2 R2 authored a memorandum regarding her observations of Hubbard and V1 while assigned to PSU (Attachment #9).

The following is a summary of R2 memorandum:

During the previous few months, R2 observed odd work behavior and acts of unprofessionalism between V1 and Hubbard. There were several incidents R2 thought were unprofessional due to V1 working under the supervision of Hubbard. Some of the interactions and conversations between them were flirtatious towards each other. V1 spent a great deal of time in Hubbard's office, at times with the door closed. On several occasions, R2 witnessed Hubbard pick up and carry V1 to his office due to her having "dizzy spells."

End of summarized memorandum.

On March 7, 2022, I conducted a recorded interview with R2 was allowed to review her memorandum prior to going on the record. Prior to going on the record, R2 talked about multiple occasions where V1 would report to work late. Once going on the record I asked about her observations regarding V1 punctuality. I asked R2 if it seemed to be accepted that she was reporting to work late. R2 told me to her knowledge it did. I asked R2 if it appeared V1 was ever disciplined for reporting to work late. R2 said, "No." I asked R2 if it appeared V1 was held to the same standard she (R2 was held to. R2 said, "Absolutely not."

R2 had no further information and I concluded my interview with her.

Witness: Administrative Coordinator R7 R7

On March 10, 2022, I interviewed Administrative Coordinator R7 R7 at Sheriffs Office Headquarters. I told R7 she was being interviewed as a witness only and the interview was going to be recorded. R7 said she understood. I recorded the interview with a digital recorder. I transferred the digital recording to a computer file with this case number.

I told R7 I had a few questions for her regarding her IA Pro Conference in Florida that she attended along with V1 R7 and V1 left on November 1, 2021, and returned on November 5, 2021. I asked R7 if she saw V1 communicate with Hubbard while they were in Florida. R7 told me it was via text several times during the day. I asked R7 if it appeared to be daily. R7 said, "Yes." I asked R7 if it was multiple times a day. R7 said, "Yes." I asked R7 if that seemed odd to her. R7 said, "Yes." R7

told me V1 would receive phone calls during the day, but she was not sure who V1 was speaking to. When V1 would receive text messages she was able to see the name of the sender on V1 phone.

I asked R7 if the amount of communication Hubbard had with V1 seemed odd to her. R7 told me it seemed "abnormal." I asked R7 if the communication seemed personal or work related. R7 told me she did not know the content of the messages. I asked R7 for perspective, how many times Perez called her (R7 direct supervisor) during the IA Pro Conference. R7 said, "Zero." I asked R7 how many times I called or texted her. R7 said once regarding the use of force statistics Levig requested.

R7 had no further information and I concluded my interview with her.

I conducted recorded interviews with the following personnel who were assigned to the Professional Standards Unit at the same time as Hubbard and V1 The following personnel had no evidence nor did they witness misconduct.

Senior Deputy Janies Money
Senior Deputy Raymond Seibert
Detentions Sergeant Scott Harbour
Detentions Senior Deputy James Dunlap
Shafter Police Department Officer Rachel Carrasco (Former Detentions Senior Deputy)
SSSS R8 R8

Subject Officer: (Former) Sheriff's Aide V1 V1

On January 26, 2022, Sergeant Danisha Ashley and I interviewed V1 at Kern County Sheriffs Office Headquarters. V1 chose not to have a representative during the interview. I recorded the interview with a digital recorder and transferred the recording to a file under this case number.

This interview was conducted in compliance with Government Code, Division 4, Title 1, Section 3300, commonly known as the "Peace Officers' Bill of Rights" and Sheriffs Office Policy and Procedures Manual Section D-200 or Section D-300.

Prior to asking V1 any questions, I confirmed with her she understood she had the right to representation. V1 told me she did and she was choosing to proceed without.

I asked V1 to describe her relationship with Hubbard prior to this incident. V1 described their relationship as professional and friendly. I asked V1 if there was a personnel relationship with Hubbard. V1 told me Hubbard's wife babysat her children and they also hung out at family events together.

I asked V1 to describe her relationship with Hubbard now. V1 told me they do not have a relationship and they have not spoken in a few months. I asked V1 if the relationship was ever flirtatious or romantic at work. V1 said, "Yes, it was." I asked

V1 if the relationship was flirtatious prior to the weekend of November 20, 2021. V1 told me it was. V1 told me the relationship became flirtatious over time. V1 explained she and Hubbard would kiss on the lips and hold hands. I asked V1 if this would occur at work. V1 told me it would. I asked V1 where this would take place so that co-workers would not see it. V1 said in her work area or Hubbard's office.

I showed V1 a picture of her cubicle with makeshift cardboard doors. I asked V1 what the doors were for. V1 told me it was a joke because she wanted an office. V1 told me she put the doors on months before anything romantic took place between her and Hubbard. I asked V1 if Hubbard would ever go into the cubicle and close the doors. V1 told me she did not remember. I asked V1 if any of the kissing or holding hands would ever occur in the cubicle. V1 said, "Yeah." I asked V1 looking back, was that appropriate. V1 said, "No." I asked V1 how they would kiss or hold hands without being seen. V1 told me there would not be anyone in the office. Ashley asked when the flirtation started. V1 estimated in September or October of 2021, after she was assigned to PSU.

I told V1 I had Sonitrol records showing her entering KCSO grounds and accessing the PSU office on November 20, 2021. I asked V1 what her purpose was for being there that day. V1 said she went to work with the intent of working on a BlueTeam project, but also to spend time with Hubbard. V1 added she knew Hubbard was going to be there. I asked V1 how she knew he was going to be there that day. V1 said Hubbard, told her he was going to be on duty.

I asked V1 if a sexual encounter occurred on November 20, 2021. V1 told me it did, in Hubbard's office, but she was unsure of the exact time. I asked V1 if Hubbard was in uniform. V1 told me Hubbard was in uniform. I asked V1 if Hubbard's radio was on. V1 said, "Yeah." I asked V1 who initiated the encounter. V1 said it was mutual. I asked V1 if she went to the PSU office that day with the intent of having sex with Hubbard. V1 told me it was not planned.

I asked V1 if she received a text from Hubbard later in the day on November 20 or 21, 2021. V1 told me she was not sure and was unable to locate archived text messages on her phone. I asked V1 if another sexual encounter occurred on November 21, 2021. V1 said, "Yes." V1 told me she did not have her access card so Hubbard had to scan her through the front gate. I asked V1 why she came to the office on November 21st. V1 told me she cannot remember if she called him (Hubbard) or he called her, but they talked on the phone. They talked about missing each other and the decision was made for V1 to go see Hubbard at work. I asked V1 if she responded to work on November 21st, with the intent to have sex. V1 told me that was the intent, the topic of sex was not discussed but it was assumed that the visit was going to be for sex.

V1 told me the sexual encounter on November 21st took place in Hubbard's office. V1 explained Hubbard was on-duty in uniform and she believed his radio was on. I asked V1 if she and Hubbard were attempting to conceal their actions when Hubbard opened

the gate for her. V1 told me they were not and she did not have her access card. I asked V1 if anyone showed up at the PSU office on Saturday or Sunday. V1 said, "No."

I asked V1 if she felt like Hubbard gave her preferential treatment or treated her differently than others. V1 told me she did and she felt like she was being "coddled." V1 added that she was given work assignments that would benefit her professionally and look good on a resume. Ashley asked V1 if she felt like she was being given more mentorship. V1 said, "Yeah." Ashley asked if this mentorship or coddling started before the physical relationship. V1 said it started before.

I referenced V1 health issues and asked if she felt the preferential treatment she received was beyond what was needed to accommodate her condition. V1 told me it was and she was given assignments and received special instruction on how to complete them. I asked V1 if these were opportunities Hubbard was not giving others. V1 told me it was, but she did not know what everyone else was doing. Ashley asked V1 if she felt Hubbard went out of his way to help her progress in her duties more than others. V1 said, "Yeah, maybe a little bit."

I told V1 I wanted to talk about her involvement in the S1 investigation. I explained to V1 that as I have gathered information regarding her and Hubbard it has become obvious that she was probably being given information she was not supposed to have. I asked V1 if Hubbard talked to her at all about the criminal investigation into S1 V1 said, "No." V1 explained the only time she spoke to Hubbard about the criminal investigation was in May of 2021. V1 felt uncomfortable in the Detective Section and called Hubbard crying and requested for him to arrange a transfer.

I asked V1 if Hubbard ever gave her information about S1 Internal Affairs investigation. V1 said, "Yeah." V1 told me after S1 interview with Internal Affairs, Hubbard told her about S1 defense in response to the allegations made against him. Hubbard told V1 that S1 accused her of "coming on," to him. I asked V1 if Hubbard indicated where he received this information. V1 told me she believed it was from me and Perez. I asked V1 if Hubbard mentioned me specifically. V1 told me she could not remember. I asked V1 if Hubbard mentioned that S1 called her "violent and crazy." V1 told me he did.

I asked V1 why Hubbard attended her Internal Affairs interview. V1 told me she asked him to attend as support. I asked V1 if their relationship had become flirtatious at this point. V1 told me when her interview took place she did not believe so. V1 added she was not sure about the timeframe of S1 Internal Affairs interview. I told V1 S1 interview was on November 22nd, the day after her and Hubbard's encounters. I asked V1 if they still communicated after November 22nd. V1 told me they did. V1 added things started to go bad the first week of December 2021.

I asked V1 if there were any other sexual encounters after the weekend of November 20th and 21st. V1 told they did not have sex, but they did kiss. I asked V1 what lead

to the affair getting out. V1 told me she was confronted by her fiance at the time. V1 told him about the affair and that it was with Hubbard.

Ashley asked V1 to clarify the timeline of their flirtatious behavior. V1 described it as "unspoken" flirtatiousness. V1 added when she went to the IA Pro Conference (November 1-5, 202 1) in Florida she and Hubbard spoke on the phone and the flirtation progressed. Ashley asked if anyone was aware of the relationship. V1 said she did not think so. I asked V1 if the conversations she and Hubbard had while she was in Florida were sexual in nature. V1 told me they expressed to one another that they had feelings for each other.

Ashley asked V1 if she kept in contact with Hubbard throughout the day. V1 explained that they would have phone calls after work and added that they did not text often. I asked V1 what phone Hubbard would communicate with her from. V1 told me from his work phone. Ashley asked V1 if they ever exchanged inappropriate pictures. V1 said they did not. I asked V1 why she called his work phone. V1 told me that was the phone he contacted her from, so that's the number she would call.

I asked V1 how many supervisors she has worked for at the Sheriff s Office. V1 estimated more than five. I asked V1 if any of those supervisors called her after hours to "BS." V1 said, "No." I asked V1 if she would categorize Hubbard's calls after hours as "BSing or chatting." V1 said, "Yeah."

I asked V1 if Hubbard provided her with any other information regarding the S1 investigation. V1 told me no. I asked V1 at the time Hubbard was providing her the information, did she know it was wrong. V1 said, "Yeah."

V1 had no further information and we concluded the interview.

Subject officer: Lieutenant David Hubbard:

On March 25, 2022, Lieutenant Augustine Moreno and I interviewed Hubbard at Kern County Sheriffs Office Headquarters. Hubbard was accompanied by his attorney Brett Rutkowski. I recorded the interview with a digital recorder and transferred the recording to a file under this case number.

This interview was conducted in compliance with Government Code, Division 4, Title 1, Section 3300, commonly known as the "Peace Officers' Bill of Rights" and Sheriffs Office Policy and Procedures Manual Section D-200 or Section D-300.

I asked Hubbard to describe his and V1 relationship prior to November of 2021. Hubbard said it was a professional relationship that progressed into a friendship outside work and their families would spend time together. I asked what their relationship was like now. Hubbard said it is nonexistent. I asked Hubbard when he felt the relationship was more than just professional. Hubbard said at the beginning of November 2021. 1 asked Hubbard when did he and V1 express feelings for each other. Hubbard told me it was early November 2021, but could not recall the exact date. I asked Hubbard if a conversation occurred while V1 was

at the IA Pro Conference where they disclosed their feelings. Hubbard said, "Yes, it was over the phone."

I asked Hubbard if he had frequent communication with V1 Hubbard told me he did it through his work phone. I asked Hubbard why he used his work phone. Hubbard said initially it was because V1 worked for him. Once the relationship progressed into something more, it was to conceal it from his wife.

I asked Hubbard to tell me about the weekend of November 20 and 21, 2021. Hubbard told me he was the Watch Lieutenant and V1 came in to work on a BlueTeam project. While there they engaged in sexual intercourse. I confirmed with Hubbard the initial encounter took place on November 20th. Hubbard told me that was correct. I asked Hubbard if there was an additional encounter on November 21st. Hubbard told me there was and confirmed he was the Watch Lieutenant again on this day. I asked where these encounters took place. Hubbard told me the PSU office. I asked Hubbard where specifically. Hubbard told me in his office.

I asked Hubbard why V1 came to the office on November 21, 2021. Hubbard told me V1 requested to come to speak with him. I asked Hubbard if a conversation took place late on November 20th or early on the 21st where he and V1 told each other they missed one another and wanted to see each other. Hubbard told me he did not recall and he was with his wife on the evening of November 20th. Hubbard added he was sure they had a conversation, but his recollection was V1 wanted to talk to him, but could not recall the exact content of the conversation. I asked Hubbard how V1 told him she wanted to talk. Hubbard told me it would have been either by text or over the phone on the morning of November 21st. I asked Hubbard if it was his perception she was coming to see him to have sex. Hubbard said he did not know that was why she was coming to the office and the topic of sex was not discussed. I asked Hubbard if he knew he was going to have sex. Hubbard said he knew it was a possibility, but it was not his intent.

I asked Hubbard how V1 accessed KCSO grounds on November 21st. Hubbard said she called him and he let her in. I asked Hubbard if he was attempting to conceal her presence by granting her access. Hubbard said he was not and she did not have her access card. I asked Hubbard if the sexual encounter on November 20th was planned. Hubbard said, "No." I asked Hubbard if the sexual encounter on November 21st was planned. Hubbard said not to his recollection. I asked Hubbard why these took place in the workplace. Hubbard told me that was not the intent, but it was probably due to a lack of opportunity outside of the workplace since they both are involved in relationships. I asked Hubbard who initiated these sexual encounters. Hubbard told me it was mutual.

I asked Hubbard if being involved in a sexual encounter while at work would take him away from his duties. Hubbard said, " The obvious answer is yes," but he had his radio and phones on and was available as needed. I asked Hubbard if he felt he was still able to effectively manage KCSO operations as the ranking member. Hubbard said he felt he was able to respond to a situation that required his attention; however, he was not actively monitoring KCSO operations at that time. I asked Hubbard if he felt this was what was expected of a KCSO manager. Hubbard said, "Absolutely not." I asked Hubbard if he felt this was an appropriate relationship to have in the

workplace. Hubbard said it is not. I asked Hubbard, once he and V1 realized and expressed feelings for each other, was it still appropriate for him to supervise her. Hubbard said, "Probably not."

I asked Hubbard if there were any other displays of affection. Hubbard told me there was kissing and holding hands. This would take place while driving or in the office when no one else was present. I asked Hubbard if any of this took place in his office behind closed doors. Hubbard said, "Yes." I asked Hubbard if this would take place in V1 cubicle. Hubbard told me they held hands in V1 cubicle. I asked Hubbard if the makeshift doors V1 installed on her cubicle were there with the intent to conceal their actions. Hubbard said they were not and they were installed long before anything romantic was occurring. Hubbard added they spent a significant amount of time together due to the workload.

I asked Hubbard why he reported the affair to Levig. Hubbard said once the affair was known he could not be around V1 and it was not appropriate for him to be in PSU any longer.

I asked Hubbard what phone he primarily used to communicate with V1 Hubbard said his work cell phone. I asked Hubbard why he used his work phone. Hubbard said to conceal the affair from his wife. I asked Hubbard if any of the texts or calls were not work related. Hubbard said, "Sure yeah."I asked Hubbard if anything inappropriate was ever shared via text. Hubbard said, "No." I asked Hubbard if any texts were deleted from his phone. Hubbard said yes and explained his wife had access to his phone and was suspicious of his and V1 relationship well before it developed into anything. Hubbard added if his wife saw the volume of communication between him and V1 it would be less than ideal for their relationship.

I told Hubbard I had time to review his cell phone records and noticed gaps in communication between him and V1 from:

November 8, 2021, to November 17, 2021, and November 22, 2021, to November 30, 2021 (texts)
November 5, 2021, to November 17, 2021, and November 17, 2021, to November 30, 2021 (calls)

I told Hubbard given the frequency he and V1 communicated this seemed odd to me. I asked Hubbard if there was anything deleted. Hubbard said, "I'm sure there was." Hubbard said there was significant conversation between him and V1 that was deleted to conceal the information from his wife. Moreno asked if the information was deleted to conceal it from this investigation. Hubbard said, "Absolutely not." Hubbard added once their relationship was known he did not delete anything. Hubbard explained he did not try to impede any information from this investigation. Moreno asked Hubbard if he was trying to be open and honest. Hubbard said, "100%." Hubbard added as ashamed he may be, he is not going to do anything to make this any worse. I asked Hubbard if he deleted anything after he knew I was going to take his phone. Hubbard said, "No." I told Hubbard I also noticed there were no texts or calls on the weekend of November 20 and 21, 2021. I asked Hubbard if anything was deleted. Hubbard said, "Yes."

I asked Hubbard if he felt he showed V1 preferential treatment. Hubbard said, "I do not." I asked Hubbard if he allowed V1 to report to work late with no repercussions. Hubbard said he allowed V1 to flex her time as he has done for any other employee that has worked

for him. Hubbard explained "life happens" and as long as you are making up the time on the backend it works for him. I asked Hubbard if he allows others to do the same. Hubbard said, "100%, I still do." I asked Hubbard if he gave V1 assignments that he knew would benefit her in the future. Hubbard said, "Absolutely, just like he would anybody else." I asked Hubbard if he provided V1 more opportunities for advancement than what was being provided to other staff. Hubbard said, "No." Hubbard explained, that when V1 came to PSU she was designated as an analyst, the projects he gave her were for analysts. Hubbard told me he was trying to create a position for an analyst, so he needed to justify the need. Hubbard added that V1 was given the assignments she was given because of the position she was in, not because of who she was.

I asked Hubbard if those assignments V1 was given were within the scope of the position he hoped to create. Hubbard said, "Absolutely." I asked Hubbard if he assumed supervision of V1 Hubbard said, "I did." I asked Hubbard why he took V1 out of Weidenkopf s chain of command. Hubbard told me the tasks she was being given were not Weidenkopf s responsibility. Hubbard added he and Weidenkopf had different views as to what the position was going to be responsible for. Hubbard wanted the position to be responsible for Stipulated Judgment type tasks. Weidenkopf wanted the position to do analytical work for PSU. Hubbard went on to explain, that everything V1 was doing was assignments given to her by him, not Weidenkopf. This caused V1 to get conflicting directions. I asked Hubbard if V1 was having disciplinary issues. Hubbard told me the only issue she was having was she would come in late and stay late. I asked Hubbard if he assumed supervision of V1 to ensure she was not disciplined. Hubbard told me he did not. I asked Hubbard if he assumed supervision of V1 to give him more time with her. Hubbard said, "No."

I asked Hubbard if he spent excessive time with V1 Hubbard told me he did not. Hubbard explained he was responsible for a significant portion of the Stipulated Judgment. Much of V1 task focused on portions of the Stipulated Judgement causing them to spend time together. I asked Hubbard if he and V1 would leave the office for extended periods of time to get coffee. Hubbard told me they would not. Hubbard explained they would go to meetings and may stop to get coffee. Hubbard provided an example of a meeting he and V1 attended at the Communication Center, where they stopped for coffee on the way back to the office. I asked Hubbard if he and V1 spent excessive time alone together behind closed doors. Hubbard said, he provided V1 counseling for some personal issues she was going through that could have been misinterpreted. Hubbard added that he and V1 did spend a great deal of time together, but it was based on the volume of work that needed to be completed.

I confirmed with Hubbard that at the onset of the S1 investigation he was the Internal Affairs Lieutenant. Hubbard told me that was correct. I asked Hubbard how he became aware of the S1 investigation. Hubbard told me a portion of the investigation was administrative and Internal Affairs placed S1 on Administrative Leave. Hubbard was also aware that PSU was haying some issues with their investigation and V1 did not want to wear a wire. This led Hubbard to have a conversation with V1 about the wire, where she ultimately agreed to wear the wire. I asked Hubbard if this conversation took place between him and V1 Hubbard told me it did.

I asked Hubbard if he requested updates from PSU investigators. Hubbard told me he was sure he did. I asked Hubbard for what purpose. Hubbard said so Internal Affairs would know when the criminal investigation was complete. Hubbard explained there have been times in the past when this notification was not made and impacted the administrative timeline. I asked Hubbard if he provided any information regarding the criminal investigation to V1 Hubbard told me he did not. I asked Hubbard if he coached V1 Hubbard told me he did not and by the time he found out about it, V1 had already been interviewed. I asked Hubbard if he attempted to influence the criminal investigation. Hubbard told me he did not and added he attempted to help them conduct a thorough investigation. Hubbard cited his investigative experience and added that he did not attempt to influence the investigation or attempt to get it to go one way or the other. Hubbard told me the investigation had shortcomings and he only assisted by getting V1 to wear a wire for the purpose of obtaining evidence. I asked Hubbard if he provided input to an investigation he saw had issues. Hubbard told me that was correct and he provided input to the investigation and guidance to the victim (V1 in an effort to gain V1 cooperation.

I asked Hubbard if he complained to the Command Staff about the issues with the investigation. Hubbard told me he had a conversation with Command Staff where this viewpoint was mutually shared. Hubbard added he respected everyone in PSU, but not everyone had a deep level of investigative experience. Hubbard explained when he was asked to go to PSU it was due to his investigative experience, which was lacking within the unit. I asked Hubbard who he informed in the chain of command. Hubbard told me he spoke to retired Chief Deputy Damian Nord, and had other conversations with members of the Command Staff, but could not recall who. I asked Hubbard if he still received investigative updates after this conversation with Nord. Hubbard told me he was sure he did. I asked Hubbard what the nature of his and V1 relationship was. Hubbard told me it was professional but there was a friendship as well because she had worked for him or around him for a while.

I asked Hubbard if he recalled what the status of the S1 investigation was when he transferred to PSU. Hubbard told me he believed the case had been filed with the District Attorney's Office. I told Hubbard the case was filed on May 4, 2021, and rejected on June 3, 2021. I asked Hubbard what his involvement was at that point. Hubbard told me nothing other than to keep track of it. At one point the reviewing Deputy District Attorney requested to meet with V1 Hubbard took V1 to the meeting, and later received information that the case would not be moving forward. I asked Hubbard if he felt taking V1 to this meeting was within the scope of his job at PSU. Hubbard said, "Absolutely."

I asked Hubbard if he asked about the time and date of S1 administrative interview. Hubbard told me he did. Hubbard explained that V1 expressed concern and requested to know when he was going to be on KCSO grounds so she could take time off. I asked Hubbard if he felt V1 would have had a significant emotional reaction had she run into S1 Hubbard told me he did.

I asked Hubbard if V1 approached him, once she was noticed by Internal Affairs that they intended to interview her. Hubbard said, "Yes." Hubbard told me he attended V1 interview as her representative after being granted permission by Perez. I asked Hubbard why he

attended the interview. Hubbard told me he was there to support her emotionally. Moreno asked if he and V1 were in a romantic relationship at that time. Hubbard said their relationship was professional and a friendship.

I asked Hubbard if he reviewed Perez' interview questions. Hubbard told me he did because Perez had requested input on how to "game plan" and approach the interview. I asked Hubbard if Perez asked him to review the questions. Hubbard told me Perez did ask him. I asked Hubbard if he felt this was for his professional input. Hubbard said, "Yes." I asked Hubbard if he approached Perez after the S1 administrative interview to see how it went. Hubbard said, "Yes." I asked Hubbard if he asked specifics about the interview. Hubbard told me he did not recall, but he was sure he did because it was a conversation between him and Perez. I asked Hubbard what information Perez gave him. Hubbard said he learned that S1 blamed V1 and the encounter was mutual. Hubbard added that allegations were made that she was involved in other relationships. I asked Hubbard if one of those relationships was with him. Hubbard said that was the allegation; however, it was not factual at the time. I asked Hubbard if he learned S1 made statements about V1 being "crazy" and emotional. Hubbard told me he did.

I asked Hubbard if he became frustrated or upset after this conversation. Hubbard said he did just like he would in any other investigation. I asked Hubbard if he was upset that S1 accused him of having a sexual relationship with V1 Hubbard told me he was. I asked Hubbard if the displeasure was visible. Hubbard told me he was sure it was. I asked Hubbard if Weidenkopf approached him about being upset. Hubbard said he may have and remembered they had a conversation, but did not recall how it began. Hubbard explained that he and V1 were not engaged in any type of sexual relationship at the time, but knew the allegation was going to cause problems between him and his wife. Hubbard added that he called his wife to inform her and the conversation did not go well. I asked Hubbard if he remembered what he told Weidenkopf. Hubbard told me he did not.

1 asked Hubbard what information he released to V1 about the S1 investigation. Hubbard told me he did not recall and remembers he did not tell her anything right away. Hubbard did have a conversation with her later when she was having emotional issues. Hubbard told V1 that there may be additional follow-up questions for her based on S1 interview. I asked Hubbard if he told V1 that S1 accused them of being involved in a sexual relationship. Hubbard said, "Yes." I asked Hubbard if he told V1 that S1 accused her of being "crazy" and emotionally unstable. Hubbard said he did not recall that specifically, but may have. I asked Hubbard if this would have been information he got directly from Perez. Hubbard said, "It would have been." I asked Hubbard what was the purpose for giving her this information. Hubbard told me to try and help her emotionally cope and prepare her for what may be coming.

I told Hubbard for context, that he and V1 had their sexual encounter on November 20 and 21, 2021. S1 interview took place on November 22, 2021, and according to Perez, he (Hubbard) approached him on November 23, 2021. Hubbard told me that sounded about right. I explained to Hubbard due to the timing the accusation was now true. Hubbard agreed and added that S1 accusations were also focused on the time he (Hubbard) and V1 were assigned to detectives. Hubbard admitted to being confused about the timing. Hubbard told me

nothing occurred between them until the November date. I asked Hubbard if he believed he and V1 were the only ones that knew about their sexual encounter. Hubbard said, "100%."

I asked Hubbard if he was emotionally involved in the investigation. Hubbard said not until November 23, 2021. I asked Hubbard, looking back at Weidenkopf s statement and having an accurate timeline of the events, did that play a role in him being upset. Hubbard told me it did and he knew he had "F'ed up," and made a poor decision.

I asked Hubbard if he should have recused himself from all aspects of this investigation once he realized his feelings for V1 Hubbard said, "In retrospect, yes." I asked Hubbard if he was emotionally involved in the outcome of the S1 investigation. Hubbard told me that is too vague. Hubbard explained when the S1 incident actually took place he was the Lieutenant in charge of detectives, and he takes it personally that it occurred in his section. Hubbard added as the investigation progressed into November it became more of an emotional involvement personally.

I asked Hubbard as the PSU Lieutenant was there any reason that he should have been involved in or had any knowledge of the administrative case. Hubbard told me not specifically, but he was privy to it at the onset and was inquisitive as to the progress. I asked Hubbard if he believed his involvement compromised the S1 administrative case. Hubbard said, "I certainly hope not." Hubbard added that he believed his involvement helped obtain evidence of the criminal act that occurred and helped to have a more detailed interview with V1 during the administrative investigation. Hubbard added, other than that he did not think it had any bearing on it.

I asked Hubbard if he felt he released confidential information. Hubbard explained he felt like he released information that would not influence or impact the outcome of the investigation as a means of supporting the victim emotionally. I asked Hubbard if this was his information to release. Hubbard said, "No." I asked Hubbard if this was a potential violation of PC 832.7. Hubbard said, "I don't know." I asked Hubbard if he violated S1 rights. Rutkowski asked me to be more specific as to what information I was referring to. I clarified with Hubbard that I was referring to the specific information regarding allegations S1 made. Moreno asked Hubbard what information did he release to V1 Hubbard said he told V1 that there were allegations she was emotionally unstable, crazy, and he and V1 were involved in a relationship. Moreno asked Hubbard if he felt that S1 rights were violated. Hubbard told me he did not believe he released any information that she would not be provided in a subsequent interview. I confirmed with Hubbard that this was not information that was his to release. Hubbard agreed and added that he believed it would be information she would be privy to. I asked Hubbard if S1 would have an expectation of privacy or confidentiality regarding statements he made during an administrative interview. Hubbard said he believed that S1 would be familiar with the fact that the allegations made are going to be investigated, and in doing so his allegations are going to be disclosed when those he is accusing are confronted.

I told Hubbard there's a proper format for this information to be released via a *Skelly* Hearing and potentially a Civil Service Hearing. Hubbard told me he believed these accusations would have come out during a subsequent interview with V1 during the investigation. I asked Hubbard

if he was saying once these allegations were made by S1 Internal Affairs would have conducted a follow-up interview with V1 where these allegations would have been disclosed to her. Hubbard told me that was correct. I told Hubbard that would still be on a very defined investigative path. Hubbard told me that was correct. Hubbard added that as her "representative" and to support her response to the allegations, was the reason he disclosed it to her. I confirmed with Hubbard he was saying that he would have been privy to it anyway in a follow-up interview because he would be attending. Hubbard told me that was correct. I told Hubbard that was not the case and there was no follow-up interview with V1 I told Hubbard this information was released outside of the proper practice. I asked Hubbard if he agreed. Hubbard told me he did. Hubbard clarified his intent was not to release confidential information to someone that would not be privy to it. I asked Hubbard if he felt the information was confidential. Hubbard said, "Yeah."

I asked Hubbard if he felt he took advantage of Perez when he approached him and obtained this information given the fact he (Hubbard) is a Lieutenant and Perez is a Sergeant. Hubbard told me he did not believe he did and that was not his intent. I asked Hubbard if he felt he took advantage of Perez' professional relationship. I explained to Hubbard, that Perez viewed him as a mentor and someone who taught him a lot. Hubbard told me it was not his intent and he and Perez had previously discussed tactics for the interview with S1

I asked Hubbard if there was ever any intent to be deceptive once he realized the timeline and S1 accusations. Hubbard told me, no and he and V1 had a conversation about being honest and not attempting to conceal anything if the relationship were to become known. I asked Hubbard if it affected him emotionally once S1 "threw him under the bus." Hubbard said, "Yes." I asked Hubbard if it was an emotional response when he gave the information to V1 Hubbard said, "Very much so, yes." I asked Hubbard, had he not been involved in such a close relationship with V1 would he have released this information. Hubbard said, "No I would not of." I asked Hubbard again, if he felt the S1 Internal Affairs investigation had been compromised by the information he released. Hubbard said, "I do not." I asked Flubbard if he was hoping to ensure S1 suffered significant punishment. Hubbard told me that was not a fair question. S1 was a sexual assault detective that sexually assaulted someone and deserved significant punishment. Hubbard added he did not wish any "ill will" on him because of his relationship with V1

I asked Hubbard if he received the notification to have Zonar installed on his vehicle. Hubbard said, "Yes." I asked Hubbard if he had Zonar installed as directed. Hubbard said, "No." tasked Hubbard if he interpreted the notice to have Zonar installed as an order. Hubbard said, "From a civilian fleet manager? No." I asked why did he not have Zonar installed. Hubbard said he was at training when he was on the schedule to have it installed. Once he got back he failed to do it. I asked Hubbard, looking back would he have followed up with the Zonar installation. Hubbard told me he would have.

At the conclusion of the interview, I asked Hubbard if he had anything to add. Hubbard said he did. Hubbard told me we have been discussing his "short comings" and "poor decision making" and he is aware there will be discipline. Hubbard added he had been upfront and honest during the interview and wanted it to be clear he is accepting responsibility for his actions. Hubbard went

on to say he had a good record at the Sheriffs Office and has worked hard to do the things that he has done and will continue to. Hubbard explained his decision making as it relates to this investigation is outside of character for him and not reflective of who he is. Hubbard further added that he was experiencing personal problems when this relationship developed which he has sought professional help for. Hubbard told me these personal problems had a significant impact on his decision making and these matters have been addressed and will not happen again. I asked Hubbard if he felt this incident was an accurate reflection of his character. Hubbard said, "Absolutely not."

Hubbard had nothing further to add and we concluded the interview.

INVESTIGATIVE ACTIVITY:

On December 6, 2021, I was briefed on this investigation and began to receive memorandums. I had yet to receive Sonitrol records, but in an effort to determine when and where this incident took place I attempted to run a Zonar audit of Hubbard's vehicle (W3623). The audit returned no results. I contacted Fleet Services Manager R4 R4 to determine if I was running the audit correctly. R4 advised me Hubbard's vehicle was not equipped with Zonar. R4 also advised me that notification for installation was sent to the Detectives Section in February of 2021, Hubbard's section and assignment at the time (Attachment #11).

On December 8, 2021, I requested the Watch Lieutenant schedule from Commander Tim Posey. Posey advised Hubbard was the assigned Watch Lieutenant for November 20 and 21, 2021. This information was confirmed by Communications Center Manager R5 R5 who informed me Hubbard logged on at 0732 hours on November 20, 2021, and 0725 hours on November 21, 2021 (Attachment #12).

On January 3, 2021, I contact Technical Support Engineer II R6 R6 R6 to see if Hubbard's GPS coordinates would be available through the use of his MDC. R6 told me Hubbard had very little data for all of 2021. However, it did appear he was logged on via his MDC on November 21, 2021, where he changed his status. There was very little GPS data for Hubbard for all of 2021, and no GPS data for November 20 and 21, 2021 (Attachment #13).

A review of Sonitrol records showed Hubbard came through the main gate on November 20, 2021, at 0742 hours and 1101 hours. On the same date, V1 came through the main gate at 1059 hours. V1 accessed the upstairs east door (PSU office) at 1101 hours followed by Hubbard at 1105 hours on November 20, 2021.

On November 21, 2021, Hubbard accessed the main gate at 0740, 1242, 1322, and 1526 hours. Hubbard accessed the PSU Office multiple times throughout November 21, 2021. There are no records for V1 on November 21, 2021.

For Sonitrol records refer to Attachment #14.

A review of Building A surveillance (pointing toward the main gate) showed Hubbard granted access to V1 at 1320 hours on November 21, 2021 (Attachment #15). Just prior to

Hubbard granting V1 access he exited the main gate in his assigned white Chevrolet Tahoe. He pulled his vehicle to the east parking lot near the KCSO memorial and waited. V1 entered the parking lot in her white SUV Crossover. Hubbard pulled out of his parking spot and opened the main gate and entered KCSO grounds followed by V1

I reviewed November 20 and 21, 2021, timecard entries for Hubbard and V1 which fell in the pay period 21/24. Hubbard's timecard was submitted and approved on December 6, 2021, by Levig. There were no hours entered for November 20 or 21, 2021, nor was the timecard rejected for any type of correction. V1 timecard was submitted and approved on December 6, 2021, by Hubbard. There were no hours entered for November 20 or 21, 2021, nor was the timecard rejected for any type of corrections. According to Auditornet Hubbard began to consistently approve V1 timecards at the conclusion of pay period 21/19, September 27, 2021. Weidenkopf was V1 previous approver.

To review all timecards refer to Attachment #16.

I reviewed cell phone records for Hubbard's department issued phone, 661-578-2997 (Attachment 17). I primarily focused on the months of November and December 2021. I did not see any inappropriate text message exchanges. The majority of the conversations appeared to be work related with some casual conversation mixed in. The majority of the text message exchanges took place during normal business hours. I did not see any text message exchanges for the weekend of November 20 and 21, 2021. Hubbard responded to a text from V1 on November 19, 2021, and the next message is from V1 to Hubbard on November 22, 2021. The final text message is from Hubbard to V1 on December 3, 2021. The message reads "Good morning, I don't want to bug you but I wanted to check in and see how you're holding up. Feel free to call if you want."

A review of Hubbard's call history revealed no calls were made or received from V1 for the weekend of November 20 and 21, 2021. There is one incoming call from V1 on November 17, 2021, and one outgoing call on November 30, 2021. There were multiple calls on December 3, 2021, that appear to be after the above referenced text message was sent. According to the records, there were only five calls made or received during the first week of November 2021 (IA Pro Conference).

End of report.

John Carpenter, Commander
Personnel Division

David Hubbard

ASSIGNMENT	*TDY or Home	Start Date	End Date
2110 - HOMICIDE UNIT	Home	9/30/2017	12/19/2020
2100 - DETECTIVE SECTION	Home	12/19/2020	3/13/2021
2075 - INTERNAL AFFAIRS SECTION	Home	3/13/2021	5/8/2021
1240 - PROFESSIONAL STANDARDS SECTION	Home	5/8/2021	12/4/2021
5160 - CENTRAL RECEIVING SECTION	Home	12/4/2021	4/28/2022
5200 - COURT SERVICES SECTION	Home	4/28/2022	8/15/2022

V1

ASSIGNMENT	*TDY or Home	Start Date	End Date
5163 - CRF SECURITY SQUAD 3	Home	10/4/2014	8/19/2017
5162 - CRF SECURITY SQUAD 2	Home	10/4/2014	1/24/2015
5161 - CRF SECURITY SQUAD 1	Home	10/4/2014	1/7/2017
2170 - COMPLAINT UNIT	Home	8/19/2017	6/28/2021
1240 - PROFESSIONAL STANDARDS SECTION	TDY	5/20/2021	12/11/2021
1260 - BODY WORN CAMERA UNIT	Home	6/28/2021	2/26/2022
1500 - CORONER SECTION	TDY	12/11/2021	2/26/2022

Notes:

*Home means it was their permanent assignment

*TDY means it was a temporary assignment

Complaint Unit would be under the Detective Section

Body Worn Camera Unit would be under the Professional Standards Section

Commission on Peace Officer Standards and Training
860 Stillwater Road
West Sacramento, CA 95605-1603
www.post.ca.gov

On May 16, 2023, Damian Nord was interviewed in a conference room located at the Paso Robles Police Department, 900 Park Street, Paso Robles, California by Kevin Sherburne and Nathan Weissich, Law Enforcement Consultants at the California Commission on Peace Officer Standards and Training ("POST"). Communications by the parties during the interview were electronically recorded. The recording will serve as the true and accurate record of the statements made by Nord. After being advised of the identity of the interviewers and the purpose of the interview, that being to obtain information related to allegations of serious misconduct, Nord provided the following information:

Nord served as chief deputy at Kern County Sheriff's Office ("KCSO") and oversaw detectives, Internal Affairs ("IA"), and special operations in the timeframe between February 2021 and December 2021. Doug Jauch was the Undersheriff who oversaw Professional Standards Unit ("PSU"). Toward the end of Nord's time at KCSO, he was in charge of detentions. This was in November to December 2021.

David Hubbard was either a lieutenant or sergeant in IA at the time. Trevino was the lieutenant in charge of PSU. Justin Weidenkopf was a sergeant in detectives and he later transferred to PSU.

There was interplay between IA and PSU. PSU was created specifically to investigate misconduct by sworn officers and staff. If a complaint came into IA that had to do with criminal acts by an officer, it was immediately discussed with PSU. PSU then met with the Undersheriff and they'd decide which route was appropriate – whether it would go to IA or PSU. In [redacted] S1 case, Nord learned of the allegations in his role as chief of IA, then he informed PSU and the Undersheriff of the allegations. The decision was to give the case to PSU. IA just had a file at the time; IA was not investigating it. Eventually, the case will come to IA for investigation and review, but the criminal investigation was PSU.

A day or two after the allegations came in, Hubbard came to Nord and said that PSU was not exhausting all of its resources in doing an investigation and PSU was just giving up. Hubbard said that the victim had offered to wear a wire and make a pretext call and PSU was telling her they were done, and the case was going back to IA. Nord went to the Undersheriff and said he did not know what was happening, but this is what he was hearing. Nord wanted to find out more and find out if the information was accurate. Nord asked Hubbard why the victim was talking to him. Hubbard explained that they had formed a relationship (not a personal relationship) when he was sergeant of detectives, and she was an aide and felt comfortable talking to him because of the nature of the allegation. Nord told Jauch and PSU and asked if they could use him because she's comfortable with him. Nord did not believe he'd characterize it as Hubbard said PSU's investigation was sub-par quality. Hubbard was not happy with the

way it was going. Nord thought he may be getting more information. There is always two sides to the story. The thought was that they did not know what she was telling PSU – that maybe she told Hubbard one thing and PSU another. Nord did not know if she was playing both sides against the middle. It appeared she was not as forthcoming with PSU as she was with Hubbard. PSU told Nord that she was not being cooperative. Nord has seen victims feel more comfortable with certain people.

Nord did not know if V1 asked Hubbard to step in or he took it upon himself. Nord did not ask. Nord simply heard the complaint and took it at face value. There was no discussion that Hubbard was a witness because of his status as lieutenant of detectives at the time of the assault against V1. Nord would never have allowed Hubbard's involvement in the case if he were a witness.

V1 told Hubbard she did not believe PSU was doing everything that she was willing to do. It was portrayed to Nord that she felt PSU was not doing everything.

After hearing the information from Hubbard, Nord met with Jauch and Trevino. Jauch was the one to make the decision to move forward. Both Nord and Trevino reported to Jauch. Hubbard was not present at the meeting. There was a total of three to four meetings. They were held in Jauch's office or Nord's office. The result was that they would move forward with V1 wearing a wire. Nord told Hubbard that PSU was going to continue the investigation. Nord did not know how the results of the meetings were expressed to Weidenkopf.

Nord did not recall ordering Hubbard not to get updates from PSU. Nord did not know of any orders to Weidenkopf or Trevino not to provide updates to Hubbard. Nord did not recall any updates being given or feedback that Hubbard was getting updates when he should not have been getting them.

PSU closed its case and sent the case to the District Attorney for review.

Nord did not have oversight of PSU. Nord can speak to the role of lieutenants. The lieutenant in charge of PSU had a limited role in dealing with the District Attorney where cases were sent for charging decisions; the sergeant generally was the one who worked on the case. Where there were issues with a case or a high-profile case, the lieutenant would get involved.

Hubbard and V1 had a purely professional relationship in the April to May 2021 timeframe. Nord was not aware that Hubbard's wife babysat V1 children. Nord did not know if Hubbard's wife was suspicious of him having an affair with V1 Nord did not know if Hubbard's wife had his passcode to his work phone.

Hubbard was a shooting star. He was the lieutenant of PSU and had "made it." After being lieutenant of PSU, you were going to be the next commander. He was regarded as a family man.

Nord was aware of the transfer of V1 to PSU. Nord did not know that V1 duties and reporting were split between Hubbard and Weidenkopf.

Nord did not know about any discussions that Hubbard and V1 had about the S1 IA investigation.

Nord was aware that Hubbard had provided input on the S1 IA investigation's interview questions. It was not uncommon at the time because there were so many new people as IA investigators for them to reach out to respected people for help. They round-tabled issues and talked about them. The S1 IA was one of Perez' first admin cases; Perez had experience in homicide investigations.

Nord did not recall that Hubbard had been V1 personal representative during her interview at the time that he was providing input to Perez on S1 interview. Hubbard would have had a conflict of interest problem to be V1 personal representative and then give her information about the S1 interview. It's like having a lawyer have the questions asked of your client. Perception is huge. The pure thought of it occurring, people will think it did happen and that it was orchestrated.

Nord heard of the Hubbard V1 affair when he had gotten to Paso Robles. He had not heard of it while he was at KCSO. Hubbard applied for job with District Attorney's Office in June 2022. Hubbard texted Nord to ask if he would serve as a reference to Hubbard's application to the District Attorney's Office. Nord said yes. The background investigator did not ask Nord about Hubbard's relationship with V1. Nord was mad but he felt like he was a mentor to Hubbard and he felt betrayed, especially while Hubbard was under Nord's command. It was a slap in the face to find out all these things were occurring.

Philip Campos was killed in a firefight. Hubbard was there, too. Campos' death may have clouded Hubbard's judgment, but Nord cannot say for certain. It affected everyone. EAP was offered to everyone at the scene. Nord has seen five line-of-duty deaths. Campos' death was the worst.

Nord did not know what specifically a person could or could not do with respect to actual conflict of interest. It's a Monday morning quarterback situation where conflict of interest could be perceived as a romantic relationship. As chief deputy at the time in charge of IA, however, V1 was the victim and wanted to talk to someone with whom she felt comfortable. It's not the normal process for a victim or witness to have someone in there with them. But because of the allegation being sexual assault, he wanted to make her comfortable. It should not have occurred that Hubbard was providing input to Perez. Nord did not recall Hubbard telling V1 what S1 said during his IA interview.

Hubbard's complaints about the PSU investigation centered around Hubbard feeling that S1 and Weidenkopf were friends. Everyone trusted Weidenkopf to do his job, but the issue was raised. Nord did not recall the issue being raised that

Hubbard complained about the investigative strategy of interviewing all detectives in the **S1** criminal case by PSU because Hubbard did not want his leadership to be questioned in light of the fact that he was lieutenant of detectives at the time of the sexual assault. Maybe it was brought up, but it was not a big point of concern.

Commission on Peace Officer Standards and Training
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On May 2, 2023, Erik Levig was interviewed in a conference room located at the California Department of Consumer Affairs, Bureau of Automotive Repair, 3331 North Sillect Avenue, Bakersfield, California by Kevin Sherburne and Darryl Elliott, Law Enforcement Consultants at the California Commission on Peace Officer Standards and Training ("POST"). Communications by the parties during the interview were electronically recorded. The recording will serve as the true and accurate record of the statements made by Levig. After being advised of the identity of the interviewers and the purpose of the interview, that being to obtain information related to allegations of serious misconduct, Levig provided the following information:

Levig first met David Hubbard when the were deputies assigned to the Kern Valley substation. Hubbard had gotten into trouble and was sent there as punishment. As time passed, Levig moved to homicide and he and Hubbard were partners doing homicide investigations. Levig came from Internal Affairs ("IA"). Both promoted to sergeant at the same time. Trevino also promoted to sergeant at the same time. When Levig became a sergeant, he moved to IA and Hubbard to homicide. They both also taught the laws of arrest and search/seizure. When Hubbard promoted to lieutenant, he moved to IA. Levig moved to compliance and standards. There was a vacancy in PSU after Trevino promoted and Doug Jauch moved Hubbard to PSU.

Hubbard spent only a short amount of time in IA. There was a vacancy in PSU and Kern County Sheriff's Office ("KCSO") policy was that department needs were filled by determining if someone out there was competent and a good fit.

Levig did not know about any complaints Hubbard had made about PSU's quality of investigations. Levig recalled discussions about Hubbard not feeling like PSU was not doing the S1 case to the same extent as it could.

Levig knew that Hubbard was only getting limited information. Levig did not know what was lacking and felt PSU was on the right track. It was just not the way Hubbard would have done the investigation.

In April 2021, Levig was a direct report to the Undersheriff as leader of compliance and standards. He had worked for Nord just prior to this. Justin Weidenkopf let Levig know that Hubbard complained about the PSU investigation. Hubbard complained to Nord who then took the complaint to Jauch. It came back down. Levig did not recall meeting with Jauch. It was not a great concern.

Sometimes, people talk about cases that are not assigned to them. Hubbard did have a role on the backside of the criminal investigation because he was in IA. V1 had gone to Hubbard in confidence and asked him for help. Hubbard's statements were like, "Hey, I was talking" to V1 At first, V1 was hesitant to wear a wire. Levig told Hubbard that they could only do so much without her cooperation. Hubbard encouraged V1 PSU sanctioned her wearing a wire. Levig did not know if Hubbard volunteered to help V1 or if PSU asked him for help with her.

Weidenkopf was on board with the plan to have Hubbard talk to V1.

Levig knew that Hubbard and V1 had worked together and that his wife watched her kids.

Levig had not hear that Hubbard complained about PSU's investigative strategy to interview all of the detectives in the section.

There was no formal plan to have V1 wear a wire. It was informal in a group setting how best to approach it. It could have been Levig giving the order to Weidenkopf or the undersheriff gave the order.

Levig has never seen IA intervene in a criminal investigation before. IA tracks the criminal investigation, but the criminal investigators do not get access to the IA case. It is never IA's role to intervene in the criminal case. Levig was not aware if Hubbard intervened in any other cases.

Hubbard told Levig about meeting with Ken Russell. It was common for PSU to meet with Russell to consult. Usually, Weidenkopf or the lieutenant would go to those meetings. Levig did not attend those meetings. It was not common for the victim to show up at those meetings. There was a process where Hubbard attended in a personal capacity. Levig would have asked Hubbard if he were the representative and need to conflict him out.

In conflict of interest situations at KCSO, the only rule is collateral employment. A Kern County ordinance governing conflict of interest would have applied to Hubbard.

Levig has been to Hubbard's house. He met Hubbard's wife a couple of times. They went to college at the same time and graduated about the same time. Hubbard asked if people could come over to his house after the shooting of Phillip Campos. Damian Nord was there, too.

It would be unusual for Hubbard's wife to have access to his work phone passcode. Employees are supposed to keep that confidential. People have gotten into trouble for sharing their information.

Levig was only aware of Hubbard's marital problems in December 2021. He was not that good a friend to know when marital problems first arose.

Hubbard sent Levig a text saying he accepted employment with the Kern County District Attorney's Office. Levig thought, "I only get a text?" The text was July 1. Hubbard asked Levig to be a reference on June 24.

Up until December 2021, Levig thought Hubbard and V1 were just friends. In the detective section, there was light horseplay and jokes.

Hubbard did not think Weidenkopf did not have leadership skills.

Hubbard came to Levig to tell him he was going to be V1 direct supervisor. It related to Blue Team reporting and there was no issue from Weidenkopf. Initially, V1 did

not want to be moved away from detectives, but then she got the cold shoulder in detectives, so she moved.

Levig thought V1 was breastfeeding in the office and that's why she had doors on her cubicle. She had been using an interview room, which had cameras.

There was banter between V1 and Hubbard. Hubbard fooled Weidenkopf and Levig in thinking there was nothing more than banter.

The Kern County District Attorney's Office did not follow up on Levig's answers to questions in Hubbard's background investigation. Levig heard that KCSO tried to serve *Skelly* notice of termination, but that Hubbard told them he did not work there anymore and that the county Chief Human Resources Officer had ordered processing of the Change in Employee Status.

Kern County SHERIFF

Interoffice Memorandum

To: Lieutenant J. Carpenter

From: Sergeant J. Weidenkopf

Date: December 10th, 2021

Re: Staff Misconduct

Sir,

At your direction, I will outline Sheriff Aide [V1] and Lieutenant D. Hubbard's history with the Professional Standards Section and my observations related thereto. For clarity, I will document these observations and events chronologically, although I did not know some facts until days, weeks, or months after some of my observations occurred. As of this date, I do not know when Hubbard and [V1] affair began.

For context, I have known [V1] and Hubbard for years. We were assigned to the Detectives Division together for some time (2017 through 2019). I know [V1] and Hubbard are close friends and Hubbard's wife acted as a babysitter for [V1] children during much of 2021. Their personal relationship was apparent but obviously extended to their immediate families.

In April of 2020, [V1] made sexual battery allegations against Detective [S1] At the time, she was assigned to the Detectives Division as a Complaint Officer and [S1] was assigned to the Special Victim's Unit (SVU). Hubbard was the Lieutenant assigned to Internal Affairs (IA). This launched a criminal personnel investigation by the Professional Standards Unit (PSU), with [V1] as the victim. I was then and currently am the Sergeant assigned to PSU. Therefore, I supervised the investigation and provided Internal Affairs with investigative updates.

During the investigation's infancy, Hubbard had at least two meetings, that I know of, with [V1] outside the presence of a PSU Investigator. This was affecting the criminal investigation as [V1] was making the difficult decision to pursue or not pursue criminal action against [S1] Initially, [V1] was unwilling to participate as a criminal victim but decided, after contact with Hubbard, to pursue criminal action. She told me Hubbard's contact and input with her impacted her decision. This began a sensitive investigation that required PSU to perform investigative actions using employees, against employees, while all involved employees were at work at Sheriff's Headquarters.

A few days into the investigation, Acting Chief Levig (then the Compliance and Standards Division Commander), Commander Trevino (then the PSU Lieutenant), and I were questioned by Sheriff's Administration as to the quality of the investigation we were conducting. During that process, we were advised that Hubbard had contacted his supervisor, then Chief Deputy Damian Nord (now retired), and claimed PSU was completing a poor investigation into [V1] allegations. Levig, Trevino, and I defended our investigation to Undersheriff Jauch and were cleared to continue, however, I was instructed to stop providing Internal Affairs with investigative updates.

Historically, providing investigative updates to Internal Affairs was common practice and, in my experience, had never disrupted a PSU investigation. I discontinued providing investigative updates to IA. Within one day or so thereafter, I saw Hubbard outside the IA office. He asked me for an investigative update and I denied his request. I am not certain who I referred him to, but it was either Trevino, Levig, or both.

Hubbard's relationship with V1 appeared to be motivating his efforts to impact the criminal investigation. PSU concluded this investigation on May 4th, 2021, and filed the case with the District Attorney's Office. PSU cases are filed directly with Supervising Deputy District Attorney Ken Russell. This process involves my investigators and I meeting with Russell, briefing him on the investigation, and then hand delivering the complaint package to him. V1 sexually battery case was no exception.

On May 21st, 2021, Hubbard was transferred to PSU as the Lieutenant. At the time, the Compliance and Standards Division was building the Body Worn Camera Unit. Hubbard and Levig (who was still the Division Commander) were instrumental in accomplishing that project. In June of 2021, Hubbard facilitated V1 transfer from the Detective's Division to the Body Worn Camera Unit, which had not been deployed yet (it would get staffed in October of 2021). Hubbard did this without involving me but was certainly not required to involve me, despite V1 then being my subordinate. However, I agreed with the move as it was supported by V1 body of work, the challenges that come with starting a new unit, and a staff report I authored in an attempt to obtain an analyst. I took possession of her D-500 file, was approving her timesheets, and was her direct supervisor.

During the months following V1 transfer, the close friendship I remembered she and Hubbard having continued to be apparent. Hubbard's wife was babysitting V1 children daily. With Hubbard now assigned to PSU, he had a work related nexus to the status of all PSU's investigations and the filing of cases we submitted to the DA. While V1 sexual battery case was in review by Russell and his team, Hubbard took V1 to the DA's office to meet with Russell without involving me, my lead investigator, or PSU staff who were involved in the investigation. Additionally, he did so without my knowledge. I learned of this weeks or months later but am struggling to recall how I learned it. Hubbard may have told me.

Meeting a DDA without the involved investigators present is certainly not consistent with past PSU practices. Hubbard involving himself while being V1 close friend (assuming the affair had not yet started) was poor judgement in the least. Ultimately, Russell decided not to file the case on July 12th, 2021. Additionally, Hubbard's wife stopped babysitting V1 children about this time.

In August or September of 2021, Hubbard told me that V1 was working on projects related to the Professional Standards Section and not many related to the Professional Standards Unit. He advised me I was being relieved as her supervisor and that he would supervise her. He took possession of her D-500 and began approving her timesheets.

In the weeks following, V1 used material consistent with compressed cardboard to make doors at her work station. This allowed her to conceal herself while in her cubicle. I noticed her alone, with the doors closed, in her cubicle on a regular basis. After my team and I learned of the affair, Detective Rutter disclosed to me that she witnessed V1 and Hubbard close the makeshift doors and spend time whispering together in the cubicle. See Rutter's memo for details.

Around the same time, I noticed the blinds on Hubbard's office window were closed. Previously, they remained open. Since I noticed them closed, they stayed closed for months and remain closed today. Hubbard meets with staff regularly to discuss confidential investigations. I assumed he closed them

during a meeting that may have been an emotional experience for one or both parties. At the time, I did not identify the closed blinds as suspicious.

In the meantime, the new BlueTeam system was being built and training for it developed. Employee selection, training, and policy development were also underway for the soon to be BWC Unit. Under Trevino, I was heavily involved in these processes. After Hubbard took over, I was slowly phased out of these projects as Hubbard gave many of the responsibilities to [V1]. Looking back now, this grew into a need for he and [V1] to work closely together daily. Without my involvement, they would have an excuse to be in the office after hours or on weekends without me.

For example, I received a call from Metro Patrol Sergeant J. Nance on November 12th, 2021. He had questions about Axon informational memo's Hubbard had sent to KCSO's supervisors earlier that week. I was unable to answer the questions as I had never seen the memo's and was not aware operational changes had been made to Axon, that directly relate to PSU. When I saw Hubbard on November 15th, 2021, I told him what happened and asked him to send me the information as members of our organization rely on me to know it. He never sent me them. While I do not think Hubbard was intentionally being ill willed to me with this issue, this example represents the breakdown in attention, his phasing me out of projects that affected me, and the poor judgement I began to notice him display.

During the work week beginning November 29th, 2021, I observed a significant deterioration in [V1] behavior. She was treating her co-workers poorly, seemed emotionally distressed, and even slammed a door on one occasion. I began checking her status by talking to my team. PSU SST [W1] told me [V1] was having serious marriage problems but [W1] did not know exactly what the issue was.

Later the same day, I observed [V1] enter Hubbard's office and close the door. My office also has a shared door with Hubbard's office. This door was also closed. I could hear, through the closed door, [V1] crying. I assumed Hubbard, as her friend and supervisor, was addressing her issues. At the time, I obviously did not know he was the issue.

They left Headquarters together a few times during the week of November 29th, 2021. I recall them returning with coffee on one such occasion. I observed them return from one of these drives in Hubbard's assigned Sheriff's vehicle (a white Chevrolet Tahoe W3426). This reminded me that Hubbard's vehicle was never equipped with Zonar tracking equipment. He told me he never had the tracker installed. We discussed this a few months ago, following a department wide request for supervisors to confirm the Zonar was working in their staff member's vehicles. Hubbard and I confirmed all affected PSU had working Zonar equipment in their vehicles but I noticed Hubbard's vehicle was not being tracked.

On December 6th, 2021, I arrived at work at 0700. Hubbard and I were scheduled to spend the day presenting use of force and canine draft policies, while defending the content of both, to a panel of Department of Justice team members, Stipulated Judgement compliance monitors, and members of the Office of Attorney General. Hubbard was assigned to play a significant role in this regard. Shortly after 0700 that morning, he sent me the following email:

Good morning sir,

I will not be present for the meeting today. Danny and Adrian are prepared to cover the UOF materials but I figured you may be able to help as well. Here are the updated items including the PowerPoint.

I am taking some time off. I'm not sure when I will return to work so for anything urgent, please reach out to Acting Chief Deputy Levig.

Thank you,
David

Sent from my iPhone

At this point, I realized something was wrong. Within minutes, I contacted him by text message and requested his status. He responded by disclosing the affair to me. Minutes later, [redacted] arrived at work and walked to her work station where she began crying. I sent her home that morning and began developing a short term plan to accomplish the weeks tasks without Hubbard and [redacted]. This plan is outlined in a memo I provided to Acting Chief Levig on December 8th, 2021. It is attached for reference.

While I did not witness inappropriate physical contact between Hubbard and [redacted] a reflection of their time in PSU led me to realize the process by which [redacted] was isolated by Hubbard and I was phased out of the projects they were working on. I believed Hubbard was acting with good will in an attempt to keep my work load manageable, however, he may have intended to create an environment in which he could start, continue, or expand on the inappropriate relationship he had with [redacted].

I understand Hubbard and [redacted] behavior jeopardized the credibility of the work PSU did while they were here. This considered, I am prepared to defend the work my team did during the affected time frame.

Respectfully submitted,

J. Weidenkopf #984

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On May 3, 2023, V1 was interviewed in a conference room located at the California Department of Consumer Affairs, Bureau of Automotive Repair, 3331 North Sillect Avenue, Bakersfield, California by Kevin Sherburne and Darryl Elliott, Law Enforcement Consultants at the California Commission on Peace Officer Standards and Training ("POST"). Communications by the parties during the interview were electronically recorded. The recording will serve as the true and accurate record of the statements made by V1 After being advised of the identity of the interviewers and the purpose of the interview, that being to obtain information related to allegations of serious misconduct, V1 provided the following information:

At Kern County Sheriff's Office ("KCSO"), PSU handles criminal cases. When they are done, the case moves to Internal Affairs ("IA"). IA's case is on pause until the criminal is over. IA is kind of involved because of situations where the employee is put on administrative leave.

When V1 first raised allegations against S1 she spoke first with a sergeant and then was taken over to IA. She was ordered not to talk about it and was walked into the lieutenant's office. David Hubbard told her she might need to talk to her boyfriend about the matter before receiving the order not to talk about the matter. Justin Weidenkopf was in the room when Hubbard gave her this advice.

Hubbard spoke with her about wearing a wire. She did not want to pursue it and wanted the whole thing to just stop. V1 told them to stop the case. Hubbard told her that she knew how things go.

V1 worked for Hubbard for about four to five years. He was a really good supervisor. He was always willing to give her more work. He was fair if you screwed up. He looked at both sides of the issue and was always nice about telling you if you made mistakes. She called him "LT," "Lieutenant," or "Hubbard."

V1 did not recall telling him or asking him to complain to command staff about the PSU case. V1 has seen interviews of homicide subjects but did not have experience with IA interviews.

V1 asked for the status of the investigation of S1 In November 2021, she asked Hubbard because she had heard what S1 had said in his defense. She knew his interview had come and gone and was trying to see if what she heard was what was said. Rumors were that S1 said V1 had asked for it, V1 had relationships with other people in the section, and that she was crazy and violent.

At first, Hubbard did not want to tell V1 but she wore him down and she laid out what she had heard. Hubbard confirmed what she heard through rumors. Through roundabout means, she asked him yes/no questions and he

answered them. She could also read his facial expressions. Hubbard told her that he could not share the information about what S1 said during his IA investigation because it was confidential. Hubbard and V1 knew each other for a long time. He told her what S1 said approximately a couple of days after S1 interview –it was before Thanksgiving. She could not say if Hubbard was in panic mode. They never talked about what was going to happen next other than to say, if IA looks into this, we will tell them the truth of anything that was asked. There was never a discussion of a plan to get their stories lined up.

In November 2021, V1 relationship with R9 was problematic and she was in the process of moving out. V1 told Hubbard that R9 knew about her affair with Hubbard.

At first, V1 and Hubbard had a regular work relationship. They were close and worked in detectives for a long time. In PSU, people did not know they were having an affair. They started kissing and holding hands in November 2021. This was after her training conference trip to Florida. When she was there, they talked by phone and said they had feelings for each other. After Philip Campos' death, Hubbard and V1 grew closer together. It affected her differently than it affected him. She was struggling with how to let go. She was not aware if Hubbard was having marital problems.

Hubbard's wife told V1 that she could not watch V1 children anymore because she was going to start working for her family business. V1 did not know if Hubbard's wife ultimately started working for the family business.

Lunch in PSU was something where everyone gathered around every day. V1 was in charge of training body worn camera ("BWC") and dispatch. There was one day where V1 and Hubbard went over to dispatch and they went out for coffee.

Hubbard assumed supervision of V1 from Weidenkopf because there really was not a position to put her in. Weidenkopf was her sergeant and there was not a lot of definition in the work she was getting. She thought it was busy work. Time passed and she got more busy work and Hubbard said he needed help. Hubbard needed more help than Weidenkopf because the BWC unit was being built. She was confused because she got mixed signals and direction and the tasks did not mesh. Hubbard came to her and told her he was her supervisor. He figured it was because she was not in a real job and was in-between.

Ken Russell, the deputy district attorney, met with Hubbard. Hubbard came to V1 and said that Russell wanted to meet with her. She did not want to go. She asked Hubbard to go with her. Eventually, he said yes. She asked him, "Do I have to go by myself? Can you go with me?" V1 did not know in

what capacity Hubbard went – either as the PSU lieutenant or as her personal representative.

When it came time for V1 to be interviewed by IA, they contacted her and asked for an interview. She had severe anxiety and did not want to go by herself. She did not want a stranger as her representative. She told Hubbard that she was anxious. Hubbard said you can have an advocate or you can take anyone. She asked him to go with her. At the time, Hubbard was the lieutenant in charge of PSU. In advance of the interview (she did not recall how many days in advance), she started not sleeping well. She asked Hubbard if he could talk to Perez beforehand because she was anxious. She, Hubbard, and Perez met. She felt better after the meeting after Perez reassured her she was doing the right thing. Perez is a very strong interviewer and she saw him interview subjects where it gets intense.

During her IA interview, Hubbard sat on her left. He did not let her know about potential questions during the interview that she remembers. He did not provide coaching, just said to tell the truth. Hubbard patted V1 back at one point because she was emotional and he said, “it’s ok.”

V1 looked up to Hubbard. If she came to him with a problem, he listened. V1 would cry to him about things and he’d listen and give advice. He has a strong work ethic – the same as hers. She felt appreciated for doing a good job. Rank does not matter to V1 she judges people by their character. Hubbard treated other females kindly and fairly, but she and Hubbard had a rapport. Other females had never worked for him in the past like she did.

She never felt like she was being groomed because she was vulnerable. R9 was not there emotionally for her, especially at the time she had anxiety around the IA interview of S1 Hubbard filled and voiced emotional support for her. V1 used Hubbard a little bit as someone to talk to.

Hubbard picked her up and carried her a couple of times. She has a heart condition, where her blood pressure drops and she gets dizzy and blacks out. She is aware when she is about to faint and needs to sit down. V1 knows when it will happen and what she needs to do to fix it. All the guys she worked with know how to deal with it. EMTs came a couple of times for allergies, not for her fainting. This was a couple of times in 2021 once in February and again later in the year.

W1 and she were buddies. They’d pick on each other and team up against others.

R2 husband, John, is friends with Hubbard. R2 likely hates V1 because of the affair.

Bess Rutter and V1 were cool together, though Rutter likely does not like V1 now.

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On May 2, 2023, W1 was interviewed in a conference room located at the California Department of Consumer Affairs, Bureau of Automotive Repair, 3331 North Sillect Avenue, Bakersfield, California by Kevin Sherburne and Darryl Elliott, Law Enforcement Consultants at the California Commission on Peace Officer Standards and Training ("POST"). Communications by the parties during the interview were electronically recorded. The recording will serve as the true and accurate record of the statements made by W1. After being advised of the identity of the interviewers and the purpose of the interview, that being to obtain information related to allegations of serious misconduct, W1 provided the following information:

W1 started at the Kern County Sheriff's Office ("KCSO") as a Sheriff's Support Technician ("SST") in November 2020. She worked in the civil litigation unit for about six to seven months until she received a promotion to Professional Standards Unit ("PSU"). She left KCSO in April 2022 to work for Nestle Purina, where she could work remotely. Working remotely was helpful because she serves as a caregiver to a family member. She believed she was in good standing and is still in touch with people at KCSO.

W1 described the physical layout of PSU. The Body Worn Camera ("BWC") unit is on the left. BWC was new when W1 arrived there. BWC had a sergeant's office and cubicles. To the right was the lieutenant's office and cubicles. W1 sat next to James Money. Bess Rutter moved into the cubicle next to W1. Across from W1 was Ray Siebert, Jose, and V1 sat next to Jose. V1 was diagonal to the right of W1, as one looked out from W1's cubicle.

V1 had erected makeshift doors to her cubicle entrance. The doors were there when W1 started. They were made of fake, plywood-type cardboard and were rectangular. They were held together to the cubicle by flex cuffs. They looked like saloon doors. W1 did not know why V1 erected the doors.

V1 was a good, hard worker. She trained W1 on BWC programs. As a person, V1 was intense with her personality and mood swings. Some days, she was in a horrible mood. Other days, she was in a wonderful mood. You could tell right away what kind of day it was going to be. V1 would be easily distracted and burn out. She was "intense" in her personality and mood swings. You could call that drama.

W1 noticed that David Hubbard's and V1's relationship was interesting in the beginning. He was more friendly with her. Not that he wasn't friendly with others, but they had a closer relationship. W1 put it off to the fact that they had worked together before. They kept to themselves more than others did. It caught W1's eye but she was new so she chalked it up to that. After a while, W1 thought the relationship was something else. They would always go to lunch separately from the team and drove together in his work car. They would be gone for lunch.

Everyone else used to pile into a brown truck, head for lunch, and eat together. It was not a normal working relationship. W1 did not see physical touching, although they might have been touching at the computer screen together.

W1 saw Hubbard pick V1 up when she had one of her fainting spells. W1 was still pretty new and had heard V1 had allergy issues, got really winded and out of breath. Still, W1 thought it was odd.

At the time Hubbard was helping V1, W1 was inside her cubicle talking to Ray in his cubicle. Hubbard and V1 were in the PSU common area. W1 thought it odd and Hubbard put V1 down after he made eye contact with W1. At other times, V1 struggled to walk and Hubbard helped V1 walk by putting his arm over her shoulder/waist. Hubbard walked her to the doorway of her cubicle. Hubbard would enter the cubicle and stay maybe five to ten minutes. W1 did not see them make calls to 911 or paramedics.

There was another time when V1 sipped Arizona Green Tea and had some kind of reaction. They used an EPI pen on her and W1 texted her sergeant (who was off duty) and Ray texted Hubbard. The Department of Justice was visiting KCSO and Hubbard sprinted up to PSU from his meeting to check on her. Everyone offered to drive V1 to urgent care, but she refused. Hubbard offered to take her home or something. He did not call an ambulance. V1 remained at work and Hubbard stayed in PSU the remainder of the day.

Watching Hubbard sprint upstairs was weird. He was usually calm in stressful situations, but he had a panicked look on his face that day. It was unique to see, especially for a lieutenant who had been around for some time.

At about Christmas 2021, everything blew up. W1 never saw Hubbard and V1 kiss or hold hands, just saw him carrying her and hugging her. W1 did not hear rumors they were having an affair until later.

W1 noticed flirtatious behavior within a few weeks of being assigned to PSU in August 2021. Within a month or two, W1 knew she wasn't the only one who thought their relationship was odd. V1 told W1 about the affair over the phone.

V1 worked directly for Hubbard. W1 learned that V1 came from another department where Hubbard worked. She had come to PSU because there was a case going on with someone else. V1 was supposed to work for Justin Weidenkopf and Hubbard made sure she worked directly for Hubbard. At the time, W1 thought that was weird. That irritated some people. It irritated Weidenkopf the most because he was over the department and Hubbard came in and started trying to take over. Hubbard had a lack of respect barrier. Hubbard had the attitude that V1 was working for him, not Weidenkopf. Hubbard had the "I'm the lieutenant" attitude. Although V1 did not say she was all about him being lieutenant,

W1 could see that she was. There was a difference in his tone of voice. When talking to W1, Hubbard was more strict, monotone. There was no banter or joking. He was very direct, "I need this done and here's the deadline, thank you." On the other hand, with V1, Hubbard had a very light banter.

Hubbard usually wore slacks and a buttoned shirt, and a uniform on occasion if something was after his normal PSU shift.

Hubbard was very tall, while V1 was very petite. She was maybe 5'5" and he was a much bigger guy. V1 was very young and naïve. You could see the maturity difference between the two of them.

Philip Campos was killed in the line of duty when W1 was in civil litigation. Hubbard never personally spoke about Campos but it was such a dark time. Everyone was affected by his death.

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On May 1, 2023, Danny Perez was interviewed in a conference room located at the California Department of Consumer Affairs, Bureau of Automotive Repair, 3331 North Sillect Avenue, Bakersfield, California by Kevin Sherburne and Darryl Elliott, Law Enforcement Consultants at the California Commission on Peace Officer Standards and Training ("POST"). Communications by the parties during the interview were electronically recorded. The recording will serve as the true and accurate record of the statements made by Perez. After being advised of the identity of the interviewers and the purpose of the interview, that being to obtain information related to allegations of serious misconduct, Perez provided the following information:

Perez was a sergeant in Internal Affairs ("IA") at Kern County Sheriff's Office ("KCSO") from February 2021 to June 2022. The lieutenants over that timeframe were David Hubbard from March 2021 to May 2021 and John Carpenter after Hubbard left IA.

Perez was the investigator of the IA case against S1 The allegations started in 2021 and the IA case was tolled pending a criminal investigation. Perez worked the IA case in September and October 2021.

Perez was acting sergeant when S1 was assigned to Special Victims Unit ("SVU") and worked with S1 on occasion. They are work associates. They got along and had a respectful relationship. Perez thought S1 was a really good senior deputy and detective.

Hubbard was Perez' supervisor for the three years prior to Perez joining IA while Perez was in homicide. Perez considered Hubbard to be a friend. He had been to Hubbard's house two to three times. Hubbard hosted a Christmas party for the homicide unit. Everyone brought their significant others. Perez texted Hubbard about three to four months prior to May 2023 to check in see if he had time for coffee. They did not end up meeting. The text messages were just light and Perez saying to Hubbard that he was thinking about him.

Perez also considered Hubbard to be a mentor. Hubbard was acting lieutenant and selected Perez to be acting sergeant. Perez looked to Hubbard for mentorship and advice.

V1 worked in the complaint unit while Perez was assigned to homicide. Perez supervised V1 for one to two years. He found her to be very competent and pretty dedicated. Homicide was busy and she could be counted on to put together "murder books," complex things, and officer involved shooting binders. She did not collect information. She compiled information the detectives obtained and put it in the correct format. V1 had medical issues, but her performance was above standard. He thinks of her as a work friend. Perez also knows R9

Perez did not know if Hubbard and R9 had any kind of relationship.

The friends closest to V1 included R3 Perez didn't know about R2 W1 and Bess Rutter. V1 was always friendly with everyone. She was very busy and worked with everyone, from patrol to detectives.

When it came time for Perez to interview witnesses in the S1 IA case, he sent emails to them. He told her the purpose of the interview was to obtain information about S1 Before the interview, she seemed very distressed. Hubbard called Perez the same day as Perez' email to V1 and said, "hey, is this starting? She's freaking out." Perez said he would talk to V1 and tell her what to expect in general terms to calm her nerves. Perez called V1 in for a pre-meeting discussion, which took place with that same day or the next. It was behind closed doors with Professional Standards Unit ("PSU") and IA. Hubbard and V1 were both there with Perez. Perez said he could not tell V1 the questions he was going to ask but told her it's about S1. Perez told her she could have someone there at the interview so long as they don't interfere and that questions may be pointed but need to be asked. That meeting was not recorded. The meeting was about 15 minutes long. Hubbard provided merely words of affirmation. They did not talk about how the criminal investigation went. Perez did not think V1 understood the process from criminal to IA.

Generally, Perez gave seven to ten days' notice prior to an interview. The notice says something to the effect that the person was identified as a witness and to let him know availability over the next seven to ten business days.

When Hubbard called Perez about V1 interview notice, he was her lieutenant in PSU at the time, but maybe Justin Weidenkopf was her direct supervisor. The interview was October 15, 2021, so a week before that, Perez had sent the email notice. Perez checked and confirmed he sent the email on October 11, 2021 at 11:00 a.m. It was likely an internal call when Hubbard phoned Perez, which showed his name and extension.

Perez interviewed V1 in an executive conference room at KCSO headquarters. There are two doors to the conference room. The room has a separate entrance. PSU is in the same building but at the opposite end. Perez also conducted S1 interview in the conference room.

Perez was not aware of the rumors that V1 and S1 were dating. The first person to say it out loud was S1 during his interview. Perez never thought that was going on, just thought V1 and Hubbard were close. He didn't get the vibe they were dating. All the years Perez knew Hubbard, he did not think Hubbard was that person.

Somewhere after serving notice to V1 Hubbard told Perez he was going to be her representative during Perez' interview of her. Hubbard told him that somewhere between the phone call and the 15 minute meeting. Perez told Hubbard at the outset not to interfere with the interview.

Hubbard reached out during the interview and touched V1 elbow toward the end of the interview during questions like "how did it make you feel? Did you want to come to work anymore?" Perez was also asking questions about whether she had gone to therapy. Perez recalled that she was having a hard time emotionally and Hubbard's touch was to say, "hey, it's all

right." Hubbard sat to the back and side of V1 He was comforting her. Perez can't tell one way or another if she was coached. She became very emotionally intense after the recording was turned off and she seemed genuine. She said she wished she had never come forward to make allegations against S1

V1 cried during her interview. Hubbard leaned in when she cried and looked at her, patting her arm and elbow.

V1 was everyone's "annoying little sister." Hubbard had a very paternal way toward V1 She had dizzy spells called POTS. They used to call her Dizzy as a nickname. She fell down. They would take her home and call her boyfriend. Hubbard was very concerned for her when she couldn't walk. Perez would roll her in a chair to her car. Hubbard picked her up and carried her to the car. She was coherent, but very weak. Perez did not know of any fainting spells where Hubbard carried V1 to his office. Perez just recalled one time in 2017-19 timeframe.

With respect to conflict of interest, Perez stated that the office didn't have a policy, but if they were having an affair, one could not be objective.

In forming his questions to ask S1 Perez started mentally forming questions as early as October 1, 2021. He put his questions on paper weeks in advance of the interview. Hubbard came to Perez' office and Perez bounced ideas of questions for S1 around people in the office. Perez told Hubbard he was gearing up for the S1 interview and asked Hubbard to look over the questions. Hubbard made a suggestion but Perez did not accept Hubbard's suggestion and make the change. S1 had made statements along the lines of "Danny, you know how she was. She was with everyone in the office (Justin Weidenkopf, Ray Ray, Hubbard, and Brad)." S1 turned it around on her, she's the one who started it. He implied she was sleeping around. S1 said she's lying, she's crazy, she's going to beat me up, she jumped on the desk at one time. Hubbard did not provide Perez with strategy.

Perez did not ask for input on the S1 interview from anyone else outside IA – Hubbard was the only person not in IA whom he asked.

On November 23, 2021, Hubbard came to Perez' office and asked how the interview went. Perez told him there was a lot to process, a world of emotions. Perez told Hubbard that S1 threw a lot of people under the bus, maybe he was just venting but Perez told Hubbard that Hubbard might be a subject officer. Hubbard got quiet and said he might need a representative for that. It didn't register with Perez until later. Hubbard had a physical reaction. He leaned back and looked upset. Perez reported S1 allegations to his lieutenant and told him it was all preliminary and asked his lieutenant to let him process the whole thing.

Perez got a call from a co-worker, Sergeant Ryan Pitcher, who supervised R9 Pitcher told Perez on a Saturday that he told Pitcher he needed to report the allegations of Hubbard and V1 having an affair up the chain of command. Perez felt sick to his stomach.

Perez was told to go take Hubbard's cell phone. Perez called Hubbard ahead of time. Hubbard apologized to Perez. It was maybe a Monday or Tuesday after it all came out when Perez took the cell phone.

In reviewing the cell phone records, John Carpenter asked Perez if Carpenter was reading them correctly. Perez' access was limited but from what Perez saw there were no indications that there were gaps in the data. Perez did not know if Hubbard had deleted texts or records of calls after Perez called Hubbard to take his phone.

Hubbard had complained about the PS investigation. PS wanted to have V1 wear a wire. She was hesitant. Hubbard thought PSU was just giving up and that they need to push this. V1 came to Perez' office in IA and they spoke behind closed doors in Hubbard's office. PSU investigators were not aware of those discussions to Perez' knowledge.

Hubbard did not intervene in other investigations, just the S1 investigation.

Perez did not hear about any order not to brief Hubbard until after the whole thing was over. Weidenkopf said that Hubbard said he wanted briefings.

Perez did not know if Hubbard shared information with anyone about what S1 had said during his interview. V1 came to Perez a few weeks after the S1 interview and asked Perez for information. Perez asked her why she wanted to know and said he was not going to tell her what S1 had said. She said she needed closure. He told her she needed to move on. That was during his second interview of her. Hubbard was not at her second interview.

Hubbard's affair, personal connection, and emotional investment in the outcome of the investigation could have derailed the whole thing. If Perez knew about the affair, there was no way he would have allowed let Hubbard become involved.

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On May 3, 2023, Bess Rutter was interviewed in a conference room located at the California Department of Consumer Affairs, Bureau of Automotive Repair, 3331 North Sillect Avenue, Bakersfield, California by Kevin Sherburne and Darryl Elliott, Law Enforcement Consultants at the California Commission on Peace Officer Standards and Training ("POST"). Communications by the parties during the interview were electronically recorded. The recording will serve as the true and accurate record of the statements made by Rutter. After being advised of the identity of the interviewers and the purpose of the interview, that being to obtain information related to allegations of serious misconduct, Rutter provided the following information:

On May 3, 2023, Bess Rutter was interviewed in a conference room located at the California Department of Consumer Affairs, Bureau of Automotive Repair, 3331 North Sillect Avenue, Bakersfield, California by Kevin Sherburne and Darryl Elliott, Law Enforcement Consultants at the California Commission on Peace Officer Standards and Training ("POST"). Communications by the parties during the interview were electronically recorded. The recording will serve as the true and accurate record of the statements made by Rutter. After being advised of the identity of the interviewers and the purpose of the interview, that being to obtain information related to allegations of serious misconduct, Rutter provided the following information:

Rutter was assigned to Internal Affairs ("IA") in 2021 and brought over to Professional Standards Unit ("PSU") in October 2021.

Rutter described the layout of PSU as an open room with desks in cubicles. Three cubicles on each side of the room. Rutter was on the north side toward the west. V1 was directly across from Rutter on the south and west sides. The opening of their cubicles was more or less aligned. V1 desk faced the wall and Rutter's desk faced the window, so they had their backs to each other. They could see each other's computer monitors if they turned around.

While at IA, they were in a different building on the Kern County Sheriff's Office ("KCSO") campus. When Rutter moved to PSU, V1 cubicle already had doors on it. Rutter understood that V1 wanted privacy and they were working with a group of guys and sometimes did not want to deal with them. They were all told doors were a fire hazard and no fake doors were allowed. V1 was a jokester. V1 mostly kept the doors open when Hubbard was there. When they were having discussions, Rutter thought something was not right. It was not a good look to have someone in your cubicle with you and you're whispering like Hubbard and V1 did. They were all in one unit and if something needed to be discussed, there should not have been secrets. Rutter could not overhear discussions in the cubicle. Siebert was in the cubicle right next to hers.

V1 was Hubbard's secretary and he was the lieutenant. He was professional. It was a relaxed atmosphere. Their relationship might have crossed a line. It seemed a little closer than Rutter would have been with her partners and Hubbard was V1 supervisor. But, Rutter was new to the unit and did not want to say anything.

As a woman, Rutter saw red flags about Hubbard's and V1 relationship. V1 was a very flirtatious individual. She is very outgoing and Rutter put it all together after the fact.

V1 drank some tea and had an allergic reaction and almost fainted. Hubbard may have picked her up. Rutter did not see that.

Rutter asked Justin Weidenkopf a few months into working at PSU what the reason was for V1 to work for Hubbard. It was odd because V1 should have reported to a sergeant, not directly to a lieutenant. Weidenkopf did not answer directly, and replied only that was just how Hubbard decided to do it.

Hubbard did not have personal animosity toward S1 When Rutter was in IA, S1 was a subject officer and Hubbard was in detectives at the time. Hubbard was S1 supervisor at the time of S1 IA incident.

Rutter did not know if Hubbard and V1 were holding hands or kissing.

There were rumors that Hubbard was trying to get involved in the criminal investigation of S1 People were upset and wondered why he was trying to do that. During Rutter's time in PSU, it was before Hubbard left the unit at the end of 2021. Rutter heard he was inserting himself by speaking with the District Attorney. It seemed later on that she heard that rumor after Hubbard had left. Rutter did not know if Hubbard inserted himself into the IA investigation of S1

In November 2021, Rutter was in the office over the weekend of November 21-22. She recalled the office light or desk lamp was on in Hubbard's office. At about that time, Rutter was suspicious that Hubbard and V1 were having an affair or something was going on. She wanted to get out of the office as fast as possible because she had suspicions. She did not see Hubbard's car. She thought his light on was odd. She knew Hubbard was watch commander that weekend. Based on her suspicions, she asked around if Hubbard was in his office. She wanted confirmation of her suspicions.

Hubbard was a good supervisor. Smart guy. He guided you, didn't tell you what to do. Rutter learned a lot from him in IA and he recommended her to come over to work for him in PSU. She would not feel comfortable talking to him behind closed doors.

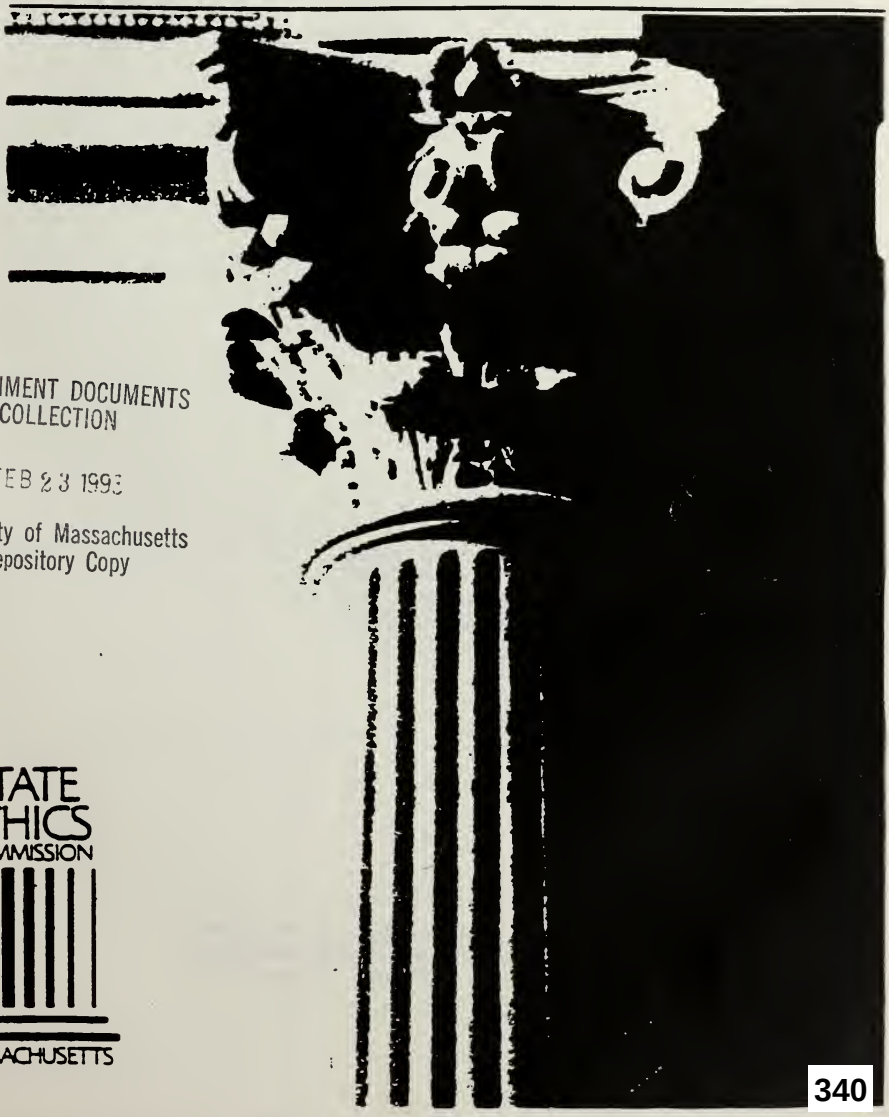
Hubbard treated V1 differently than others he supervised, including support staff. Rutter did not see Hubbard abuse his power. From outside looking in, V1 appeared to cross the line in joking with Hubbard. V1 treated Hubbard more like a peer than her supervisor. Hubbard did not reciprocate. He didn't really respond to her but every now and then he did. He was not as outlandish as she was. V1 was more flirtatious than he was. She was more flirtatious with Hubbard than anyone else. It was more words. She did not dress provocatively but would talk close to his face. She was like that with everyone. Within a group, everyone engaged in innuendo and Rutter can't say V1 did that more than others. V1 did aim innuendo at Hubbard to see his reaction.

Hubbard treatly everyone the same if they came in late for work. Rutter had to make up work on the back end of her shift. It was common for V1 to be late for work.

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A Practical Guide to the **Conflict of Interest Law** for Police Officers

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A PRACTICAL GUIDE TO THE CONFLICT OF INTEREST LAW FOR POLICE OFFICERS

State Ethics Commission
Room 619
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THE MASSACHUSETTS CONFLICT OF INTEREST LAW (Chapter 268A of the General Laws) was enacted in 1962 to promote confidence in government.

THE MASSACHUSETTS STATE ETHICS COMMISSION was established in 1978 by the Legislature as an independent civil enforcement agency to enforce the conflict of interest and financial disclosure (Chapter 268B) laws.

The Commission is a bipartisan, five-member board appointed by the Governor, the Secretary of State and the Attorney General. The members serve part-time for staggered five year terms. The Commissioners appoint an Executive Director who heads a full-time staff employed in four divisions: Enforcement, Legal, Financial Disclosure and Public Education.

Note: The conflict of interest law applies to state, county, city and town officials and employees -- all elected or appointed, full, part-time, paid and unpaid positions. This Guide uses the terms "municipal employee" and "municipal official" interchangeably to cover anyone who serves local government, either elected or appointed. This Guide also uses the terms "state employee" and "state official" to identify anyone who works for a state department, agency or other office in state government. Because this Guide is designed for police officers, the terms "police officer" and "police department employee" are also used.

*Many terms used in this Guide can be found in the Glossary.

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PREFACE

This Guide provides general guidance to police officers on how to comply with the conflict of interest law. It is not meant to serve as formal advice or as a substitute for legal counsel.

While this Guide is geared primarily toward municipal police officers, the conflict of interest law also applies to officers who work for state or county agencies or departments, and are therefore state or county employees. The rules of law differ slightly for state, county, and municipal employees, and the Guide briefly addresses the difference between state and municipal guidelines within each section. For more detailed information on the conflict law as it applies to state or county employees, please contact the State Ethics Commission and request a copy of the Public Education Division's "Practical Guide" for state employees, or its pamphlet for county employees.

If after reading this booklet you have questions about particular situations, you may request an advisory opinion from either the Ethics Commission or your town or city lawyer. The Ethics Commission urges police officers to take advantage of this opinion process (See page 29 for information on how to obtain an advisory opinion).

This Guide reviews the conflict of interest law in effect as of July, 1989. The conflict law may be amended from time to time by the state Legislature; be sure to consult the current version of the law or call the Commission's Legal Division at (617) 727-0060 for advice concerning the most recent application of the law.

INTRODUCTION TO THE CONFLICT OF INTEREST LAW

A. PURPOSE OF THE LAW

The purpose of the conflict law is to ensure that the private financial interests and personal relationships of public employees -- including police officers -- do not conflict with their public obligations. The law is broadly written to prevent an officer from becoming involved in a situation that could result in a conflict or give the appearance of a conflict.

The law restricts what a public employee may do:

1. on the job
2. after hours (or "on the side")
3. after leaving public service

B. WHO THE LAW GOVERNS

1. Municipal Employees

The conflict law regulates the conduct of public officials and employees (referred to collectively in the law as "employees") at the state, county and municipal levels of government. The term "employee" at each level is defined expansively. You are considered a municipal employee if you hold any office, position, employment or membership in any municipal agency. It does not matter whether you are paid or unpaid or whether you serve full-time or part-time. People who work as consultants or on an intermittent basis are generally covered, as well. For example, unpaid members of local town or city boards or commissions are municipal employees, as are private citizens serving on a special advisory committee appointed by the mayor or board of selectmen to make recommendations on a specific issue. However, elected town meeting members or attendees at an open town meeting and members of a local charter commission are not considered "municipal employees" for purposes of the conflict of interest law.

As a police officer, you will be considered either a municipal or state employee for the purposes of the conflict of interest law, depending on which level of government you serve.

2. "Special" Municipal Employees

"Special municipal employee" status can be assigned to certain police positions by a vote of the board of selectmen, board of aldermen or city council. Certain sections of the conflict law apply less restrictively to "specials." All other sections of the conflict law apply exactly the same way to special public employees and regular public employees. You are eligible to be designated as a special municipal employee if:

1. you are not paid; or
2. you hold a part-time position that allows you to work at another job during normal working hours; or
3. you were not paid by the city or town for more than 800 working hours (approximately 20 weeks full-time) during the preceding 365 days.

In both municipal and state employment, it is the job or position that is designated as having special status, not the individual. Therefore, all employees holding the same office or position must have the same classification as special. For instance, one police department part-time secretary cannot be classified as a special unless all of the department's part-time secretaries are similarly classified.

3. State Employees

You are considered a state employee if you hold any office, position, employment or membership in any state agency. Again, it does not matter whether you are paid or unpaid, full- or part-time, including consultant (e.g."03") work.

4. "Special" State Employees

On the state level, you are automatically a special state employee if:

1. you are an unpaid elected or appointed official; or

2. you hold a part-time appointed position that by the terms of the contract or conditions of employment allows you to work at another job during normal working hours and before you begin any private employment you notify the Ethics Commission (Disclosure forms are available in the Commission's office).

In addition, appointed state employees may be expressly classified as special state employees by their appointing official if the state employees were not paid for an appointed position for more than 800 working hours (approximately 20 weeks full-time) during the preceding 365 days. If you are not paid by the hour, calculate seven hours for every day or part of a day worked.

In both municipal and state employment, it is the job or position that is designated as having special status, not the individual. Therefore, all employees holding the same office or position must have the same classification as special. For instance, one police department part-time secretary cannot be classified as a special unless all of the department's part-time secretaries are similarly classified.

5. Municipal Agencies

A municipal agency includes all departments, offices, councils, divisions, boards, bureaus, commissions, institutions or tribunals of city or town government. In other words, all entities established by the community, such as the council on aging, the historical commission, the licensing board and the town by-law committee, are municipal agencies under the conflict law.

6. Regional Organizations

The status of regional bodies such as regional school districts is not clearly defined in the conflict law. However, the State Ethics Commission has ruled that many of these regional organizations are "municipal agencies" for purposes of the law because these organizations provide services to the community that individual towns would traditionally provide.

Some of the regional organizations determined by the State Ethics Commission on a case by case basis to be municipal agencies are:

Regional School Districts
Local Water and Fire Districts
Community Development Corporations
Local Arts Lottery Councils
Private Industry Councils

Certain regional bodies that are part of a state-wide organizational structure are not municipal agencies, but rather are considered state agencies. For example, regional transit authorities or regional mental health centers are considered state agencies for purposes of the conflict law.

7. Independent State Authorities

Independent state authorities, districts and commissions are considered state agencies for purposes of the conflict law. Some of these agencies are:

MBTA
Massport
The Massachusetts Turnpike Authority
The Massachusetts Water Resources Authority
Massachusetts Convention Center Authority
Massachusetts Municipal Wholesale Electric Company

HOW THE CONFLICT OF INTEREST LAW AFFECTS POLICE OFFICERS

A. RESTRICTIONS "ON THE JOB"

1. BRIBES (Section 2)

The conflict law prohibits all public employees from seeking or receiving bribes, gifts, promises, or anything else of value in return for an official favor or a promise of action or inaction. In addition, the law prohibits public employees from accepting anything of value in exchange for committing any fraud on a state, county or municipal agency (or allowing anyone else to commit such a fraud). Finally, the law prohibits public employees from being influenced in giving testimony under oath or rendering themselves unavailable to testify. (The conflict law does not prohibit a public employee from receiving witness fees and other expenses allowed by law for testimony.)

A police officer violates Section 2 if he or she acts with a "corrupt intent." As a general rule, whenever there is an agreement that an officer will receive something of value from a private party for certain official action (or inaction), that agreement is sufficient evidence that the police officer is acting with corrupt intent.

The bribery section of the conflict law also applies to private parties; anyone who bribes or attempts to bribe a public employee violates the conflict law and faces criminal sanctions.

The item of value that is solicited or accepted does not need to be money. Trips, for example, or improvements to one's home would be covered. In addition, the item of value need not be for the benefit of the public employee personally, but may be for the benefit of another person or an organization.

2. GIFTS (Section 3)

It is illegal to request or accept anything of "substantial value" from anyone with whom you have or are likely to have official dealings (absent some family or social relationship that would explain the gift), even if the motivation for the gift is to express gratitude for a job well done or to foster goodwill.

It is also illegal for a private party to offer or give anything of substantial value to a police officer or other department employee if it is given "for or because of" some act the official has performed or will perform; this is true even if there is no corrupt intent on the part of either the giver or the receiver.

Example: A police department purchasing agent awards several city office supply contracts to a stationery supplier who submits the lowest bids. At the end of the year, the general manager of the stationery firm offers the purchasing agent a set of luggage worth over $50 as a token of goodwill. The purchasing agent violates Section 3 if he accepts the gift. The supplier violates Section 3 simply by making the offer of luggage to the purchasing agent.

In 1985 the Commission issued an Advisory which established "substantial value" as anything worth $50 or more. Items of "substantial value" range from cash, additional compensation and tips to meals, free tickets and passes to entertainment events. In addition, free or discounted services such as construction or accounting work are considered gifts.

Example: A police officer accepts a free meal from a restaurant owner in his or her service district. Both the officer and the restaurateur would violate Section 3 of the conflict of interest law if the meal were worth $50 or more. In addition, if officers establish a pattern of accepting meals, tickets or other "perks" from individuals they deal with in their official capacity, even if the individual meals or other gifts cost less than $50, the Ethics Commission will combine the costs of such gratuities and the officers may be found in violation of the law.

If a police officer were to ask for meals or other gifts in return for any official act -- for example a guarantee of a prompt response on any call from the gift-giver -- the officer would violate Section 2 of the law, the bribery section.

Business travel and related expenses are also considered to be gifts if they are given directly to a public employee without the safeguards of standard department or agency reimbursement procedures.

Example: The police department you work for is negotiating a contract with a computer company to improve the department's access to criminal records and other files. You are part of the contract negotiating team. In the course of discussions with the computer company, it appears to both sides that a site visit to the company's New York headquarters would be helpful. If the computer company offered to arrange and pay for the travel, room and board for the site visit, you would violate Section 3 if you accepted their offer.

The Ethics Commission recommends that in cases where travel is deemed to be necessary to conduct business, either the municipal agency -- in this case the police department -- should pay for the travel, or else the vendor should arrange to pay for the travel by making payments to the agency (not the individual employees) specifically earmarked for such expenses. Employees who go on the business trip may then be reimbursed through the department according to usual agency procedures.

By following these guidelines, police officers can avoid both the appearance of conflict that results from "wining and dining," as well as the potential for real abuse. For more detailed information on accepting or being offered "gifts," see Commission Advisory No. 8, the "Free Pass Advisory," and/or the Commission's Fact Sheet, "Business and Entertainment Expenses for Public Employees," available from the Commission office.

3. RESTRICTIONS ON OFFICIAL ACTIONS (Section 19, Section 6)

Police officers must not act in their official capacities on matters in which they have a personal financial stake. The law also recognizes that the objectivity and integrity of an officer can be compromised if he or she acts on matters affecting the financial interests of people or businesses with whom the officer is closely related.

Section 19 of the conflict law does not prevent municipal police officers from having private financial interests or dealings in their town, but it does restrict what official actions, if any, they can take with respect to their private financial interests.

a. Acting on Private Financial Interests

To prevent public employees from using their positions to further private interests, the law prohibits public employees from participating in a "particular matter" in which they know that they personally, their immediate family or a business they are closely associated with has a financial interest. Public employees are specifically prohibited from acting on matters affecting:

1. themselves
2. their "immediate family" (the employee and his or her spouse and each of their parents, children, brothers and sisters);
3. their partner;
4. a business organization in which they are serving as an officer, director, trustee, partner or employee (for example, if a police department employee is an unpaid trustee of a private school she may not

participate in a particular matter in which the school has a financial interest, even if she has no personal, direct financial interest herself); or

5. any person or organization with whom they are negotiating for or have any arrangement concerning future employment.

In summary, police officers may not act in their official position on any matter affecting the financial interest of themselves, their family or their businesses.

Example: A police officer in town wishes to rent a building he owns to the police department for the annual police fundraiser. In his official capacity as a police officer, he may not discuss, recommend, analyze or decide whether the department will rent the building from him.

A police department employee is prohibited from participating in a final decision affecting personal financial interests and in participating in any of the steps along the way.

Finally, the "financial interest" at stake need not be present or immediate. Police officers may not participate in a matter if they have a "reasonably foreseeable" financial interest in that matter.

Example: A police officer is also a part-time real estate developer. She currently has no projects in the municipality she serves as a police officer, but is negotiating to develop several condominiums in town. A meeting is held in the officer's department to discuss whether the police should provide officers for after-dark security for all construction sites in town, or whether local developers should be required to hire a private security service. Because she may be developing buildings that will require one or the other type of security, the officer has a "financial interest" in the decision by her department whether to provide the security service. She would therefore be prohibited from participating in that decision.

b. Acting on a competitor's Financial Interest

The conflict law restricts police officers from taking any official action that would have affect the financial interest of their business competitors. Such action will ultimately affect the employee's own financial interest. The employee may also not take official action on matters concerning the competitors of his or her immediate family, business or employer.

There is no one easy "rule" for local officials to rely upon when deciding who an employee's competitors are in any particular instance.

In a prior advisory opinion concerning a liquor license, the Commission indicated that local authorities are often in a better position than the Commission to identify the local factors that would make a liquor license holder a competitor. In that opinion, we suggested the appointed official rely on his appointing authority to make such a determination.

Example: A police officer who is part-owner of a firing range must abstain from any decision by the police force she works for on whether the department should obtain a group membership at her range for police department employees. The officer must also abstain from any discussion or decision on the matter if a firing range or gun club that is a competitor to her own range is being considered for the same group membership.

c. Acting on Matters Affecting Family (Nepotism)

The conflict law prohibits a police officer from participating in any particular matter affecting the financial interests of an "immediate family member." The purpose of the broad prohibition against acts of nepotism is to prevent potential conflicts or the appearance of favoritism that arise whenever a public official's personal loyalty to a family member competes with the need to make objective personnel decisions. "Immediate family member" is defined in the law as the employee and his or her spouse and each of their parents, children, brothers and sisters.

The following specific acts are prohibited:

1. hiring a family member;
2. any significant involvement in a hiring process in which a family member is an applicant, e.g., interviewing or creating a test for applicants;
3. any significant involvement in the reappointment, promotion, reclassification, demotion or firing of any family member;
4. determining a family member's salary (including approving "automatic" increases such as annual step increases);
5. conducting a job performance review of a family member;
6. day-to-day supervision of a family member;
7. delegating the task of dealing with an immediate family member to a subordinate.

Example: If your sister, who works in a police department in another city, applies for a transfer to your department, you may not participate in any way in the decision whether or not she should be hired by your office.

Participation in discussions and recommendations regarding the hiring of an immediate family member, even if you do not make the final decision, are also prohibited under Section 19.

An exemption is available for appointed public employees, allowing them to act on matters that affect the financial interest of immediate family members provided they make a written disclosure to their appointing authority and obtain written permission from that authority to participate prior to any action being taken (This is discussed in under "Disclosure and Authorization Procedure" below). However, elected officials may not take advantage of this procedure -- they must always abstain from participating in a matter involving an immediate family member.

d. Appearances of Favoritism

Some relatives such as cousins, aunts and nephews are not "immediate family" members for purposes of the conflict law. However, a public official's actions regarding these relatives may violate the Standards of Conduct (Section 23) of the conflict law.

Section 23 prohibits a public official from giving the impression that he or she can be improperly influenced by someone or that a relative or friend could receive preferential treatment because of kinship or other ties. A public official must be careful to avoid this appearance of favoritism. The law states that appointed public employees, which police officers are, can dispel this appearance by making a written disclosure to their appointing authority. The law requires that the appointing authority keep the disclosure open to inspection by the public. Slightly different guidelines apply to elected officials.

Under the Standards of Conduct, public employees are also prohibited from using their positions to secure an unwarranted privilege of substantial value (anything over $50) for someone else. Thus, if a police chief hired a nephew who was unqualified for the job -- even if the chief publicly disclosed the relationship -- the police chief would violate the law because it would be an "unwarranted privilege" for the nephew to be paid for a job he could not adequately perform.

For more detailed information on exactly what constitutes a nepotism violation and what the Commission's enforcement policy is regarding these violations, see Commission Advisory No. 11, available from the Commission's office.

e. Exemptions 1 and 2

Exemption 1. Disclosure and Authorization Procedure

Police officers may participate in a matter that affects their own, their immediate family's or their business' financial interest only if they receive permission from the public

official who appointed them to their job. To receive the exemption, officers must first advise their appointing official of the nature and circumstances of the particular matter in which they want to participate and make full disclosure of the financial interest involved. The appointing official may then decide whether to allow the person to participate or to have someone else handle the matter. Any such determination must be in writing with a copy available for public inspection at the city or town clerk's office.

This exemption is not available to elected public employees because they have no "appointing official." They must always abstain from participating in matters involving their own, their immediate family members' or their business' financial interest.

> Example: A local developer has submitted plans to the local planning board to begin construction on a certain property. The police chief, who must sign off on the plans regarding the effect of the construction on traffic patterns, lives adjacent to the proposed construction site. Because the new construction could affect the property values in the area, the police chief has a financial interest in the approval of the plans and must not sign off on the plans unless he has made an written disclosure to his appointing authority (usually the Board of Selectmen), and received written permission to participate in the matter prior to doing anything regarding the plans.

Exemption 2. Determinations of General Policy

Certain decisions made by police officers affect either the municipality as a whole or a substantial segment of its population. The decision to raise local taxes to add more officers to the police force, for example, affects financially not only the police department, but all town residents. A strict application of the conflict law in this circumstance would prohibit all town officials from participating in these decisions. This result would severely hinder the operation of a municipality. Therefore, Section 19 does not restrict one's participation in a particular matter if the issue involves a "determination of general policy" and the interest of the public employee or members of the employee's immediate family is shared with a substantial segment of the population of the municipality.

f. State Employees

Section 6 is the section of the conflict law that deals with prohibited financial interest for state police employees. Section 6 spells out the same restrictions for state employees that Section 19 applies to municipal employees participating in matters that affect the financial interests of members of their immediate family. Copies of all Section6 exemptions must also be filed with the Ethics Commission.

4. MISUSE OF OFFICIAL POSITION
(Section 23)

Section 23, referred to in the law as the "Standards of Conduct", provides a general code of ethics for all public employees. As a general rule, the Standards of Conduct may apply whenever there is an overlap or direct connection between a public employee's official duties and responsibilities and his or her private activities, interests or relationships. This overlap of personal and public interests can at a minimum create an appearance of a conflict of interest.

A police department may establish and enforce additional standards of conduct above and beyond those in the conflict law. Section 23 contains the following specific provisions:

a. Unwarranted privileges

Police officers are prohibited from using or attempting to use their official positions to secure for themselves or others unwarranted privileges of substantial value that are not properly available to similarly situated individuals. Substantial value has been set by the Commission at $50 or more.

Example: A police officer submits a request for reimbursement for travel expenses he said that he incurred in attending a conference. The employee did, in fact, attend the conference, but did not incur the full expenses for which he seeks reimbursement. This conduct would violate the conflict law since it is an attempt to use his official position to secure an unwarranted privilege of substantial value for himself.

Example: A full-time employee in the police department uses the office computer after hours to set up a data base for his wife's accounting business. This violates the conflict law. Using city equipment and resources for personal business is using an official position to obtain an unwarranted privilege of substantial value not properly available to others.

b. "Appearances" of conflict

Public employees must avoid conduct that creates a reasonable impression that they will act with bias.

The law states that if a reasonable person having knowledge of the relevant circumstances would conclude that a public official or employee could be improperly influenced, the public official can dispel this impression of favoritism by disclosing all the facts that would lead to such a conclusion. For example, it may be necessary for a police officer who is involved in a decision-making process to disclose a personal relationship with someone applying for the job or contract being evaluated.

Appointed officials must disclose in writing to their appointing authority. This disclosure must be kept available for public inspection. An elected official's public disclosure must be made in writing and filed with the city or town clerk. These public disclosures must be made prior to any official participation or action.

Once this public disclosure has been made, the official may participate in the matter notwithstanding the "appearance of a conflict." When officers do act on matters affecting individuals with whom they have a private relationship, they must act objectively and be careful not to use their official position to secure any unwarranted privilege or benefit for that person. Use of an official position to secure an unwarranted privilege for people is always prohibited, regardless of whether the disclosure procedure is followed.

> Example: The longtime friend of the chief of the town's police department applies for a job on the police force. If the chief gets involved in the hiring process, it may appear as though his friend could enjoy undue favoritism. To dispel the appearance of favoritism, the police department chief must disclose his private relationship with the job applicant in writing to his appointing official (the board of selectmen) prior to any action. This disclosure must be available for public inspection. It is then within the authority of the board of selectmen to determine whether any further steps need to be taken to avoid the appearance of a conflict.

c. Inherently incompatible activities

A police department employee is prohibited from accepting other employment involving compensation of substantial value ($50 or more) the responsibilities of which are inherently incompatible with the responsibilities of his or her public office. For example, in a 1984 enforcement case, a state mediator admitted he violated the conflict law by working privately for a union when he was involved in mediating a labor dispute with the same union.

d. Use of confidential information

No current or former officer or employee of a police department may:

1. accept employment or engage in any business or professional activity that will require the employee to disclose confidential information gained by reason of the employee's official position or authority; or

2. improperly disclose material or data that is not considered public records and that is acquired in the course of official duties, nor use such information to further personal interests.

Example: A former employee of the town police department sets up her own private investigation service and uses confidential information from the police departments files and records to prepare client and suspect lists for use in her private business. This violates Section 23 because she would be using confidential information acquired in the course of official duties to further personal interests, and also because she would be using her official position to secure for herself an unwarranted privilege not properly available to similarly situated individuals (i.e., other P.I. services).

5. RESTRICTIONS ON PARTNERS OF MUNICIPAL EMPLOYEES (Section 18)

The law prohibits partners of police officers from deriving an unfair advantage as a result of their association with the police department employee. Therefore, the partner of a police department employee may not act as agent or attorney for a private party before the city or town in connection with a matter in which the police officer has ever participated or over which the employee has official responsibility.

Police officers are also prohibited from shifting to their partners what they themselves are prohibited from doing.

Example: A police officer is a partner in a law firm. The officer has official responsibility for certain cases being investigated by the police department. His law partners cannot represent anyone other than the town before any local board in connection with the cases under the officer's official responsibility. It does not matter if the officer takes no action on the cases, or disqualifies himself from that proceeding.

6. RESTRICTIONS ON PARTNERS OF STATE EMPLOYEES (Section 5)

The law applies the same way to the partners of state employees as it does to the partners of municipal employees, but the relevant section of the law is Section 5.

B. RESTRICTIONS "AFTER HOURS"

1. OUTSIDE JOBS (Section 17, Section 4)

a. Application to Municipal Police Officers

Section 17 limits what a municipal police officer may do "on the side" for someone other than the city or town that the employee works for. A person cannot serve two masters; whenever a police officer works for private interests in matters in which the city or town also has an interest, there is a potential for divided loyalties at the expense of the municipality. Therefore, Section 17 prohibits any police department employee:

1. from acting as agent or attorney for a private party before city or town boards; or

2. from being paid by a private party in relation to any matter in which the city or town has a "direct and substantial interest."

The term "attorney" applies to lawyers and may also include any person exercising a power of attorney. The term agent refers to anybody acting in a representative capacity on behalf of someone else, regardless of whether the person is a lawyer.

Section 17 also prohibits anyone from giving, promising or offering such compensation to a police department employee.

With respect to Section 17, you should note at the outset:

1. Not all outside activity is prohibited, only outside activity that relates to particular matters of direct and substantial interest to the city or town. This outside activity is prohibited whether or not it benefits or is adverse to the city or town's interest.

2. The restriction applies as long as any municipal agency has a direct and substantial interest in the matter; it makes no difference whether the police department has the interest.

3. "Anyone other than the city or town or a municipal agency" includes private individuals or organizations, as well as other levels of government (state, county or federal).

4. Compensation includes money, as well as anything of value received for services rendered. For example, the opportunity to participate in an investment qualifies as compensation, as would various fringe benefits. Reimbursements for expenses are not compensation.

5. Finally, when a police department employee acts as agent or attorney for someone other than the city or town in connection with a particular matter of direct and substantial interest to the city or town, the employee violates Section 17 even if the services are unpaid.

Example: A full-time police officer cannot be paid by a developer to help prepare plans for a private security system for a private development that will be presented to the city's planning board for approval. Although the officer does not work for the planning board, Section 17 would prevent him from performing such services, even on his own time, because the action of the planning board is a particular matter of direct and substantial interest to the city.

Example: A police department employee serves in his off-duty hours as an unpaid trustee of a church in his town. The church and the town are negotiating a land exchange. If the police officer represents the church in discussions with the town on this matter (the land exchange), he is acting as agent for the church in connection with a particular matter in which the town is a party. This is prohibited.

b. Application to "Special" Municipal Employees

The conflict law imposes fewer restrictions on special municipal employees. Section 17 applies to special police officers only when there is a connection between the special police department employee's outside activity and the work of the employee's agency or department.

A special police department employee is prohibited from receiving compensation from, or acting as an agent or attorney for, someone other than the city or town only if the particular matter involved is one:

1. in which he or she participated at any time as a police department employee or special police department employee;
2. that is or has been (within the preceding year) the subject of the employee's official responsibility; or
3. that is pending in the police department in which the employee is serving -- if the employee serves more than 60 days in any 365 day period. To serve more than 60 days means to perform work on more than 60 days; work on any part of a day will be considered work for one full day. The employee is responsible for keeping accurate records in this regard.

If none of these conditions is met, the special police department employee may represent an outside interest before town agencies.

> Example: A computer programmer is hired by the city's police department as a part-time consultant. By virtue of this city consulting job, the programmer is a police department employee; the city council has designated this position as a "special" position. A computer company that has a contract with the city's personnel office offers a job to the programmer to work on this contract. The programmer may work for the company because the contract with the personnel office is not a particular matter she participates in or has official responsibility for (in her police department position) and the matter is not pending in the police department for any type of action.

c. Municipal Exemptions 1 through 5

Exemption 1. If a police officer's job responsibilities require the employee to represent interests other than the municipality's, the officer does not violate Section 17 even though he or she may be acting as agent for someone other than the town regarding a matter in which the town has a substantial interest. It is rare, however, that police officers are expected to represent outside interests before the town.

> Example: A police officer may assist a citizen in filling out a complaint against the police department as part of his official duties. This would not violate the conflict law even though he is acting as their "agent."

Exemption 2. A police department employee may provide unpaid assistance to someone who is subject to employment discipline or other municipal personnel proceedings.

Exemption 3. Appointed municipal employees may act as the paid or unpaid agents or attorneys for themselves and for members of their immediate family or any person for whom they serve as a guardian, executor, administrator or other fiduciary, so long as the employees do not participate in, and do not have responsibility over, the matter involved. An employee's appointing authority must approve the arrangement in writing prior to any action. Elected officials may represent only themselves before town boards; they may not represent members of their immediate family.

Exemption 4. A present or former special police department employee may assist another person for compensation in working on a contract for the benefit of the police department, so long as the head of his or her agency certifies in writing that "the interest of the city or town requires such aid or assistance," and the certification has been filed with the city or town clerk.

Exemption 5. A police department employee may give testimony under oath or sworn statements and receive witness fees from one other than the city.

d. Application to State Employees and "Special" State Employees (Section 4)

The same guidelines listed above apply to state police employees, except that it is the state and state agencies, rather than the city, town or municipal agencies, to which the officer owes his or her loyalty. The relevant section of the law for state employees is Section 4.

e. State Exemptions

All of the municipal exemptions regarding outside employment, except Exemption 1, also apply to state employees. In addition, the following exemptions apply to state police employees:

1. State employees may hold paid elected or appointed offices in a city, town or district. However, they may not vote or act on any matter within the purview of the state agency where they work or over which they have official responsibility; and

2. A state employee (except for Revenue Department employees) may be paid for filing or amending state tax returns.

2. PROHIBITED CONTRACTS & MULTIPLE JOBS (Section 20, Section 7)

a. Application to Municipal Police Officers

In general, municipal police officers are prohibited from having a direct or indirect financial interest in a "contract" made by a municipal agency. This means that police officers may not use their police positions to obtain city or town contracts or other municipal jobs for themselves. This restriction will avoid any public perception that police officers have an "inside track" on getting municipal contracts and jobs.

Contracts include agreements to provide goods and services. Employment also constitutes a contract with the municipality. Therefore, generally, public employees are prohibited from holding more than one paid position or contracting with a city or town agency.

Example: A full-time police officer is half owner of a business that provides photographic equipment. The officer will violate Section 20 if his business enters into a contract with the police department to upgrade the department's photo equipment for booking arrested individuals.

Example: A part-time police officer works for a large data processing firm. The police department has asked her firm to computerize their files and records. They enter into a contract to do so. The officer could continue to work for her firm, but she would be prohibited under Section 20 from working for the firm on the police department records project, or from receiving any financial benefit from that contract.

Police officers may qualify for one of the exemptions under Section 20 to allow them to contract or hold multiple positions with the town or city for which they work. A police department employee must fulfill certain specific conditions before receiving an exemption. (See exemptions 1 through 8, starting on page xx.)

Section 20 is the most complex section of the conflict law; we suggest you call the Commission or contact your city solicitor or town counsel for specific advice on Section 20.

b. Multiple Office Holding

Section 20 generally prohibits an appointed municipal official or employee from holding more than one paid position in the same city or town because employment constitutes a "contract" with the municipality. However, election to public office is not a contractual relationship; therefore, public officials can hold any number of elected paid positions and not be in conflict.

Despite the general prohibition against holding more than one paid position in the same town, there are a number of exemptions to this rule, as explained below. There are special rules for selectmen, city solicitors and clerks that are not addressed in this publication.

For more detailed information on multiple office holding, see Commission Advisory No. 7 available from the Commission's office.

c. Application to Spouses

A spouse's financial interest in a municipal contract is not necessarily attributed to the police department employee. Therefore, if the spouse has a financial interest in a city or town contract this does not automatically place the police department employee in violation of the law. However, a police department employee will not avoid violating Section 20 merely by having the contract "technically" in a spouse's name while continuing to share in the contract proceeds.

Example: An employee of the police department (Jane) is married to the owner of an electronics store (Bob). Bob has a contract selling and leasing radio equipment to the police department. Jane does not, by law, have a financial interest in Bob's contracts simply because she is married to him. Therefore, Bob may have a contract

with the town. However, if Jane were a partner or part-owner in her husband's store or if she exercised control over the management of the store, she would have a financial interest in the contracts. Her financial interest would prohibit the electronics store from contracting with the police department.

d. **Municipal Exemptions 1 through 8**

As a general rule, there will be very few instances when police officers will be able to contract or hold second jobs with their own agency. However, there will be instances where officers are allowed to contract or hold second jobs with other agencies.

Exemption 1. The most comprehensive exemption is found in Section 20(b). It states that if you are a public employee, you may have a contract or a second job with a municipal agency if:

a. you do not work for the contracting agency;
b. you do not work for any agency that regulates the activities of the contracting agency;
c. you do not participate in or have official responsibility for activities of the contracting agency;
d. the contract is made after public notice or competitive bidding; and
e. you file with the clerk a disclosure of your and your immediate family's financial interest in the contract.

Example: A full-time employee of the police department also owns a company that produces electrical equipment. He may sell lighting fixtures to the school department provided the contract is competitively bid or publicly advertised and he makes the necessary disclosure to the town clerk. However, if the officer worked for the school department (the contracting agency), or if the contract were not awarded after advertising or competitive bidding, he would violate the law by having such a contract.

If the contract is for personal services, in addition, you must fulfill the following criteria:

a. the services must be provided outside the normal working hours of your primary job;
b. the services may not be required as part of your regular duties;
c. you may not be compensated for the services for the second contract for more than 500 hours in a calendar year;
d. the head of the contracting agency must file a written certification with the clerk that no employee of the contracting agency is available to perform those services as a part of his or her regular duties.

Example: A full-time secretary in the police department may contract with the local licensing board to provide typing services, provided he does the work on his own time (e.g., nights or weekends); he does not bill the board for more than 500 hours in any one calendar year; he makes the necessary disclosure to the clerk; the board gives members of the general public the opportunity to seek the contract; and the head of the licensing board certifies that no one at the board is available to do the work.

Exemption 2. Special municipal employees may have a financial interest in a contract made by the same city or town if the employee meets one of the following conditions:

a. the special municipal employee does not participate in or have official responsibility for any of the activities of the contracting agency, and has filed with the city or town clerk a statement making full disclosure of the financial interest in the contract; or

b. the special municipal employee has filed with the city or town clerk a statement making full disclosure of the interest in the contract and the city council, board of selectmen or aldermen has approved his or her exemption from this section. This means that if a special municipal employee gets formal approval, that employee may have a financial interest in a contract with the agency he or she works for, e.g., a police officer contracting with the police department.

Example: An engineer works part-time for the city's police department and has been classified a special municipal employee. As a special, she may have a consulting contract with the highway department regarding road construction if she has filed with the city clerk a disclosure of her interest in the consulting contract. In addition, if she receives approval from the board of selectmen and files a disclosure statement, she may contract with the police department (her own agency).

Exemption 3. Section 20 does not prohibit municipal police officers from receiving benefits from programs funded by the United States or any other source in connection with the rental, improvement, or rehabilitation of their residence.

Example: A police department employee who owns and resides in a home that qualifies for federal subsidies for home weatherization may obtain such a subsidy, even though the program is administered by, and the funds distributed by, a municipal agency of the same town in which she is employed.

Exemption 4. Section 20 does not prohibit a police department employee from being eligible for a housing subsidy program administered by a local housing authority. However, the housing authority employee who has responsibility for the administration of the subsidy program may not be eligible for a subsidy.

Exemption 5. Section 20 does not prohibit an individual who is already a police department employee from also serving as selectman (or as councillor in a municipality with a town council form of government) in the same town as long as the selectman:

a. does not vote or act as selectman on any matter that is within the authority of the police department; and
b. receives compensation for only one office or position in the town (individuals may choose which pay they wish to receive).

A selectman who does not hold a municipal position before being elected may not be appointed to such a position afterwards. In fact, once one's term as selectman expires or one resigns, there is a six-month waiting period before being eligible to be appointed to a municipal position. However, a selectman may be routinely reappointed to a previously held position.

Example: A police officer may serve as elected selectman as long as he does not vote or act on any matter that is within the authority of the police department, and he receives only one salary. His original police contract may be renewed. However, he is not eligible for promotion to chief of the police department (considered a new appointment) while he is a selectman, or for six months after his term as selectman ends. After a selectman is elected, he may not be appointed to any new municipal position during his term as selectmen or for six months after his term ends.

Note: The limitation on Selectmen described above in Exemption 5 does not apply to selectmen in towns with a population of under 10,000 who have been designated as special municipal employees. Selectmen designated as specials may hold additional paid town positions if they meet the requirements detailed in Exemption 2 (page 22).

Exemption 6. A state employee may hold a paid or unpaid elected or appointed office in a city or town. However, in the municipal position, an employee may not vote or act on any matter that comes under the authority of the state agency the employee works for or over which the employee has official responsibility. This exemption is found under Section 4 of the conflict law.

Example: A full-time employee of the State Police Drug Task Force may not serve as a municipal police drug agent because every matter that she would be acting on in her municipal job would be within the purview of the state task force.

Exemption 7. A clerk of a city or town may hold additional municipal positions for compensation as long as this arrangement is not disapproved of by the selectmen, town meeting, town counsel (in a town) or mayor and city council (in a city). (See G.L. c. 41, Section19I).

Exemption 8. A police officer in a town with a population of less than 3,500 may hold more than one paid appointed position if the board of selectmen formally approves the additional appointments. The officers do not need to be designated as specials in communities with a population of less than 3,500.

e. Application to State Police Employees

There is a similar prohibition under Section 7 of the law against public employees -- including police officers -- holding multiple jobs and/or contracts at the state level.

Again, contracts include employment with the commonwealth, as well as agreements to provide goods and services.

f. Exemptions for State Employees

Municipal exemptions 1, 2, and 6 also apply to state employees. In addition, five other exemptions for state employees exist under Section 7, the section of the conflict law that deals with contracts and multiple office holding for state employees. Briefly stated, the additional exemptions for state employees under Section 7 provide:

1. a state employee will not be in conflict for having a financial interest in a contract with the state if the employee --within 30 days of learning that he or she has a financial interest in a state contract -- discloses that interest and disposes of it, or terminates the contract; and
2. if a state employee owns less than one percent of the stock of a corporation, the company may contract with the state and the state employee will not be in conflict; and
3. state employees may teach part-time for pay in an educational institution of the commonwealth, as long as they do not participate in or have official responsibility for the financial management of the educational institution. Educational institutions include state colleges and universities and the community colleges. This exemption has also been found to apply to state employees who teach part-time courses that are mandated by law, such as educational courses at correctional facilities; and
4. state employees may work on a part-time basis for a mental health, public health or correctional facility, or any other facility principally funded by the state that provides services on an uninterrupted and continuous basis, such as halfway houses;

(Note -- There are additional provisions to this exemption. Please contact the State Ethics Commission or consult the agency's "Practical Guide to the Conflict of Interest and Financial Disclosure Laws for State Employees" on page 17 for additional information.)

5. a state employee may provide services or furnish supplies, goods and materials to a recipient of public assistance if:

   a. the services, supplies, goods or materials are provided in accordance with a schedule of charges promulgated by the Public Welfare Department or the Rate Setting Commission; and
   b. the recipient has the right under law to choose and in fact does choose the person or firm that will provide the services or furnish the supplies, goods or materials.

C. RESTRICTIONS AFTER YOU LEAVE GOVERNMENT SERVICE

1. MISUSE OF GOVERNMENT CONNECTIONS (Section 18, Section 5)

Former police officers may not use their past friendships and associations within government, or use confidential information obtained while serving the government, to derive unfair advantages for themselves or others. The law does not prohibit a police officer from using general expertise that he or she developed while a police department employee; rather, the law limits what actions a former city employee may take regarding individual decisions or other "particular matters" in which the employee actually participated or over which he or she had official responsibility while a police department employee. (The prohibition against using confidential information is contained in Section 23, page 14.)

The law also applies to the business partners of former police officers. The law prohibits partners from deriving an unfair advantage as a result of their association with a former police department employee. In addition, former police officers may not shift to their partners what they themselves are prohibited from doing.

a. Application to Former Municipal Employees Officers

1. Perpetual Ban

If a municipal police officer participated in a "particular matter" as a police department employee he or she can never become involved in that same matter after leaving police service except on behalf of the city or town.

Specifically, the law states that a former municipal employee may not act as agent or attorney for, or receive compensation directly or indirectly from, anyone other than the municipality in connection with any particular matter in which the municipality is a party or has a direct and substantial interest and in which he or she participated as a police department employee.

Example: A member of the police force who is also an attorney participates in the investigation and subsequent arrest of an individual. After the officer leaves the police force, she is asked to represent the individual in a wrongful arrest suit against the police department. Because she participated as a police department employee in the matter, she may not act as the attorney in the lawsuit.

Example: The superintendent of a police department selects a computer vendor to install PCs in the department. Shortly afterward, he resigns his superintendent position and is hired by the computer company to act as sales representative for the company on the police department contract. The law prohibits him from accepting this employment because he participated in the award of that contract while a police department employee. However, the superintendent could work for the computer vendor on other jobs in which he did not participate as a police department employee. The superintendent may also, in the future, work on a town contract he had no responsibility for and did not participate in as a police department employee.

2. One Year "Appearance" Ban

The law also restricts the actions of a town or city employee who had official responsibility for a matter even though the employee did not personally participate in it. For one year after an official leaves municipal service, he or she may not appear before any municipal agency on behalf of a private party if:

a. the appearance is in connection with a particular matter in which the municipality has a direct and substantial interest; and
b. the matter was within the employee's official responsibility within the two-year period before leaving public service. Note that this prohibition lasts for only one year, and restricts only appearances (whether paid or unpaid) before municipal agencies.

Example: The head of the homicide unit has official responsibility for all cases involving alleged murder in the city. If the homicide chief is also a lawyer, he may not represent a suspect in any case that was in the department within two years of leaving his police department post, whether or not he participate in the case.

b. Application to Business Partners of Former Municipal Employees

The partner of a former municipal police department employee is restricted for one year after the former employee leaves police service from personally representing or being paid by a private party in connection with a matter that the former police department employee participated in as a public employee.

Example: A member of the police department leaves the force to become a partner in a consulting firm. When the officer leaves the police force, she is forever prohibited from representing private clients in connection with matters in which she actually participated as a police officer. Her partners may not, for one year after the police officer leaves the department, represent anyone (except the town) in connection with matters in which the former officer participated.

The term "partner" is not restricted to those who enter into formal partnership agreements. The following criteria are examined to determine if a partnership exists: whether the person shares in the advantages or risks of ownership, contributes to capital or operating expenses, owns a transferable interest in the assets of the entity, or reasonably appears as having a stake in the ownership of the business to an objective third person.

In addition, if a group creates the public appearance of a partnership (for example, by using joint stationery, business cards, and business listings), the group will be treated as a partnership even though profits may not be shared.

Example: Three contractors do not have a formal partnership agreement, but share office space, common expenses and advertising and work together and share profits on some projects. Because they would reasonably appear to be partners to an outsider, the three contractors will be treated as partners for purposes of the conflict law. Accordingly, if one of the contractors is a former police department employee, the other two will be prohibited for one year after the police department employee/partner leaves police service from working on any matter in which the former police department employee participated while on the force.

If a partner of a former police department employee is also a member of another partnership in which the former employee has no interest, there are no restrictions on the activities of the latter partnership.

c. Application to Former State Employees and the Business Partners of Former State Employees

The conflict law applies the same way to former state police officers and their partners that it does to former municipal police officers; however, the relevant section of the law is Section 5.

In addition to the "forever ban," and the "one year appearance ban," former state employees are also restricted from acting as legislative agents for anyone other than the commonwealth before their former state agencies. A "legislative agent" is defined in G.L. c. 3, §39 as anyone who for compensation or reward does any act to promote, oppose or influence legislation or the adoption, defeat or postponement of a standard, rate, rule or regulation.

The Commission stated in a 1984 case that "The need to insulate the legislative process from the former employee's inevitable special knowledge and access during this initial period is the same whether the former employee is doing the lobbying directly or instead is advising and directing the lobbying activities of someone else."

D. OTHER INFORMATION ON THE CONFLICT OF INTEREST LAW

1. HOW TO OBTAIN LEGAL ADVICE

You may call the State Ethics Commission's Legal Division at 727-0060 for informal, confidential advice on the conflict law, or you may seek a written advisory opinion from your city solicitor or town counsel or from the Ethics Commission. If you have a question about your own activities, we urge you to request an opinion prior to engaging in the activity in question. Requests to the Commission for an advisory opinion must be in writing and must be about a real, not hypothetical, situation that presents a problem under the conflict of interest law.

2. INVESTIGATIONS

a. How to File a Complaint

Anyone can file a complaint concerning a conflict of interest -- in person, over the phone or by letter. The law requires the Commission to keep the identity of all complainants confidential and the Commission's enabling statute (M.G.L. c. 268B, Section8) protects a complainant from retribution for filing a complaint with the Commission.

The Commission can initiate investigations based on these complaints, on referrals from other civil and criminal enforcement agencies or on its own based on information obtained through other sources, such as news reports.

If you believe that a violation of the conflict of interest law has occurred or is occurring, you may call or visit the State Ethics Commission office at Room 619, One Ashburton Place, Boston, (617) 727-0060, and speak with a member of the Commission's enforcement staff.

b. Investigation Procedures

The Enforcement Division reviews each complaint received. If the complaint falls within the Commission's jurisdiction, an initial "screening" is done to determine if the facts warrant a formal investigation. The screening is an informal fact gathering stage. Many enforcement cases end confidentially at the conclusion of the screening with a private educational letter sent to the subject of the investigation. In these cases, no formal charge of a violation is brought and the matter remains confidential.

After the screening, if the staff determines a case should be formally investigated, authorization is sought from the appointed Commissioners to conduct a Preliminary Inquiry. During the Preliminary Inquiry the Commission has subpoena powers for testimony under oath.

After a preliminary inquiry is conducted, the Commissioners vote on whether "reasonable cause" exists to believe that the law has been violated. If the Commissioners find "reasonable cause" the subject of the complaint is entitled to a public hearing before the Commission to present evidence and testimony on his own behalf. At the conclusion of a public hearing the Commissioners issue a Decision and Order stating whether there was a violation of the conflict law and what fine, if any, will be assessed. A person has the right to appeal the Commission's decision to Superior Court. In the alternative, the person may settle the case by admitting publicly that he or she violated the law and agreeing to pay a civil penalty for each violation.

If the Commission finds "no reasonable cause" to believe the law has been violated, the case is closed and records and proceedings of the investigation remain confidential.

c. Penalties

The Commission is authorized to impose civil fines of up to $2,000 per violation of the conflict law. In addition, the Commission may bring a civil action against any individuals who have acted to their economic advantage in violation of the law, and may recover on behalf of the commonwealth or a municipality,

damages in the amount of the economic advantage or $500, whichever is greater. In certain circumstances, the Commission may also recover multiple damages.

Further, any violation that has substantially influenced an action taken by a police agency is grounds to avoid, rescind or cancel that action. For example, if a police department decided to hire a certain company to supply weapons for the department, and one of the officers who voted to award the contract was found to be in conflict, the contract could be rescinded.

The law also carries criminal penalties including fines and terms of imprisonment. Criminal prosecutions under the law are the responsibility of the Attorney General and District Attorneys. The Ethics Commission has the authority to refer cases to or concurrently investigate cases with these other law enforcement agencies.

d. Statute of Limitations

In general, the State Ethics Commission will review cases that are not more than six years old. The Commission has established rules governing the Statute of Limitations. These rules state that the Statute of Limitations begins on the date that the State Ethics Commission (or another law enforcement agency, such as the District Attorney) learns about an alleged violation of the conflict law. This is usually the date when someone makes a complaint. The State Ethics Commission has three years from the date it learns of an alleged violation to issue an Order to Show Cause, which starts public proceedings against an individual.

An Order to Show Cause may not be issued more than six years after the alleged violation occurred. Therefore, if a police officer violated the law in 1980, if the Commission did not learn of the violation until 1988, the Ethics Commission could not take any action against the officer.

3. PUBLIC EDUCATION

Public education has been a primary commitment of the State Ethics Commission since its establishment in 1978.

The Public Education Division conducts seminars for police officers and other state, municipal and county officials to help avoid potential conflicts that may arise between an employee's private interests and public positions. The Commission staff will travel anywhere in the state to conduct a seminar tailored to any group of public employees or citizens.

The goal of the presentation and question and answer period is to provide an understanding of the basic principles of the law and how to comply with it by discussing "real life" conflicts that arise on the job.

Some of the topics covered at our seminars include: restrictions on receiving gifts, outside employment, contracting with municipal agencies, acting on matters that financially affect family members and business associates, holding more than one town job, and leaving the government to work for companies you dealt with as a public employee. To arrange for a seminar on the conflict law, call (617) 727-0060 and ask for the Director of Public Education.

The Public Education Division also provides other publications free of charge or for a nominal fee including: the Commission's newsletter, The Bulletin; pamphlets for public employees on the conflict of interest and financial disclosure laws; a yearly compilation of Enforcement Actions and Advisory Opinions; and an Annual Report.

APPENDIX

COMMISSIONS OR AGENCIES THAT OVERSEE ETHICAL CONDUCT:

The following is a list of agencies that oversee the ethical conduct of public employees, including judges and legislators, as well as private sector lawyers. These agencies are responsible for interpreting and/or enforcing the statutes and regulations that are noted.

1. **Massachusetts Municipal, County and State Employees:**

State Ethics Commission
One Ashburton Place
Room 619
Boston, MA 02108
(617) 727-0060

M.G.L. c. 268A and c. 268B.

2. **Federal Employees:**

Federal agencies have a designated "ethics in government officer" who handles questions and refers complaints to the appropriate law enforcement agency concerning the federal conflict of interest statute. You may also contact the Inspector General's office within each federal agency for advice and information. In addition, the Office of Government Ethics (202-632-7642) will handle questions of a general nature.

Federal employees are covered by:

1. The Ethics in Government Act of 1978, Public Law 95-521.
2. Executive Order 11222 issued 5/21/65 (Standards of Ethical Conduct for Executive Agency Personnel).
3. Code of Federal Regulations 5 CFR 735.101 to 735.306 (Regulations promulgated by the Office of Government Ethics).

3. **Judges:**

Commission on Judicial Conduct
14 Beacon Street
Suite 102
Boston, MA 02108
(617) 725-8050

(Rule 3:09 of the Rules of the Supreme Judicial Court Code of Judicial Conduct.)

Judges, as state employees, are also covered by the conflict of interest law enforced by the State Ethics Commission.

4. Legislators:

House Ethics Committee
State House, Room 163
Boston, MA 02133
(617) 722-2040

House Rules 16 and 16A.

Senate Ethics Committee
State House, Room 517
Boston, MA 02133
(617) 722-1544

Senate Rules 10, 10A, and 12A.

Legislators, as state employees, are also covered by the conflict of interest law enforced by the State Ethics Commission.

5. Private Sector Lawyers:

Massachusetts Board of Bar Overseers
11 Beacon Street
Boston, MA 02108
(617) 720-0700

Rule 3:01 of the Rules of the Supreme Judicial Court.

For information on:

Campaign and Fundraising Activities

Office of Campaign & Political Finance
One Ashburton Place
Room 1005
Boston, MA 02108
(617) 727-8352

M.G.L. c. 55.

Open Meeting Law

Contact your local District Attorney's Office.

M.G.L. c. 30A Sections 11A, 11A 1/2, 11B and 11C;
c. 34 Section 9;
c. 39 Sections 23A, 23B and 23C.

Public Records

Public Records Division
Secretary of State's Office
Room 1701
One Ashburton Place
Boston, MA 02108
(617) 727-2832
M.G.L. c. 4, Section 7 cl.37.

Glossary

This Glossary contains the definitions of those terms that are defined in the conflict law. They are designated with an asterisk.* In addition, we have given the ordinary meaning of terms used in the Guide that the conflict law does not specifically define.

Agent: anybody acting in a representative capacity on behalf of someone else, regardless of whether the person is a lawyer.

Attorney: a lawyer; any person exercising a power of attorney.

Business Organization: business companies and agencies such as sole proprietorships, corporations, partnerships, and trusts; also includes non-profit corporations, associations and municipalities.

*Compensation: any money, thing of value or economic benefit conferred on or received by any person or entity in return for services rendered or to be rendered by himself or another.

*Competitive bidding: all bidding, where the same may be prescribed by applicable sections of the General Laws or otherwise, given and tendered to a state, county or municipal agency in response to an open solicitation of bids from the general public by public announcement or public advertising, where the contract is awarded to the lowest responsible bidder.

Contract: any type of agreement or arrangement between two or more parties where each undertakes certain obligations in consideration of the promises made by the other(s); for example, construction or consulting contracts, employment arrangements, contracts for the sale of goods or to provide services, grants awarded by the city or town to individuals or corporations, and agreements between a municipal agency and a state agency.

*Immediate family: the employee and his spouse, and their parents, children, brothers and sisters.
Note: Cousins, nephews, aunts, uncles, are not considered to be immediate family members. Also, under the definition of immediate family, some brothers-in-law are immediate family, others are not; if your brother in-law is your spouse's brother, he is immediate family but if he is your sister's husband, he is not immediate family for purposes of the law.

*Municipal agency: any department or office of a city or town government and any council, division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.

*Municipal employee: a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution.

*Official act: any decision or action in a particular matter or in the enactment of legislation.

*Official Responsibility: the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action.

Note: Many special municipal employees, including most consultants, have responsibility over only the specific project for which they were hired. On the other hand, members of boards or commissions are often special municipal employees but will normally have "official responsibility" for every matter that is pending in their agency.

*Participate: participate in agency action or in a particular matter personally and substantially as a state, county or municipal department employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.

*Particular matter: any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding 1. enactment of general legislation by the general court, and 2. petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property.

Note: The definition of particular matter focuses on activity that involves making decisions and exercising judgment. It covers specific decisions and proceedings rather than general issues or subject areas. For example, a town's appropriation to train police in cardio-pulmonary resuscitation (CPR) is a particular matter. However, the general subject of CPR training is not.

A contract is a particular matter. However, if a contract is renewed the year after its original award, that second contract is a new particular matter, distinct from the original grant.

While the enactment of general legislation is not included in the definition of particular matter, the term does cover enactment of special legislation. Special laws are those directed at a specific situation or individual or entity -- for example, a law

exempting a specifically identified parcel of land from local zoning restrictions. General laws, in contrast, usually establish a rule of future conduct applicable on a wider scale of people or things and apply uniformly to all individuals similarly situated.

A particular matter of direct and substantial interest to a city or town includes: 1) All particular matters that affect the financial interests of the city or town -- for example, contracts, grants and determinations of local tax liability (e.g., property, excise); 2) any city or town regulatory or adjudicatory proceeding such as permits, applications, licensing, zoning, eminent domain or assessment proceedings; 3) civil litigation involving a city or town or a municipal agency as a party (but not a lawsuit between two private parties where the city or town is not involved even though that lawsuit is pending in a state court); and 4) decisions about the use of municipal property and funds.

Partner: Any person who joins with any other person(s) formally or informally in a common business venture. The term is not restricted to those who enter into formal partnership agreements. The following criteria are examined to determine if a partnership exists: whether the person shares in the advantages or risks of ownership, contributes to capital or operating expenses, owns a transferable interest in the assets of the entity, or reasonably appears as having a stake in the ownership of the business to an objective third person. In addition, if a group creates the public appearance of a partnership (for example, by using joint stationery, business cards, and business listings), the group will be treated as a partnership even though profits may not be shared.

*Person who has been selected: any person who has been nominated or appointed to be a municipal employee or has been officially informed that he will be so nominated or appointed.

3/23/90



The State Ethics Commission
One Ashburton Place
Room 619
Boston, MA 02108
(617) 727-0060

Conflict of Interest Policy

Office of the Police and Crime Commissioner Gloucestershire

Policy Title

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Section 1 – Policy wording

This policy does **not** supersede the current Notifiable Association and Business Interest policies.

In its most simplest of terms, a 'Conflict of Interest' (COI) is any situation in which an officer, police staff, member of the Special Constabulary or volunteer with Gloucestershire Constabulary or employee of the Office of the Police and Crime Commissioner (OPCC) has a competing interest or loyalty and where it is arguable that a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the relevant person could be biased.

A 'COI' can exist in many guises – notably where an officer's, member of staff's, member of the Special Constabulary's or volunteer's or employee of the OPCC's personal interest conflicts with their own professional position. A 'COI' can typically arise where that relevant person has a private interest that might influence or be perceived to influence the delivery of their public service.

Crucially, the responsibility placed upon Police Officers, members of Police Staff, members of the Special Constabulary, volunteers and employees of the OPCC alike, is so great as to demand that whatever we do is done with integrity, impartiality and transparency. A 'COI' is not a negative reflection on the parties involved. However, failure to raise that conflict as and when it is identified prevents the Constabulary / OPCC taking swift action to manage against the suggestion of bias and may be damaging to the reputation and confidence in the Constabulary / OPCC. Under no circumstances should we find ourselves in a situation where our responsibility to discharge our duties is limited or hindered as a consequence of a personal or professional 'COI'. A 'COI' has the potential to undermine public trust in Gloucestershire Constabulary / OPCC and the Police Service in general.

All Police Officers, members of Police, members of the Special Constabulary, OPCC Staff and volunteers are required to declare a 'COI' to an appropriate manager / departmental point of contact (normally your Line Manager, but if not appropriate another suitable manager) as soon as this becomes apparent. Failure to report a 'COI' may result in disciplinary proceedings being considered.

The appropriate manager must consider whether the existence of the 'COI' is significant enough for further steps to be necessary and/or to separate or remove the individual from continuing involvement with the matter.

For example an officer has been tasked to investigate a case of minor assault – and discovers that the alleged offender is an acquaintance, e.g., a friend of a friend, a regular at the same local public house etc.

(This policy does not replace the responsibilities of all staff to adhere to the Notifiable Associations policy).

In the example above, the appropriate manager must consider whether in light of the declaration, it is prudent to allow the officer to continue with the investigation. By removing the officer from this investigation, it will negate any later suggestion that the officer treated the offender differently simply because of the relationship.

Equally, for example where a senior finance officer is party to a Constabulary / OPCC decision on the procurement of services for the Constabulary / OPCC and that person has an interest in the company that is offering the services e.g. knows the director, or other senior manager within that company – it would be necessary for the Senior Finance Manger to declare that interest.

Again it does not mean that the person would be removed from any decision making but by highlighting the fact that the 'COI' exists, will provide greater transparency should that matter ever be the subject of scrutiny.

Each possible 'COI' will be considered on a case by case basis and it may be necessary for the appropriate manager to seek further guidance and advice in making a final decision.

Irrespective of the decision that is reached, it is essential any consideration of a 'COI' is accurately and formally recorded. Further advice can be taken from PSD.

To ensure 'COI' are identified and managed, the following will take place in the Constabulary:

- All Governance meetings within the Constabulary / OPCC must have a standing agenda item requiring all in attendance to declare any known Conflict of Interest at the commencement of meetings. The minutes must reflect any declarations and the chair's decision to remove or retain the member of staff.

- This Policy should enable consistent and effective decision making. Where operational or managerial circumstances require any decision making that would adversely affect adherence to the policy or procedure, in line with the 'Statement of Intent' of the Constabulary and the police service 'Code of Ethics', if an officer, police staff member or volunteer believes that they need to make a decision that steps outside of policy and procedure they should do so, provided that:

    - the officer, member of police staff, member of the Special Constabulary, volunteer or OPCC staff member raises the matter at the earliest opportunity (and ideally before any such decision is made) with their line manager declaring their intended (or actual) course of action if notification is made after the decision is taken,
    - produces, in a timely manner, a signed and dated written explanation of why it is/ was deemed necessary to step outside of policy and procedure, and
    - maintain an adequate record of this written rationale for audit purposes appropriate to the circumstances / contravention

Conflict of Interest Policy

Section 2 – Procedural guides

When a Conflict of Interest (COI) is identified:

- Bring the matter to an appropriate manager's attention as soon as possible.
- Ensure you provide the manager with all the information you are aware of.
- Allow your line manager to consider whether there is a COI.
- In the event a COI is identified, the manager is expected to articulate and record a proportionate rationale for removing or permitting that officer, member of staff, member of the Special Constabulary, volunteer or OPCC staff to continue with that particular matter. This record should be capable of retrieval at a later date e.g., on an incident or crime report or other appropriate system.
- In case of a COI involving procurement / financial matters, the report **MUST** be copied to the Head of Finance.
- At all Governance meetings, all participants must declare any COI and minuted accordingly.

Section 3 - Relevant Legislation: (*Human rights/diversity/Health & Safety/any other specifics*)

Data Protection Act 1998:

The information provided will be processed in accordance with data protection principles as set out in the Data Protection Act 1998. Data will be processed only to ensure that the Constabulary is transparent in its dealings with members of the public and is accountable when using public funds. The information provided will not be used for any other purpose.

Section 4 - Related References:

Notifiable Associations Policy

Conflict of Interest Policy

Section 5 - Identification, Monitoring and Review

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EIA	**EIA Sign Off**	**EIA Review**
LOW K:\Waterwells\Equality Impact Assessment\Conflict of Interest Policy - EIA Oct 2017.doc	**Steve Jacques/Kevin McCloskey**	**2/8/2020**
This version will be placed on the public domain website		
If this version cannot be placed on the public domain website, provide reason and relevant COG authority		

Previous policies can be found with the Governance and Compliance team.

Conflict of Interest Policy

March 2013

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1 Introduction and Purpose

1.1 The Office of the Police Ombudsman for Northern Ireland (the Office) recognises that its employees may have a diverse range of interests and associations outside of their employment within both a local setting and a national or international context. The Office recognises that links between employees of the Office and outside bodies are often in the public interest as well as of benefit to individual. There will be occasions when such links may be of benefit to the Office, however the Office also recognises that it is possible that such links or associations may give rise to conflict of interest or the perception of a conflict of interest.

1.2 The independence and impartiality of the Office are fundamental to the discharge of the Police Ombudsman's statutory function and as such it is imperative that the Office manages all actual perceived and potential conflicts of interest in a clear and consistent manner.

1.3 It is expected that generally individual members of staff will recognise situations in which there are actual, perceived or potential conflicts of interest and will want to ensure that there can be no perception of any such conflict either interfering in the performance of their duties or that there can be no perception of any such conflict furthering private interests.

1.4 The purpose of this policy is to

- Define what is meant by a conflict of interest
- Assist in identifying conflicts of interest
- Establish a system for disclosure of conflicts of interest
- Provide guidance to staff and those responsible for managing conflicts of interest

1.5 This policy applies to all employee's and post holders in the Office (including contract, agency or seconded staff) and relates to any actual, perceived or potential conflicts of interest that may arise in the performance of an individual's duties.

2 Principles

2.1 The independence and impartiality of the Office are fundamental to the discharge of the Police Ombudsman's statutory function and as such it is imperative that the Office manages all actual perceived and potential conflicts of interest in a clear,consistent and timely manner.

2.2 Each employee has an obligation to act in the interests of the Office in relation to the proper performance of their duties, activities and employment.

2.3 There is a requirement to balance the rights and responsibilities of employees with those of the Office in relation to the management of conflicts of interest. To this end the Office accepts that it has no right to interfere in the private concerns of employees where these have no bearing on the interests of the Office.

2.4 The existence of an actual, perceived or potential conflict of interest does not of itself imply wrongdoing on anyone's part. However any private, voluntary, charitable, commercial, political or personal interest which gives rise to an actual, perceived or potential conflict of interest must be recognised, appropriately disclosed and either eliminated or properly managed.

2.5 Police Ombudsman for Northern Ireland Code of Ethics

All staff are required to adhere to the Code of Ethics. Paragraph 5 of the Police Ombudsman for Northern Ireland Code of Ehics states

> "Police Ombudsman staff shall disclose to the Police Ombudsman any private interest relating to their public duties and should seek assistance from the Police Ombudsman to resolve any conflict arising in a way that protects the public interest".

2.6 Seven Principles underpinning Public Life (Nolan Principles)

In 1995, the Committee on Standards in Public Life defines seven principles which should underpin the action of all who servce the public in any way. These are:

- **Selflessness** - Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or other friends.
- **Integrity** - Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- **Objectivity** - In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability -** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

- **Openness** - Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- **Honesty** - Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership** - Holders of public office should promote and support these principles by leadership and example.

2.7 Police Ombudsman for Northern Ireland Public Values

In addition to the Nolan Principles included above, the Office has also 9 stated Public Values which all staff in the Office are expected to comply with. These are:

- **Independence - T**he Police Ombudsman operates independently of the PSNI and NI Policing Board and strives to investigate all complaints objectively and even-handedly.
- **Impartiality -** The Police Ombudsman and his staff handle and investigate complaints free of bias or influence.
- **Integrity -** The Police Ombudsman and his staff operate with integrity in all their dealings with the public and the police.
- **Openness -** The Police Ombudsman must not disclose any information in relation to a complaint except as provided by the Police (NI) Act 1998.
- **Fairness -** The Police Ombudsman gives all complainants and police officers an opportunity to state their case.
- **Human Rights -** The Police Ombudsman observes the relevant international principles and standards on policing and respects human rights.
- **Accessibility -** The Police Ombudsman's Office is open to the public during normal working hours. There is a dedicated phone number for making complaints. All complaints are acknowledged, whether by e-mail, telephone, fax or via our website.
- **Accountability -** The Police Ombudsman is accountable to the Northern Ireland Assembly and to the Courts. An Annual Report and Accounts is provided to the Department of Justice and laid before the Assembly.
- **Satisfaction -** The Police Ombudsman welcomes from members of the public and police officers any complaints, criticisms or comments in relation to the manner in which complaints or investigations have been handled.

3 Definitions

3.1 Conflict of Interest

A conflict of interest may arise in any situation in which an employee has a private, voluntary, charitable, commercial, political or other personal interest which could influence or could be perceived to influence them in the performance of their duties.

3.2 For the purposes of this policy the term conflict of interest means an actual, perceived or potential conflict of interest.

3.3 **Perceived Conflict of Interest**

A perceived conflict of interest is one in which a reasonable person could consider it likely to influence a person in the performance of their duties.

3.4 **Potential Conflict of Interest**

A potential conflict of interest is a situation which could develop onto an actual or perceived conflict of interest.

4 Determining a Conflict of Interest

4.1 In order to determine whether a conflict of interest exists, it should be determined whether the interest Is likely to interfere or be perceived to interfere with the objective judgement of the employee in the performance of his or her duties of employment. An employee should ask him or herself whether their private, voluntary, charitable, commercial, political or personal interest might reasonably be perceived by others (including complainants, police officers, managers, colleagues, members of the public) to influence or potentially influence them in the performance of their duties in accordance with the principles outlined above.

4.2 If others could reasonably consider that the interest might influence the employee to act other than in the interests of the Office then in accordance with the Principles outlined above, the member of staff must declare the existence of the actual, perceived or potential conflict.

4.3 In any circumstance where an employee is uncertain whether a conflict of interest exists they must assume that it does exists and act accordingly.

4.4 It is not possible to list all possible conflicts of interest since the circumstances and relationships may vary so widely. However common areas in which a conflict of interest may arise include:

- Where an employee may be asked to investigate a complaint from a friend, family member or person otherwise known to them
- Where an employee may be asked to investigate a complaint about a friend, family member or person otherwise known to them
- Where the provisions of the Article 2 Policy apply (see section 7 below).
- Where an employee may be involved in the procurement of a supply or service from a business in which he or she or a relative or friend has a financial interest
- Where an employee may be involved in the recruitment and selection process for a post for which a relative or friend has applied
- Where an employee seeks to hold a position as an elected representative.

4.5 In any situation where a member of staff considers that there may be an actual, perceived or potential conflict of interest they must disclose the matter as detailed in section 5 below.

4.6 Similarly where a manager becomes aware of a possible conflict of interest that an employee appears not to have considered the manager should remind the employee of the existence of this policy and how it should be applied and fully consider the matter with the employee as detailed in section 5 below.

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5 **Disclosure of a Conflict of Interest**

5.1 The responsibility for avoiding a conflict of interest lies in the first instance with the individual employee. It is the personal responsibility of every individual to whom this policy applies to disclose to their line manager any actual, perceived or potential conflict of interest in relation to any matter related to the performance of their duties providing sufficient detail that an assessment can be made as to how to best deal with the issue.

5.2 There may be circumstances when it was not initially apparent that an actual, perceived or potential conflict of interests exists. As soon as it becomes apparent any such conflict of interest must be disclosed.

5.3 Where a manager is uncertain about how to address a matter which has been brought to his or her attention advice should be sought from the HR manager.

5.4 Where a member of staff does not wish to reveal the details of a conflict of interest to his or her line manager and is unable to withdraw from the situation in which the conflict of interest arises he or she should seek advice either from the second line manager of the HR manager.

5.5 In all cases disclosure must include sufficient information to enable appropriate resolution. This information is likely to include (where applicable);

- The type of the potential conflict of interest
- The nature of the activity giving rise to the conflict of interest
- The details of the parties involved
- Any financial or non-financial benefit involved
- Any other relevant information.

5.6 Confidentiality of disclosures made in respect of conflict of interest discussions will be maintained as far as is possible and information will only be shared where there is a need to do so.

5.7 <u>Senior Management Team meetings</u>
The declaration of conflicts of interest is a standing item on the Senior Management Team agenda. All members of the Senior Management Team are required to declare any Conflicts of Interest prior to the commencement of the business of the meeting. Where a conflict of interest is declared that member of the Senior Management Team may be required to withdraw from all or part of the meeting. The declaration of conflicts of interest, including nil declarations and any related actions are recorded in the minute of the meeting.

5.8 <u>Audit Committee meeting</u>
The declaration of conflicts of interest is a standing item on the Audit Committee agenda. All members of the Audit Committee are required to declare any Conflicts of Interest prior to the commencement of the business of the meeting. Where a conflict of interest is declared

that member of the Senior Management Team may be required to withdraw from all or part of the meeting. The declaration of conflicts of interest, including nil declarations and any related actions are recorded in the minute of the meeting.

5.9 Register of Interests

A register of interests is maintained which is reviewed and updated on an annual basis which contains the details of any interests of members of the Senior Management Team and Non – Executive Members of the Audit Committee which is available on the website.

5.10 Recruitment Panels

All recruitment panels are required to consider the potential for conflicts of interest. It is recognised that there may be occasions when panel members know individuals who have applied for a position within the Office. In all such situations the fact that a particular candidate(s) is known to a member of the panel must be disclosed to the other members of the panel for a consideration as to how to proceed. In situations where there is a close association it is possible that the panel member may be required to withdraw from the panel. In other situations where a candidate is known but there is no close association it may be appropriate that the panel remains unchanged. Queries in respect of the application of these principles should be referred to the Human Resources Manager.

5.10 Disclosure of Conflicts of Interest on Application Forms

All applicants for a position with the Office will be provided with a copy of this Conflict of Interest Policy and a guidance note for applicants. Applicants are required to disclose on completed application forms whether there are any conflicts of interest which might be relevant in relation to their possible employment with the Office. Any relevant conflict of interest which is not disclosed may result in dismissal.

6 Resolution of Conflicts of Interests Declared

6.1 Once a conflict of interest has been declared the person to who the conflict has been declared (usually the line manager) is responsible for resolving the conflict of interest as soon as is reasonably practicable, taking into consideration the impact of the conflict of interest that has been declared.

6.2 Where possible the resolution of a conflict of interest should be with the agreement of the employee concerned.

6.3 Where the person to whom the conflict of interest has been declared is uncertain how to proceed he or she should refer the matter to their more senior colleague and/or seek advice from the Human Resources manager.

6.4 Where resolution cannot be reached within one working week a preliminary decision must be reached either to permit the employee to continue in the activity in the interim (possibly with modifications or to require the employee to suspend involvement in the activity in the interim pending final resolution and this decision communicated to the employee . Where interim suspension has been decided, the reasons for this should be communicated to the employee.

6.5 Where a conflict of interest is considered there will be one of 3 outcomes

- An agreement that the matter raised does not present a conflict of interest to the Office
- An agreement that the activity can be allowed to continue with modifications such as
    - Disclosure of pertinent information to relevant individuals
    - Exclusion from decision making authority
    - Third party review of decisions made by the employee
    - Limited involvement only in the activity
    - Increased supervision or monitoring of the activity
    - Removal of others (eg friend or relative) from the activity that caused the conflict
- An agreement that the employee should not be involved further in the activity

6.6 Where no agreement can be reached by the employee and their manager the default position will be that the employee should not be involved further in the activity

6.7 In all circumstances where a manager is required to consider a conflict of interest, the manager to whom the conflict of interest has been disclosed must maintain a written record of the disclosure and all subsequent related actions and decisions. Where a conflict of interest is ongoing it is important that the current and future line managers are aware of it. The fact that there is an ongoing conflict of interest which has been identified must be communicated to any subsequent line manager of the individual concerned.

6.8 In all cases a copy of the conflict of interest consideration and decision must be forwarded to the HR manager who is responsible for maintaining such conflicts of interest in a register.

7 **Article 2 Policy Considerations**

7.1 When conducting investigations where Article 2 is engaged, the Police Ombudsman is obliged to ensure that such investigations comply with the requirements of independence under the European Convention and Human Rights Act. The are therefore specific circumstances in which the Office considers that it may not be appropriate for staff from a former RUC, PSNI or Military background to investigate certain matters.

7.2 While the requirement to maintain hierarchical and structural independence is met by the independence of the Office from the PSNI, the additional requirement to ensure the practical independence of those conducting an investigation from those under investigation can present some difficulties.

7.3 Employees who previously served in the RUC or PSNI may have practical links to persons under investigation in any given case and while there is no suggestion of impropriety on the part of any employee, there will be situations where , through no fault of any individual person, the Article 2 requirement would be breached by permitting certain employees from investigating certain allegations.

7.4 Paragraph 7.5 below provides examples of situations in which a conflict of interest may arise over and above those possible conflicts of interest detailed at section 4.4 above. Should a conflict of interest arise, the employee concerned should immediately notify and seek direction from their line manager.

7.5 Situations where direction from line management should be sought include

- Where an investigator at any time served in a line management position relative to a person under investigation (namely where they supervised or were supervised by the person under investigation)

- Where an investigator was in any way in any capacity linked to the incident under investigation

- Where a police policy is the subject of the investigation and the investigator was in any way involved with the setting or maintenance of that policy

This list is not exhaustive and as in 4.5 above where an investigator has any doubt as to their practical independence, they should seek direction from line management

7.6 On occasions where practical independence is impacted management may remove an investigator from a particular Article 2 investigation. This step is necessary to ensure compliance with legislation, to protect the integrity of the investigation, protect the individual investigator and to maintain confidence in the police complaints system. Such a decision does not suggest any improper conduct on the part of the investigator concerned.

7.7 It is possible that a conflict of interest may not be immediately apparent at the outset of an investigation but that an issue may arise during the course of enquiries. In such

circumstances the investigator affected should bring this matter to the attention of line management at the earliest possible opportunity.

7.8 The family of a deceased person has the right to ask if investigators or managers connected to their case are Article 2 compliant and to raise an objection if they have concerns about the background of staff involved in investigating their complaint. The objection will be considered by the Chief Executive who will advise the Police Ombudsman. The final decision on the deployment of staff to the case is for the Police Ombudsman.

8 Failure to Disclose of a Conflict of Interest

8.1 Failure to disclose an actual, perceived or potential conflict of interest is a breach of the Code of Ethics and may be considered under the Disciplinary Policy and Procedure of the Office. In serious cases this may result in dismissal. In any disciplinary procedure which may arise in relation to failure to disclose a conflict of interest, consideration will be given to the extent to which the employee was aware of the actual, perceived or potential conflict of interest and the reasonableness of any decision made not to declare it.

9. Linked Policies

- Code of Ethics
- Investigation Manual
- Investigation of State Related Deaths Policy (Article 2 Policy)
- Witness Policy
- Fraud Policy
- Discipline Policy
- Gifts and Hospitality Policy
- Whistleblowing Policy
- Procurement Policy

10. Equality Screening

10.1 This policy has been screened for impact in accordance with the Equality Scheme of the Office. There is no evidence to suggest that this policy will have an impact on equality of opportunity or good relations.

CORRUPTION PREVENTION CONCEPTS: CONFLICTS OF INTEREST

Australian Government
Australian Commission for Law Enforcement Integrity

The mismanagement of, and failure of employees to declare, conflicts of interest may leave law enforcement agencies vulnerable to corruption.

ACLEI investigations have shown that the manner in which conflict of interest declarations are notified and recorded, and appropriate employee training and awareness, are important components of a successful conflict of interest regime.

Conflicts of Interest

Managing actual and perceived conflicts of interest is an inherent requirement for law enforcement officers and public officials[1]. Similarly, the declaration of actual, potential and/or perceived conflicts of interest is a key mechanism used by many public sector agencies to identify the risks facing employees and their ability to effectively perform their duties[2].

The robustness of any conflict of interest declaration framework hinges on the ability of officers to recognise and report instances giving rise to potential or actual conflicts of interest.



Instances requiring declaration may include familial and social relationships, professional and personal associations, membership of certain clubs and organisations, and regular attendance at higher-risk locations where there may be a known or potential conflict.

Conflicts of interest may give rise to corrupt conduct where they are undeclared, concealed, understated, mismanaged or abused[3].

What you need to know:

High risk area — the personal/private nexus:

Conflicts of interest can arise when officers are 'off-duty'. Decisions and actions taken by officers in their private lives may impact on their ability to effectively perform their duties and uphold the law[4]. For example, an officer engaging in the personal use of illicit substances is engaged in illegal activity and will likely be exposed to criminal entities to facilitate their behaviour[5].

Decisions and actions which run counter to an agency's integrity expectations may ultimately heighten the risk of corrupt compromise.

Secondary employment may also increase the risk of corrupt compromise due to actual or perceived conflicts of interest[6]. Officers engaged in secondary employment which draws on their law

ACLEI defines the personal/private nexus as the correlative relationship between the official duties of a law enforcement officer and the decisions/actions taken in their private/personal lives. Some decisions/actions taken may be inconsistent with the professional responsibilities of the officer and may heighten the risk of corrupt compromise of the officer and law enforcement operations.

[1] OECD 2005 - https://www.oecd.org/gov/ethics/49107986.pdf
[2] APSC 2009 - https://www.apsc.gov.au/sites/default/files/whoseinterest.pdf
[3] NSW ICAC 2019 - https://www.icac.nsw.gov.au/ArticleDocuments/232/Managing-conflicts-of-interest-in-the-nsw-public-sector_June-2019.pdf.aspx
[4] ACLEI 2019 - https://www.aclei.gov.au/corruption-prevention/key-concepts/glossary
[5] ACLEI 2019 - https://aclei.govcms.gov.au/sites/default/files/acl5508_personal_private_nexus_final_web.mp4
[6] QLD CCC 2018 - https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/Prevention-in-Focus-Conflicts-of-interest-2018.pdf

enforcement skills, knowledge, experience and access to information and methodologies may be at particular risk of compromise as the boundaries between their official duties and secondary employment may be blurred[7].

Using official resources for secondary employment, or engaging in secondary employment while on duty, are also likely to cause a conflict of interest[8].

Officers who are considering secondary employment should be mindful of the potential for conflicts of interest between their law enforcement duties and their other commitments, and seek advice and approval from their agency prior to commencing secondary employment.

High risk area — relationships and associations

Criminal entities may seek access to law enforcement through intimate relationships, family connections, professional associations or cultural and social links[9]. Long-term relationships between law enforcement officers and members or associates of criminal organisations may represent a significant corruption vulnerability if they are not declared[10].

Criminal entities may attempt to compromise a law enforcement officer's loyalty to their agency by exploiting a relationship or association and creating a conflict of interest[11].

Undeclared relationships between work colleagues, particularly between an employee and the employee's manager, may give rise to claims of favouritism and nepotism[12].

Conflicts of interest may also occur where the parties to a relationship find their loyalty to one another is inconsistent with the integrity expectations of their agency[13], for example, in cases where one of the parties to the relationship engages in misconduct and the other party decides not to report it.

During an ACLEI investigation into a suspected inappropriate relationship between a law enforcement officer and a member of an organised crime group, it was determined that the officer initially self-assessed the relationship did not meet the threshold for declaration. While the officer ultimately declared the relationship, this only occurred after the officer became concerned for their safety and subsequently reported their concerns to their manager.

High risk area – officers attempting to self-manage risk

Self-managing risk involves officers attempting to deal with integrity issues alone and failing to report matters or seek assistance through management or their agency's integrity framework. Self-managing risk exposes staff to compromise, and denies the employer the opportunity to understand, appreciate and deal with risk holistically[14].

Senior and experienced officers may be particularly vulnerable if they decide to self-manage conflicts of interest given their ability to influence agency decision making[15]. Undeclared conflicts of interest may add weight to allegations of improper conduct and bring the validity of key decisions into question.

High risk area — ineffective notification, recording and training processes

Public sector agencies, including those in law enforcement, must maintain a suite of integrity measures to address the risks posed by actual and potential conflicts of interest.[16] However, corruption vulnerability may increase where these integrity measures are not fit for purpose[17].

For example, law enforcement officers should be made aware of potential conflicts of interest and their reporting obligations involving attendance at higher risk locations – that is, locations such as

[7] NSW Police Force 2016 - https://www.police.nsw.gov.au/__data/assets/pdf_file/0020/301475/10_COI_Procedures_437417_15Sep2016_.pdf
[8] ibid
[9] Strategic Centre for Organised Crime 2015 - https://www.gov.uk/government/publications/individuals-at-risk-of-being-drawn-into-serious-and-organised-crime-a-prevent-guide
[10] ibid
[11] Davids 2008 *Conflict of interest in policing: problems, practices and principles*. Institute of Criminology Press: Sydney.
[12] VPSC 2018 - https://vpsc.vic.gov.au/html-resources/managing-consensual-personal-relationships-practice-guide/2-conflict-interest-relationships/
[13] USQ 2018 - https://www.usq.edu.au/hr/empcond/conflicts/conflict-examples
[14] ACLEI 2019 - https://www.aclei.gov.au/corruption-prevention/key-concepts/glossary
[15] APSC 2018 - https://www.apsc.gov.au/sect-411-conflict-interest
[16] ibid
[17] ACLEI 2019 - https://www.aclei.gov.au/corruption-prevention/key-concepts/what-best-approach-early-intervention

licensed premises[18] and gyms which may be frequented by criminal entities seeking to establish social relationships for illegitimate means[19] [20].

Without the necessary infrastructure in place – including through the implementation of clear policy, regular training and appropriate record keeping[21] – agencies are at risk of producing a work environment which is perceived as both reluctant and unable to manage conflicts of interest. In turn, this may leave the agency and its officers vulnerable to corruption.

ACLEI Case Study Example

During an ACLEI investigation into the potential leaking of operationally sensitive information, it was identified that the officer subject to the allegation had failed to declare potential conflicts of interest in relation to their partner communicating with criminal entities at a high risk location.

The officer's involvement in the investigation of associates of these criminal entities placed them at increased risk of compromise.

The investigation also showed that the officer was likely unaware of their conflict of interest reporting obligations and may not have completed relevant conflict of interest training.

What should you do?

For agencies:

- Make it easy for staff to report integrity matters, including actual and potential conflicts of interest.
- Regularly remind employees of their obligations to declare conflicts of interest, particularly in circumstances where a failure to declare may lead to an increased risk of corrupt compromise.
- Ensure mechanisms for recording and reporting on conflicts of interest are fit for purpose – including by ensuring records are held centrally and confidentially.
- Make sure officer training and awareness programs remain contemporary and align with agency expectations regarding the declaration of conflicts of interest.

For managers:

- Reinforce agency expectations regarding when and how conflict of interest declarations should be made.
- Consider the potential conflicts of interest which are likely to arise in your work area and take steps to minimise or mitigate the possibility of a conflict of interest remaining undeclared.
- Foster an environment where your team are empowered to ask questions, seek advice, and raise concerns.

For employees:

- Trust the system and don't try to self-manage risk. It is your agency's responsibility to know and treat its risks - reporting an actual or potential conflict of interest to your agency as soon as possible will minimise your risk of compromise.
- Know where to go for help and advice within your agency – your integrity and professional standards area or your manager are good places to start.

Further information and resources:

- Watch the ACLEI Corruption Prevention Concepts Video: Personal/Private Nexus
- ACLEI Corruption Prevention Posters: available for download from the ACLEI website
- ACLEI Case study: failure to disclose associations

[18] Queensland Police Service 2016 - https://www.publications.qld.gov.au/dataset/2370ab47-b1c2-4b71-bd61-9ff75099ae5f/resource/79db37f1-38a2-4602-bdfd-07af5dcabb1f/fs_download/submission7.2queenslandpoliceserviceinquiryarea7.pdf
[19] Australian Institute of Criminology 2014 - https://www.aic.gov.au/publications/tandi/tandi473
[20] ACLEI 2018 - https://www.aclei.gov.au/sites/default/files/corruption_prevention_concepts_-_protect_yourself.pdf?v=1549852655
[21] ICAC SA 2019 - https://icac.sa.gov.au/system/files/Troubling_Ambiguity_Governance_in_SA_Health.pdf



Australian Government

Australian Commission for Law Enforcement Integrity

Report corruption at:

aclei.gov.au

COUNTY OF KERN

Sheriff's Office

Statement of Receipt: Required County Policies

EMPLOYEES: Read each of the policies and notices referenced below. Initial each summary below and sign at the bottom of this page indicating that you have read and understand the policies. You may retain/access these policies for future reference.

1. ALCOHOL AND DRUG ABUSE POLICY

Initial I have received a copy of Kern County's alcohol and drug abuse policy statement and I understand that I am to abide by its terms. I understand that the Drug-Free Workplace Act requires employers to maintain a drug-free workplace and to distribute a policy statement to employees prohibiting the unlawful possession and use of controlled substances in the workplace. I understand that Kern County will take actions against employees for violations.

2. CONNELLY ASBESTOS NOTICE

Initial I have received a copy Kern County's Connelly Asbestos Notice to Employees as required by Assembly Bill 3713 - 1988 Regular session. This notice details the location of any known quantity of asbestos found in any county buildings and the potential health risks or impacts that may result from asbestos exposure.

3. ELECTRONIC COMMUNICATIONS USAGE POLICY

Initial I have received a copy of and am fully aware of Kern County's Electronic Communications Usage Policy which describes the conditions for authorized use of information technology and associated devices. I agree to abide by its terms, and I understand that should I commit any violation, my access privileges may be revoked and/or appropriate legal/disciplinary action may be taken. I also agree to remain apprised of future revisions to this policy and to abide by the terms of all such revisions.

4. HOSTILE WORK ENVIRONMENT POLICY

Initial I have received a copy of the Hostile Work Environment Policy, which states the County's policy to provide for its employees a work environment free from hostile and offensive conduct. I understand that conduct which creates or enables a hostile work environment is expressly prohibited, and that violations will result in disciplinary action up to and including termination.

5. SEXUAL HARASSMENT POLICY

Initial I have received a copy of the County's Sexual Harassment Policy, Exhibit B to Chapter 1 of the Kern County Administrative Procedures Manual, which states that sexual harassment in any manner or form is expressly prohibited. I understand that violations of the policy shall result in disciplinary action.

6. WORKPLACE VIOLENCE POLICY

Initial I have received a copy of the Kern County Workplace Violence Policy, which states that violence and threats of violence in a County workplace will not be tolerated. I understand that any employee who threatens or commits such violence in a County workplace is subject to disciplinary action.

7. SHERIFF'S EXPECTATIONS

Initial I have received a copy of the Sheriff's Expectations which outline the conduct expected of all Sheriff's Office employees. I understand that I will be held accountable for my actions.

COUNTY OF KERN

Sheriff's Office

Statement of Receipt: Required County Policies

8. SHERIFF'S SAFE DRIVING DIRECTIVE

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9. PRISON RAPE ELIMINATION ACT (PREA) NOTICE

Initial I have received a copy of the Sheriff's Prison Rape Elimination Act notice and I agree to abide by its terms. I understand that material omissions regarding such misconduct, or the provision of materially false information, will be subject to discipline up to and including termination. I have read and understand the PREA questions and have not been involved in any PREA related misconduct.

10. EMERGENCY DRIVING POLICY DPPM E-0100

Initial I have received a copy of the Emergency Driving Policy DPPM E-0100. I understand the fundamental purpose of Code 3 operations is to enable peace officers to arrive quickly and safely at a scene of an emergency. Code 3 operations (red light and siren) are strictly limited to emergency situations and pursuits. The safety of the deputy and the public must be the primary concern when driving under emergency conditions. I have received, read, and understand the policy.

11. VEHICLES POLICY PURSUITS DPPM E-0200

Initial I have received a copy of the Vehicle Policies – Pursuits DPPM E-0200. I understand this policy is intended to establish procedures for vehicle pursuits that are consistent with California law and consider the safety of all persons. I have received, read, and understand the policy.

I, the undersigned County employee, hereby acknowledge receipt of a copy of above County policies or notices herein listed on the date appearing next to my signature below, and agree to abide by each policy as appropriate.

Employee Signature

9/9/16
Date

DAVID HUBBARD
Printed Name

METRO
Department

COUNTY OF KERN

Sheriff's Office

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DH

Employee Signature

9/18/17

Date

DAVID HUBBARD

Printed Name

KCSO-METRO

Department

COUNTY OF KERN

Sheriff's Office

Statement of Receipt: Required County and Department Policies

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DH **5. SEXUAL HARASSMENT & DISCRIMINATION HARASSMENT POLICY**

Initial I have received a copy of the County's Sexual Harassment Policy, Exhibit B to Chapter 1 of the Kern County Administrative Procedures Manual and DPPM C-300, which states that discrimination/harassment in any manner or form is expressly prohibited. I understand that violations of the policy shall result in disciplinary action.

DH **6. WORKPLACE VIOLENCE POLICY**

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COUNTY OF KERN

Sheriff's Office

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Employee Signature — *Date* 9/11/18

DAVID HUBBARD — *Printed Name*

HOMICIDE — *Department*

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Sheriff's Office

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Employee Signature

9/25/19
Date

DAVID HUBBARD
Printed Name

SHERIFF'S OFFICE
Department

Revised 2/2018

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Employee Signature

8/6/20
Date

DAVID HUBBARD
Printed Name

KCSO
Department

COUNTY OF KERN

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Employee Signature

12/1/21

Date

DAVID HUBBARD

Printed Name

KCSO

Department

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Managing conflicts of interest

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This document was current as at 14 June 2022. Police policies are regularly reviewed and updated.
The most current version of Police policies are available from www.police.govt.nz

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Policy statement and principles

What

As noted in the Public Service Commission's model standards, “A conflict of interest means a conflict between a public duty and private and/or personal interests. Personal interests can be financial or relate to family, friends or associates. Conflicts of interest may be actual, potential or perceived.”

It is important that conflicts of interest are recognised and properly managed. Conflicts of interest that are hidden, or poorly managed, create the risk of misconduct (or the appearance of misconduct), and could undermine public trust and confidence. Conversely, good management of conflicts of interest protects both the employee(s) involved and Police from allegations of bias or inappropriate conduct.

Why

Integrity is at the heart of our ability to police effectively. A staff member’s conflict of interest can threaten Police’s integrity because it can bring the organisation’s impartiality into question. And a perceived or potential conflict of interest can be just as damaging as an actual conflict. The main goal of identifying and managing conflicts of interest is to ensure that all policing decisions are made - and are seen to be made - legitimately, justifiably, independently and fairly. The requirement to report conflicts of interest exists to protect Police’s and Police employees’ integrity, not to question it or test it.

How

In line with Police’s values of Professionalism and Integrity, Police staff are expected to maintain high standards of behaviour. The public expects Police to carry out its work impartially at all times. It follows that all employees should be alert to potential conflicts of interest. All actual, potential or perceived conflicts of interest should be declared to a supervisor by way of the appropriate declaration.

Supervisors must work with employees who declare conflicts of interest to assess the risks involved, and to identify appropriate strategies to manage those risks.

Scope

This chapter applies to all Police employees. The principles apply to all Police’s work - every incident attended, every investigation assigned, and all its corporate work as well.

Some forms of conflicts of interest are covered by specific policies; see 'Secondary employment', 'Procurement' and 'Gifts, discounts and hospitality'. And some specific guidelines are appended to this chapter, to help staff maintain professional boundaries.

Definitions

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Actual conflict of interest	A conflict between official duties and other interests that could interfere with a Police employee's ability to be impartial, objective and independent.
Perceived conflict of interest	The perception of outside observers that a Police employee's other interests may interfere with their ability to be impartial, objective and independent, whether or not that is the case.
Potential conflict of interest	A situation where other interests have the potential to interfere with a Police employee's official duties in the future, or where their official duties could affect their other interests in the future.
Other interests	Interests unrelated to Police - such as those of a personal, family or financial nature.

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Conflicts of interest

Conflicts of interest occur naturally, as Police employees have numerous interests, many of which may give rise to conflicts in different situations. Such conflicts occur frequently in a small country like New Zealand, and even more often for those living and working in small communities where everyone knows everyone. Conflicts of interest can be actual, perceived or potential, and can arise not only in investigations, but in all aspects of our work. If a conflict of interest arises, it doesn't necessarily mean that someone has done or may do something wrong.

Conflicts of interest are especially significant in the public sector where taxpayer dollars are directed and used. In addition to using taxpayer dollars, Police has access to private and confidential information and must be seen to act impartially, without any possibility of influence by favouritism, personal motives or private benefit.

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Identifying conflicts of interest

Our own conflicts of interest are often the most difficult to identify, particularly perceived or potential conflicts of interest. In considering whether a conflict exists, Police employees should ask themselves whether they would act differently if they didn't have other interests. They should also ask themselves how a reasonable observer would be likely to perceive their actions, given their other interests. Would a reasonable observer believe the employee would act differently if they didn't have other interests?

Finally, they should consider whether their professional reputation would be damaged if friends, colleagues, or the public became aware of their involvement in a situation where they had other interests. In other words, would their actions stand up to scrutiny?

If unsure whether a conflict exists, it is better to err on the side of transparency and discuss the situation with your supervisor.

Conflicts of interest in smaller communities

Police employees working in smaller communities need to be especially alert to the potential for perceived or actual conflicts of interest, particularly if they have family members residing, or working, in the same community. It is particularly important for employees in smaller communities to regularly review their 'other interests' and consider the potential for conflicts of interest. Prior to joining community organisations, consider the potential for conflicts of interest and document, with your supervisor, how they will be managed. When dealing with family, friends and acquaintances, it is important to carefully consider your actions and document them for review.

What other interests could create a conflict of interest?

A conflict of interest can arise through a relationship, an activity or strong personal views. Conflicts of interest vary in seriousness and degree. Because of the wide range of interests and roles that employees have, it is not possible to list every possible situation that could give rise to a conflict of interest. The Office of the Auditor-General has assembled a raft of guidance around conflicts of interest including instructional videos and a quiz. It is important to be alert to the potential of conflicts in all situations. Some examples of interests that could conflict with duties include:

- relationships with family, friends, current former partners, or work colleagues
- being a member of a club, team, society or association
- a financial interest in a company, trust or property
- holding another public office
- political or union affiliations
- expressing views on social media
- secondary employment (see 'Secondary employment', including as a social media influencer)
- personal relationships that evolve from professional relationships
- the acceptance of gifts, discounts or hospitality (see the 'Gifts, discounts and hospitality' chapter)
- a legal obligation, such as being a trustee

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- a financial obligation, such as a loan
- providing written character references
- intervening to assist a family member or friend in a dispute
- attending Court in a support role.

Certain roles we perform are at higher risk of conflict of interest than others, such as:

- internal investigations
- working in isolated or small communities
- procurement (see 'Procurement' in the Police Manual and the Office of the Auditor-General's Quick guide to conflicts of interest and video on Personal dealings with a tenderer for a contract
- acting as a Police representative in a governance role for a third-party organisation
- exercising discretionary powers
- licensing or vetting
- using information obtained from NIA or other Police systems
- maintaining relationships with the media (see 'Dealing with the media' chapter in the Police Manual)
- managing staff or contractors, including security consultants
- reviewing decisions in which Police played a role.

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Conflicts of interest in context

Conflicts in a response context

When responding to incidents, Police employees may be immediately faced with situations where a conflict of interest exists. It is important to be alert to this possibility, and to avoid conflicts if possible. Police employees who are personally associated with the parties involved in an incident may not be seen as having acted objectively.

In some situations, it may be necessary to act immediately (for example, to protect life or property). In those situations, Police employees must discharge their duties first, and declare any conflict of interest as soon as possible afterwards. In other situations, steps should be taken to avoid the conflict, such as dispatching a different employee, if possible.

There is a natural overlap and interdependence of people living in small, rural or remote communities. It may not be possible for employees to avoid dealing with people with whom they have a personal connection. In those cases, it is important to document that potential conflict of interest and ensure any decisions in relation to those with whom the employee has a personal relationship can be reviewed by a supervisor at a later date.

Conflicts in an investigation context

Internal investigations

Particular care must be given to the potential for conflicts of interest in the case of internal investigations (where the subject is a Police employee), whether they are criminal or employment investigations. Police is never more open to allegations of bias than when it is investigating its own employees. It is essential that investigations are independent, and that Police's independence has been considered in each case. For this reason, all investigators assigned to internal investigations (IPCA category A and B) must complete an Independence of Investigation Conflict of Interest Declaration form (whether or not a conflict of interest exists). For IPCA categories C and D, a form must be completed if an actual, perceived, or potential conflict of interest exists. This ensures that the potential for conflict has been considered in all investigations. This form must be attached to the file, and a PDF version must be attached in Blueteam.

Supervisors should never investigate sexual or other serious complaints against staff under their direct supervision. An independent investigator should be appointed to ensure the enquiry is impartial and carried out in a diligent and robust manner.

External investigations

Conflicts can also arise in external investigations (where the subject is not a Police employee) for a broad range of reasons, some of which are those listed above. Police investigators should also evaluate their independence when conducting external investigations, and complete an Independence of Investigation Conflict of Interest Declaration form in situations where an actual, perceived or potential conflict exists.

Conflicts of interest in a resolution context

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It is generally the resolution of an incident or investigation that is most likely to face scrutiny. It is important when Police is involved in informal resolutions, pre-charge warnings and prosecution that employees ensure that their objectivity is seen to be maintained. Employees involved at this stage of any incident or investigation should be aware of the potential for conflicts of interest, and declare any actual, perceived or potential conflicts of interest to their supervisor as soon as they become aware of the conflict.

Conflicts of interest in a corporate context

Procurement

Conflicts of interest must be considered in every request for proposals or tender process, or when engaging contractors. As outlined in the 'Procurement' chapter, all employees must declare to their supervisor any personal interest or involvement which may affect, or could be perceived by others to affect, their impartiality in any aspect of their work. Any employee participating in a tender process must complete a *Conflict of interest and confidentiality agreement* (on the Procurement templates page), whether or not a conflict exists.

Providing written character references

From time to time, Police employees may be asked to provide a written character reference for someone. Police employees may only provide such written references as private individuals, and should not sign-off using their Police job titles when doing so. Police letterhead must not be used.

Other situations, including personal and family ties

Conflicts of interest can occur in other situations that arise through work, such as recruiting or managing employees, or making decisions that can affect organisations or individuals. Police employees need to consider the potential for conflicts of interest in all their work, and declare any actual, perceived or potential conflicts of interest to a supervisor as soon as they become apparent.

Of note, it will sometimes be necessary to acknowledge and put in place arrangements to manage the risks of perceived or potential conflicts of interest that arise when people with personal ties work together in the same place or reporting line. This will especially be the case where one person has supervisory or decision-making authority over the other's work; either directly or indirectly. The risks of such perceived or potential conflicts of interests are likely to be heightened for those in senior leadership positions.

Where such ties exists - for example, familial relationships like a mother and her son or daughter; or people who are in a de facto relationship, or who are married or civil union partners - employees should declare the perceived or potential conflict of interest.

In some cases, it will be necessary or otherwise appropriate to formalise how those with personal ties intend to manage the perceived or potential conflict of interest, by preparing a written management plan. There is no set format which must be used for such a plan (unlike the specific Independence of Investigation Conflict of Interest Declaration form, used to help ensure Police investigators are not open to allegations of bias). The important thing is that it's made clear what steps will be taken to prevent the perceived or potential conflict leading to any actual problems, and confirm the proposed management actions will not

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unfairly discriminate against or adversely impact those who have the personal ties.

By way of example, for a conflict of interest management plan involving spouses who work in the same group, Service Centre or Area/District, it might be agreed that an alternative reporting line will be used in any situation where decisions about one the people's direct work needs to be made by the other person - for instance, skipping up a level in the hierarchy, so that such decisions are made by someone even more senior, who does not have any personal ties to either individual.

Because there is no prescribed form, different people will use different approaches to develop a conflict of interest management plan. Some may prepare a POL258; others might write a memo or set things out in an email. The important thing is there is clear paper trail, and the agreed management plan is shared with, and signed-off-by, the senior manager in the part of the organisation where the perceived or potential conflict of interest has arisen.

Professional boundaries

Police employees should always tread very carefully lest professional relationships with members of the public develop into close personal relationships (where the relationship is intimate). Such relationships compromise professional boundaries and may lead to a conflict of interest because of a power imbalance. Imbalances of power are likely to exist in professional relationships with members of the public that Police deal with due to:

- members of the public being required to disclose private, confidential or highly personal information to Police
- the ability and power held by Police to make decisions relating to certain members of the public, e.g. Police has the power to arrest, to detain, to further a complaint or issue an infringement, or otherwise affect outcomes for that person
- a member of the public being vulnerable due to personal circumstances.

In some cases, personal relationships with members of the public can be inappropriate, such as those with:

- witnesses in a current investigation and their family members
- informants
- vulnerable persons where a duty of care exists
- any person in custody
- complainants in a current investigation in which the Police employee is involved.

Any professional involvement with people with whom a Police employee has a pre-existing personal relationship is likely to create a conflict of interest. A Police employee is expected to take steps to manage any personal relationship where a conflict of interest arises, including declaring any such (potential) relationship, to a supervisor.

To help keep yourself and the organisation safe, specific guidance around the issue of maintaining professional boundaries has been included as an appendix to this chapter.

Managing internal relationships

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Imbalances of power may also exist in personal relationships between Police employees where a Police employee has a decision-making role with respect to another Police employee. This is likely to include any relationship between Police employees where there is a reporting line relationship, or between recruits and instructors. Such relationships should be reported so that steps can be taken to manage the resulting conflict of interest.

Conflicts of interest in a non-work-related context

As a Police employee, the lines of separation between our personal and professional lives are often blurred. It is often the case that your actions/views will be seen as those of New Zealand Police by the public.

It is important that Police employees not misuse their positions to benefit themselves, their colleagues or others they have a close connection with (such as family members). By way of example, wearing Police uniform or displaying Police identification cards may, in some situations, be seen as an attempt to inappropriately influence or intimidate. (Scenarios could include negotiating purchases or services, intervening in a dispute in support of a family member or friend, showing a Police ID when off duty to gain entry to licensed premises or restricted areas, attempting to influence through social media posts.)

Police employees who attend Court in a support role for an accused person and identify themselves as Police employees could unwittingly give the impression that the organisation supports the accused person. Such actions could also be misinterpreted as being an attempt to intimidate or influence witnesses in the Court proceedings.

As individuals, we have an increasing online presence on various social media platforms, both through our work and through our personal lives. Connections can be made between those various platforms by members of our community, media and others seeking to corrupt police employees. Always consider the SELF CHECK before posting and make it clear that opinions you express are your own, and not those of New Zealand Police. Check the Social Media Police manual chapter's section on Personal use of social media for tips on how to keep yourself and Police safe online.

Proactively released by New Zealand Police

How to manage conflicts of interest

If possible, avoid the conflict

Police employees may be able to avoid conflicts of interest by abstaining from involvement in the decisions or actions that could be compromised by their other interests. Likewise, they should avoid activities where they could be seen to be at an advantage because of information or other resources they have access to because of their role with Police. For example, Police employees should follow the same channels as members of the public in order to access Police data for their own research.

In a response or investigative context, another employee could be assigned to the incident or investigation. If that is not immediately possible, any decisions required could be deferred to another employee.

For those in governance roles, conflicts can most readily be avoided if they are considered prior to discussions. It is good practice to have a 'declaration of interests' agenda item at the start of every meeting, such as: "Does anybody present need to declare any interests that might be considered prejudicial to their independence in relation to the items on the agenda?"

The same principles should be kept in mind when conducting all work - when responding to incidents, assigning or conducting investigations and participating in decisions in various roles. Police employees should always consider whether an outside observer could have reason to question their independence.

How to participate in the management of the conflict

Police employees should discuss the conflict of interest and how it could be managed with a supervisor, and cooperate with the management plan. Employees who know the subject of an investigation, or were former colleagues of the subject may not necessarily be excluded from further related activity (e.g. ongoing work for an investigation) for that reason. Employees who are concerned that the management plan does not properly address the conflict, should raise those concerns with a supervisor, and escalate them if necessary.

Proactively released by New Zealand Police

Supervisor and manager responsibilities

Supervisors or managers should foster an environment where employees feel free to discuss issues such as conflicts of interest. When a conflict of interest is identified, they should discuss the risks associated with the conflict with the individual employee.

It is the supervisor's responsibility to determine whether the conflict could prevent the involved employee from being able to make unbiased decisions, or whether a reasonable observer may consider the involved employee to be biased. Supervisors should advice from their own supervisor if they are unsure of the potential impact of the identified conflict.

Together with the involved employee, supervisors should assess the risks involved with the conflict and consider strategies to manage it. Conflicts of interest can be managed in a range of ways, depending on the circumstances:

- noting the conflict of interest only, if in the supervisor's view the conflict of interest will not cause bias or give the perception of bias
- obtaining the agreement of involved parties about the participation of the conflicted employee
- imposing additional oversight over the conflicted employee's work
- assigning work to another employee
- assigning work to an employee outside the District, Service Centre or work group
- an employee stepping back or away from the role that is causing the conflict.

In cooperation with the involved employee:

- assess the seriousness of the conflict - is the risk low, medium or high? (Consider the Risk Matrix found in the Risk Management Summary to identify strategies appropriate to the risk level)
- document the conflict of interest and how the conflict was managed
- support staff when issues arise: ensure there are channels in place for people to raise concerns about how their declared conflict(s) of interest are being managed or breaches of the conflicts of interest policy.
- monitor the conflict of interest, if required, for any changes in circumstance
- consider strategies to avoid future conflicts.

Management plans can take many different forms. As previously mentioned, the important thing is that a management plan is documented.

This document was current as at 14 June 2022. Police policies are regularly reviewed and updated.
The most current version of Police policies are available from www.police.govt.nz

Proactively released by New Zealand Police

Appendix: Maintaining professional boundaries

As an organisation, we need to maintain our professional boundaries in all of our dealings with members of the public. There is a continuum of behaviour from under involvement to over involvement, and the professional relationship sits in the middle.

Breaches of this professional relationship occur when a police employee becomes over involved with a person they are dealing with through work. Over involvement may occur gradually, and accidentally. A police employee may feel the over-involvement is justified because they are trying to help the person.

Over-involvement with a member of the public may result in a conflict of interest which can be mitigated through early identification and resolution. If not addressed, the over-involvement could seriously harm the member of the public, particularly if they are vulnerable to begin with.

Failing to maintain our professional boundaries presents a risk to the public, our colleagues and the organisation as a whole. If the public's trust and confidence in Police is undermined, this affects our ability to keep our communities safe and feeling safe.

Steps you can take to keep yourselves and others safe

- **Take responsibility for maintaining professional boundaries** - help members of the public understand when their requests or behaviour are beyond the limits of the professional relationship.
- **Document all contact in NIA**.
- **Involve a support person** or a police colleague where possible when meeting/corresponding, particularly if meeting in remote locations or the person's home.
- **If the person makes contact outside working hours**, when replying state that you will make contact when actually back at work.
- **Keep colleagues/supervisors informed** about meetings/dealings with the person - if you feel hesitant to do this, ask yourself if the behaviour is professional.
- **Consider the cultural values** of the person you are dealing with - seek advice from cultural advisors.
- **Raise concerns with a colleague** if there is reason to believe they are behaving inappropriately. Sometimes employees may not be aware that their actions are inappropriate.
- **If in doubt, ask yourself whose needs are being met** - yours or the member of the public. Make sure your behaviour doesn't cause confusion about your role.
- **Develop and follow a plan of contact**.

Possible warning signs that a professional relationship may be crossing a line and that an inappropriate personal or sexual relationship is developing:

- The employee reveals feelings and aspects of his/her/their personal life to the member of the public.
- The relationship becomes emotionally close.
- The relationship carries on outside the professional setting, outside normal working hours or after the professional relationship has ceased.
- The employee dwells on the relationship when away from work.
- The employee provides personal contact information.

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- The person insists on speaking with a particular employee and refuses to speak to other employees.
- The employee denies previous interaction with someone they are dealing with.
- The employee accesses the person's NIA record without justification.
- The employee gives or accepts social invitations.
- Texting or other forms of direct messaging that is not professionally focused.
- Any contact the employee makes with the person via social media.
- Intimate touching.

Commission on Peace Officer Standards and Training
860 Stillwater Road
West Sacramento, CA 95605-1603
www.post.ca.gov

On May 1, 2023, Jason Colbert was interviewed in a conference room located at the California Department of Consumer Affairs, Bureau of Automotive Repair, 3331 North Sillect Avenue, Bakersfield, California by Kevin Sherburne and Darryl Elliott, Law Enforcement Consultants at the California Commission on Peace Officer Standards and Training ("POST"). Communications by the parties during the interview were electronically recorded. The recording will serve as the true and accurate record of the statements made by Colbert. After being advised of the identity of the interviewers and the purpose of the interview, that being to obtain information related to allegations of serious misconduct, Colbert provided the following information:

Colbert is a lieutenant with the Kern County Sheriff's Office ("KCSO"). The organizational structure of KCSO is that lieutenants supervise sections. Colbert's section is Human Resources ("HR"), which covers backgrounds and Internal Affairs ("IA"). Sergeant Charles Shinn works backgrounds. Sergeant Tanner works IA. Danny Perez was the sergeant in IA during Hubbard's IA investigation. Perez reported to Colbert directly and before that to John Carpenter. In April 2021, Perez was the lead IA investigator on the S1 case. Sergeant Justin Weidenkopf was the lead criminal investigator assigned to Professional Standards Unit ("PSU"). Weidenkopf worked with Ray Siebert and James Money or Bess Rutter as investigators. PSU was built differently. PSU has a section lieutenant and also a commander who reported directly to the undersheriff, not a chief deputy. PSU only handles investigations of cops or staff at KCSO.

Shown a document that contained a table of David Hubbard's and V1 assignments, Colbert stated that HR created the document at his request. Colbert made notes in the document.

Hubbard was the right fit for PSU, although he spent a short time in IA. Colbert did not know the reason for the transfer from IA to PSU and believed there was a need in PSU. Hubbard wanted to stay in the detective section but command wanted him to branch out a little bit. IA is considered a stepping stone to bigger things. Two months might be a little amount of time to spend in IA. Lieutenants and above get moved around on a whim. If there's a need and someone available who could fill a need, they get moved. Colbert did not know if the move to PSU was a result of Hubbard's insertion into the PSU investigation of S1

Hubbard and Weidenkopf worked together as detectives. Hubbard and Weidenkopf always got along. Colbert never heard of them having issues with each other. Colbert did not hear Hubbard speak ill of Weidenkopf. Hubbard had a nice way of saying things like "this guy might need help or this guy is not good," but Colbert did not hear Hubbard say that about Weidenkopf.

Hubbard loved Perez. Perez was Hubbard's Number One guy. Perez deserved praise, he's a good investigator.

Colbert never saw Hubbard around Erik Levig. Colbert had an issue with a decision Levig made. Colbert was telling Hubbard about it. Hubbard's response was "just so you know, Levig is my friend." Hubbard gave advice to Colbert how to approach Levig. After Hubbard left KCSO,

Levig was upset because Hubbard did not reach out and say goodbye. Hubbard left Levig high and dry when he left KCSO and they no longer have a relationship. Levig is moral, but not judgmental. It might be that Levig is disappointed in Hubbard. Colbert did not know if Hubbard and Levig hung out after work, but they had a great working relationship. Levig started about a year before Colbert. Hubbard started about six months after Colbert. Levig did not show favoritism.

Colbert avoided Damian Nord like the plague because he did not think Nord liked him. Colbert did not know who Nord's friends were.

Colbert did not know who Hubbard complained to other than Nord about the PSU investigation of S1 At one point, IA's lieutenant reported directly to the chief deputy and there was no commander of IA. Hubbard might have complained to James Morrison because Nord and Morrison were friends. The undersheriff might have known about the complaints, too.

Hubbard stuck up for people. Hubbard had the attitude of "let's do what is good for the department or people" but he made decisions where he could have gone after people and chose not to. Instead, Hubbard had the approach of "let's talk to" this person and find out what's going on. If Hubbard thought the investigation based on V1 allegations was not going the right way, he would have spoken up. Colbert did not recall any other instances where Hubbard stood up and inserted himself in other investigations.

Colbert did not know why the District Attorney's Office declined to prosecute S1 In the past, the office said to handle matters administratively unless the conduct was super egregious. S1 case did not rise to the level of beyond a reasonable doubt but was at the preponderance of the evidence level.

KCSO did not have a conflict-of-interest policy. Colbert did not know about any conflict-of-interest policy at the county level. Shown a copy of the Kern County conflict of interest ordinance, he stated the document looked like a county ordinance, not a civil service rule. During annual performance reviews, employees signed certain policies.

Colbert did not know V1 highest level of education.

If Hubbard had something going on, he would wear a uniform, such as bomb squad gear. In PS, suit and tie were the norm. The office atmosphere was somewhat casual.

Hubbard was not a very "by the rank" kind of guy. He was very much open with communication. Horseplay was photoshopping pictures, not physically touching each other.

Colbert did not know who might still be in touch with or protect Hubbard. Levig might have done that at one point, but not now. Levig generally sees things in black and white.

When the Kern County District Attorney's Office was doing Hubbard's pre-employment background investigation, a background investigator asked "why are we hiring Hubbard?" Colbert called Hubbard about the waiver form for the DA and Hubbard said he wanted the DA's Office to

see his IA file. Jared Kadel first came and asked their opinion. Colbert said that Hubbard would not be doing that again. Kadel asked if Hubbard was subject to SB2 and Colbert said no, because she was not a member of the public. Veronica Alvarez also came by KCSO. She served as the background investigator. Alvarez said she did not know why her office was doing this for Hubbard and did not explain more about what she meant.

Hubbard is extremely close to the District Attorney. They worked together on homicides and she tries to recruit people as investigators.

Colbert did not know if Nord would protect Hubbard.

Colbert did not know who would still be in touch with Hubbard.

Colbert thought Hubbard shared his passcode to his work phone with his wife because she suspected him of infidelity. Colbert was shocked when he heard about Hubbard's affair because he's a big family man and very religious. After Hubbard's transfer to court services section, there were a lot of rumors about Hubbard. The culture at KCSO is that you get sent to this position and then the email comes out and the internal site. In Hubbard's case, Hubbard moved and the internal site stated the transfer occurred on a past date, which was unusual. Women at KCSO were shocked by his infidelity.

EXHIBIT A

KERN COUNTY SHERIFF'S DEPARTMENT

EMPLOYEE STATEMENT FORM

As an employee of the Kern County Sheriff's Department you may have access to confidential information on individuals including, but not limited to; criminal records, Department of Motor Vehicle records, and law enforcement data which is controlled by statute and Departmental policy. Any misuse of such data or the authority to retrieve it may adversely affect an individual's civil rights and is a violation of the law.

Penal Code Section 502 prescribes felony and misdemeanor penalties relating to computer crimes.

Penal Code Section 11105 and 13300 identify who has access to criminal history information and under what circumstances it may be released. Penal Code Sections 11140-11144 and 13301-13305 prescribe penalties for misuse of criminal history information. Government Code Section 6200 prescribes the felony penalties for misuse of public record and CLETS information. Penal Code Sections 11142 and 13303 state:

> *"Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person not authorized by law to receive the record or information is guilty of a misdemeanor."*

California Vehicle Code Section 1808.45 prescribes the penalties relating to misuse of Department of Motor Vehicles record information.

Kern County Sheriff's Department Policies and Procedures Section J-1610 governs the use of computer systems and data.

YOUR RIGHT TO KNOW AND NEED TO KNOW MUST GOVERN YOU ACCESS AND USE OF LAW ENFORCMENT RELATED INFORMATION. ACCESSING ANY LAW ENFORCEMENT DATA AND/OR DISSEMINATING CONFIDENTIAL INFORMATION TO ANY UNAUTHORIZED PARTY IS A VIOLATION OF THE LAW. ANY EMPLOYEE WHO IS RESPONSIBLE FOR SUCH MISUSE IS SUBJECT TO IMMEDIATE DEPARTMENTAL DISCIPLINARY ACTION UP TO AND INCLUDING DISMISSAL AND POSSIBLE CRIMINAL AND/OR CIVIL ACTION.

I have read the above paragraph and understand the policy regarding misuse of law enforcement data.

Signed _____

Date 10/11/07

Print Name DAVID HUBBARD

Social Security Number [redacted]

I, the undersi[illegible]d County employee, licensee, [illegible]iant, or other, hereby acknowledge receipt of a copy of the four page Connelly asbestos Notice to Employees on the date appearing next to my signature below.

Dated 4|5|07

Signature

David Hubbard

Print Name

[X] Check if County Employee

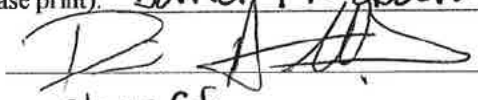
GSS 580 1151 395-5700 (11/93)

Acknowledgment of Kern County Electronic Communications Usage Policy

I have received a copy of and am fully aware of Kern County's Electronic Communications Usage Policy, and I agree to abide by the terms of this policy. I understand that I should have no expectation of privacy in any matter created, received or sent using the County's electronic communications systems. I understand that my violation of this policy may result in disciplinary actions being taken against me, and may constitute a criminal offense. Should I commit any violation, my access privileges may be revoked and/or appropriate legal/disciplinary action may be taken. I also agree to remain apprised of future revisions to this policy and to abide by the terms of all such revisions.

A copy of this policy and signed acknowledgment will be placed in the departmental personnel folder of Kern County employees or with the executed contract for the contractor or vendor.

Employee Name (please print): David Hubbard

Employee Signature: 

Department: Sheriff

Date: 4/5/07

Policy Effective Date: July 23, 2002

Acknowledgement of Kern County Nepotism Policy

I have received a copy of the Kern County Nepotism Policy.

David Hubbard
Employee Name

4/5/07
Date

Employee Signature

Sheriff
Department Assigned

EXHIBIT A

KERN COUNTY SHERIFF'S DEPARTMENT

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I have read the above paragraph and understand the policy regarding misuse of law enforcement data.

Signed _____

Date 4/5/07

Print Name David Hubbard

Social Security Number [redacted]

RECEIPT FOR SEXUAL HARASSMENT POLICY
NOTICE TO EMPLOYEES

I, THE UNDERSIGNED County employee, hereby acknowledge receipt of a copy of the County's Sexual Harassment Policy, Chapter I, Exhibit B, of the County Administrative Procedures Manual, on the date appearing next to my signature below.

Dated 4/5/07

Signature

David Hubbard

Print Name

Kern County Sheriff's Office

Authorization for Release of Employee Personal Address Information

In order to communicate current and correct mailing information to the following list of Kern County Sheriff's Associations, I give my permission for the Kern County Sheriff's Human Resources Division to release my current address information to the following association(s), as checked below:

- ☑ Kern County Sheriff's Benefit Association
- ☐ ~~Kern County Sheriff's Command Association (KCSCA)~~
- ☑ Kern Law Enforcement Association (KLEA)
- ☐ ~~Kern County Detention Officers Association (KCDOA)~~
- ☐ None of the above. I do not wish for my personal address information to be shared.

(NOTE: For those employees who are current members of CCAPE, the County Personnel Department currently updates address information on a bi-weekly basis per their M.O.U.)

This form will be filled in the Employee's Personnel File for reference. Only addresses of employees that have this signed release form will be shared with the above indicated association(s).

Revocation of this service must be in written form and submitted to the Sheriff's Human Resources Division.

David Hubbard
Print Name

Employee Signature

4/5/07
Date

EXHIBIT A

KERN COUNTY SHERIFF'S DEPARTMENT
EMPLOYEE STATEMENT FORM

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I have read the above paragraph and understand the policy regarding misuse of law enforcement data.

Signed D. Hubbard Date 7/10/04

Name David Hubbard Social Security Number [redacted]

EXHIBIT A

K N COUNTY SHERIFF'S DEPART NT
EMPLOYEE STATEMENT FORM

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I have read the above paragraph and understand the policy regarding misuse of law enforcement data.

Signed David Hubbard Date 7/12/04

Print Name David Hubbard Social Security Number [redacted]

RECEIPT FOR CONNELLY ASBESTOS

NOTICE TO EMPLOYEES

I, the undersigned County employee, licensee, tenant, or other, hereby acknowledge receipt of a copy of the four page Connelly Asbestos Notice to Employees on the date appearing next to my signature below.

Dated 9/11/06

Signature

DAVID HUBBARD

Print Name

[X] Check if County Employee

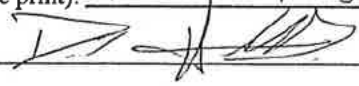
GSS 580 1151 395-5700 (11/93) (Volunteer)

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This signed acknowledgment of the employee receiving and reading this policy will be placed in the departmental personnel folder of employee or with the executed contract for the contractor or vendor.

Employee Name (please print): DAVID HUBBARD

Employee Signature: 

Department: KERN COUNTY SHERIFF DEPARTMENT

Date: 9/11/06

Policy Effective Date: July 23, 2002

RECEIPT FOR SEXUAL HARASSMENT POLICY
NOTICE TO EMPLOYEES

I, THE UNDERSIGNED County employee, hereby acknowledge receipt of a copy of the County's Sexual Harassment Policy, Chapter 1, Exhibit D, of the County Administrative Procedures Manual, on the date appearing next to my signature below.

Dated 9/11/06

Signature

DAVID HUBBARD

Print Name

INSTRUCTIONAL GOALS:

The overall goal of instruction, of the POST Management Course is to provide the student with the awareness, knowledge, and skills necessary to become an effective leader in their new role as a manager within a law enforcement organization.

Specific goals are to provide the student with:

1. The ability to understand the importance of how their leadership skills play in their own personal success, the success of their peers and subordinates, the success of their respective organizations, the success of the law enforcement profession, and the success of their respective communities.
2. The ability to understand the responsibility they have as managers to serve as ethical role models who reflect the values of their organization and profession.
3. An understanding of the differences in the leadership responsibilities they have as management as compared to those they had as first-line supervisors.
4. An understanding that developing effective written and verbal/non-verbal communication skills is an essential characteristic of a good leader.
5. An understanding that effective leadership is as much a day-to-day process as it is an ideal theory or concept; that they must continue to develop their leadership skills through constant study, research, and networking with other individuals both within and outside of the organizations.
6. An understanding that people are the most valuable resource in any organization, and effective leaders communicate vision and empower people to perform consistent with that vision.
7. An understanding of the tools and/or methods for evaluating success and maintaining accountability.
8. An understanding of the key concepts of self-awareness (emotional intelligence) necessary to be an effective leader.

Instructional Topic:	Presentation Skills	Module: B	Hours:	8

The overall goal of instruction for **Part 1, Presentation** Skills of the POST Management Course is: to increase the capacity of Law Enforcement Managers to develop, deliver, present, and speak in professional venues.

Specific goals are to provide the student with:

INSTRUCTIONAL GOALS:

1. The ability to understand and apply the components for an effective presentation.
2. The ability to re-create Presentation Platform Skills spontaneously and extemporaneously.
3. The ability to present using the Koegel or Persuasive Presentation Model.
4. The ability to create the structure/outline for cohesive group presentation to later be delivered to a panel of chiefs.
5. Enhanced written and verbal/non-verbal communication skills essential for effective leadership.

I. Becoming an Exceptional Presenter
   - A. The Best Presenters
     1. Characteristics
     2. Learned Skills
   - B. Self-Assessment
     1. Most Developed Skills
     2. Undeveloped Presentation Skills
     3. Improving by Specific Intent
   - C. Types of Presentations
     1. Spontaneous
     2. Extemporaneous
     3. Prepared
        a. Informative
        b. Persuasive
   - D. Presentation Platform Skills
     1. Attire - Appropriate for the Event
     2. Grooming – Accept the Influence of appropriate personal presentation
     3. Stance - Feet comfortably shoulder width apart, anchoring yourself you a location at the moment of delivering a key point.
     4. Movement for a Purpose
        a. Visual Paragraphing
           1) Use visual paragraphing to provide a visual representation of a separation and connection between key points.

2) Provide each key point with a location and return to that location when readdressing that point, or at least point towards that location.

b. Anchoring
c. Distance from/to audience

5. Voice
   a. Pitch
   b. Tone
   c. Pace
   d. Pause
   e. Inflection
6. Non-verbal
   a. Hands
      1) Congruency
      2) 1st, 2nd, 3rd, and 4th Place
   b. Facial
   c. Eye Contact

E. Five Components of a Presentation
   1. Purpose
   2. Objective/Purpose/Mission/Goal
   3. Position/Situation/Issues
   4. End results/Benefits/Consequences
   5. Next Step/Action Plan/Time Line

F. Persuasive Presentations
   1. Thesis Statement
      a) Opinion, Idea, or Position
      b) Stated as a Point of Fact
      c) Stated with Belief and Passion
   2. Factual Statement
      a) Provides an acceptable consideration for the Disbelievers from the Social Judgment Theory
      b) Researched and validated
      c) At least two
   3. Impactful Statement
      a) Humanizes the Issue
      b) Provides a reason for the audience to care in a meaningful way
      c) Delivered with compassion when needed
   4. Strategic Statement
      a) This is the description of a what you would like them to do
      b) Spoken in the verbiage that appeals To your audience

5. Invitational Statement
   a) Provide the audience with an easy way to do what you want, with as little effort as possible
   b) Provide an affirmative action

G. Preparation Skills
1. Be the Right Presenter for the Event
   a) Do you have the credentials
   b) Do you have the knowledge
   c) Do you have the credibility
2. Know the Material
   a) If you need to read the PPT, you don't know the material
   b) Don't read the PPT regardless
   c) Don't overextend your scope
3. Know the Audience
4. Dress appropriately (one level above the audience)
5. Be early
6. Stay late

Instructional Topic:	**Personnel Issues I**	**Hours:**	**4**

The overall goal of instruction for **Personnel Issues I and II** is to provide the student with the knowledge and skills necessary to understand, analyze, and properly handle personnel issues.

Specific goals are to provide the student with:

INSTRUCTIONAL GOALS:

1. The role of a manager and the transitional shift to a management position.
2. The ability to portray a leader and the liabilities associated with this position.
3. The ability to identify resources available to offset potential litigation in all personnel issues.
4. An understanding of the hiring and retention of employees
5. The ability to maintain a positive work environment for both sworn and non-sworn personnel.
6. The ability to recognize legal requirements and regulations utilized within the hiring process.
7. The ability to identify performance-based issues when dealing with personnel.
8. Knowledge and privacy issues when dealing with personnel.
9. Knowledge in the ethical conduct in dealing with background investigations on new personnel.
10. Knowledge in Federal, State and labor laws concerning their personnel and individual agency.

11. The ability to identify, locate, and interpret information in the resources available concerning, Federal, State, and Labor laws.
12. The ability to recognize and respond to all forms of workplace harassment.
13. Knowledge of POBRA as it applies to employee investigations and their rights.

Human Resource Management

I. Employee Life Cycle

A. Stage 1: Strategic Workforce, Planning and Development

1. Mission
2. Goals and Objectives
3. Budgets and Forecasts
4. Environment
    a. Laws
    b. EEO
    c. Hostile work environment
    d. Economy
    e. Technology
    f. Demographics

B. Stage 2: Recruiting and Onboarding

1. Job Description Classifications and approvals
2. Background investigations
    a. Confidentiality
    b. ethics
3. Interviews and evaluation (tests)
4. Pre-employment physicals, drug testing
5. Engagement and training

C. Stage 3: Payroll

D. Stage 4: Compensation and Benefits

1. Job analysis and classification
2. Salary administration
3. Promotions

4. Transfers
5. Health and other insurance
6. Retirement plans
7. Vacation, sick and holiday policies
8. Wellness plans
9. Leaves
    a. Family Medical Leave Act
    b. California Family Rights Act
    c. Pregnancy Disability Leave
    d. Military Leave

E. Stage 5: Organizational Development and Employee Relations
1. Training and development
2. Organizational culture
3. Employee engagement
    a. Rewards
    b. Discipline
4. Performance development
5. Performance management
6. Grievances and investigations
7. Unions
8. Employee assistance programs (EAP)

F. Stage 6: Separation and Retirement
1. Succession planning
2. Retiring planning and management
3. Employee separation and termination

Instructional Topic:	Personnel Issues ll	Hours:	4

The overall goal of instruction for **Personnel Issues ll** is to provide the student with the knowledge and skills necessary to understand, analyze, and properly handle personnel issues utilizing the discipline process for subordinate management.

Specific goals are to provide students with:

Instructional Goals:

1. An understanding of discipline tools available to managers for employee development, rule and standard enforcement, and behavior modification.
2. An understanding of the manager's role in employee accountability
3. An overview of POBRA, including how and when it applies in the sworn employee investigative process
4. An understanding of informal verses formal levels of discipline.
5. The ability to understand the Internal Affairs investigation process.

'RANDOM REFLECTIONS' AND 'TIPS ON TOP'

1. Are you a *manager*? Or a *supervisor*? Actually, you are now both!
2. Formulate and circulate your written expectations
3. Inculcate your staff with "The Doctrine of Completed Staff Work"
4. Understand the importance of: "Therefore, I recommend…"
5. Expect personnel issues to occupy much of your time
6. Don't push your problems onto someone else
7. "Not all readers are leaders, but all leaders are readers" (Harry S. Truman)
8. People don't care how much you know, until they know how much you care
9. Take time to get to know those you work 'with'
10. Make this an integral part of your lexicon: RUOK
11. Remember the importance of a cost/benefit analysis
12. Remember the law of unintended consequences
13. Remember the adage fence-fence-mow
14. Remember to check, re-check and double-check the work of others

15. Remember to ask yourself: Did I hear what I thought I heard?
16. Remember this exercise: “I didn’t say that he shot the clerk”
17. Remember the lesson about properly examining gun magazines
18. Always seek and review source documents/recordings/images
19. Scene investigations are of utmost importance
20. View scenes from the exact vantage point of witnesses
21. Physical evidence outweighs witness statements
22. You don’t know what you don’t know
23. Get to know your lab’s capabilities (e.g., sodium rhodizonate tests)
24. Assign inquiries/investigations to the involved employee’s supervisor

PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS ACT

Tip: Purchase--and read--the latest version of the California Public Employee Relations (CPER) "Pocket Guide to the Public Safety Officers Procedural Bill of Rights Act”

1. 3301
    a. The Act relates to the defined peace officers only
    b. Note: Be aware not to set precedence by extending the Act to every employee group
2. 3303
    a. The section applies to officers “under investigation” and “subjected to interrogation” and who face “punitive action”
    b. Punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment
    c. Note: It does not apply to witness officers or officers under criminal investigation
3. 3303(a)
    a. An on-duty interrogation is preferred
    b. The agency must compensate officers who are interrogated while they are off-duty
4. 3303(b)
    a. There may be no more than two interrogators

5. 3303(c)
    a. Note: No matter how complex, define the allegation(s) simply
6. 3303(d)
    a. Note: Be aware of officers or representatives who ask for breaks at inopportune moments during interrogations
7. 3303(e)
    a. Note: Warn--don't threaten--that failure to answer questions may result in punitive action
8. 3303(f)
    a. Officer statements made under duress, coercion or threat are inadmissible
    b. Note: Be aware of quid pro quo conversations that are intended to get officers to resign in lieu of starting an investigation or imposing discipline
9. 3303(g)
    a. Officers are entitled to recordings or transcripts of previous interviews
    b. Officers are entitled to documents they authored
    c. Officers are not entitled to "confidential" investigative material
    d. Note: Officers need a reasonable amount of time to review the information
10. 3303(h)
    a. Note: Miranda admonitions apply to custodial interviews and 3303(h)
11. 3303(i)
    a. Officers have a right to a representative
    b. Note: Officers do not have a right to a derailer or roadmap-maker
    c. Officers are not entitled to representatives during the normal course of supervisory or managerial duties
12. 3303(j)
    a. Avoid retaliatory assignments for officers under investigation

13. 3304(a)
    a. You cannot take punitive action against officers who exercise their rights
    b. Note: You can prohibit officers from promoting/transferring while under investigation

c. You can order an officer to cooperate with another agency's criminal investigation
d. Note: You cannot order an officer to cooperate if they have 5th Amendment concerns

14. 3304(d)(1)
    a. From the date of first supervisory notification of misconduct, the letter of intent to impose administrative discipline must be served within one year
    b. Note: Be aware of approving an officer's time-off request if the statute date is impending
15. 3304(d)(2)(A)
    a. Administrative investigative time tolls when an officer is under criminal investigation
    b. Note: Time may toll, but the administrative investigation need not stop
    c. Is it best to do concurrent criminal and administrative investigations?
    d. Or bifurcated criminal and administrative investigations?
    e. Or combined criminal and administrative investigations?
16. 3304(d)(2)(B)
    a. Administrative investigative time tolls when the officer waives the statute in writing
17. 3304(d)(2)(C)
    a. Administrative investigative time tolls when a reasonable extension is needed due to a multi-jurisdictional investigation
18. 3304(d)(2)(D)
    a. Administrative investigative time tolls when a reasonable extension is needed due to more than one officer being involved
19. 3304(d)(2)(E)
    a. Administrative investigative time tolls when an officer is incapacitated or otherwise unavailable
20. 3304(d)(2)(F)
    a. Administrative investigative time tolls when there is civil litigation and the officer is named as a defendant

21. 3304(d)(2)(G)
    a. Administrative investigative time tolls when a complainant is a defendant in criminal litigation
22. 3304(d)(2)(H)
    a. Administrative investigative time tolls when the allegation involves workers' compensation fraud involving the officer
23. 3305
    a. No adverse comments may be placed in an officer's personnel file unless the document is read and signed by the officer
    b. If an officer refuses to sign a document, the refusal is noted on the document by the supervisor/manager
    c. Note: Any refusal should also be witnessed by a secondary supervisor/manager
24. 3305.5
    a. Discussion: "Brady list means any system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in Brady v. Maryland (1963) 373 U.S. 83"
25. 3306
    a. An officer has 30 days to file a written response to any adverse personnel comment(s), and it must be attached to the adverse comment(s)
    b. Note: This is typically in response to performance log entries
26. 3307
    a. Officers cannot be compelled to take "lie detector" tests
27. 3308
    a. An officer cannot be required to disclose personal financial data unless certain criteria are met
    b. Note: Consider the benefit of a criminal investigative course of action and search warrant laws to obtain evidence in support an administrative allegation

28. 3309
    a. Employer-owned/leased lockers and storage space may be searched under certain conditions
    b. Note: The Act does not cover searches of personal belongings
29. 3309.5
    a. Court sanctions apply to agencies and supervisors/managers who violate the Act
30. 3312
    a. Agencies cannot take punitive action against officers who wear pins or other items bearing the American flag, unless certain criteria are met by the agency

CASE STUDY: AN AGENCY'S RIM/TIRE IS MISSING

KEY CONCEPTS RELATED TO SUPERVISORY INQUIRIES

1. Inquiries are routine, preliminary contacts with employees to ascertain whether a formal investigation is needed
2. Inquiries should be used for the preliminary searching for, and gathering of, information related to an allegation or incident
3. Inquiries should cease when a supervisor/manager has reason to believe the subject employee committed misconduct which could result in discipline
4. 'Flip the script' when conducting inquiries
5. And a word of caution regarding 'flipping the script'
6. If an employee spontaneously confesses to instances of misconduct to a supervisor/manager, there is no obligation or law requiring them to be stopped

KEY CONCEPTS RELATED TO DISCIPLINE

1. By now, you should have fully developed into your role as a supervisor
2. Agencies have legal and moral obligations to the public they serve to develop and maintain the highest ethical standards in personal and official conduct
3. "Misconduct" simply means 'missing the mark' regarding the 'conduct' that is expected

4. It is the agency's and your responsibility to clearly articulate expectations and consequences of misconduct to employees
5. Simultaneously, make it your mission to 'catch' employees doing their job well!
6. The purpose of discipline is to appropriately address misconduct to ensure effective and efficient agency operations and employee adherence to reasonable and acceptable rules of performance and conduct
7. Discipline should be corrective in nature and designed to impress upon the employee and the overall work force the necessity for proper conduct and performance
8. The imposition of discipline should be understandable, clear, consistent, equitable and fair
9. Progressive discipline should be used where appropriate to correct, resolve or remove an employee's misconduct at the lowest, most effective level
10. Counseling, accompanied by documentation in a performance log, is not discipline
11. Know that if misconduct is not documented, it is as if it did not happen
12. You must take action to curtail misconduct
13. You must intervene on behalf of your subordinates if unlawful orders come down from above

KEY CONCEPTS RELATED TO COMPLAINT INTAKE AND INVESTIGATION

1. Begin with the end in mind
2. At a minimum, audio record complaints
3. Listen! Listen! Listen!
4. Clarify! Clarify! Clarify!
5. At some point, ask the complainant something like this: "From your perspective, how do you want your concern to be resolved?"
6. Explain your agency's investigative process and expected timeline
7. Give regular and timely updates to the complainant
8. Explain that California law makes peace officer investigations confidential
9. California Criminal Jury Instructions contain this guidance (in part), "If you decide that a witness deliberately lied about something significant in this case, you should consider not believing anything that witness says."

10. Use something similar to this statement for close-out letters to complainants: “California law makes peace officer personnel investigations confidential, but please know that appropriate administrative action was taken.”

KEY CONCEPTS RELATED TO ADMINISTRATIVE INVESTIGATIONS

1. Consider using pre-disposition settlement agreements where appropriate
2. Generally speaking, administrative investigations are undertaken to determine adherence to policy, training and tactics
3. Quality investigations are fair, complete, thorough, timely and objective
4. Gain a thorough understanding of complaints from the complainant’s perspective
5. Determine whether there is a criminal component to the allegation and ensure the appropriate investigative course(s) of action
6. Gain a complete understanding of 1) the exact policy in place at the time of the misconduct and 2) the exact elements of the policy
7. Ensure that investigations are not assigned to supervisors where there may be a conflict of interest or special relationship between the supervisor and subject employee
8. Determine whether subject matter expert (SME) statements should be incorporated into the investigation
9. Ensure that all source documents, recordings and images are gathered and appropriately analyzed
10. Ensure that the exact location of the alleged misconduct has been visited and evaluated
11. Ensure that witnesses are appropriately identified and interviewed
12. Ensure that no investigator asks leading questions
13. Ensure that open-ended questions are asked, as opposed to ‘yes’ or ‘no’ questions
14. Ensure that facts, not opinions, are contained in investigations
15. Where appropriate, let others evaluate the facts and reach conclusions
16. Should investigative or executive summaries be written?
17. Avoid redundant information in investigative records

KEY CONCEPTS RELATED TO SUBJECT INTERVIEWS

1. Generally speaking, the subject of an investigation is interviewed last
2. Ensure that interviews begin with a question similar to this: "Is there is any reason why this interview cannot take place today?"
3. Whether referring to a document written by a subject or to statements they make/made, ensure that something similar to this is asked:
4. "Is there anything you want to add, delete or modify?"
5. Then ensure the subject is asked whether the statement or document is full, complete and truthful
6. Ensure that subjects initial every page of any document they review
7. Avoid duplicative criminal and administrative interviews
8. Afford subjects an opportunity to make a final statement before ending an interview (and ask follow-up questions if they mention something that needs clarification)

MISCELLANEOUS COMPLEXITIES RELATED TO ADMINISTRATIVE INVESTIGATIONS

1. Can employees be ordered to write reports if they do not want to write them? Yes, but an employee is allowed to seek advice/input from a lawyer first, if they desire (within a reasonable amount of time)
2. Can agencies discipline employees for off-duty conduct, or for what they post on social media? Yes, if policies are in place, and to the extent their conduct discredits them or their agency, or their conduct adversely affects their ability to do their job for the agency
3. Where appropriate, obtain written releases for medical records
4. Be cautious about how evidence obtained from compelled interviews is used
5. Personal cell phone and computer records of employees: Private? Or not?
6. Understand today's complexities regarding the access of cell phone data

Instructional Topic:	Tactical Strategies	Hours:	8

This course is designed to develop and enhance critical thinking skills necessary for officers/supervisors to successfully resolve unfolding dynamic field tactical problems.

Specific goals are to provide students with:

INSTRUCTIONAL GOALS

1. Methods to develop and enhance critical thinking skills necessary for officers/supervisors to successfully resolve unfolding dynamic field tactical problems.
2. An understanding of fundamental doctrinal principles from which strategy and tactics are derived.
3. Familiarity with universal concepts, principles, and methodologies for dynamic tactical problems.
4. An Understanding of the 4 basic roles of an incident commander.
5. Models and methods for managing dynamic tactical problems during the initial operational phase of an event (first 60 minutes), before ICS can be implemented.

1. Introduction:

a. Greetings and instructor introduction.
b. Overview.
    i. What the course is about.
        1. This course focuses on the time-tested fundamental doctrinal principles from which all tactics are derived.
        2. The Tactical Strategies course is part of a larger field of study (Tactical Science Course – 40 hours).
        3. This class is about “how” to think (strategy), not “what” to think (tactics).
c. Warfare.
    i. How old is Warfare (Quarterly Journal of Military History)?
        1. 48,000 BCE – evidence of cannibalism at El Sidron site in Spain.
        2. 11,000 BCE – human remains from mass grave in Sudan bear signs of group violence.

3. 2,500 BCE – First known armies existed in the city-states of Sumeria in Mesopotamia.
4. 500 BCE – Art of War is written by Chinese General Sun Tzu.
5. 1802 AD – US Military Academy at West Point established.
6. 1925 AD – British major JC Fuller identifies the 9 Principles of War.
7. 2016 AD – The average law enforcement tactician would be hard put to quote a single source, theory or doctrine to justify their decisions.

ii. Why should we (L/E) study "warfare?" What are the advantages?

iii. Quote - "The art of war is the art of peace." Sun Tzu.

1. Quote - "The supreme art of war is to subdue the enemy without fighting." – Sun Tzu.
2. Achieve peaceful, or least forceful, resolutions through the use of superior strategy and tactics.

iv. "Good fighters of old first put themselves beyond the possibility of defeat…" – Sun Tzu

1. Create the greatest degree of disparity between you and your adversary before a conflict begins.
    a. Place your adversary in a position of disadvantage or…
    b. Place yourself in a position of advantage to create a disparity (tactical advantage).
    c. Varsity move – do both at the same time to achieve the greatest degree of disparity (most advantageous position).

d. Course goals and performance objectives.

i. Appreciate that there is an underlying science to all tactics.

1. It is a "soft" science like psychology, sociology, anthropology.
2. Not a "hard" science like mathematics, chemistry, physics.

ii. Identify the component parts of strategy and tactics and explore their interrelated value.

iii. Identify methods and strategies for managing dynamic tactical problems.

iv. Identify the dynamics of a tactical decision.

v. Successfully participate in practical application problems designed to test adaptive and tactical decision-making skills.

e. History is the repository for all lessons.
   i. Due to time restrictions, we will extract the lessons from short patrol-based video clips rather than study the large-scale complex tactical operations listed in this slide.
   ii. Why study historical operations?
      1. To learn the lessons from the past.
      2. To ignore history is to ignore the lessons and sacrifices of our predecessors.
   iii. "Those who cannot remember the past are condemned to repeat it." – George Santayana, Novelist, 1865-1952.
f. Movie video clip – "The Mummy" (commanding officer flees on horseback as opposing army approaches).
   i. What is your opinion of this incident commander?
   ii. Would you want to work for him?
   iii. Have you ever known a supervisor who flees from risk or conflict?
g. Roles of an incident commander.
   i. Quote - "The commander stands for the virtues of wisdom, sincerity, benevolence, courage, and strictness." Sun Tzu, Art of War.
   ii. Explain roles and ask students for positive/negative examples in each category.
   iii. A successful incident commander knows how and when to perform each role effectively. Can transition smoothly from one role to another during all phases of the operation.
   iv. Roles to be performed:
      1. Watch Commander. Commander of the watch. Provides leadership.
      2. Strategist. Strategic thinker, future oriented, planner, anticipates.
      3. Tactician. Practitioner. Possesses subject matter knowledge and utilizes available resources to get the job done.

4. Evaluator. Reviewer/mentor. Constantly monitors situation and makes corrections or provides guidance as needed. Passes judgment and identifies training opportunities.

h. Defined levels of responsibility.
   i. Field Sergeant.
      1. Field oriented.
      2. Performs maneuvers and tactics to achieve goals.
   ii. Watch Commander.
      1. Strategy oriented.
      2. Defines End State, sets priorities.
      3. Strategies are derived from principles, and principles are derived from knowledge, and knowledge is derived from science.
   iii. The most valuable contributions from the watch commander comes from the neck up (brain power).

i. Quote – "A person who knows how works for the person who knows why." – business axiom.
   i. "How" is tactics; "why" is strategy.
   ii. Quote – "The person who knows "how" will always have a job, the person who knows "why" will always be the boss." New York University Professor Diane Ravitch.
   iii. "How" is training; "why" is education.
   iv. Knowing "why" allows for adaptability.
   v. Quote – "Any fool can know. The point is to understand." Albert Einstein.
      1. The goal is to apply understanding, meaning and value to the information so it can be leveraged, not simply memorize data points.

j. Age of warfare.

k. Group exercises designed to stimulate thought, identify principles, and broaden perspective:
   i. High ground – what is the logic behind occupying the high ground?
   ii. Wagon train – what is the best way to encircle a wagon train. Must defend answer.

2. **<u>Strategy and Tactics:</u>**
    a. Strategy and Tactics.
        i. Why study this topic?
        ii. What is it?
        iii. Are there rules?
        iv. What are the component parts of strategy and tactics?
    b. Component parts of strategy and tactics.
        i. Quote – "If you can't explain it simply, you don't understand it well enough." – Albert Einstein.
        ii. Strategy.
            1. Strategy defined: the science or art of combining and employing the means of war in planning and directing large military movements and operations.
            2. Strategy has three component parts (Lykle model):
                a. End State. State of final resolve. Strategic objectives.
                b. Ways – methodology for achieving one's goals.
                c. Means – resources required to achieve goals.
        iii. Tactics
            1. Tactics defined: the art or science of disposing military or naval forces for battle and maneuvering them in battle.
            2. Tactics has five component parts:
                a. End State.
                b. Party 1 (defender).
                c. Party 2 (adversary).
                d. Time – all conflict unfolds in time.
                e. Terrain – the place where conflict occurs.
            3. Strategy and Tactics are separate items, but they are inseparable.
            4. Tactics are a subset of strategy.
    c. Group exercise designed to stimulate thought, identify principles, and broaden perspective:

i. Video clips:
   1. Killer Whales vs. King Penguins.
   2. Lions vs. warthogs.
   3. Police officers vs. armed criminals.
ii. How are the strategies similar in all three conflicts?
iii. How are the tactics similar in all three conflicts?

d. Quote – "What you don't do is as important as what you do." – Steve Jobs, Apple.
   i. Quote – "There are roads which must not be followed." – Sun Tzu.
   ii. Military concept - refuse battle.

e. Quote – "Strategy requires thought; tactics requires observation." – Max Euwe, Ph.D., World Chess Champion, 1935-1937.
   i. Have students explain the above statement. Strategy requires planning/forethought; tactics must be constantly adjusted in accordance with the changing environment. No conditions remain constant.
   ii. The more rigid the plan, the more fragile it becomes.

3. <u>Fundamentals of Tactics:</u>

a. Rubik's Cube – Can we control or explain what we don't fully understand?
   i. Over 43 quintillion combinations.
   ii. Understanding how the Cube works is key to solving it.

b. Tactics are a subset of strategy.
   i. Sound tactics can only be conceived after the establishment of a defined End State and consideration of the five basic elements.

c. Venn chart depicting the five basic elements of tactics.
   i. End State (Strategic goal).
      1. The desired result or final outcome of a tactical operation.
      2. Must be obtainable.
      3. Must be specific enough to be visualized.
      4. Provides the beginning of a "common operational picture."
   ii. Adversaries (you and your opponent).
      1. Capabilities: training, experience and equipment.

2. Center of gravity.
    a. Something relied upon which, if damaged, diminished, eliminated, or destroyed will severely hinder success.
    b. May be tangible; may be intangible.
3. Critical vulnerability.
    a. A weakness that, if exploited, will create failure.
    b. May be tangible or intangible.

iii. Time.

1. Time is on no one's side.
2. The benefits of time belong to the person who exploits it.
3. Time can be "wasted" and never recovered.
4. Time can be a force multiplier and used as a "tool."
5. Time can be used to improve or degrade human performance.
6. Time and terrain are inseparably linked.
7. The greater the distance, the greater the time. The greater the time, the greater the flexibility.
8. Lots of time, lots of options. No time, no options.
9. There are three major factors for maneuvering in time:
    a. Initiative. The first person to move has the advantage.
    b. Tempo. How quickly things unfold.
    c. Density. The number of activities at the same time.

iv. Terrain.

1. Why should an incident commander study this topic?
    a. Terrain is present at every conflict.
    b. Terrain offers many advantages and disadvantages.
    c. Terrain is key element of maneuver warfare.
    d. Terrain is there to be exploited by both parties.
    e. Terrain influences the behavior and performance of all involved.
    f. Terrain can be a force multiplier.
    g. Terrain and Time are inseparably linked.
    h. Time can be "increased" with barriers and distance.

2. Rural vs. Urban Terrain.
3. "Urban Combat is Complex," Dr. Russell Glenn, RAND Corp.
4. Urban cities are "alive;" activities within a city ebb and flow with time.
5. Terrain can be intangible (philosophy).

d. Group Exercise – Microsoft interview process.
   i. "How would you move Mount Fuji?"
      1. Based on book with same title – William Poundstone.
      2. Strategy (Why) always comes before tactics (How).
      3. Use the five elements of tactics to solve problem.

e. Crisis Decision Making.
   i. Factors influencing decision-making.
      1. Quote – "The brain is a battle-space." – Colonel John Boyd, USAF.
      2. The brain is a multiprocessor.
      3. The brain does not give equal attention to all tasks.
      4. Two demanding tasks cannot be equally shared.
      5. Maximum retention of about seven items.
      6. A little stress improves function; too much stress impedes function.
      7. Training, education, and confidence minimize negative effects of stress.
   ii. Exercise - Play electronic Simon-says game to demonstrate all points listed above.

f. Can surprises make you go blind? - Vanderbilt University study.
   i. Surprise acts as a "blindfold."
   ii. Whenever we are surprised, our brain loses the ability to perceive additional visual stimuli for around a half second.
   iii. Video clip demonstrations.
      1. Jumping snowman.
      2. OIS – "routine" vehicle stop of a traffic violator.

4. <u>Case Studies:</u>

a. Warrant service at fortified apartment building.
   i. Lesson: Terrain influences tactics.

ii. Quote – "He will win who knows when to fight and when not to fight." Sun Tzu (Refuse battle).

b. Vehicle stop on busy freeway.
   i. Lesson: Some terrain features are mobile.
   ii. Flex tactics in accord with changing environment.

c. LASD Lakewood Station TASER incident.
   i. Poorly defined End State.
   ii. Lacked contingency planning.
   iii. Lacked adaptability.
   iv. 4.1-million-dollar civil judgment.

d. LASD Palmdale Station OIS.
   i. Officer created jeopardy.
   ii. Poor use of time and terrain.
   iii. 1.1-million-dollar civil judgment.

5. <u>Class exercise – Strategic planning and case study (60 minutes):</u>

a. Scenario based on Stratford High School incident, Goose Creek, S.C.
b. Provide and review written scenario with groups.
   i. Groups to develop plan of action for described tactical problem (15 minutes).
c. Select a group to present their tactical plan to class for discussion.
d. Discuss strengths, weaknesses and risks of proposed plan.
e. Review video of actual incident.
   i. Discuss lessons learned from training scenario and real life incident.

6. <u>Managing a Dynamic Tactical Problem:</u>

a. Group exercises designed to stimulate thought, identify principles, and broaden perspective:
   i. Simple drawing of a school bus - Identify which direction the bus is travelling (preschool test)?
      1. Lesson: Experts are quick to recognize the absence of critical information.

ii. Triangle diagram – Identify how many triangles are in the figure?
    1. A tactical problem is always multi-faceted.
    2. Consider the problem both holistically and through each component piece.

b. Elements of a basic law enforcement strategy.
    i. Prevent the loss of life and seek a peaceful or least forceful resolution (End State).
    ii. Must minimize the risk to uninvolved/innocent parties.
    iii. Must conform to all laws and agency policies.
    iv. Should conform to community expectations.
    v. Video clip – Detroit OIS. Incident is in contrast with elements of basic strategy.

c. Three phase event cycle.
    i. Pre-Event.
        1. Preparation phase (planning, logistics, training).
    ii. Event.
        1. Performance phase (action).
    iii. Post-Event.
        1. Evaluation phase (debrief, follow-up, review, investigate, document, critique, judgment, judicial).
    iv. Related quotes from Napoleon, Abraham Lincoln, Winston Churchill, and George Patton.

d. Managing a dynamic tactical problem - Planning Pyramid.
    i. Video clip – failed bungee cord jump (what caused the debacle?).
    ii. Quote – "The opportunity to secure ourselves against defeat lies in our own hands." – Sun Tzu.
    iii. The planning pyramid is a model that depicts the five phases necessary for a successful operation. Those phases are:
        1. Identifying and establishing an End State (foundation for base).
        2. Planning.
        3. Logistics.
        4. Training.

5. Event performance.

e. "Kaleidoscope thinking" – Professor Rosabeth Kanter, Harvard Business School.
   i. A thought process by which a situation is viewed from various perspectives.
   ii. Jumbling elements or assumptions to create new combinations and patterns.
   iii. A law enforcement tactician must win the battle in three domains.
      1. Must win in the field.
         a. Tactics utilized must be in accord with community standards.
      2. Must win in court.
         a. Knowledge is power. Knowledge is the principle weapon used in court battles.
         b. All tactical operations must be explained/justified to varying degrees of review/scrutiny.
      3. Must win public's support.
         a. A police agency consistently out of harmony with the community it serves will not stand.
   iv. Video clip – Ice Bucket Challenge.
      1. Bareback horse rider dumps ice water over self and horse. Horse bolts and rider is thrown.
         a. Plan must include all participants.
         b. Horse surprised and not committed to fundraising cause.
         c. Rider not strategic in thought.

7. <u>Managing a dynamic tactical problem – initial focus of effort (chart).</u>

a. The Initial Focus of Effort chart provides a methodology, with supporting doctrine, for first responders to manage an unfolding dynamic tactical problem.
b. Nine "initial focus of effort" points and their supporting doctrines are explained in detail.
   i. Prevent the loss of <u>life</u> (End State, primary objective).
   ii. Determine what <u>response/resources</u> are appropriate for the incident (justification/mass/economy of force).
   iii. <u>Contain</u> the event (prevents expansion).

1. Containment may include efforts to contain the effects/impact that the event has on the community.

iv. Isolate the event (prevents intrusion).
v. Evacuate all uninvolved parties (simplify the problem).
vi. Gather, verify and disseminate intelligence information (clarity/unity).
vii. Gather/protect all materials for justification/prosecution (future battle).
viii. Provide for human needs (physical & psychological).
ix. Develop contingency plans (infuses flexibility and enhances decision process).

c. The order of occurrence will be determined by: nature of crisis, primary objective, available resources, time and terrain.
d. Class exercise – small groups within the class will be called upon to handle various tactical problems utilizing the above methodology.

8. Dynamics of a tactical decision:

a. Have you ever approved or disapproved a tactical plan?
   i. What criteria do you use when creating or approving tactical plans?
b. Elements of a tactical decision.
   i. Must have justification for law enforcement intervention (laws/policies).
   ii. Evaluate risks and complexity of the operation.
   iii. Evaluate capabilities of those involved.
   iv. Ask yourself, "Can we do it and should we do it?"
c. Incident commander should review a plan to ensure that the risk factors and complexities of the operation are reduced to the lowest possible level.
   i. Quote – "Simplicity is the ultimate sophistication." – Leonardo de Vinci.
d. What options are available if the task is beyond the capabilities of the involved law enforcement personnel?
   i. Increase personnel's capabilities with training, experience, and equipment.
   ii. Use time and terrain to reshape the battlefield and create additional advantages/opportunities.
   iii. Refusing battle, if the conditions are not conducive, is a viable option.

e. POST Operational Guidelines for SWAT recommends conducting risk assessments and evaluations to determine if mission is appropriate for the involved personnel.
f. Enhanced liability exists in the void between what the involved law enforcement personnel are capable of and what the situation requires.

9. <u>Case studies/class exercises designed to extract tactical concepts and principles.</u>

a. Movie Clip – "Collateral."
b. Case study – OIS Texas Department of Public Safety, vehicle stop.
c. Case study – OIS Davenport Police, known suspect – pedestrian stop.
d. Case study – Dane County deputy struck by car while deploying spike-strip.
e. Case study – OIS Maricopa County SWAT warrant service.
f. Case study – University of Central Florida officer traffic stop.

10. <u>You are the Incident Commander (group exercises).</u>

a. Scenario - In progress domestic violence/homicide incident at a detached residence. Children inside the home describing unfolding events to the 911 operator (compilation of actual events).
b. Scenario – In progress armored car robbery in front of a bank that is located on the perimeter of a large shopping center. Suspects ex-military and heavily armed (based on actual event).
c. Scenario - Suspicious vehicle parked near middle school with an empty pistol holster and loaded 30-round assault rifle magazine lying on front seat (based on actual event).
d. Scenario – Large impromptu group of protesters block key intersection near regional airport. Motorist panics and drives through crowd (compilation of actual events).
e. Scenario - Active shooter incident in business district containing multi-story office buildings, a Sheraton Hotel, and a city-owned performing arts center hosting hundreds of middle school children (based on actual event).

Instructional Topic:	Student Project Presentations	Hours:	4

The overall goal of the Student Project Presentations is to equip middle managers with the skills necessary to research and present about important law enforcement topics to a variety of audiences using written, verbal, and non-verbal deliveries.

Specific goals are to provide the student with:

INSTRUCTIONAL GOALS

1. An understanding of the importance of working in a group.
2. Tools and resources on how to conduct research via a variety of methods.
3. Methods for sharing their personal findings.
4. An understanding of how to develop persuasive arguments for a course of action
5. The ability to develop and present effectively in a group setting.
6. The ability to evaluate others' presentations, and identify strengths and weaknesses to assist in their ability to research and present.

Overview

Students are placed in groups of 5 or 6 to present on topics that are current issues impacting law enforcement. The presentations require the students to conduct research outside of class. Some identified source material is provided and there is the necessity to research their own department practices and provide statistics collected from their own agency. Presentations are time limited to no more than 30 minutes based on the size of the group, require all students' participation, and are presented to a panel of police executives. Feedback is provided to the students on content and delivery by their peers and the panel.

Presentation Topics

1. Review of Public Safety Agencies by the Department of Justice (DOJ)
2. Use of Force
3. Supervision of Sergeants
4. Complaint Process
5. Warrant Service Protocols
6. Other significant topics (with the coordinator's approval)

Instructional Topic:	Leadership Issues	Hours:	4

The overall goal of **Leadership Issues** is to provide the students with an understanding of a police manager's necessity to keep abreast of current law enforcement issues and challenges, to understand the value and importance of researching best practices, and to encourage collaboration with other departments to ensure consistency in practice and data collection based on current issues in law enforcement.

Building on the content provided during the student group presentations and feedback provided by the panel members, discussion is facilitated in groups to identify ways in which the students can go back to their agencies, share best practices, and develop plans for introducing and implementing change in their own agencies.

Specific goals are to provide the student with:

INSTRUCTIONAL GOALS:

1. An understanding of how and why Department of Justice (DOJ) Federal oversight becomes mandated, and to provide an opportunity to discuss ways to avoid it.
2. An overview of the varied ways in which law enforcement agencies define and collect data on uses of force and a facilitated class discussion on ways to create consistency.
3. An overview of the varied ways in which departments investigate citizens' complaints and a facilitated class discussion on ways to create consistency.
4. An understanding of the importance of active and consistent supervision of sergeants and class discussion on ways to improve as an occupation.
5. An overview of the varied levels of training officers/deputies receive in the State of California, and a facilitated class discussion on recommendations for improvement and consistency.
6. An understanding of the necessity to develop consistent training and protocols for serving warrants involving multiple agencies.

Overview

1) Law Enforcement agencies are more closely scrutinized than ever before because of the media and the public's access and right to information in real time.
2) There are several consistent themes present in agencies previously and/or currently under Federal oversight that can predict vulnerability in a department, including problems with:

a) Excessive uses of force and inconsistent data collection and investigative practices
b) Excessive complaints, poorly investigated citizens' complaints, inconsistent protocols for investigation.
c) Substandard training.
d) Poor supervision and lack of accountability.

Discussion Points by Instructor/ Facilitator

1. The topics presented all provide significant diversity in the way law enforcement agencies:
    a. Prioritize their importance
    b. Develop policies and procedures
    c. Measure, collect, and analyze data
    d. Require accountability
2. GROUP DISCUSSIONS IN BREAK OUT GROUPS
    a. What can middle managers do about it?
    b. Why should managers care?
    c. What do the inconsistencies mean to the LE occupation as evidenced by recent DOJ interventions?
    d. In what ways can managers avoid pitfalls that resulted in Federal oversight?

AGENDA ITEM REPORT

Title: POST2322012 - IVAN D. SARABIA-MEDINA (POST ID: C12-A96)
LAST EMPLOYING AGENCY: LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

REPORT PROFILE

MEETING DATE 03/21/2024	**BUREAU SUBMITTING THE REPORT** Professional Conduct Los Angeles Bureau	
RESEARCHED BY Robert Bringolf	**REVIEWED BY** Mike Radford	
REPORT DATE	**APPROVED BY** Annemarie Del Mugnaio	**DATE APPROVED**
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

The matter is before the Peace Officer Standards Accountability Advisory Board (POSAAB) for review and recommendation regarding the subject peace officer's certification status.

BACKGROUND:

The Respondent began his employment with the Los Angeles County's Sheriff's Department on July 13, 2007, as a Deputy Sheriff after graduating from the Los Angeles Sheriff's Police Academy on July 13, 2007. At the time of this incident before the POSAAB, he was assigned as a Patrol Sergeant. The Respondent was terminated from the Los Angeles County Sheriff's Department on November 4, 2023 while holding the rank of Sergeant. The Respondent is not currently employed as a peace officer in the State of California.

This position is a peace officer position as defined under California Penal Code §830.1(a) and is required to be certified pursuant to California Penal Code §13510.1(a).

Video Evidence Links:

POST2322012 Sarabia-Medina Reaction Video Taser

POST2322012 Sarabia-Medina Armory Video with Shotgun

POST2322012 Sarabia-Medina Police Take Down Lights

POST2322012 Sarabia-Medina Singing Spanish Song in Uniform

POST2322012 Sarabia-Medina Amory Video with 40 MM Less Lethal

POST2322012 Sarabia-Medina Armory Video showing multiple shotguns on racks

POST2322012 Sarabia-Medina Video Inside Watch Sergeant Office

POST23022012 Sarabia-Medina Video Showing Weapons Inside Sergeant Tahoe Vehicle

POST23022012 Sarabia-Medina Video Sergeant Vehicle Inspection

POST23022012 Sarabia-Medina Video of Debriefing 5150 Call

POST23022012 Sarabia-Medina Video in Supervisor Vehicle

POST23022012 Sarabia-Medina Video in In-N-Out Burger

POST23022012 Sarabia-Medina Video Moto Duet

POST23022012 Sarabia-Medina Video Duet with Lawyer

POST23022012 Sarabia-Medina Video Reaction to Playground Confrontation

POST23022012 Sarabia-Medina Video Two Reaction Videos

ANALYSIS:

This alleged serious misconduct occurred during Internal Affairs interviews by the Los Angeles County Sheriff's Department (LASO) on June 8, 2023, and July 14, 2023. The incident was reported to the Los Angles Sheriff's Department when a citizen saw the TikTok video and submitted a citizen complaint. Respondent was being interviewed related to several social media postings Respondent made while on duty and in full LASO uniform.

The Division found that the clear and convincing evidence substantiated that Respondent violated California Penal Code § 13510.8(b)(1), in that during separate Internal Affairs interviews, Respondent was dishonest with LASO investigators

when he said he had not recorded any TikTok videos while on duty.

RECOMMENDATION: The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigation presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

ATTACHMENT(S):
BR1_POST2322012_Sarabia-Medina_ISF_REDACTED.pdf



INVESTIGATIVE SUMMARY AND FINDINGS

PEACE OFFICER NAME: Ivan D. Sarabia-Medina

POST ID NUMBER: C12-A96

EMPLOYING AGENCY: Los Angeles County Sheriff's Department

POST CASE NUMBER: POST2322012

WRITTEN BY: LEC Robert Bringolf

DATE: 12/19/2023

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I. Executive Summary

The Los Angeles County Sheriff's Department (LASD) submitted this case, in which they alleged the subject officer, Sergeant Ivan D. Sarabia-Medina, hereinafter "Respondent," was involved in serious misconduct when he lied to internal affairs investigators during an internal affairs investigation into LASD policy violations.

II. Background Information

a. Identity of Respondent

At the time of the events at issue, Respondent was employed as a Sheriff's Sergeant with the Los Angeles County Sheriff's Department.

b. Respondent's Service Record, Relevant Training, and Prior Complaints and Discipline

Respondent began his employment with the Los Angeles County Sheriff's Department on 07/13/2007 as a deputy sheriff. Respondent was promoted to the rank of sergeant on 10/16/2016. Respondent was terminated from the Los Angeles County Sheriff's Department on November 4, 2023.

Prior Employment History

Respondent does not have any additional law enforcement appointments in California.

c. Peace Officer Certification

Respondent is assigned POST ID C12-A96. He received the following peace officer certificates from the Peace Officer Standards and Training (POST):[1]

- Basic #132572 (08/11/2008)
- Intermediate #123444 (08/13/2013)
- Advanced #115908 (11/14/2017)
- Supervisory #88205 (10/15/2018)

[1] Respondent's POST profile (Attachment G).

d. The Present Allegations of Serious Misconduct

This alleged serious misconduct occurred during internal affairs interviews by the Los Angeles County Sheriff's Department (LASD) on June 8, 2023, and July 14, 2023. Respondent was being interviewed related to several social media postings Respondent made while on duty and in full LASD uniform.

During an internal affairs interview, Respondent was dishonest with LASD investigators when he said he had not recorded any TikTok videos while on duty.

The complaint was received by POST on December 7th, 2023, at 1029 Hours via the "Mark 43" report management system.

III. Investigative Methodology

This report summarizes the findings related to allegations of serious misconduct. This investigation was conducted in accordance with the regulations and policies of POST. The investigation included a review of the LASD administrative investigation, review of several hours of audio recordings of interviews, and review of several TikTok videos Respondent had posted to his TikTok account.

Information obtained was analyzed using the clear and convincing evidence standard. For purposes of this report, clear and convincing evidence means "evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. The evidence need not establish a fact beyond a reasonable doubt."

This report is necessarily summary in nature and does not include every fact or issue that might be found in the underlying investigation and attachments. It does, however, contain reference to that evidence that establishes the requisite facts, and proves the serious misconduct charged, by clear and convincing evidence.

IV. Factual Summary

The specific allegation in this complaint is that Respondent was involved in serious misconduct when he lied to internal affairs investigators during an internal affairs

investigation into misconduct related to posting several videos on the social media platform TikTok[2]:

An internal affairs investigation was initiated after LASD command staff learned Respondent was posting videos on TikTok. Several of Respondent's videos showed Respondent in full LASD uniform and apparently on-duty when he recorded the videos. On August 23, 2022, a Watch Commander Service Comment Report was generated after a retired LASD sergeant contacted the internal affairs bureau and filed a complaint regarding Respondent's actions in his TikTok videos, some of which appeared to be in violation of LASD policy.

Upon LASD's review of the videos, it was discovered Respondent created and posted numerous videos on his personal TikTok account. Several of those videos showed Respondent may have been in violation of LASD policies.

In summary, the videos showed Respondent activating a taser in his hand while in uniform and in a police vehicle. Respondent was also seen inside the Walnut Station (Respondent's duty station) critiquing another TikTok user's video related to search and seizure. Respondent made additional TikTok videos while inside Walnut Station, one such video was filmed in the station armory and showed Respondent manipulating a shotgun in his hands and another video manipulating a less-lethal weapon and pointing it at the camera. Respondent made other videos from the interior of his patrol vehicle which showed his Mobile Digital Computer (MDC), the vehicle's takedown lights illuminating the exterior of the vehicle and showing the interior of the vehicle and the vehicle's inventory of weapons. Respondent recorded himself receiving a gratuity in the form of a discounted meal while on duty, in a police vehicle, and in full department uniform. The LASD reviewed a total of 26 TikTok videos for their investigation.

[2] Attachment H – Policies related to Respondent's misconduct attached in one comprehensive document.

These apparent policy violations led to the internal affairs interviews in which the serious misconduct of dishonesty in this allegation occurred. Internal affairs investigators asked Respondent several times whether he recorded any of the TikTok videos while he was on duty. Respondent told investigators in no uncertain or equivocal terms that he had never recorded a TikTok video while on duty. Through their investigation and through detailed observations within the videos, internal affairs investigators found evidence Respondent was being dishonest about the times he recorded the videos and that the videos had, in fact, been recorded while Respondent was on duty. Respondent was ultimately terminated for dishonesty.

In the internal affairs investigation, Respondent was shown specific videos and asked whether he was on duty at the time he recorded the videos. At least 18 times in the internal affairs investigation, Respondent told internal affairs investigators that he was off duty when filming a specific video, or while filming any video. Respondent repeatedly stated that he never recorded any of his TikTok videos while on duty. These statements are the basis for the dishonesty allegation against Respondent.

I reviewed all of the TikTok videos provided by LASD in which Respondent appeared in full LASD uniform and appeared to be on duty and reviewed the full internal affairs transcripts. In each TikTok video, I looked for facts that supported the claim Respondent was off-duty when the video was recorded. I also analyzed the videos for facts that tended to refute Respondent's claim he was off-duty. I coupled my observations of the videos with statements made by Respondent in his internal affairs interviews. The following is my analysis of several videos where Respondent appeared to be on duty:

Video 1 – "Arcing Taser in Vehicle"

- Respondent was in full LASD uniform.
- Interior of vehicle was consistent with a Chevy Tahoe.

- Uplighting (illumination from a low source of light) from center of vehicle consistent with mobile data terminal (MDT) placement.
- Respondent held a taser in his hand and activated it.
- It was dark outside consistent with video taken at night.
    - Respondent's shift was from 2100-0500.[3]
- Respondent told internal affairs investigators he was off-duty when he recorded this video.[4]
- Respondent told internal affairs investigators that he did not possess his own Taser or take his taser home.[5]
- Respondent implied he could have recorded the video in his sister's Chevy Tahoe.
    - He could not do this if he did not take his taser home.

Conclusion:

There was no evidence found that directly supports Respondent's assertion he was off duty when the video was recorded. There was no evidence to support Respondent's speculation that his sister's vehicle may have been used to film the video – there was uplighting in the video consistent with the mobile data terminal shown in other videos. Evidence establishes to a clear and convincing standard of proof that Respondent was on duty when the video was recorded.

Video 2 – "Armory Video with Shotgun"

- Date showed video was uploaded on 08/12.
    - Respondent was on-duty on 08/12/2022.[6]
- Respondent was in full LASD uniform.
- Respondent's shift was from 2100-0500 hours.[7]
- Body-worn Camera was on Respondent's uniform.

[3] (Attachment A) Respondent Interview Transcripts, Pg 94 of 138, Paragraphs 12 and 13.
[4] (Attachment A) Respondent Interview Transcripts, Pg 105 of 138, Paragraphs 15 and 16.
[5] (Attachment A) Respondent Interview Transcripts, Pg 106 of 138, Paragraphs 8 and 9.
[6] (Attachment A) Respondent Interview Transcripts, Pg 89 of 138, Paragraphs 6 and 7.
[7] (Attachment A) Respondent Interview Transcripts, Pg 94 of 138, Paragraphs 12 and 13.

- In another video, Respondent shows the last thing he does before getting ready to go in service is to attach his body-worn camera.[8]

- Respondent was wearing his patrol radio.
- Respondent stated he may have recorded the video on a different date than the date it was uploaded.[9]
- Respondent stated he was off-duty when the video was recorded, and that it "might" have been recorded before he started his shift.[10]

Conclusion:

There was no evidence found that directly supports Respondent's assertion he was off duty when the video was recorded. Respondent could not advise when he recorded the video, but suggested the video may have been recorded on a separate date and he ultimately uploaded on the date he was working. It is reasonable to conclude Respondent was on duty because he was seen in full uniform, wearing a body-worn camera, a patrol radio, and was in the armory at Walnut station. Evidence establishes to a clear and convincing standard of proof that Respondent was on duty when the video was recorded.

Video 3 – "Police Takedown Lights"

- Date shows video was uploaded on 08/4.
  - Respondent was on-duty on 08/04/2022[11]
- Respondent was clearly inside a patrol vehicle when the video was recorded.
- Respondent activated vehicle's takedown lights and illuminated a building.
- Video was clearly not taken at the Sheriff Station or in the parking lot of the Sheriff Station.

[8] (Accessed via Evidence.Com) Video 7 –"Inside Locker Room".
[9] (Attachment A) Respondent Interview Transcripts, Pg. 89 of 138, Paragraphs 12, 13, and 14.
[10] (Attachment A) Respondent Interview Transcripts, Pg. 90 of 138, Paragraphs 2 and 3.
[11] (Attachment A) Respondent Interview Transcripts, Pg 109 of 138, Paragraphs 4 and 5.

- Internal Affairs investigators determined the video was recorded in the parking lot of the Latter Day Saints Church located at 20801 Marcon Drive, in Walnut, CA[12].

- In his internal affairs interview, Respondent stated he was not on duty when he recorded the video.[13]
- Respondent could not remember where he recorded the video. In the same paragraph, he stated he could not tell where the video was recorded because he worked nights and it was dark.[14]
- Respondent said he had never gone to the station to record a video on a day off.[15]

Conclusion:

There was no direct evidence other than Respondent's own assertion that he was off duty when the video was recorded. It is unreasonable to believe Respondent came to work, obtained a vehicle in the middle of the night, and then drove over a mile away from the station to a location he did not remember. Further, the Respondent stated he could not remember where the location was, because it was dark when he was at work. Evidence establishes to a clear and convincing standard of proof that Respondent was on duty when the video was recorded.

Video 4 – "Singing Spanish in Uniform"

- Date showed video was uploaded on 08/03.
  - Respondent was on-duty on 08/03/2022.[16]
- Time on Respondent's watch (visible in video) showed 0440 Hours.[17]
  - Respondent's shift was 2100 to 0500 hours.[18]
- Respondent was in full uniform.

[12] (Attachment B) Respondent Interview Transcripts, Pg 54 of 54, Paragraphs 1 - 7.
[13] (Attachment A) Respondent Interview Transcripts, Pg 109 of 138, Paragraphs 12 and 13.
[14] (Attachment A) Respondent Interview Transcripts, Pg 109 of 138, Paragraph 9.
[15] (Attachment B) Respondent Interview Transcripts, Pg 5 of 54, Paragraphs 2 and 3.
[16] (Attachment A) Respondent Interview Transcripts, Pg 87 of 138, Paragraphs 14-17.
[17] (Attachment C) Photograph of wristwatch showing 0440 Hours.
[18] (Attachment A) Respondent Interview Transcripts, Pg 94 of 138, Paragraphs 12 and 13.

- Respondent was wearing a body-worn camera on his uniform.
- The video was taken while it was dark outside.
- Uplighting was consistent with MDC near the center console.
- In his internal affairs interview, Respondent told investigators he was off duty when the video was recorded.[19]

Conclusion:

There was no direct evidence other than Respondent's own assertion that he was off duty when his videos were recorded. There was direct evidence from Respondent's wristwatch, however, supporting the time the video was recorded was 0440 hours, which fell within Respondent's work hours. Video was taken in a vehicle that appeared to be consistent with the interior of a Chevy Tahoe. There was uplighting in the interior of the vehicle which was consistent with a mobile data terminal. Evidence establishes to a clear and convincing standard of proof that Respondent was on duty when the video was recorded.

Video 5 – "Armory Video with 40 mm Less Lethal"

- Date stamp showed video was uploaded on 07/30
    - Respondent was on-duty on 07/30/2022[20]
- Respondent's shift was from 2100-0500 hours.[21]
- Respondent was in full uniform.
- Respondent was wearing a body-worn camera on his uniform shirt.
- Respondent was wearing his patrol radio on his lapel.
- Respondent was in the armory at Walnut Station.
- In his internal affairs interview, Respondent told investigators he was off-duty when he recorded this video[22]

[19] (Attachment A) Respondent Interview Transcripts, Pg 88, Paragraphs 5 and 6.
[20] (Attachment A) Respondent's Interview Transcripts, Pg 98 of 138, Paragraphs 10 and 11.
[21] (Attachment A) Respondent Interview Transcripts, Pg 94 of 138, Paragraphs 12 and 13.
[22] (Attachment A) Respondent's Interview Transcripts, Pg 98 of 138, Paragraphs 16 and 17.

- Respondent stated the date stamp may not reflect the date he recorded the video, only the date he uploaded the video[23]

Conclusion:

There was no direct evidence other than Respondent's own assertion that he was off duty when the video was recorded. Respondent was in full uniform, wearing a body-worn camera, a patrol radio, and at his place of work. Further, Respondent uploaded the video on a day he was at work, which is consistent with other videos in which the Respondent is seen in full uniform. There is no direct indication of the time the video was recorded. Evidence establishes to a clear and convincing standard of proof that Respondent was on duty when the video was recorded.

Video 6 – "Armory Showing Shotguns"

- Respondent was in full uniform.
- Respondent was wearing his patrol radio on his lapel.
- Respondent said he often had 20 to 30 minutes between when he arrived at the station and started his shift, and, in this case, he believed he just walked into the armory and recorded himself doing a "360."[24]
- Respondent asserts he was off duty for all the videos he recorded.[25]
-

Conclusion:

Aside from Respondent's own assertion that he never recorded videos while on duty, there was no direct evidence found to support Respondent was off duty when he filmed this video. Respondent was in full uniform with his patrol radio on his lapel. There is no direct indication of the time the video was recorded. The Respondent's appearance in the video in full uniform is indicative of being on duty.

[23] (Attachment A) Respondent's Interview Transcripts, Pg 100 of 138, Paragraph 3.
[24] (Attachment A) Respondent's Interview Transcripts, Pg 79 of 138, Paragraph 2.
[25] (Attachment A) Respondent's Interview Transcripts, Pg 105 of 138, Paragraphs 8 and 9.

Evidence establishes to a clear and convincing standard of proof that Respondent was on duty when the video was recorded.

Video 8 – "Inside Watch Sergeant's Office"

- Date showed video was posted on 7/9.
    - Respondent was on duty 07/09/2022.[26]
- Respondent was assigned as the patrol sergeant.[27]
- Respondent's shift was from 2100 – 0500 hours.[28]
- Respondent was in full LASD uniform.
- Respondent had his patrol radio on his lapel.
- Respondent was wearing his body-worn camera.
- Video was taken in the Patrol Sergeant's office.
- Respondent asserts he was off duty for all the videos he recorded.[29]

Conclusion:

There is no direct evidence other than Respondent's own assertion that he was off duty when the video was recorded. Respondent was clearly on duty in "Video 10" below, which was filmed during the same shift and posted prior to midnight during that shift. Evidence establishes to a clear and convincing standard of proof that Respondent was on duty when the video was recorded.

Video 9 – "Showing Weapons in Sergeant's Vehicle"

- Date showed video was posted on 7/8.
- Respondent asserted he was off duty when he recorded all of the videos.[30]

Conclusion:

[26] (Attachment B) Respondent's Interview Transcripts, Pg 42 of 54, Paragraph 1.
[27] (Attachment B) Respondent's Interview Transcripts, Pg 42 of 54, Paragraph 1.
[28] (Attachment A) Respondent Interview Transcripts, Pg 94 of 138, Paragraphs 12 and 13.
[29] (Attachment A) Respondent's Interview Transcripts, Pg 105 of 138, Paragraphs 8 and 9.
[30] (Attachment A) Respondent's Interview Transcripts, Pg 105 of 138, Paragraphs 8 and 9.

There is no direct evidence other than Respondent's own claim he was off duty when the video was recorded. Direct evidence that refutes this video was recorded off duty is that this video is another clip of "Video 10" below, in which evidence establishes to a clear and convincing standard of proof that Respondent was on duty when the video was recorded.

Video 10 – "Sergeant Vehicle Inspection"

- Date showed video was uploaded on 7/8.
- Respondent's watch showed the time as 2136 Hours.
- Respondent says, "It's Friday, July 8th, 2022. Let's go 10-8."
- Radio traffic heard in background.
- Respondent clearly in a police vehicle.
- Respondent's taser is hanging in a holster on the gun rack.
- Respondent asserted he recorded this video prior to the start of his shift and he had been off-duty.
- LASD Investigators were able to determine Respondent logged into his MDT at 2124 Hours on 07/08/2022[31].
- LASD investigators were able to locate the radio traffic heard in the background of this video – it was broadcasted at 21:31:44 hours on 07/08/2022[32].
- Toward the end of the video, Respondent's wristwatch showed the time as 2136 Hours.[33]
- When confronted with the above, Respondent continued to deny he was on duty when the video was recorded.[34]
- During his internal affairs interview, Respondent told investigators he never came to the office on his days off and recorded TikTok videos.[35]

[31] (Attachment B) Respondent's Interview Transcripts, Pg 42 of 54, Paragraphs 10-15/
[32] Audio Recording with timestamp provided by LASD and is accessible via evidence.com
[33] (Attachment C) Photograph of wristwatch showing 2136 Hours.
[34] (Attachment B) Respondent's Interview Transcripts, Pg 51 of 54, Paragraphs 7-9.
[35] (Attachment B) Respondent Interview Transcripts, Pg 5 of 54, Paragraphs 2 and 3.

Conclusion:

There is evidence that proves beyond the "highly probable" clear and convincing evidence standard that Respondent recorded the video while he was on duty. The time was clearly shown on Respondent's wristwatch. The radio transmission was broadcasted while Respondent was on duty. Respondent had logged into his MDT in the vehicle prior to recording the video. The video was posted on the same day it was recorded. Evidence establishes to a clear and convincing standard of proof that Respondent was on duty when the video was recorded.

Video 11 – "Debriefing a Call for Service"

- Date showed the video was posted on 6/25.
    - Respondent was on duty on June 25th, 2022.[36]
- Respondent was inside a police vehicle.
    - Gun rack was visible in background.
    - Uplighting consistent with MDC was visible.
- Respondent says, "It's almost four in the morning so I've got about an hour – one more hour to go."
    - Respondent's shift was from 2100 – 0500 hours.[37]
- Respondent debriefs a call from the night prior in which he talks about a mentally ill subject who tried to light her garage on fire.
    - LASD located the call for service and determined it was, as described, from the night prior to when the video was posted.[38]

Conclusion:

There is no direct evidence other than Respondent's own assertion that he was off duty when the video was recorded. In fact, direct evidence from the video directly contradicts Respondent's assertion. Respondent stated the time in the video,

[36] (Attachment A) Respondent's Interview Transcripts, Pg 93 of 138, Paragraphs 8-11
[37] (Attachment A) Respondent Interview Transcripts, Pg 94 of 138, Paragraphs 12 and 13
[38] (Attachment D) CFS report - Incident #:WAL22174-0017

which fell into the hours of his shift. Further, the light from the MDC was providing uplighting on Respondent and the interior of the vehicle. Respondent was in full LASD uniform and had his radio affixed to his lapel. Evidence establishes to a clear and convincing standard of proof that Respondent was on duty when the video was recorded.

Video – "Video In Supervisor Vehicle"

- Date showed the video was uploaded on 06/25.
    - Respondent was on duty on June 25th, 2022.[39]
- Respondent said in the video that he was on duty and says the time was 0327 Hours.
    - Respondent's shift was from 2100 – 0500 hours.[40]
- Uplighting was consistent with an MDC in center console.
- Respondent was in full LASD uniform.
- Respondent told internal affairs investigators he filmed the video after his shift and made it look like he was on-duty when he filmed the video.[41] Respondent told internal affairs investigators he misled his followers and misstated the time intentionally.

Conclusion:

There was no direct evidence other than Respondent's own assertion he was off duty at the time the video was recorded. Respondent was clearly in a police vehicle. Respondent said during the video that the time was 3:27 AM, which was during his work hours (2100-0500). Respondent was in full LASD uniform and it was clearly dark outside when the video was recorded. Respondent's statement of the time appeared spontaneous and was also specific - there would be no reason to state the exact time if recording the video after one's shift. Further, the next video

[39] (Attachment A) Respondent's Interview Transcripts, Pg 93 of 138, Paragraphs 8-11
[40] (Attachment A) Respondent Interview Transcripts, Pg 94 of 138, Paragraphs 12 and 13
[41] (Attachment A) Respondent's Interview Transcripts, Pg 95 of 138, Paragraph 10.

recorded, on the same date, was a video in which Respondent told followers that the time was around 4:00 AM. This also supports the video was recorded while Respondent was on duty. Evidence establishes to a clear and convincing standard of proof that Respondent was on duty when the video was recorded.

Video 13 – "IN-N-OUT Discount"

- Date showed the video was uploaded on 07/28.
    - Respondent was on-duty on 07/28/2022.[42]
- Respondent's shift was from 2100-0500 Hours.[43]
- Respondent used hashtag "#policediscount on the video.
- Video showed Respondent ordered a "Flying Dutchman".
- The exterior of the vehicle showed it was very dark outside.
- Lighting was consistent with the uplighting from an MDC in the center console.
- Respondent was in full uniform.
- Respondent was wearing a body-worn camera on his uniform.
- In his internal affairs interview, Respondent stated "a lot of times" he would don his uniform, get a patrol vehicle, and go across the street to In-N-Out and got a burger before his shift started.[44]
- In his internal affairs interview, Respondent stated he filmed this video before his shift started (Shift started at 2100 hours on 07/27/2022).
- I contacted In-N-Out corporate offices and asked if they retained receipts. I provided the store location for the In-N-Out store directly across the street from the Walnut Station (Industry City In-N-Out). I asked for all receipts for purchases that received a 50% discount and had a "Flying Dutchman" between 1930 hours on 07/27/2022 and 07/28/2022 (the date the video was posted). There was only one order during that time frame, placed at 11:48 PM on 7/27. I clarified – and they

[42] (Attachment A) Respondent's Interview Transcripts, Pg 82 of 138, Paragraphs 17-18
[43] (Attachment A) Respondent Interview Transcripts, Pg 94 of 138, Paragraphs 12 and 13.
[44] (Attachment A) Respondent's Interview Transcripts, Pg 85 of 138, Paragraph

confirmed – that this order was an in-car dining order and the discount was a 50% "Police Discount."[45] Further, the timeframe to search started at 1930 hours on 07/27/2022 because this would cover the hours of dusk, as the sun set in Los Angeles on 07/27/2022 at 1958 hours[46], and the video was clearly shot when it was dark outside.

Conclusion:

There is no direct evidence other than Respondent's assertion that he was off duty when this video was filmed. Other evidence (In-N-Out receipt) refutes Respondent's assertions. Further, Respondent was seen in a patrol vehicle, in full uniform, and wearing a body-worn camera and patrol radio when the video was recorded. There was only one order matching Respondent's order at the Industry City In-N-Out in a timeframe beginning 1.5 hours before Respondent's shift started on 07/27/2022 to the last moment Respondent's video could have been posted (23:59:59) on 7/28/2022. Evidence establishes to a clear and convincing standard of proof that Respondent was on duty when the video was recorded.

Video 15 – "Moto Duet"

- Respondent was in full LASD uniform.
    - Respondent stated he had worked as the Watch Commander at Walnut Station on several occasions.[47]
- Respondent was in the Watch Commander's Office.
    - Watch Commander's Office identified by Respondent.[48]
- Respondent's wristwatch showed the video was recorded at 0125 Hours.

[45] (Attachment F) In-N-Out receipt – received from In-N-Out corporate offices on 12/20/2023, via secure web platform "Genetec Clearance" – In-N-Out case # 199-072722.
[46] Sunrise / Sunset schedule for Los Angeles, CA – retrieved from https://griffithobservatory.org/explore/observing-the-sky/whats-in-the-sky/the-sun/2022-sunrise-and-sunset/
[47] (Attachment A) Respondent's Interview Transcripts, Pg 116 of 138, Paragraphs 1-4.
[48] (Attachment A) Respondent's Interview Transcripts, Pg 114 of 138, Paragraph 4.

- Attached still image of Respondent's watch, enhanced and shown in mirror image.[49]

- Respondent said he was not on duty when this video was recorded.[50]
- Respondent said he never came into the office and recorded videos on his days off.[51]
- Respondent said he took the video at the end of his shift, and it was, "…just a quick little video that [he] took before going downstairs to the locker room."[52]

Conclusion:

There was no direct evidence other than Respondent's own assertion that he was off duty when this video was recorded. This video was recorded at 0125 hours on an unknown date. Respondent told internal affairs investigators he did not come in on his days off to record videos. If Respondent did not record videos on his days off, the video had to be recorded at 0125 hours on a day Respondent was working. Respondent was in full uniform and in the Watch Commander's Office when the video was recorded. Respondent's wristwatch in this video and in other videos was found to be in military time format. There is evidence that shows the video was filmed in the middle of the "Early Days" shift hours (2100-0500). Evidence establishes to a clear and convincing standard of proof that Respondent was on duty when the video was recorded.

Video 17 – "Duet with Lawyer"

- Date on video showed it was uploaded on 08/18 [2022].
    - Respondent was assigned as Watch Commander from 2100-0500 on 08/18/2022.[53]
- The video was filmed in the Walnut Station Watch Commander's Office.

[49] (Attachment C) Screen shots from video "0125 Watch Commander" .PDF.
[50] (Attachment A) Respondent's Interview Transcripts, Pg 114 0f 138, Paragraphs 7-8.
[51] (Attachment B) Respondent Interview Transcripts, Pg 5 of 54, Paragraphs 2 and 3.
[52] (Attachment A) Respondent's Interview Transcripts, Pg 115 of 138, Paragraph 14.
[53] (Attachment E) 08/18 EM Shift In-Service log - Desk Operations, Line 1 (W/C).

- Respondent identified the location of this video as the Walnut Station Watch Commander's Office.[54]

- Respondent was in full LASD uniform.
- In his internal affairs interview, Respondent told investigators he recorded this video at the end of his shift.[55]
- Respondent's wristwatch showed the time as 0205 Hours.
  - Attached still image of Respondent's watch, enhanced and shown in mirror image[56]
- Respondent said he never came to work and recorded a video on his days off.[57]
- Respondent's shift was from 2100-0500 hours.[58]

Conclusion:

There is no direct evidence other than Respondent's own assertion that he recorded this video at the end of his shift; to the contrary, there is direct evidence refuting Respondent's assertion. Respondent's wristwatch showed the video was recorded at 0205 hours (2:05 AM). The respondent told investigators this video was recorded at the end of his shift – that was clearly not the case. Since Respondent stated he never went into the station on his days off and recorded a video, this video had to be taken during his work hours and while he was on duty. Evidence establishes to a clear and convincing standard of proof that Respondent was on duty when the video was recorded.

Video 18 – "Reaction to Playground Confrontation"

- Red light was illuminating the interior of the vehicle.
- A gun rack was visible behind Respondent in video.

[54] (Attachment B) Respondent's Interview Transcripts, Pg 18 of 54, Paragraphs 13-14.
[55] (Attachment B) Respondent's Interview Transcripts, Pg 19 of 54, Paragraphs 10-11.
[56] (Attachment C) Still image of video (00:50) – mirror image and turned 180 degrees.
[57] (Attachment B) Respondent Interview Transcripts, Pg 5 of 54, Paragraphs 2 and 3.
[58] (Attachment B) Respondent's Interview Transcripts, Pg 19 of 54, Paragraph 7.

- Respondent's patrol radio was attached to his lapel.
- Dark conditions were consistent with Respondent's shift hours.
- Badge and patches covered by "digital stickers".
    - Respondent was in full LASD uniform and had to cover intellectual property (badges and patches identifying and trademarked by LASD).[59]
- Respondent stated he never recorded videos at work on his days off.[60]

Conclusion:

There is no direct evidence other than Respondent's own assertion he was off duty when he filmed this video. Respondent was in uniform, in a patrol unit, during hours of darkness. Respondent stated he never came in on his days off to film a video. Respondent chose to use the red light to illuminate the interior of the vehicle – red light reduces the potential to compromise an officer's night vision which is critically important when working at night. Evidence establishes to a clear and convincing standard of proof that Respondent was on duty when the video was recorded.

Video 22 – "Two Reaction Videos"

- Both videos were filmed while Respondent was in uniform.
- Respondent appeared to be in a police car.
- Respondent was wearing his patrol radio on his lapel.
- Darkness during filming consistent with Respondent filming during nighttime hours, during his shift of 2100 to 0500 hours.

Conclusion:

There is no direct evidence other than Respondent's own assertion that he was off duty when he recorded these videos. Respondent is in full uniform and had to use "digital stickers" to cover intellectual property. It appears the videos were recorded during nighttime hours. Uplighting from center of the interior of the video is consistent with uplighting from a mobile data terminal. Evidence establishes to a

[59] (Attachment A) Respondent's Interview Transcripts, Pg 13 of 138, Paragraphs 5-11.
[60] (Attachment B) Respondent Interview Transcripts, Pg 5 of 54, Paragraphs 2 and 3.

clear and convincing standard of proof that Respondent was on duty when the video was recorded.

Respondent was terminated from employment at the Los Angeles County Sheriff's Department on November 4, 2023. The LASD cited several policy violations that supported Respondent's termination and also supported an allegation of serious misconduct pursuant to Penal Code Section 13510.8(b)(1).

LASD Policy 3-01/040.69 – Honesty Policy

Department members are held to the highest standards of integrity and ethics. In particular, honesty and trustworthiness are of paramount importance to the credibility and integrity of all Department members. Honesty and maintaining the trust of those we serve depend on candor, forthrightness, sincerity, and accuracy.

Dishonesty destroys trust and violates Department policy. Examples of dishonesty and violations of trust include not only false statements, but also deliberate distortions of the truth; intentional exaggerations, concealment of or failure to disclose material facts, observations, or recollections, and failure to make full, complete and truthful statements when required.

Department members who violate this section are subject to discipline up to and including discharge.

LASD Policy 3-01/040.70 – Dishonesty / False Statements

Members shall not make false statement or commit any other violations of the honesty policy, section 3-01/040.69, when questioned, interviewed, or in reports or documents submitted. Department members who violate this section are subject to discipline up to and including discharge.

LASD Policy 3-01/040.75 – Dishonesty / Failure to Make Statements And / Or Making False Statements During Departmental Internal Investigations

False statements and any other form of dishonesty during an official Departmental internal investigation or inquiry shall, absent extenuating circumstances, result in discharge.

Failure or refusal to make statements when ordered during Department internal investigations constitutes insubordination and shall, absent extenuating circumstances, result in discharge.

V. Analysis and Findings

a. Does the alleged conduct violate California Regulation 1205(a)(1) – Dishonesty?

California Regulation 1205(a)(1) defines serious misconduct as, "Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to, false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct…"

Respondent clearly lied to internal affairs investigators several times during two separate internal affairs interviews. Respondent categorically denied having ever filmed TikTok videos while on duty, yet review of the videos proved Respondent was lying. Rather than admit he was lying, Respondent doubled down in a second interview and provided implausible explanations as to why it may appear he was on duty when he filmed the TikTok videos. Respondent never provided any direct evidence beyond his own assertions that the videos in which he appeared to be on-duty were actually filmed while he was off-duty.

In the videos reviewed for this investigation, Respondent was in full LASD uniform, at the Walnut Sheriff Station or in a police vehicle. Respondent worked night shift from 2100 hours to 0500 hours. In Respondent's "Sergeant Vehicle Inspection" video described above, Respondent showed himself in full LASD uniform inventorying the rear of a sheriff's patrol unit. While panning across his hand, Respondent's wristwatch was captured in the video. When slowed, the video showed the time to be 2136 Hours, 36 minutes after Respondent's shift started. Respondent told investigators he filmed this video prior to his shift and he was not on duty when the video was filmed. Radio traffic from the patrol radio was captured on the video recording. LASD investigators were able to locate the transmission and found it was broadcast at 2131 hours. The time discrepancy between the time of the radio traffic and the time shown on Respondent's wristwatch show that the video was edited and consisted of different takes spanning an abbreviated amount of time. Even after being confronted with these discrepancies, Respondent continued to assert all of his videos were filmed while he was off duty.

In the "Moto Duet" video described above, Respondent filmed himself in full LASD uniform inside the Walnut Sheriff's Station. Respondent told investigators he had decided to film this video after his shift before he changed out of his uniform. Again, his watch was shown in the video. After freezing the frame and flipping the image to a mirror image, it was clear that the video was filmed at 0125 hours. The "Duet with Lawyer" video showed the time on Respondent's wristwatch to be 0205 hours. In the "Singing Spanish in Uniform" video Respondent's watch showed the time was 0440 hours – it is highly probable that all of these times were times in which Respondent was on-duty, as Respondent said he never came into the office to film on his days off.

Other videos show Respondent in full LASD uniform in his patrol vehicle. In the video entitled "Video in Supervisor Vehicle," described above, Respondent told his followers the date and time he was recording the video. He mentioned that he only had a short amount

of time before the end of his shift. When questioned about that specific video, Respondent told investigators he was off duty and that he was misleading TikTok followers as to the date and time the video was being recorded. This explanation was both implausible and unsupported by any evidence.

In the video entitled “IN-N-OUT Discount” above, which was posted on July 28, 2022, Respondent filmed a video of himself in full uniform, in the interior of a patrol vehicle. Respondent was in the drive-through of an In-N-Out Hamburger restaurant. The restaurant employee can be heard saying something about getting Respondent a discount. Respondent posted he received a 50% discount on his order of a “Flying Dutchman.” When asked about this video, Respondent told internal affairs investigators he was off duty when he filmed the video. Respondent said he would often get into his uniform early and take a marked police vehicle across the street to the In-N-Out and buy his meal before his shift started. In-N-Out corporate security office was contacted as to whether any “Flying Dutchman” orders were given a 50% discount between 07-27-2022 at 1930 hours and 7-28-2022 at 2359 hours at the In-N-Out that was the subject of Respondent’s video. There was only one order in that time frame that matched the search criteria, it was for a “dine in the vehicle” order. The order was made on 07-27-2022 at 2348 hours, during his shift.

After objective analysis of the videos in which Respondent appeared to be on-duty, evidence established to a clear and convincing standard of proof that Respondent was on duty when the videos were recorded. Each video described above contained evidence that establishes with high probability that Respondent was on duty when the video was recorded. In each case where direct evidence of the date or time could be located, it further proved Respondent was on duty when the videos were recorded – it also proved Respondent was repeatedly dishonest with LASD internal affairs investigators.

Respondent presented several possible ways his videos could have been recorded while he was off duty, to include the possibility he filmed videos in his sister's vehicle, or in a garage to make it look dark outside, or minutes before his shift started. These possibilities were considered during the review of the facts and they were not credibly supported.

While this case addresses social media usage on duty, those issues are not at play in the question of whether to decertify and remain a matter of the LASD purview. However, there is clear and convincing evidence that Respondent repeatedly lied to LASD internal affairs investigators. Based on California Regulation 1205(a)(1) that dishonesty constitutes serious misconduct.

The lies told by Respondent were not low-stakes white lies of little consequence. These were not lies to hide his opinion or personal feelings. These were not lies told to maintain social cohesiveness. Respondent's lies were high-stakes lies told to cover up misconduct. Indeed, Respondent's motivation for lying is plainly evident, in part, from Respondent's own words during his internal affairs interview:

> I always made it my goal to, every time I record something, to make sure that I am – you know, before my start time or after my end time…I've always made it a goal to, you know, make sure that it's off duty because it's pretty obvious that if you're on duty, you know, you're – doing any social media, that might get you in trouble.[61]

Courts have repeatedly emphasized that integrity is an essential requirement for any job:

> *A deputy sheriff's job is a position of trust and the public has the right to the highest standard of behavior from those they invest with the power and authority of a law enforcement officer. Honesty, credibility, and temperament*

[61](Attachment A) Respondent's Interview Transcripts, Pg 81 of 138.

are crucial to the performance of an officer's duties. Dishonesty is incompatible with the public trust[62].

Further aggravating this misconduct is the fact that Respondent was a sergeant, tasked with supervising others and at times acting as the watch commander in the absence of a lieutenant. Respondent's integrity calls directly into question the accuracy and objectivity of his written reports, his testimony, and his workplace evaluations of subordinates.

Peace officers are routinely placed in situations that the normal civilian may never experience. The officer's ability to remain unbiased, objective, and truthful is critically important. Integrity is not only an issue of police witness credibility in a court of law; it strikes to the core of the ability to perform essential functions effectively. Peace officers are required to draft truthful and objective reports based upon their investigations and observations. Those reports and an officer's testimony are relied upon to further investigations or provide critical evidence in a variety of hearings[63].

Dishonesty is one of the most dangerous and severe factors in the erosion of public trust. In this case, Respondent lied to investigators about key facts that would prove or disprove the allegation of misconduct for which he was being questioned. Police are not expected to be perfect, but they are necessarily held to a higher standard, particularly when serving in a supervisory capacity. The Law Enforcement Code of Ethics, a code that is established by regulation in California, emphasizes the importance of a peace officer being truthful and reads, in part, "*I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department."*[64]

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[62] *Kolender v. San Diego County Civil Service Commission* (2005) 132 Cal. App. 4th 716.
[63] https://www.law.berkeley.edu/files/Honesty_is_the_Best_Policy.pdf
[64] 11 Cal. Code Regs. § 1013.

Another consideration in this case is the fact that Respondent will likely be placed on a *Brady* List. California Government Code Section 3305.5(e) defines a *Brady* List as, "..any system index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in *Brady v. Maryland* (1963) 373 U.S. 83."[65] Pursuant to *Brady,* the prosecutor must disclose evidence or information that would enable the defense to more effectively impeach the testimony or credibility of government witnesses.

The zero-tolerance policy towards dishonesty is founded on the core principle articulated in *Christal v. Police Commission of the City and County of San Francisco* (1939) 33 Cal.App.2d 564 567[66]:

> *[Peace] officers are the guardians of the peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust reposed in them.*

VI. Supporting Evidence and Documentation

- Attachment A – Respondent's Interview Transcripts – Selected pages from Respondent's First Interview.
- Attachment B – Respondent's Interview Transcripts - Selected pages from Respondent's Second Interview.
- Attachment C – Still photos of Respondent's wristwatch captured from video recordings provided by LASD.
- Attachment D – Call for service report – LASD Incident #:WAL22174-0017.

[65] California Government Code Section 3305.5(e)

[66] https://www.law.berkeley.edu/files/Honesty_is_the_Best_Policy.pdf

- Attachment E – EM Shift In-Service logs – July 11, 2022 and August 18, 2022.
- Attachment F – In-N-Out receipt.
- Attachment G – Respondent's POST profile.
- Attachment H – Copies of LASD policies mentioned in this record.
- Video 1 – "Arcing Taser in Vehicle" – Accessed via Evidence.com
- Video 2 – "Armory Video with Shotgun" - Accessed via Evidence.com
- Video 3 – "Police Takedown Lights" - Accessed via Evidence.com
- Video 4 – "Singing Spanish in Uniform" - Accessed via Evidence.com
- Video 5 – "Armory Video with 40 mm Less Lethal"- Accessed via Evidence.com
- Video 6 – "Armory Showing Shotguns" - Accessed via Evidence.com
- Video 8 – "Inside Watch Sergeant's Office" - Accessed via Evidence.com
- Video 9 – "Showing Weapons in Sergeant's Vehicle" - Accessed via Evidence.com
- Video 10 – "Sergeant Vehicle Inspection" - Accessed via Evidence.com
- Video 11 – "Debriefing a Call for Service" - Accessed via Evidence.com
- Video 12 – "Video In Supervisor Vehicle" - Accessed via Evidence.com
- Video 13 – "IN-N-OUT Discount" - Accessed via Evidence.com
- Video 15 – "Moto Duet" - Accessed via Evidence.com
- Video 17 – "Duet with Lawyer" - Accessed via Evidence.com
- Video 18 – "Reaction to Playground Confrontation" - Accessed via Evidence.com
- Video 22 – "Two Reaction Videos" - Accessed via Evidence.com

VII. Findings

Reasonable grounds exist to submit this case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation pursuant to Penal Code 13510.8.

Sarabia: He's the captain of the station. So sergeant, lieutenant and then obviously the captain.

Sandoval: So is he the highest-ranking member at Walnut Station?

Sarabia: Yes.

Sandoval: I believe you mentioned earlier that you did agree with Captain Tousey's concerns when he initially talked to you. Is that correct? About your video?

Sarabia: Yeah, he made it clear that, I could not show intellectual property, so I did agree with him, yes.

Cary: And you said he made it clear so it was crystal clear?

Sarabia: Yes.

Sandoval: Did you take any corrective action or actions to address Captain Tousey's concerns about your social media account?

Sarabia: Yes.

Sandoval: What actions did you take?

Sarabia: I covered up the patches with, digital stickers and covered up the badge or whatever was intellectual property with digital stickers.

Cary: Can you just explain just for the recording, for the people who, I don't wanna say behind the times, but with social media just what a digital sticker is?

Sandoval: It could be a picture of a, digital badge or maybe a patch, that either says, you know, sergeant or it'll say police and it goes over the, the intellectual property so people cannot see what's behind the, digital sticker.

Cary: So am I safe in saying, like, it can potentially cover or conceal something if you put a digital sticker over something?

Sarabia: Yes.

Sandoval: Did you consider using those stickers before you were talked to by Captain Tousey for any of the videos?

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Sandoval: This is a copy of your calendar. Your work schedule. And this video says July 11th. And based on your calendar, if you can glance at it, on July 11th were you working or were you assigned to work that day? July 11th of 2022.

Sarabia: July 11, 2022.. it shows that I'm a RDO.

Sandoval: And for the record, what's RDO?

Sarabia: It's a regular day off.

Sandoval: Okay, and the previous video that I showed you, was timestamped 7-8. Can you glance at your July calendar again for 2022 and on July 8th were you, working that day?

Sarabia: On July 8th?

Sandoval: Yes.

Sarabia: 2022? It shows that I was the watch sergeant.

Sandoval: Okay. Thank you. Was it your goal in making this video to have your video appear as it represents the department when making and posting your video in uniform?

Sarabia: None of the videos that I've posted in uniform are meant to make people believe that it's an official, LASD video.

Sandoval: How can someone distinguish when you appear in full Class A uniform, if you represent or don't represent the department on your videos?

Sarabia: Well I can't speculate as to, you know, what people are going to assume or what they're going to be able to tell. I mean, the purpose of the video is just to inform, you know, people about the duties of a police officer.

Gibbons: And he did say before it was two, maybe three, times that there's a disclaimer on the site.

Sandoval: Okay.

Cary: Do you have any regrets about posting that video online?

Sarabia: No, I found it to be just.. informative and fun at the same time.

Sandoval: Why did you choose to appear in the full Class A uniform versus doing this outside of the uniform? If you stated that you were off duty.

Sarabia: Again, a lot of the times, depending on what time I get to the station, and I know during maybe when I did the video - I can't really remember what I was thinking at the time - but a lot of times when I get to the station and have got, let's say, 20, 30 minutes before my shift starts, you know, a lot of times I'll record myself doing something, whether it's walking down a hallway, I think- I just walk into the armory and, recorded myself doing a 360 or walking into the armory. But it was never meant to, make people believe that it's an official, sheriff's video.

Sandoval: Can someone assume that you're on duty based on uniform appearance?

Sarabia: People can make all the assumptions they want, sir. I mean, people could assume that I'm off duty, on duty. I have no control over that.

Cary: Do you have any regrets about posting that video and making it available online?

Sarabia: No. Again, sir, I believe it was an informative video at the time. That's why I posted it.

Cary: Okay sir. And if you had it to do all over again, would you do the same thing and post that video? Since you said there's no regrets?

Sarabia: Well, you know, given the fact that, you know, Captain Tousey was upset- or my captain was upset about some of the videos, then of course if I can have a do-over then of course I wouldn't've posted, now that I know that, you know, it upset my captain.

Sandoval: Do you intentionally include the badge in the department logos to increase credibility with your viewers?

Sarabia: No, I would generally post videos and purposely sometimes not show, or kind of try to show an angle that doesn't display, the shoulder patch so they can't tell where I work.

Sandoval: Any safety concerns with showcasing all the weapons that are kept inside the station armory?

Sarabia: I don't believe so.

Sandoval: Is there a station trustees at Walnut Station?

Sarabia: Yes.

Sandoval: Is it- Are your videos public or private on TikTok with regards to this one specifically?

Sarabia: They are public, but trustees don't have access to TikTok or cellphones.

Sandoval: Do trustees get visits from family members at the station?

Sarabia: Yes.

Sandoval: Does he get access to the telephone where they can communicate with the, public, correct?

Sarabia: Correct.

Sandoval: Knowing that they get visits and have telephone access, did that cause any concern for you when you were showcasing the department's weaponry in this video?

Sarabia: No. Everything's under lock. It's heavily secured. If you ever open that door, it is a very heavy door and it's not accessible to just anybody. You would have to [redacted]. So it's extremely secure.

Sandoval: Did you submit this video for editing prior to posting this video on your social media account with SIB?

Sarabia: No.

Sandoval: How about the two previous videos? Did you submit those to SIB for editing prior to posting those videos?

Sarabia: I didn't submit any videos, to SIB, sir.

Sandoval: Okay. Does it appear that you promoted yourself or the department in this video?

Sarabia: The intent was to promote myself, a peace officer, and show my followers, again, part of the process of being a police officer.

Cary: In your opinion, are there any positive aspects of the video that you posted to your followers?

Sarabia: 7-28, okay.

Sandoval: And can you look at your calendar? Hold on; let me finish my other video. And did you pick the title for this video?

Sarabia: I did. (continues video, indecipherable talking; '…give you a discount.' 'Oh okay, I appreciate that, thank you').

Sandoval: Now the video's repeating itself; I paused it at 38 seconds. Tell me what you saw in this video.

Sarabia: It's myself. I'm going through what appears to be an In & Out drive-through.

Sandoval: Okay, and, were you able to tell what the conversation was between you and someone else in this video?

Sarabia: It appears, maybe I'm placing an order, about to get maybe what looked like a flying Dutchman.

Sandoval: Okay and do you recognize the person in the video?

Sarabia: Yes, it's myself.

Cary: Flying Dutchman is food, right?

Sarabia: Yes.

Cary: Okay.

Sandoval: Were you on duty when you recorded this video?

Sarabia: No I was not.

Sandoval: So once again, did you record this video before or after your shift?

Sarabia: Before. So it's not uncommon a lot of times when I get to the station, you know, get ready, especially if I didn't eat the entire day, before I make relief, I will just, you know, grab a black-and-white and go out to In & Out, get me a burger, then go make relief. It did happen before.

Sandoval: Okay, and I think the date on that video says 7-28. Can you look at your calendar and tell me if you were on duty or off duty on 7-28 of 2022?

Sarabia: It looks like I was on duty.

could infer a lot of things. You can say, well it appears that he is, but.. but I'm not, 'cause I purposely do my videos before or after my shift.

Cary: And is that common though, when you are off duty before your shift for you to have the radio on and for you to be in a patrol car like that?

Sarabia: Is it common before or after my shift?

Cary: Before.

Sandoval: Or after.

Cary: When you're actually listening to the radio.

Sandoval: M-hm.

Sarabia: Is it common? No, I mean, it depends on if I decide to get something to eat before I go 10-8 and, you know, what the process will be that I go down to the locker room, I get ready, I go upstairs, haul ass to- I'm sorry, drive to the In & Out, get me something, take it back to the station, provide relief. They go and then I sit down and I eat.

Sandoval: What kind of vehicle do you think you were in when you recorded this video?

Sarabia: I can't really tell. I don't know if it's a, an Explorer; I don't know if it's a Tahoe. I don't know if it's a- I can't really tell.

Sandoval: And again, if you would've been off duty, why didn't you use your personal vehicle to go to the drive-through at In & Out? And place a order for food?

Sarabia: Well the In & Out is directly across the station from, you know, from Walnut Station. So a lot of times, you know, I get to the station, my concern is do I have enough time to get a burger? Depends on how fast I get ready, go downstairs, get ready, suit up, and if I look at the clock and I'm, like, hey I got 20 minutes, then I'll run to In & Out, get something, come back and then provide relief.

Sandoval: Do you think the public who sees this video might not agree with law enforcement receiving discounts at In & Out?

Sarabia: So you're asking me what the perception of the public will be?

Sandoval: And basically in uniform appearance, can anyone tell what department you work for?

Sarabia: No.

Sandoval: And are you trying to represent the department while making this particular video in uniform?

Sarabia: No.

Cary: Do you have any regrets about posting that video online?

Sarabia: Again, after I talked to the captain and he, he showed his discontent, then of course yeah, I- at that point, I said okay, maybe, you know, I should not do that, where I post myself getting a discount because the captain was pretty upset about that.

Sandoval: Yes.

Cary: And did you agree with his discontent?

Sarabia: I agree with it because of, you know, how he explained it. Again, you know, cannot show intellectual property, especially, you know, because we have policies in place about receiving gratuities, as you mentioned.

Cary: And at that time, when you recorded that video, did you think you were violating any department policies?

Sarabia: No.

Sandoval: (plays video clip #5- music, no talking) Are you able to see the date on this video?

Sarabia: It appears that it says 08-03.

Sandoval: And can you take a look at your August calendar and tell me if you were on or off duty on August 3rd 2022.

Sarabia: 08--

Sandoval: No, 8-3 22.

Sarabia: Oh 8-3. Yeah, it appears that I was assigned 290Sam.

Sandoval: Okay. (continues video #5). Alright, so for that video, can you tell me what you saw on the video?

Sarabia: It looked like there's a video of me singing a, you know, to a Mexican song and I'm using the radio as a mic.

Sandoval: Okay. Did you recognize the person in the video?

Sarabia: Yes, it's myself.

Sandoval: Okay, were you on duty when you recorded that video?

Sarabia: No I was not.

Sandoval: Again, why did you make this video?

Sarabia: It was a trend at the time. It was a catchy song. A lot of people were doing it. I thought it would be funny if I did it.

Sandoval: Were your sleeves rolled up in this video and your tattoos visible while you were in uniform?

Sarabia: Yes.

Sandoval: Okay. What's your understanding of department policy related to tattoos while in uniform?

Sarabia: It's- it's my belief that the department policy states that if you're on duty, then you should cover your tattoos.

Sandoval: If you're on duty? Not if you're just in uniform?

Sarabia: It's my understanding that if you're, on duty, obviously in uniform.

Sandoval: Okay. Does it appear that you were representing the department in that video?

Sarabia: No it does not appear so.

Sandoval: And again I'm going to ask you, this video, why do you keep choosing to appear in the Class A uniform versus out of uniform if you're stating that you're off duty?

Sarabia: Yeah, for the same reason I stated before, it's, you know, a lot of those videos are spur-of-the-time [*sic*], whether or not I've got, you know, time

Tousey spoke to me and, you know, directed me to take 'em down, then I did.

Sandoval: So at that time you thought it was appropriate, when you made that video.

Sarabia: Yeah, I didn't see anything inappropriate with the video.

Sandoval: And does it appear that you promoted yourself or the department in this video, based on your appearance- your uniform appearance?

Sarabia: Every single video that I posted, including this one, it's to promote myself as a police officer, not affiliated to any agency.

Sandoval: This video, can you tell me the date that appears on this video?

Sarabia: That video appears to be 06-25.

Sandoval: Okay and can you look in your calendar for June of 2022 and tell me if you were on or off duty that day?

Sarabia: June 25th?

Sandoval: Yes.

Sarabia: It appears that I was on duty.

Sandoval: (plays video clip #7: "What's going on guys? It is Saturday morning. It is 3:27 in the morning on June 25th and I am tired. Today is my kick-off. That means I get the next two days off and time to get a few hours. I've got, let's see, I'm off at 5 so I've still got about an hour and a half before I get to go home and relax. I'll go home and, take a little nap, wake up and go on about my day. I think I'll make it a nice little barbecue today, maybe hit the pool, hang out with the kiddos. I don't know; we'll see. But right now I'm just eating some snacks.") Can you tell me what you see in this video?

Sarabia: Yeah, it's myself and I appear to be talking to the camera.

Sandoval: Based on the video- on your knowledge of this video, can you tell me where this video was recorded?

Sarabia: It looks like, based on the setup, it looks like I was inside a Tahoe.

Sandoval: And what kind of vehicle- I'm sorry, is this a supervisor vehicle?

Sarabia: Yes.

Sandoval: Did you recognize the person in the vehicle?

Sarabia: It's myself.

Sandoval: Were you on duty when you recorded this video?

Sarabia: I think that was at the end of my shift when I recorded that video.

Sandoval: Were you on duty or off duty when you recorded this video?

Sarabia: I was off duty.

Sandoval: Okay. So according to the video and the audio, you said it's 3 AM. What's your shift for early mornings at Walnut Station?

Sarabia: So, the reason why I said it's 3 AM - it's not necessarily because it was 3 AM; I was trying to portray to my followers that it was 3 AM and I was tired. That was actually at the end of my shift. I was getting ready to unload my stuff and I decided to make that video. It's not common that I would say, Oh hey guys it's, you know, 2 in the morning, I'm tired, I just get off call - and I could be sitting in my garage or sitting in the parking lot. It's just something that, you know, I've done in the past.

Cary: What was your intent to deceive your followers by giving them the incorrect time?

Sarabia: It's catchy. A lot of the followers, you know, they want to see officers on duty or going to 10-8. Since I know I can't go 10-8 and show myself, I will sometimes pretend that I'm on duty when I'm not on duty.

Sandoval: What are the hours for an early morning sergeant- Or yourself? What are your hours for your shift at Walnut Station?

Sarabia: 21 to 05.

Sandoval: Okay, and for- for example, if Captain Tousey saw this video, how would he know if you're on or off duty if you're inferring that it's 3 AM and you're almost gonna end your shift. If he sees that video, can he assume that you're on duty?

Gibbons: Well he could ask him. Instead of just assuming.

Sandoval: Right, but if he first--

Gibbons: Like you just assuming he's trying to deceive anybody. He's not trying to deceive anybody.

Sandoval: Right. If Captain Tousey sees this video, on a Saturday morning and you're off and he sees that video, can he perceive that you're on duty based on the recording that you provided on your TikTok account?

Sarabia: Again, he could- I mean, I don't know what he's going to perceive by looking at it, I mean--

Sandoval: Well if he looks at his calendar and it says June 25th and you're on duty, and the video you say, Hey guys I have- it's 3:30, I'm about to get off shift, I have an hour and a half left to go, what are you infer- you yourself, what are you inferring to your viewers?

Sarabia: So, obviously when I recorded this video I'm not, you know, I'm not selling that video to Captain Tousey so I don't know- 'cause you said what's he going to infer? I mean, I don't know what he's going to infer.

Sandoval: What are you inferring when you say, It's 3:30, I have an hour left to my shift. What are you inferring to your viewers, in general, that have access to your public account?

Sarabia: I think what I was trying to infer that it's, like, Hey I am tired, I'm about to get out and I was talking about, you know, what I was gonna do on my day, or on that day later on on that day. I think I mentioned something about the pool or barbecue.

Sandoval: So even after watching this video, your stance is that it doesn't appear you're on duty? Even after watching this video?

Sarabia: A lot of the videos that I post, I will make it seem like I'm on duty, to my followers because a lot of my followers want to see me on duty. And I get a lot of requests about, Hey man, when are you gonna show us you going on duty? You are going 10-8? I know I can't do that on duty so sometimes I will pretend like I'm on duty when I really am not. I've done videos out of my garage pretending I'm on duty because some of my viewers want to see that. And because I don't want to violate policies and I'll make it seem like I'm on duty when I know I'm not.

Cary: But don't you think that puts you in, potential risk for the department? When they see that?

Cary: Okay.

Sandoval: Again, are you making- are you appearing in these videos in full Class A uniform to make your videos appear official or endorsed by the department?

Sarabia: That is not my intent.

Sandoval: Can the public that sees this video determine what department you work for?

Sarabia: I don't believe so.

Sandoval: Do you promote yourself or the department in that video?

Sarabia: I promote myself.

Sandoval: (plays video clip #8 - no talk, music Remember the Name) Can you see a timestamp on this video? On the bottom left corner?

Sarabia: It looks like… the posted video dated 7-30.

Sandoval: And can you look at your calendar for July 30th and tell me if you were on or off duty?

Sarabia: It looks like I was on duty.

Sandoval: (replays video #8) Can you tell what you saw on this video?

Sarabia: It looks like it's myself, again at the armory and I'm showing what appears to be a less-lethal weapon.

Sandoval: Did you recognize the person on the video?

Sarabia: It's myself.

Sandoval: Were you on duty when you recorded this video?

Sarabia: No, I was off duty.

Sandoval: Were your shoulder patches and badge visible in this video?

Sarabia: The patch was blurry, but the badge was definitely visible. Shoulder patches I can't recall if they were visible or not.

Sarabia: Again, my intent is not to portray that, but it- I can't, I can't tell you what other people are going to assume or believe.

Sandoval: Do you recall if you recorded this video before your shift, after your shift or on duty?

Sarabia: None of the videos that I recorded are on duty. A lot of the videos I think like this one might've been part of the other ones. I think I recorded, you know, multiple videos on that one instant, and then I'll break down the videos into multiple videos and then I'll post 'em throughout the time. I mean, I think I might've draft that for a couple of weeks and then ultimately I ended up posting it. Keep in mind that the posted date is not necessarily the date that it got recorded. I can record something on one day, wait multiple weeks, break it down into multiple videos and then post them.

Sandoval: So the timestamp reflects the day you posted it, not the day you created it.

Sarabia: Exactly.

Sandoval: Okay. And again, I ask you, why did you choose to record this video, if you were off duty, in full Class A uniform, for your personal TikTok account?

Sarabia: It was.. again, a video that I posted, showing the 40, mm, and I happened to be, in uniform when I posted it. There was no specific reason as to why I did it.

Sandoval: Do you appear in Class A uniform to make your videos appear that these videos are official?

Sarabia: That is not my intent, no.

Sandoval: Do you think that anyone who sees this video can assume that department members are trigger happy since we have several videos where we're displaying, weaponry, whether lethal or nonlethal?

Sarabia: Yeah I won't speculate as to what someone else might assume.

Sandoval: Well, do you think someone can infer that we're trigger happy based on several TikTok videos you posted on your account showing lethal and less-lethal weapons?

Sarabia: Yeah, the title of the video says 15000 Volts, Please Fight Us In Court, Not On the Street. It's meant as a message to say, you know, please don't fight police officers, you know, just wait 'til you go to court and then you can state your case in court.

Sandoval: Did you pick the title of the video?

Sarabia: I did.

Sandoval: Does it appear that you represent the department in this video?

Sarabia: No.

Sandoval: Why did you choose to appear in full Class A uniform in this video?

Sarabia: There was no specific reason. I can only assume that, you know, I did it just as a reaction video, just like multiple of my other videos. There's no logic behind it; it's just me doing a reaction video.

Sandoval: And I think you said you were- you said you were off duty for this video, right?

Sarabia: For all the videos.

Sandoval: All the videos, okay. Is it common for you to appear off duty on the videos for TikTok in full Class A uniform with a radio attached to your uniform?

Sarabia: Is it.. common?

Sandoval: Yes, is that a common theme for your videos?

Sarabia: Yeah I'll do that every now and again. You know, sometimes, you know, I've done that again out of my garage too, where I put on a radio, maybe a vest or maybe a, you know, Class A shirt. I'll try to cover, you know, the intellectual property then I'll do some sort of reaction video.

Cary: And sir, with that video with the taser, do you have your own personal taser like that or that taser that we saw that you were employing, was that a.. Walnut Station taser?

Sarabia: I don't--

Cary: We can go back and play it if you need to see the tape again.

Sarabia: I can't remember exactly where it was located or where it was recorded. I know it's in a parking lot. It looks like a dark parking lot.

Sandoval: Would it happen to be a parking lot to a church in the RD for Walnut Station?

Sarabia: Very possible.

Sandoval: And can you look at your calendar for August 4th and can you tell me if you were on or off duty on August 4th?

Sarabia: August 4th, it appears that I am on duty.

Sandoval: Is that a parking lot to a Baptist church?

Sarabia: I could not tell you that based on the video.

Sandoval: Not off the video; off your recollection of recording the video.

Sarabia: As I mentioned, I don't recall where I recorded the video. I record videos at different locations, different times. So that specific one, I don't know if it was a Target parking lot, if it was the In & Out parking lot across the street. Obviously 'cause I work night it's actually dark, so. But more specifically I can't tell you.

Sandoval: Did you recognize the voice in the video?

Sarabia: It's my voice.

Sandoval: Were you on duty when you recorded this video?

Sarabia: No I was not.

Sandoval: Okay. Can you tell me what image you were able to see on the MDC?

Sarabia: The MDC show LA County Sheriff.

Sandoval: Okay. Based on that, can someone viewing your video tell what department you work for?

Sarabia: Based on that video, yes.

Sandoval: Okay. Can you explain the meaning of this video?

Sandoval: We have two more videos and we're done. (plays video clip #11 - talking: "Ahh I see _____ moving in. Ahhh!" Car driving. "Oh I thought he- I thought you pulled in front of me and turned your lights on, but is he pulling me over? Oh bro, okay, alright. It was like come on. I didn't want any trouble, bro!") Can you tell me what you saw in that video?

Sarabia: Yeah it appears that I'm doing a duet on a different agency, or a duet- a reaction video, on TikTok.

Sandoval: Based on the video, can you tell me where this video was recorded?

Sarabia: It appears that- the background appears to be the watch commander's office.

Sandoval: Do you recognize anyone in that video?

Sarabia: Yeah, myself.

Sandoval: Were you on duty when you recorded this video?

Sarabia: I was not.

Sandoval: Can you explain the meaning of that video?

Sarabia: The meaning of the video is essentially just that, you know, sometimes people do something and they feel guilty. He saw a police officer. He automatically assumed that he was being pulled over because there was a police officer that was making a left turn and essentially was finding the fact that he pulled himself over, and that was just a reaction to that video.

Sandoval: What kind of uniform are you wearing in that video?

Sarabia: It looks like a Class A uniform.

Sandoval: And you base that on what?

Sarabia: The fact that I know what a Class A uniform looks like.

Sandoval: Are you basing it on shoulder patches and badge that is on the uniform?

Sarabia: Yeah, I mean, there's a badge on the video, obviously a metal badge, and that's what we use on Class A uniforms.

Sandoval: Okay. And were the shoulder patches or badge visible in that video?

Sarabia: No they were not. You can see the patches, you can see the badge, but you cannot clearly read what is on the badge or the patches.

Cary: And sir, I just had a quick question for you. I know you just said this is a, like a duet video with another agency. Do you ever contact those other agencies and get their approval before you do the reaction video like we just saw from that agency?

Sarabia: No.

Cary: Okay, never?

Sarabia: Never.

Sandoval: Why did you make this video?

Sarabia: I thought it was funny, that it was a funny video.

Sandoval: Did you pick the title for the video?

Sarabia: Yes.

Sandoval: Does it appear that you were representing the department in this video?

Sarabia: No.

Sandoval: And again, why did you appear in this video in full Class A uniform if you're off duty versus being out of uniform?

Sarabia: Again, a lot of the videos, you know, I would either do 'em at the beginning or the end of the shift. That video, I think I might've done it after- at the end of my shift. It's just a quick little video that I decided to take before going downstairs to the locker room.

Sandoval: Right, but we keep appearing again in full Class A uniform and.. I wanna show you the date on this. (replays video #11 - talking). There's no date on this. You remember the date you posted that?

Sarabia: I do not.

Sandoval: Okay.

Cary: Have you worked in that role before at Walnut Station on early morning or any other shifts as the watch commander?

Sarabia: Multiple times, yeah.

Cary: Multiple times.

Sarabia: Multiple times.

Sandoval: Are you appearing in full Class A uniform to make your videos appear official and endorsed by the department?

Sarabia: No.

Cary: Were you ever concerned that the other agency that are in some of your duet videos would have any issues or concerns with the video that you're posting?

Sarabia: No. A lot of those videos.. surface the internet once they go viral, whether someone reports a video, once it's posted on the internet, it's for everyone to kinda see and do reactions, whatever, so I don't see that they would have an issue with that.

Sandoval: Can the public who sees your video here determine what department you work for based on uniform appearance?

Sarabia: No.

Sandoval: Are your tattoos visible in this video?

Sarabia: Yes.

Sandoval: You know what the department policy is related to department members showing their tattoos while on duty.

Sarabia: Right. You cannot display your tattoos while on duty.

Sandoval: Can someone.. Again, department members that I'm talking about, other deputies that might see your TikTok videos, can it appear to them that you're on duty when recording this video?

Gibbons: You know you've asked him this 25 times now.

Sandoval: I know and we keep- It's a different video, so I've gotta ask it again because--

Sarabia-Medina: I have, yes.

Sandoval-Mendoza: You know what? Can I just get you to initial this part, yeah. The picture that we covered earlier, initial and date it, please. Have you ever gone to the station on a day off to record a TikTok video? Walnut Station to record a TikTok video?

Sarabia-Medina: No.

Sandoval-Mendoza: No. For your -- on your transcript, Page 52, I had asked you about monetary compensation. I know Miss Gibbons had objected to that during our first interview stating you couldn't be asked any questions related to financial information. Was that under Government Code 3308, Miss Gibbons?

Gibbons: Yes.

Sandoval-Mendoza: I'm gonna go ahead and ask you some financial information today as it pertains to the department's belief that you had outside employment and you didn't report this employment to the department and, therefore, the scope of the investigation entails some questions regarding financials from TikTok to you.

Gibbons: Okay, that's still a violation of the Peace Officers Bill of Rights. That is not an exception under the statute. So -- and you're, again, violating his rights. I asked you at the beginning if there was any other allegation and now you're telling us -- before you said no. Now you're telling us that there is an allegation that he didn't properly report outside income.

Sandoval-Mendoza: Oh, that was brought up during --

Gibbons: That is a --

Sandoval-Mendoza: -- during first interview, ma'am.

Gibbons: That is not an allegation either then or now that is listed on the form that you are required to tell him in advance. And if you want to violate his rights, there's nothing I can do to stop you, but I'm gonna take some further action later on down the road.

Sandoval-Mendoza: Your objection has been noted for the record.

Gibbons: And I assume you're ordering him directly to answer those questions?

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Sandoval-Mendoza: Would you have a record of that message when it was posted on your live stream?

Sarabia-Medina: No, because it was during a live stream and people just come in and comment.

Cary: And did you report that potential fraudulent activity to TikTok at all?

Sarabia-Medina: I did not only because I've heard of people reporting massively and nothing ever happens.

Cary: Okay.

Sarabia-Medina: So people that have, you know, massive following, they'll get duplicated three, four times. They'll start ripping people off and then, you know, they'll report them and, apparently, TikTok doesn't do anything about it unless you're a verify user with a checkmark then they'll pay attention to it.

Sandoval-Mendoza: On Page 47 for -- there was a shotgun video that was posted on August 12. You mentioned you believed you were off duty when you recorded the video. It -- was there a reason why you weren't sure if you were on or off duty? You mentioned you believed you were off duty.

Sarabia-Medina: I know when I recorded a video at the armory prior to my shift and it must have been a few minutes prior to I remember getting there kind of early, went to the armory, shot the video. And then I -- I went ten-eight or started doing briefing or whatever I did that day.

Sandoval-Mendoza: So you're saying you are sure you were off duty?

Sarabia-Medina: Yeah, pretty confident I was --

Sandoval-Mendoza: Okay.

Sarabia-Medina: -- off duty.

Sandoval-Mendoza: For the video that was -- that went viral and I keep getting confused. Was that in the watch sergeant's office or the watch commander's office?

Sarabia-Medina: Watch commander's.

Sandoval-Mendoza: The watch commander's, okay. And you said you recorded that video also off duty. Was anyone else in that office when you recorded that video?

Sarabia-Medina: No.

Sandoval-Mendoza: And you work an early morning shift; is that correct?

Sarabia-Medina: That was correct.

Sandoval-Mendoza: So if you're recording a video prior to your shift, where is the p.m.'s watch commander when you are recording this video?

Sarabia-Medina: Where is the p.m. watch commander?

Sandoval-Mendoza: Right.

Sarabia-Medina: Well, I start at 21 so when I get there, the p.m. watch commander would have taken off.

Sandoval-Mendoza: So do you know -- what kind of -- what time do you -- would you say you normally show up to make your relief for your partners for the p.m. watch commander?

Sarabia-Medina: It varies. It could be 10 minutes before, give or take.

Sandoval-Mendoza: So if I understand you correctly you believe you made relief that day and the p.m.'s watch commander left and then you recorded your video?

Sarabia-Medina: No. That day I think I recorded it at the end of my shift not at the beginning because I remember I looked kind of tired. I was about to leave. Relief showed up and I was already relieved and then I -- I remember I recorded the video. But it was -- it was at the end of my shift.

Sandoval-Mendoza: And you mentioned "relief showed up." So I'm assuming it was a a.m.'s watch commander that relieved you?

Sarabia-Medina: Correct.

Sandoval-Mendoza: And tell me how -- how did that relief go for you that day when the a.m.'s watch commander showed up.

Sarabia-Medina: On that specific day?

Sandoval-Mendoza: On that specific day.

Sarabia-Medina: What's the date on that video again? It was -- are you talking about August of 2022?

Sarabia-Medina: It looks like on Saturday, July 9th, 2022, I was assigned to 290 Sam.

Sandoval-Mendoza: And what are the -- is that -- are you out in the field or in the station based on your assignment for that day?

Sarabia-Medina: Field operations.

Sandoval-Mendoza: And I'm gonna show you the sign-in sheet for that same day for July 9th. Does your name appear on the sign-in sheet?

Sarabia-Medina: Yes.

Sandoval-Mendoza: And what are the times next to your name where your signature is?

Sarabia-Medina: Twenty-one to zero five.

Sandoval-Mendoza: And that's your typical workday, right, 21 to zero five?

Sarabia-Medina: Yes.

Sandoval-Mendoza: And I'm gonna show you a log-on, a unit history report for your unit for that day.

Sarabia-Medina: Okay.

Sandoval-Mendoza: Can you tell me what time appears on your log-on sheet for that day? What time did you log on?

Sarabia-Medina: 2124.

Sandoval-Mendoza: 2124 hours.

Sarabia-Medina: Uh-huh.

Sandoval-Mendoza: And that's a short time after your start -- your start time, correct?

Sarabia-Medina: Correct.

Sandoval-Mendoza: This is also a Deputy Daily Worksheet for the same day.

Sarabia-Medina: Okay.

Sandoval-Mendoza: Are the hours on this timesheet that are -- that are reflected on the timesheet, are they true and accurate to the best of your recollection?

Sarabia-Medina: Yes.

Sandoval-Mendoza: Can you provide any explanation as to why your watch and the radio traffic indicate that on July 8th, 2022, you were on duty when you recorded that video?

Gibbons: I think he's already given you all the explanations he can. He already told you he can't explain it any further than what he told ya.

Sandoval-Mendoza: Is this -- is there -- I'm gonna order you to answer the question. Can you provide an explanation as to why the radio traffic and your watch indicate that you're on duty for that day?

Sarabia-Medina: The radio traffic indicates that there was a call of a 242 and my watch simply indicates the time. Whatever implications, you know, you want to get from that it's entirely up to you.

Sandoval-Mendoza: I'm not trying to implicate anything. I'm asking you if you can provide an explanation, any further explanation that we've already discussed as to why the radio traffic and your watch seem to indicate that you're on duty based on your log-on time, which was 2124 hours?

Sarabia-Medina: I mean, same explanation. If I record, you know, some audio at 3:00 in the morning and I play it as a background. You might say, well, that's audio. It's 3:00 in the morning, you were on duty. Well, I could have recorded the video, you know, that morning or that, you know, that evening or whatever. So we got the -- it didn't necessarily -- I don't believe it necessarily clears that I was on duty; that's my opinion.

Sandoval-Mendoza: So it's still your standing or your -- your statement today that none of your videos were recorded on duty even after what I just showed you?

Sarabia-Medina: Yeah, because my -- my start time is between one, again, if I start recording something at 2058, 2059 and it's my belief that I'm off duty.

Sandoval-Mendoza: Right, but based on your watch it looks like you're recording it at 2130 hours that day. At the bare minimum, 2031 hours. So it's not --

Sarabia-Medina: Yeah, but how --

Sandoval-Mendoza: -- an indication that you were off duty, it's an indication that --

Sarabia-Medina: -- how --

Sandoval-Mendoza: -- you're on duty.

required to tell us that before you start asking him questions. So you can play dumb all you want but you are violating his rights.

Sandoval-Mendoza: Mr. Sarabia, actually, I do have a question for you. That MDC picture with the department's name on it, during the first interview, I believe you mentioned you don't recall where that video was recorded, correct?

Sarabia-Medina: Correct.

Sandoval-Mendoza: I'm gonna show you a picture here. This is a church in Walnut's reporting district and the name of the church is Jesus Christ of Latter Day Saints on Marcon Drive. Is that sound familiar? Am I pronouncing that street correctly in Walnut?

Sarabia-Medina: Sure, yeah, it's -- it's --

Sandoval-Mendoza: Do you recognize this church and --

Sarabia-Medina: I think I've seen that church, yeah.

Sandoval-Mendoza: -- okay. Have you ever recorded any videos at this parking lot to the church?

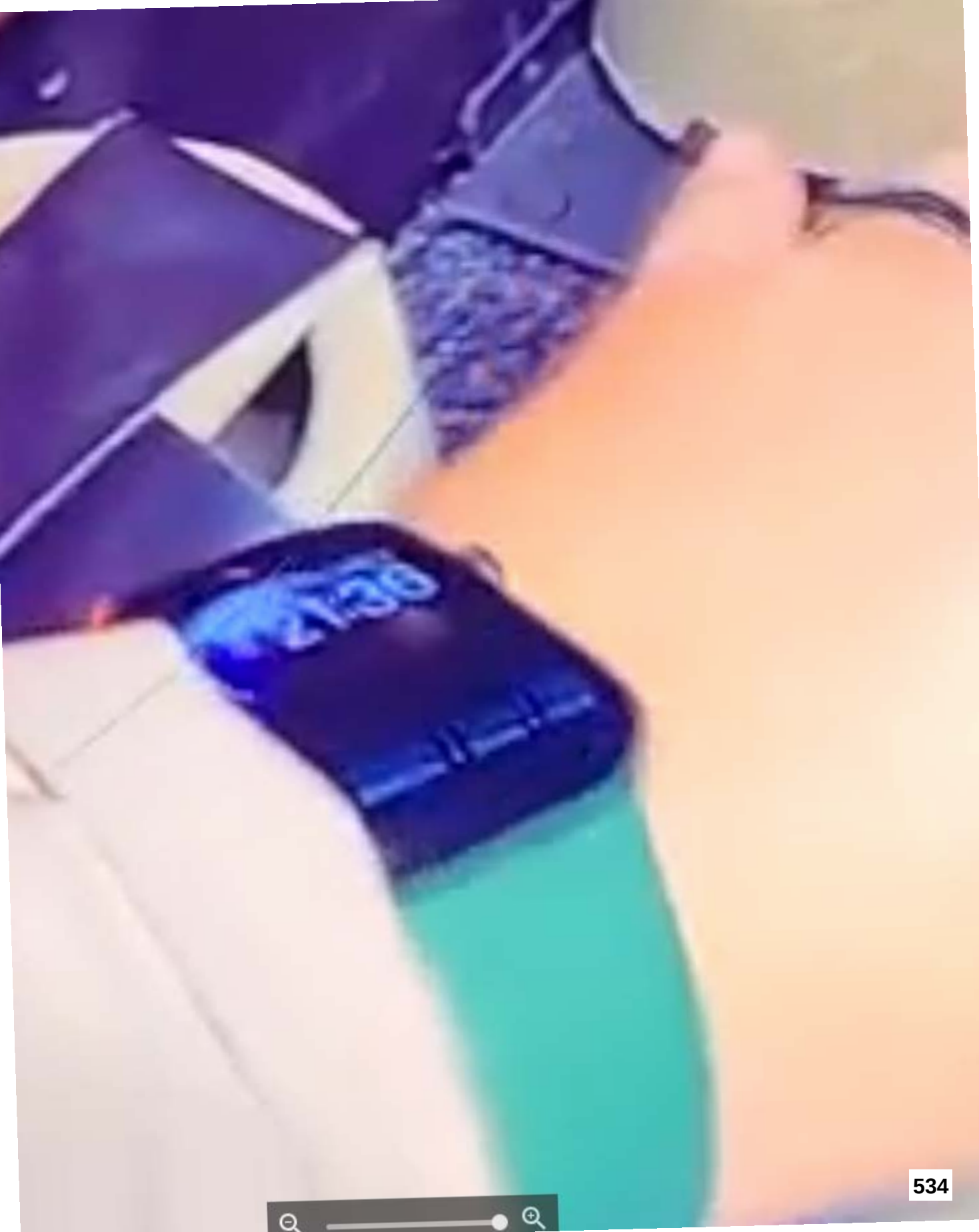
Sarabia-Medina: I don't remember recording any videos in this parking lot, to be honest with you.

Sandoval-Mendoza: Those are all the questions I had for you. All right. If you have nothing else to add to this investigation, then we're gonna go off the record. The time is 1211 hours.

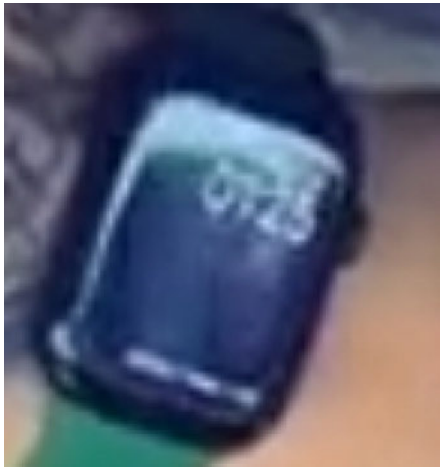
LO
Cron & Associates Transcription 714-573-7172

LASD-000439 RELEASE DATE: 12/11/2023

ATTACHMENT "C"




Police





ATTACHMENT "D"

Report Date: 01/02/24

INCIDENT HISTORY REPORT
WALNUT

Station: WAL Incident Date:06/23/22 Tag #:17 Incident #:WAL22174-0017

/0205 ENTRY (440739) INCIDENT, [redacted] DB,P,415F,918,,,,,, [redacted] [redacted] IS SCHITZO,,SET CLOTHES ON,FIRE IN GARAGE,,SON [redacted] BANGING ON DOORS,,,BOTH DPS REFUSING TO LV,,,,,WAL,,,,,WAL01

/0205 ASSIGN/B (440739) 292K5/E #639908 MARQUEZ

/0205 ASSIST/B (440739) 292K2/E #465510 MOORE

/0205 ASSIST/B (440739) 292K3/E #485025 REYES

/0205 ASSIST/B (440739) 290S/E #525113 SARABIA MEDINA

/0205* ACK (525113) 290S/E <000>

/0205* ENR (525113) 290S/E <000>

/0205* ACK (639908) 292K5/E <000>

/0205* ENR (639908) 292K5/E <000>

/0205* ACK (485025) 292K3/E <000>

/0205* ENR (485025) 292K3/E <000>

/0205* ACK (465510) 292K2/E <000>

/0207 CHGRMK5 (440739) BOTH DPS REFUSING TO LV,,->BOTH DPS REFUSING TO LV,, *UD*

/0207 CHGRMK6 (440739) ->NO WPNS

/0207 REDISP/B (440739)

/0208* ENR (465510) 292K2/E <000>

/0212* 10/97 (639908) 292K5/E <000>

/0213* 10/97 (485025) 292K3/E <000>

/0213* 10/97 (465510) 292K2/E <000>

/0215* 10/97 (525113) 290S/E <000>

/0305* 10/15 (639908) 292K5/E <000>

/0308* 10/98 (525113) 290S/E <000>

/0328* 10/98 (465510) 292K2/E <000>

/0350* 10/98 (485025) 292K3/E <000>

/0352* CLEAR (485025) 292K3/E,,,780,,,,,,,ASSISTED 292K5 AS NEEDED RE:,415F/918,SEE HER CLEARANCE FOR F,URTHER,,,,,,,

ATTACHMENT "E"

EM Shift In-service, Walnut/Diamond Bar

Thursday, August 18, 2022

DESK OPERATIONS		
W/C	2100-0500	*SARABIA MEDINA, I.*
W/SGT	2100-0500	*OT REDUCTION*
W/DEP	2200-0600	[redacted] 8.0T
DISPATCHER	2200-0600	[redacted]
COMP 1	2200-0600	[redacted]
COMP 2	2200-0600	
COMP 3	2200-0600	
JAILER	2200-0600	
JAILER 2	2000-0600	[redacted]

FIELD SERGEANTS UNIT	VEHICLE	HOURS		NAME	CODES
290S	SH7670	2100-0500		[redacted]	Z L
291S		2100-0500			
292S	SH8438	2100-0500			

CITY OF WALNUT UNIT	VEHICLE	HOURS		NAME	CODES
291		2300-0700			
291K1	SH6120	2300-0700	R	[redacted]	Z L
291K2		2200-0600			
291K3	SH7729	2200-0600		[redacted] 8.0T	TW

CITY OF DIAMOND BAR UNIT	VEHICLE	HOURS		NAME	CODES
292K1	SH8306	2200-0600		[redacted] 8.0T	Z M
292K2	SH6203	2300-0700		[redacted]	M T
292K3	SH7919	2200-0600		[redacted] 0100 Start 8.0T	M
292K5		2300-0700			

ROWLAND HEIGHTS UNIT	VEHICLE	HOURS		NAME	CODES
293	SH8272	2200-0600		[redacted]	Z MD P W
				[redacted]	
293B	SH7803	2200-0600		[redacted]	B L
293D		2300-0700	R	****DARK****	
				****DARK****	
293K1	SH1270	2200-0600		[redacted]	
293K3		2300-0700			
293K4		2200-0600			
293K5		2300-0700			
293K6		2300-0700			
293B1	SH7811	VARIABLE		[redacted]	Z M P
				[redacted]	Z MDL TW
293U2		2300-0700			
295		2300-0700			

SPECIAL ASSIGNMENT		
SPE.A	VARIABLE	

SECRETARIES UNIT	VEHICLE	HOURS		NAME	CODES
SECRE		1600-0200			
SECRE		2000-0600			

LEGEND: R=RESPONSE TEAM; A=AR-15; Z=ARWEN/SL6/SL1/Duce; B=Bi-Lingual*; M=Crisis Intervention Trained; D=Desk; L=Live Scan; P=PIT Trained Deputy*; T=Traffic; W=WMD;

ADULT DAY: 10-17-22 08:00 AM ADULT NIGHT: JUVENILE TRAFFIC: 10-17-22 08:00 AM MISDEMEANOR: 10-17-22 08:00 AM

WATCH COMMANDER APPROVING TIME COPY:

LASD-000457 RELEASE DATE: 12/11/2023

Today's Julian Date: 22230

ATTACHMENT "F"

IN-N-OUT Burger



Eat-In

164

2 FLYING DUTCHMAN	**$7.10**
Police Discount	-$3.55
CONTACTLESS	$3.89
DRIVE-Eat In	$3.55
Tax	$0.34
Amount Due	$3.89
Tender CC	$3.89

Cashier: [redacted] Transaction # 4749
07/27/2022 11:48:28 PM
Store #199 City Of Industry POS6

POST PROFILE NAME:

SARABIAMEDINA, IVAN D.

CALIFORNIA COMMISSION ON **POST**

Certification Status: Active

AKA: SARABIA-MEDINA, IVAN D

DATE: 01/05/2024

PERSONAL IDENTIFICATION

POST I.D.	Agency	Birth Date	Gender	Race/Ethnicity
C12-A96		[redacted]	[redacted]	[redacted]

CERTIFICATES AWARDED

Cert No.	Type	Awarded	Education	T	T+	Comments
132572	B	08/11/2008	[redacted]			
123444	I	08/13/2013				
115908	A	11/14/2017				
88205	S	10/15/2018				

Total Number of Certificates: 4

EMPLOYMENT

Hired From	To	R*	Rank	Rank Date	Agency	Agency Name	F/P	P/U	Seas
07/13/2007	10/16/2016	7	DPTY	07/13/2007	19000	LOS ANGELES CO SD	F	P	
07/13/2007	11/04/2023	8	SGT	10/16/2016	19000	LOS ANGELES CO SD	F	P	

***Reason for Separation: 7 = Promotion/Demotion, 8 = Involuntary Separation**

POST CERTIFIED TRAINING

Comp Date	Cat	CCN	Hrs	Rmb	Cmp	Agency	School	*	Course Name
06/12/2007	K	4890-23272-06-126	8		Y	19000	M TOLERNCE		CULT. DIV.-TOOLS FOR TOLERANCE (MOT ONLY)
07/13/2007	A	1820-00100-06-007	720	R	Y	19000	LASD		BASIC COURSE-INTENSIVE
04/30/2010	C	1820-00310-09-007	80	X	Y	19000	LASD		ADVANCED OFFICER COURSE (FTC)
05/03/2010	K	1820-21779-09-051	4		Y	19000	LASD		CPR REFRESHER
09/15/2011	K	9180-25554-11-077	2	X	Y	19000	POST	*	COMMUNICATION: KEEPING YOUR EDGE (WEB)
09/10/2013	K	1820-20147-13-001	8		Y	19000	LASD		MACTAC BASIC
01/08/2014	K	1820-22386-13-006	8	X	Y	19000	LASD		DECISION-MAKING/BASIC
01/21/2015	K	4890-23272-14-044	8		Y	19000	M TOLERNCE		CULT. DIV.-TOOLS FOR TOLERANCE (MOT ONLY)
03/18/2015	K	1820-23161-14-025	16	X	Y	19000	LASD		GANGS-CAL GANG COMPUTER SYSTEM
03/27/2015	K	1820-23220-14-002	40	X	Y	19000	LASD		ETHNIC RELATIONS AND GANGS
04/21/2015	K	1820-32075-14-018	16	X	N	19000	LASD		FIREARMS/TACTICAL RIFLE
08/17/2015	K	1820-31810-15-018	8		Y	19000	LASD	*	FIREARMS/SEMI-AUTO PISTOL
08/26/2015	K	1820-21055-15-019	8		Y	19000	LASD		FIREARMS/LASER TRAINING UPDATE
11/04/2016	D	1820-00400-16-002	80		Y	19000	LASD		SUPERVISORY COURSE
03/11/2021	K	1820-29504-20-080	2		Y	19000	LASD	*	TACCOM(PSP)
03/11/2021	K	1820-21055-20-102	6	X	Y	19000	LASD		FIREARMS/LASER TRAINING UPDATE
03/16/2021	K	1820-29501-20-083	8		Y	19000	LASD	*	FIREARM(PSP)
04/28/2021	K	1820-29515-20-094	8	X	Y	19000	LASD	*	ARSTCTL/DRVTNG(PSP)
02/09/2022	K	1820-29580-21-055	4	X	Y	19000	LASD	*	USE OF FORCE (PSP)
04/20/2022	K	1820-21797-21-046	8		Y	19000	LASD		FIRST AID/CPR/AED REFRESHER
08/10/2022	K	9180-25595-22-041	4	X	Y	19000	POST		BEYOND BIAS:RACIAL & ID PROFILING UPD- SELF PACED
01/03/2023	K	1820-29582-22-106	8	X	Y	19000	LASD	*	ARSTCTL/USE OF FORCE (PSP)
01/10/2023	K	1820-29540-22-055	2	X	Y	19000	LASD	*	STRATEGIC COMMUNICATIONS (PSP)
01/10/2023	K	1820-21055-22-071	6	X	Y	19000	LASD		FIREARMS/LASER TRAINING UPDATE
01/17/2023	K	1820-29501-22-065	8		Y	19000	LASD	*	FIREARM(PSP)

POST PROFILE NAME:

SARABIAMEDINA, IVAN D.

CALIFORNIA COMMISSION ON **POST**

Certification Status: Active

AKA: SARABIA-MEDINA, IVAN D

DATE: 01/05/2024

POST CERTIFIED TRAINING *continued*

Comp Date	Cat	CCN	Hrs	Rmb	Cmp	Agency	School	*	Course Name
02/02/2023	K	1820-21135-22-060	8		Y	19000	LASD	*	DRIVER AWARENESS UPDATE

***Meets Perishable Skills**

FOOTNOTES

NO FOOTNOTE ON FILE.

PLEASE REFER TO THE ENCLOSED EXPLANATION SHEET FOR ADDITIONAL INFORMATION.

COMMISSION ON POST – PROFILE REPORT

The Profile Report contains confidential information.

EXPLANATION SHEET

PERSONAL IDENTIFICATION: Subject's personal information as indicated in POST database (EDI system)	
POST ID:	Unique identification number assigned to subject by POST.
Agency:	Indicates the agency (or one of the agencies) where subject is currently employed. An "*" indicates that the subject is employed in more than one position within the same agency.
Birth Date/Gender:	Self-explanatory.
Race/Ethnicity:	**A** = Asian **B** = African American (Black) **N** = Native American **S** = Spanish/Hispanic **W** = White **O** = Other

CERTIFICATES AWARDED	
Cert:	Certificate serial number.
Type:	**B** = Basic **I** = Intermediate **A** = Advanced **S** = Supervisory **M** = Management **E** = Executive **R** = Reserve **D** = Public Safety Dispatcher **SX**= Specialized X (example: SA = Specialized Advanced)
Awarded:	Date certificate was issued.
Education:	Educational points or degree used for earning a certificate.
T:	Training points used for awarding the certificate.
T+:	Additional training points.
Comments:	Comments regarding training or institute(s) where subject received education.
Total Number of Certificates:	Number of certificates awarded to subject as indicated in POST database.

EMPLOYMENT: Subject's employment history as indicated in POST database	
Hired From:	Date subject was hired or sworn into the agency.
To:	Date subject left agency (if applicable).
R*:	Reason for separation as indicated by number in the Report description.
Rank / Rank Date:	Indicates rank as translated by POST database and date subject made rank.
Agency / Agency Name:	Agency code number and name where subject is currently working or previously worked.
F/P:	Time base: **F** = Full time **P** = Part time
P/U:	Wage status: **P** = Paid **U** = Unpaid
Seas:	Provisional or seasonal employment.

POST TRAINING: Courses attended or completed as indicated in POST database	
Comp Date:	Date course ended.
Cat:	General course category (for POST use only).
CCN:	Course Control Number.
Hrs:	Hours completed in course.
Rmb:	Reimbursement indicator: **R** = Reimbursed *(before FY 83/84 reimbursable agency not necessarily reimbursed)* **J** = Job specific * = Job specific, SALARY NOT PAID **Blank** = None or no data available
Cmp:	Completion indicator: **Blank or Y** = Course completed **N** = Course not completed **?** = Prior to 1979
Agency:	Agency where subject was employed at time of course enrollment.
School:	Training institute offering the course.
Course Name:	Course name as shown in POST database.

NON-CERTIFIED COURSES
This section will only appear if applicable.

FOOTNOTES
This section reserved for additional information.

ATTACHMENT "H"

3-01/040.70 - Dishonesty/False Statements

Members shall not make false statements or commit any other violations of the honesty policy, section 3-01/040.69, when questioned, interviewed, or in reports or documents submitted. Department members who violate this section are subject to discipline up to and including discharge.

Revised: 11/24/2015

LASD-000472 RELEASE DATE: 12/11/2023

3-01/040.69 - Honesty Policy

Department members are held to the highest standards of integrity and ethics. In particular, honesty and trustworthiness are of paramount importance to the credibility and integrity of all Department members. Honesty and maintaining the trust of those we serve depend on candor, forthrightness, sincerity, and accuracy.

Dishonesty destroys trust and violates Department policy. Examples of dishonesty and violations of trust include not only false statements, but also deliberate distortions of the truth; intentional exaggerations, concealment of or failure to disclose material facts, observations, or recollections, and failure to make full, complete and truthful statements when required.

Department members who violate this section are subject to discipline up to and including discharge.

Revised: 11/24/2015

LASD-000473 RELEASE DATE: 12/11/2023

3-01/000.10 - Professional Conduct

All Department members shall be held accountable for any on-duty or off-duty conduct which has a tendency to adversely affect, lower, or destroy public respect and confidence in the Department, or its members. Conduct unbecoming also includes any conduct which brings the Department or any members into disrepute or brings discredit upon the Department or its members. Department members shall also be held accountable for their utterances, writings, conduct, and visual representations; including electronic and web-based communications, when they conflict with our Core Values, our Mission, or our Creed and personnel can be reasonably identified as Department members.

Personnel who cause undue embarrassment or damage to the reputation of and/or erode the public's confidence in the Department shall be deemed to have violated this policy and shall be subject to counseling and/or discipline up to and including discharge.

Unit commanders shall ensure copies of our Mission, our Core Values, and our Creed are clearly and prominently displayed and maintained in the public lobbies of all Sheriff's Department facilities.

Unit commanders shall ensure copies of our Mission, Core Values, and our Creed are clearly and prominently displayed and maintained within a high-traffic work area in all Sheriff's Department facilities (e.g., briefing room) for viewing by assigned personnel.

Unit commanders shall routinely express to the members of their staff their expectations of honesty, integrity, trustworthiness, and acceptable conduct, including the tenets of the Core Values. The message that shall be conveyed to each employee is, "You are part of something greater than yourself. Don't dishonor it!"

Revised: 7/22/2021

LASD-000474 RELEASE DATE: 12/11/2023

3-01/000.13 - Professional Conduct - Core Values

Members shall conduct themselves in a manner consistent with the Department's Core Values. Members shall not ignore nor contradict the Department's Core Values. Examples of conduct inconsistent with the Department's Core Values include, but are not limited to, the following:

1. Conduct or behavior resulting from a situational outburst of emotion including, but not limited to, the use of profanity and/or other inappropriate, inconsiderate, and/or insensitive language, phrases, or terms of speech;
2. Conduct or behavior that demonstrates a bias, prejudice, and/or intolerance, or demonstrates a trend or pattern of undesirable and/or unprofessional behavior; and/or,
3. Conduct or behavior so egregious that it constitutes a severe and immediate threat to the integrity of the Department and/or jeopardizes the health, safety, and/or welfare of the public including, but not limited to, criminal misconduct of members, and/or the misuse of Department assets, resources, or intellectual property.

Revised: 1/27/2013

LASD-000475 RELEASE DATE: 12/11/2023

3-01/000.15 - Electronic and Web-Based Communications

Electronic and web-based communications include any medium used to deliver information electronically or digitally. Examples of electronic and web-based communications include, but are not limited to, websites, "smart" phone technologies, text messaging, Nixle, electronic mail (email) and "social media" sites such Facebook, Myspace, Pinterest, and Twitter; photo sharing websites such as Flickr; video sharing websites such as YouTube; and/or any other similar electronic or digital delivery system.

"Social media" includes any electronic medium where users may create, share, and view user-generated content, including uploading or downloading videos or still photographs, blogs, video blogs, podcasts, or instant messages, or online social networking content.

Revised: 1/27/2013

LASD-000476 RELEASE DATE: 12/11/2023

3-01/025.45 - Safety of Firearms

Sworn employees assume a significant responsibility in protecting and serving the public. As a result, they enjoy a considerable level of public trust. Consequently, high standards are placed upon their conduct. These high standards extend to both on and off duty conduct. This is particularly applicable when the off duty conduct involves the consumption of alcohol. In order to remain beneficiaries of the public trust, we must balance the rights of our sworn employees with the responsibility to maintain the highest standards of professional and personal conduct.

Sworn employees and Security Officers carrying or handling any firearm while on or off duty shall not consume any intoxicating substance to the point where the employee is unable to or does not exercise reasonable care and/or control of the firearm.

> NOTE: For purposes of this section, intoxicating substance shall include alcoholic beverages, medication (both prescription and over-the-counter), and/or controlled substances.

A violation of this section shall be determined upon the totality of the circumstances. It shall be presumed that an employee who has a 0.08 percent or more by weight of alcohol in his or her blood is unable to exercise reasonable care and/or control of a firearm. However, the fact that the employee acted reasonably and without negligence may rebut the presumption.

Revised: 8/9/2010

LASD-000477 RELEASE DATE: 12/11/2023

3-01/030.05 - General Behavior

A member shall not act or behave while on or off duty in such a manner as to bring discredit upon himself or the Department.

Members' arrests and/or referrals for prosecution are an embarrassment to the Department and bring discredit upon the member and the Department regardless of whether a criminal case is filed and/or ultimately results in a conviction or plea agreement.

Members who are publicly intoxicated to the extent their recollection about an allegation of misconduct is affected have brought discredit upon themselves and/or the Department.

Revised: 6/7/2013

LASD-000478 RELEASE DATE: 12/11/2023

3-01/030.10 - Obedience to Laws, Regulations, and Orders

a) Members shall not willfully violate any federal statute, state law or local ordinance;

b) Members shall conform to and abide by the following:

- Charter of Los Angeles County;
- Los Angeles County Code; and
- Rules of the Department of Human Resources;

c) Members shall obey and properly execute all lawful orders issued by any supervisor of higher rank or classification or who is officially acting in such capacity;

d) When assigned to duty with another member of the Department, an employee shall be subject to disciplinary action for any violation by the other member of any provision of this chapter unless the employee was unaware of the violation or unless the employee, if the situation permits safe and prudent action, attempts in good faith to prevent the violation and, at the earliest reasonable time, reports the violation to his supervisor;

e) Members who violate any rules, regulations, or policies of the Department or the County, shall be subject to disciplinary action. The commission or omission of any other act contrary to good order and discipline shall also be the subject of disciplinary action;

f) Members who are arrested or detained for any offense, or named as a suspect, other than an infraction under the Vehicle Code, shall immediately notify their immediate supervisor or Watch Commander of the facts of the arrest or detention or allegation.

> After business hours, if the member is unable to contact their immediate supervisor or Watch Commander at the Unit of Assignment, the member shall contact Sheriff's Headquarters Bureau and request immediate notification to their Unit Commander. The member shall provide details of the arrest or detention to Sheriff's Headquarters Bureau, including alleged charge(s), location, police agency jurisdiction, and return phone number where the member can be reached, for relay to the Unit Commander. The Sheriff's Headquarters Bureau member receiving notification shall immediately notify the employee's Unit Commander.
>
> The Unit Commander shall immediately notify Internal Affairs Bureau. The employee's Unit Commander shall immediately respond to the member's location if the member is arrested and taken into custody.

According to the nature of the offense and in conformance with the rules of the Department of Human Resources, disciplinary action may result and may include, but is not limited to, the following:

- a reprimand (written);
- suspension without pay;
- reduction in rank; and/or
- dismissal from the Department.

NOTE: For purposes of this section, any reference to "members" shall include any member of the Department, both sworn and professional staff.

Revised: 12/12/2013

LASD-000480 RELEASE DATE: 12/11/2023

3-01/040.62 - Use of Sheriff's Intellectual Property/Star/Logos

The Department's intellectual property is among the County of Los Angeles' most valuable assets. The Department has spent considerable time and resources in developing and protecting its valuable trademarks, copyrights and other intellectual property. The goodwill associated with its intellectual property is of vital importance to the Department. To protect their intellectual property, the Department and the County are committed to carefully considering requests for its use and policing possible infringements in the marketplace.

Definition of Intellectual Property

The term "intellectual property" means all logos, marks, stars, seals, emblems, badges, insignias, symbols and slogans which were created by, or at the request of, the Department, or were transferred or assigned to the Department, and which are identified with the Department or any of its Divisions, Units, Stations, programs or groups. Examples of the Department's intellectual property are as follows: Department's name, flag, yearbook, uniform patches, slogans (i.e., "A Tradition of Service"), Sheriff's Star, 150th Anniversary Commemorative Badge, memorial patches, SEB shoulder patch, computer programs, marks, emblems and logos. This policy applies to all of the Department's intellectual property, whether or not registered with a governmental agency.

Definition of Sheriff's Star

The term "Sheriff's Star" includes all photographs or graphic depictions of the six-point star used by the Department, whether represented in color or black and white, and all substantially similar stars which could reasonably be considered the Sheriff's Star. This includes the graphic depiction of the regular uniform badge/flat badge, and the 150th Anniversary Commemorative Badge. The Sheriff's Star is the official mark, logo, and insignia of the Department.

Prohibited Use

Use of intellectual property by Department members or non-members is prohibited unless authorized by this policy or statute. Other than for the official business-related purposes of the Department, use of the intellectual property on any written, printed material, posters, advertisements, merchandise, films, movie or television programs, photographs, clothing, Internet web sites, video presentations or any other display or communication medium, is strictly prohibited, unless authorized pursuant to this policy. The intellectual property may not be used in any unofficial capacity and/or where its display may erroneously portray an official sponsorship by, or association with, the Department or reasonably confuse the public as to the relationship with the Department and the user of the intellectual property.

Procedure to Request Authorization to Use Intellectual Property

All requests from outside entities, vendors, individuals, agencies or organizations to use the Department's intellectual property in any form or by Department members to use the Department's intellectual property for any non-official Department use must be made in writing to Sheriff's Headquarters Bureau. The approval process involves two steps:

- Submitting a completed application (Outlook-All Forms/Miscellaneous/"Application to Use Sheriff's

Intellectual Property") to Sheriff's Headquarters Bureau (SHB); and

- If the application is recommended for consideration, SHB will forward it to the Legal Advisory Unit for review and preparation of a license agreement, if appropriate. The Board of Supervisors must approve all license agreements for outside use of intellectual property.

Policy Application

This policy also applies to all requests by organizations, clubs, foundations and programs which are affiliated or associated with the Department and wish to use the Department's intellectual property.

Department members requesting to use the Department's intellectual property for on-duty, inter-Departmental, County business, such as Department-related or sponsored events, training, speaking engagements, presentations, or any event that includes the distribution of publications, handouts, etc., depicting a Department image, even that which involves an outside entity and is **not for tangible gain or commercial purposes**, need only to obtain the approval of their respective Unit Commander and abide by all Department policies.

Use of the Department's intellectual property by Department members or Units for official business-related purposes must comply with this policy and the Department's Organizational Identity Manual located on the Department's Intranet website. Approved artwork graphics shall be obtained through the Department's Intranet website via the graphics repository. **All** variations from the official artwork or new conceptual designs must be approved through the Department's approval process.

Use of the Department's intellectual property in any manner that will or could result in any immediate or future, foreseen or unforeseen tangible gain (i.e., charity events, fund-raisers, product development or endorsement, partnerships, sponsorships, tactical endorsements, publication by-lines or credits, donations, etc.), even that which is not immediately identifiable (i.e., increased subscriptions to a publication because it contains LASD intellectual property or endorsements), will require the Department member or outside entity to submit an "Application to Use Sheriff's Intellectual Property" and go through the Department's approval process.

Unauthorized use of the Department's intellectual property by Department members is subject to discipline and legal action. Department members are encouraged to report any unauthorized use of Sheriff's intellectual property to the Department's Legal Advisory Unit.

Unit Commander's Responsibility

All requests by Department members to use the Department's intellectual property must have the member's Unit Commander's approval on the concept alone. The Unit Commander shall review the proposed usage and make a decision as to whether it conforms to the Department's mission, philosophy and ideals, and whether the usage would promote the image and reputation of the Department. The Unit Commander should also consider when reviewing the proposed usage whether any other Department Unit (i.e., Uniform Committee, etc.) should become involved prior to approving the concept. After approving the concept, the Unit Commander should follow the concept through the "Request to Use Sheriff's Intellectual Property" flowchart to assist the Department member in determining whether the concept requires an "Application to Use Sheriff's Intellectual Property" to be submitted to Sheriff's Headquarters Bureau. If an application is required, the Unit Commander should ensure sufficient supporting documentation and artwork is included with the application prior to signing it. The application should include enough detail to stand on its own merit

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without follow-up correspondence prior to it being submitted to Sheriff's Headquarters Bureau.

Revised: 12/12/2013

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3-01/080.10 - Public Appearances, Writing, Etc.

Unless authorized to do so by the Sheriff's Headquarters Bureau, an employee of this Department shall not:

- Address any public or private gathering or make radio or television appearances where his identity, as a member of this Department, is made known and any remarks made by the employee could be considered to represent the Department's view of the subject or subjects discussed; and/or
- Write articles or manuscripts for publication in which references or inferences are made to this Department, or in which, as the author, his identification as a member of the Department would add authenticity or weight to the contents.

(Procedure governing authorized public appearances of Department personnel are covered in the Miscellaneous Administrative Procedures chapter.)

Revised: 12/12/2013

LASD-000484 RELEASE DATE: 12/11/2023

3-01/100.46 - Use of Communication Devices

Absent extenuating circumstances, members shall not use a cellular telephone or other similar communication/recording device for a Department-related tactical purpose (i.e., coordinating field units to a radio call, advising other units of possible suspect locations) when an established, Department-authorized communication device/system is available, and/or a Department-authorized regulation/protocol has been established (e.g., Department radio and communications systems etc.).

NOTE: This prohibition shall apply to the use of the cellular telephone for both voice communications as well as data (text) communications.

Members shall not use a personal cellular telephone or any other similar personal communication or recording device to record, store, document, catalog, transmit, and/or forward any image, document, scene, or environment captured as a result of their employment and/or while performing official Department business that is not available or accessible to the general public. Official Department business shall include, but is not limited to, confidential, sensitive, or copyrighted information that is printed, audio recorded, photographed, or video recorded; information related to any past, present, or anticipated criminal, civil, or administrative investigation, including reports, declarations, evidence, photographs, videos, or audio recordings; and/or photographs of suspects, arrestees, defendants, evidence, or crime scenes.

In addition, Department members who respond to scenes where human remains are present shall be guided by MPP section 5-09/475.00, Photographs/Recordings at Scenes Where Human Remains are Present.

NOTE: A personal cellular telephone or any other similar personal communication or recording device used exclusively to record contacts with members of the public during legitimate Department business (e.g., traffic stops, etc.) are exempt from the provisions of this section.

Revised: 7/23/2020

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3-01/100.47 - Use of Communications Equipment and Systems

Members shall not initiate, modify, or have installed any non-authorized communications equipment or services within a County operated facility for personal, social, or unofficial purposes. This equipment includes, but is not limited to, wired or wireless services such as internet services, computer terminal equipment and hardline/landline telephone equipment. Members shall refrain from entering into any personal non-authorized Departmental communications service agreement which lists any County operated facility as a host, party to the action, or as the billing address.

Members shall conduct all Departmental related official business with an established Department authorized, controlled and auditable communications device and/or system. Official Department business includes, but is not limited to, confidential, sensitive, or copyrighted information that is printed or transferred via digital means, Department or County related emails, audio recordings, photographs, or video recordings; information related to any past, present, or anticipated criminal, civil, or administrative investigation, including reports and evidence.

Members shall also observe policies and procedures regarding County information technology assets, computers, networks, systems, and data as detailed in the Acceptable Use and Confidentiality Agreement as related to Board of Supervisors Policy # 6.101.

> **NOTE:** This section does not preclude members from having a personal cellular telephone and/or tablets at their workplace unless it violates policy and/or the law.

Revised: 12/7/2016

LASD-000486 RELEASE DATE: 12/11/2023

3-01/030.75 - Bribes, Rewards, Loans, Gifts, Favors

The following rules shall apply:

- A member shall not accept a bribe or engage in any act of extortion or other unlawful means of obtaining money or property through his position with the Department;
- Members, individually or collectively, shall not solicit or accept any reward, fee, loan or gratuity in conjunction with services rendered in the performance of their duties;
- Members shall not use their positions to seek free admission to places of amusement, sporting events, etc. and shall not solicit free meals or transportation or any other favors or gratuities which would not ordinarily be accorded a private citizen; and/or
- All members are prohibited, without express permission of the Department, from the following:
    - Making any gift for or presenting any gift to or receiving a gift from any prisoner or arrestee;
    - Having any barter or dealing with a prisoner or arrestee; and/or
    - Having any direct or indirect interests in any contracts or purchases by and for a custodial facility.

Violations under this rule shall be subject to penalty under 2540 PC, wherein members of this Department shall be discharged and contractors or agents shall be expelled from the Department facility and not permitted entry in those capacities.

Revised: 12/12/2013

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3-09/170.25 - Internal Requests

Department personnel desiring to participate in any group, club, organization, society, radio or television program as an official representative of this Department shall submit, through channels, a Sheriff's Department Office Correspondence (SH-AD-32A) giving all necessary details. The memo shall be addressed to the Sheriff and marked "Attention: Sheriff's Headquarters Bureau ."

The concerned Division Chief or Division Director, or his designated subordinate, shall confer with the Sheriff's Headquarters Bureau concerning the request. This Bureau shall submit the request and any recommendations to the Sheriff for approval or denial.

Personnel will be guided in such requests by the above and will not independently accept any speaking engagements for themselves or for other members of the Department under their command except as indicated below:

- Ranking members of the Department, Lieutenant and above, are encouraged to seek speaking engagements and avail themselves of any opportunity where they may speak on behalf of the Department and its role in public service. Such personnel shall not avoid extemporaneous speeches on behalf of the Department at any public or social meeting; and/or
- Ranking personnel speaking in spontaneous situations shall complete a Public Appearance on Behalf of the Sheriff form (SH-AD-177) to be retained at the Unit for record purposes.

Revised: 12/12/2013

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