PAUL IRISH,	)	
	)	
Appellant,	)	
	)	
and	)	Hearing Officer's Report
	)	
CITY OF FULLERTON,	)	
	)	
Employer.	)	

HEARING OFFICER

Walter F. Daugherty

APPEARANCES

For the Appellant:

Michael D. Williamson
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Stone Busailah, LLP

For the Employer:

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INTRODUCTION

Pursuant to the terms of the Fullerton Police Officers' Association Police Safety Unit Agreement ("Agreement"), the undersigned was selected as the Hearing Officer to conduct a hearing and prepare a report with findings, conclusions, and recommendations for initial review and consideration by the City Manager in this dispute. Hearings were held on April 1 and 5, July 12, October 27, November 10 and 16, 2016, and January 13, 2017. Both parties appeared and were afforded full opportunity to present relevant evidence, examine and cross-examine witnesses, and offer argument. A verbatim transcript of the proceedings was furnished to the Hearing Officer. Post-hearing briefs were filed, the matter standing submitted with the receipt of these briefs on or before March 10, 2017.

ISSUE

At the commencement of the hearing, the parties stipulated to the following statement of the issues (RT 23):[1]

1. Does the preponderance of the evidence support the charges?
2. If so, was termination the appropriate penalty?
3. If not, what would be the appropriate penalty?

The parties were in disagreement whether the Hearing Officer was required to exercise his independent judgment as set forth in *Quintanar v. County of Riverside* (2014) 230 Cal.App. 4th 1226, in reaching his findings regarding the above stipulated issues.

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[1]"RT" refers to the reporter's transcript of the hearing. "AIT" refers to the transcripts of the Internal Affairs interviews conducted regarding this matter.

In brief, the *Quintanar* court held that the hearing officer under the terms of the memorandum of understanding ("MOU") before it was required to exercise independent judgment rather than defer to the employer's discretion. This conclusion was premised on provisions of the MOU not found in the Agreement before the undersigned. Of substantial weight in the court's conclusion was its finding that because of the MOU's provisions the employer had "gave up any requirement that the hearing officer defer to its discretion" (*Id.*, at p. 1235).

In his role as the "professional arbitrator" contemplated by the parties' Agreement, the Hearing Officer here is required to sift and weigh the evidence and make necessary credibility determinations in deciding the first issue as presented. In so doing, the Hearing Officer conducts a *de novo* review that necessitates the exercise of his independent judgment in deriving his conclusions in such regard. With respect to the second two stipulated issues, the Agreement in clear and unambiguous terms prohibits the Hearing Officer from "reversing, overruling, or otherwise modifying" the City's disciplinary decision unless it was "under the circumstances, arbitrary, capricious, discriminatory, or otherwise unreasonable" (Article 45 (D) (7) (d)). Thus, the Agreement governing these procedures and the authority of the Hearing Officer differ in language and substance from the MOU before the *Quintanar* court such that the Hearing Officer is not required to exercise his independent judgment in deciding these second two issues. Instead, the Hearing Officer must determine in deciding the second two issues whether in consideration of the sustained charges the Appellant's termination was "under the circumstances, arbitrary, capricious, discriminatory, or otherwise unreasonable" as specified in the applicable provisions of the parties' Agreement.

RELEVANT DEPARTMENT POLICY MANUAL SECTIONS

Section 340.2 DISCIPLINE POLICY
The continued employment of every employee of this department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure of any employee to meet the guidelines set forth in this policy, whether on-duty or off-duty, may be cause for disciplinary action.

Section 340.3 CONDUCT WHICH MAY RESULT IN DISCIPLINE
The following list of causes for disciplinary action constitutes a portion of the disciplinary standards of this department. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to efficient department service.

Section 340.3.2 (f) Failure of any employee to promptly and fully report activities on their own part or the part of any employee where such activities may result in criminal prosecution or discipline under this policy.

Section 340.3.5 (e) Disobedience or insubordination to constituted authorities, including refusal or deliberate failure to carry out lawful directives and orders from any supervisor or person in a position of authority.

Section 340.3.5 (i) The falsification of any work-related records, the making of misleading entries or statements with the intent to deceive, or the willful and unauthorized destruction and/or mutilation of any department record, book, paper or document.

Section 340.3.5 (l) Any knowing or negligent violation of the provisions of the department manual, operating procedures or other written directive of an authorized supervisor. Employees should familiarize themselves with and be responsible for compliance with each of the above and the Department shall make each available to the employees.

Section 340.3.5 (m) Work-related dishonesty, including attempted or actual theft of department property, service or the property of others, or the unauthorized removal or possession of department property or the property of another person.

Section 340.3.5 (n) Criminal, dishonest, infamous or disgraceful conduct adversely affecting the employee/employer relationship, whether on or off duty.

Section 340.3.5 (o) Failure to disclose, or misrepresenting material facts, or the making of any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.

Section 340.3.5 (y) Violating any misdemeanor or felony statute.

Section 340.3.5 (z) Any other on-duty or off-duty conduct which any employee knows or reasonably should have known is unbecoming a member of the Department or which is contrary to good order, efficiency or morale, or which tends to reflect unfavorably upon the Department or its members.

Section 450.3 All recordings made by personnel acting in their official capacity as members of the department shall remain the property of the Department and should not be considered private, regardless of whether these recordings were made with department-issued or personally owned recorders.

Section 450.4 Penal Code 632 prohibits any individual from surreptitiously recording any conversation in which any party to the conversation has a reasonable belief that the conversation was private or confidential, however Penal Code 633 expressly exempts law enforcement from this prohibition during the course of a criminal investigation.

Section 450.4 (a) No member of this department may surreptitiously record a conversation of any other member of this department without the expressed knowledge and consent of all parties.

Nothing in this section is intended to interfere with an officer's right to openly record any interrogation pursuant to Government code 3303(g).

BACKGROUND

Paul Irish ("Appellant") was employed by the City of Fullerton Police Department from February 1994 until terminated effective on or about March 9, 2015 (D. Ex. 1).[2] At all material times, he was a permanent Police Corporal assigned to the 5:30 p.m. to 6:00 a.m. patrol shift, the "graveyard shift."

By letter dated January 29, 2015, the Appellant was notified of the City's intent to terminate his City employment (D. Ex. 2). This notice consisted of some four single-spaced pages setting forth the alleged factual bases for the proposed termination and the sections of the Fullerton Police Department Policy Manual which the Appellant's actions were alleged to have violated. In brief, it was alleged that the Appellant was dishonest in advising his supervisors that he was going to train on seat belt policy at the September 6, 2014 shift briefing but instead trained on ethics and was dishonest during his administrative interview regarding what he had told the investigators in such regard. It was further alleged that the Appellant's actions, which will be set forth in greater detail below, violated Fullerton Policy Department Policy Manual ("Policy Manual") Section 340.3.5 (i), Section 340.3.5 (m), Section 340.3.5 (n), and Section 340.3.5(o), which collectively prohibit dishonesty, the failure to disclose material facts, and the making of false entries or statements intended to deceive. The Appellant was also alleged to have violated Policy Manual Section 340.3.5 (l) which prohibits the "knowing or negligent violation" of the department manual, operating procedures, or written directive of an authorized supervisor.

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[2]Department and Appellant exhibits are referenced as "D. Ex.__" and "A. Ex.__," respectively.

Following his February 26, 2015 *Skelly* meeting, the Appellant was notified by letter dated March 6, 2015 that he was terminated effective on or about March 9, 2015 for the grounds and reasons as set forth in the prior Notice of Intent to Terminate (D. Ex. 1). Subsequent to receipt of the Appellant's notice of termination, the matter was appealed to "arbitration" pursuant to the relevant terms of the Agreement.

During the April 1, 2016 hearing, the Appellant in response to questioning by Counsel for the City stated that he had made an audio recording of the September 6, 2014 briefing using his cell phone (RT 128-129).[3] The hearing was recessed and the Department initiated an Internal Affairs investigation and a criminal investigation into the Appellant's recording of the September 6, 2014 briefing (D. Ex. 7 (A) and (C)). Thereafter, a Supplemental Notice of Termination dated July 8, 2016 was issued to the Appellant (D. Ex. 7). In pertinent part, it was alleged that the Appellant had violated Policy Manuals Sections 450.3, 450.4, and 450.4 (a) by surreptitiously recording the September 6, 2014 briefing and failing to provide the recording to the Department. The Appellant was also charged with violating Penal Code Section 632 that prohibits such alleged surreptitious recordings. It was further charged that the Appellant's alleged acts of commission or omission violated Policy Manual Sections 340.3.2 (f), and 340.3.5 (e), (l), (n), (o), (y), and (z).

According to the Department's Final Supplemental Notice of Termination, the Appellant's Counsel accepted service of the Supplemental Notice of Termination for the Appellant and no written or oral response was provided (D. Ex. 11). In any event, the Final

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[3]The Appellant's recording was not limited to his presentation but included the briefing provided by Sergeant Rios and Captain Rudisil (RT 128).

Supplemental Notice of Termination was issued on or about August 12, 2016. The allegations and charges contained therein were consolidated with the matter then pending before the undersigned and the hearing proceeded on both sets of charges.

Turning first to the events that led to the initial Notice of Termination, the Appellant testified that before the start of his September 5, 2014 shift he had called his direct supervisor Sergeant Tim Petropulos to ask if he could do briefing training that evening (RT 72). Since Petropulos did not respond, the Appellant telephoned Sgt. Pedram Gharah, another graveyard shift patrol sergeant, and asked if he could provide briefing training (RT 72). Gharah told the Appellant that because another officer was scheduled to do training that evening he could instead provide training on the next shift, Saturday, September 6, 2014 (RT 72-73). According to the Appellant, Sgt. Gharah first asked then pressed him on a training topic and he replied, "Well, I might be doing it on seatbelts. I'm now quite sure yet." Their conversation then ended (RT 74, 91-92). According to Gharah's testimony, he did not ask the Appellant what his training would cover and had not done so because he was not his direct supervisor (RT 242-243, 507-508).

Several minutes after his phone call with Sgt. Gharah ended, the Appellant received a call at about 4:15 p.m. from Sgt. Petropulos. The Appellant stated that he advised Petropulos that he had taken care of the matter and when asked why he had called told Petropulos that he would be giving briefing training that Saturday (RT 75-78). Sergeant Petropulos testified that the Appellant had asked if he could do briefing training that night and that he had replied that he could not as someone else was scheduled for that briefing and that he offered the following day (RT 522-523). According to the Appellant, when asked by Petropulos for his training topic he had responded "I'm not sure yet. I might be doing seatbelt policy, but I'm still not sure yet" (RT

78-79, 91-92). Sergeant Petropulos said that he asked the Appellant what his training topic would be and he had said "seatbelts" (RT 523). In response, Sgt. Petropulos said he had asked "seatbelts?" and the Appellant then replied "Don't worry. It will be interesting" (RT 524). He stated that the Appellant had never advised him that he would be training on ethics instead of seatbelts (RT 524). Sergeant Petropulos said that during this discussion with the Appellant he was driving in the City of Anaheim Hills and the call was conducted on his personal iPhone (RT 521-522). Petropulos was then off duty (RT 521).

The Appellant acknowledged that following his telephone discussions with Sgts. Gharah and Petropulos he had told Corporal Michael Bova and Officer Hazel Rios that his briefing topic would be ethics (RT 83). Officer Rios testified that her discussion with the Appellant took place at the gas pumps, that the meeting was not preplanned, and that she could not recall whether he said he would be training on seatbelts (RT 921, 923). The Appellant further acknowledged that he told Officer Cynthia Hines and Community Services Officer Kristy Wells that he would be doing training "on the stuff in the hallway" meaning materials "painted" near the sergeants' office regarding integrity and ethical codes of law enforcement (RT 83-84). He said that these discussions all occurred following the Friday briefing (RT 84-85).[4] Hines could not recall the Appellant saying that he would be training on the material on the wall only that his training would be good (RT 955-956). At the hearing, all Wells could recall regarding the discussion with the Appellant's remark that she and Officer Hines should come to briefing as it would be good (RT 808-809). The Appellant stated that he had told these four individuals plus at least two other Department employees that they should attend his briefing training as it would be good (RT

[4]On the Appellant's shift, the briefing sessions typically ended at about 6:00 p.m. (RT 84-85).

95). According to the Appellant, by the time these discussions were had he had decided that he would be training on ethics the next day (RT 90). He did not advise either Sgt. Gharah or Sgt. Petropulos that his September 6, 2014 briefing training was to be on ethics because he did not believe it was necessary (RT 93-94).

On September 6, 2014, the Appellant was scheduled to work from 5:30 p.m. until 6:00 a.m. Sunday, September 7, 2014. He arrived in the briefing room at about 5:00 p.m., some 30 minutes before the scheduled start of briefing (RT 103-104). Using a colored marker, the Appellant wrote either "seat belts" or "seat belt policy" in large letters on a dry erase board near the front of the briefing room (RT 104).

Sergeant Gharah testified that before the briefing was to begin he was advised by Sgt. Mike Hines that he had heard from his officers that the Appellant "was going to go off" in briefing and discussed this information with Captain, then Lieutenant, Scott Rudisil (RT 244-245). Captain Rudisil told Gharah to speak with the Appellant before briefing began and find out what his briefing topic would be (RT 245-246). Both Gharah and Rudisil claimed that they were then unaware of the Appellant's training topic (RT 244, 838-939).

Sergeant Gharah testified further that he entered the briefing room at about 5:25 p.m., asked the Appellant what his training topic would be, and the Appellant pointed to the board with the words "seatbelt policy" written on it and said seatbelt policy (RT 246-249). He said that the front row of the room which seated some six or seven officers was filled and other officers were also present (RT 247). Gharah stated that he had then formed the understanding that the Appellant would be training on seatbelt policy and returned to the watch commander's office and so advised Lt. Rudisil (RT 250, 939-940).

Corporal Alan Valdiserri testified that he had observed Sgt. Garah and the Appellant speaking in the briefing room before briefing began, stating that he could hear they were talking but he did not "remember exactly what they said" (RT 626, 633). He observed the Appellant point to the white board where "seatbelt policy" was written (RT 626, 633). Corporal Emmanuel Pulido testified that he remembered Sgt. Garah had asked the Appellant about his training topic and the Appellant pointed to the board on which "seatbelts" was written (RT 652). Pulido said that he thought the Appellant had said seatbelt policy, stating that he "was pretty sure he said that" (RT 652-654). Sergeant Jonathon Radus testified that before briefing had started he had seen Sgt. Gharah and the Appellant talking near the white board at the front of the briefing room. He could not hear what they were saying but assumed they were talking about the information written on the white board (RT 686).

The Appellant testified that he had no recollection of having spoken with Sgt. Gharah before the start of briefing, stating that he had no recollection of Gharah inquiring about his training topic or his responding "seat belts" to the question (RT 105-106). He stated that he did recall pointing to the dry erase board to indicate that his training would be on seat belts (RT 105).

Prior to the start of briefing on September 6, 2014, Sgt. Tony Rios asked the Appellant how much time he needed for his presentation and he replied that he needed about 20 minutes (RT 106). According to Rios, he did not say that he was training on any topic other than seatbelts (RT 575). Sergeant Rios gave the briefing, followed by Lt. Rudisil who spoke for a few minutes before the Appellant began his training presentation (RT 107-108).

Review of the testimony of the Appellant, the various percipient witnesses, and the audio tape and transcript of the Appellant's recording of the briefing (D. Ex. 7 and D. Ex. 8) discloses

that after some initial comments the Appellant stated, "Do we want to talk about seat belts?" answered his own question with a "No" and then asked "What do we want to talk about?" Although the Appellant stated that he believed he had told the group, "We all know we need to wear them [seatbelts]," the audio recording and the transcript reveal that Corporal Bridges made this remark (RT 108, D. Ex. 8, p. 10). After several suggested topics from those present, the Appellant said that he then stated to the effect "let's talk about ethics," crossed out "seatbelts" on the dry erase board, and trained on ethics for about 15-20 minutes (RT 112-113).

During his training, the Appellant referred to two pages of notes that he began to compile about one week before the September 6, 2014 briefing training (RT 113-114, D. Ex. 5, pp. 178-179). He said that he would have more fully discussed the seatbelt policy had he been able to access the written policy but was unable to do so either using the Lexipol system on a Department computer or his patrol unit's MDT unit (RT 108-109, 116-118). According to the Appellant, he had first attempted to download the seatbelt policy on the Department's computer at about 5:00 p.m. Friday, September 5, 2014 and then again at about 6:00 p..m. He then attempted to access the policy from his patrol vehicle (RT 117-118).

Following the conclusion of the September 6, 2014 briefing, Sgt. Gharah discussed the Appellant's presentation with Captain Rudisil in the watch commander's office (RT 259). According to Gharah, he told Rudisil that he was "upset that Paul [Appellant] lied to me" and was instructed by Rudisil to speak with the Appellant about the profanity he used during his briefing training (RT 259). Some 15 to 20 minutes after the briefing session had ended, the Appellant was told by Sgt. Gharah to come to the sergeants' office (RT 122). The respective accounts of Gharah and the Appellant differ as to the discussion that ensued there.

According to Sgt. Gharah, he told the Appellant that he did not appreciate his lying to him and that Captain Rudisil wanted to address his use of profanity (RT 260). The Appellant, said Gharah, replied that he did not lie and that his training was "spontaneous" which was said in a sarcastic tone while he smirked (RT 260-262, 478-479). Sgt. Gharah testified that he discussed the Appellant's use of profanity but denied asking any questions during their discussion, which evolved into a conversation about camping (RT 478-479).

According to the Appellant, after being summoned to meet with Sgt. Gharah, Gharah admonished him for using the "F-word" in his briefing training. He could not recall Sgt. Gharah saying that he did not appreciate having been lied to regarding his briefing training topic (RT 122-124). The Appellant stated that after he had entered the office, Gharah closed the door, said "What the fuck was that?" and he responded "What are you talking about?" (RT 125). Sergeant Gharah, said the Appellant, replied, "You're [sic] supposed to talk about seatbelts" and he (Appellant) stated, "Whoa, Whoa, Do you not remember the conversation we had on the phone yesterday. I said I might talk about seatbelts. I wasn't sure yet" (RT 125). The Appellant said he then asked if he were in trouble and Gharah replied, "No, the lieutenant just wanted me to tell you to watch the "F-bombs" (RT 125). The Appellant denied using the word "spontaneous" in reference to his briefing training and said that at some point in the meeting Gharah changed the conversation to a discussion about camping (RT 127).

Sergeant Tony Rios testified that he was in the room during the discussion had between the Appellant and Sgt. Gharah but was trying not to pay attention (RT 580). He said he formed the impression that the discussion concerned the language that may have been used during the briefing and that they began to discuss "personal stuff," maybe camping (RT 580, 589). Sergeant

Rios could not recall Sgt. Gharah asking the Appellant any questions during this meeting (RT 589).[5]

Captain Rudisil testified that he had been told that the Appellant was to provide seatbelt training and that when he had trained on a different topic he wanted to know why (RT998). He said he had Sgt. Gharah meet with the Appellant to find out why the Appellant had given the training on ethics and if he had lied about intending to provide training on the seatbelt policy (RT 1001-1002). According to Rudisil, he had also directed Gharah to speak with the Appellant about his use of "F-bombs" during his training (RT 1003).

As noted, the Department asserts that it first learned that the Appellant had recorded the entire September 6, 2014 briefing session during the April 1, 2016 hearing (RT 128-129). In such regard, it is undisputed that the Appellant used his personal i-phone as a recording device, that he placed it on the table near to where he was speaking, and that he did not advise anyone in the room that he was recording the briefing, nor did he obtain permission from any supervisor to have done so. Other than the Appellant recording the September 6, 2014 briefing, no evidence was presented that other Department employees have recorded briefing sessions.

Sergeant Gharah testified that the information provided at the briefings would not be shared with the general public and that it was his understanding that the content of most briefings was confidential (RT 505-506). Captain Rudisil stated that briefing sessions are not open to the public, that confidential information is sometimes discussed, and that members of the public who

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[5]The Appellant asserts that any information obtained or statements purportedly made during either Sgt. Gharah's pre-briefing discussion or post-briefing discussion with the Appellant must be excluded as the Appellant was denied the protections afforded by the Peace Officers Procedural Bill of Rights ("POBR"), Government Code Section 3303. The Department takes a contrary view, asserting that no POBR violations occurred in connection with either discussion.

are allowed to attend briefings typically receive authorization from the watch commander (RT 961, 996). Ride-alongs and outside sales personnel have been allowed to attend briefings (RT 986-987). The briefing room has not been labeled or otherwise identified as a confidential area and no written policy expressly provides that briefing sessions are confidential or that their recording is prohibited.

Approximately 19 individuals attended the September 6, 2014 briefing. The Department presented some seven witnesses who testified as to their respective understandings of the confidential nature of a briefing session. Although the basis for their understanding varied, the witnesses' testimony was to the effect that they had an expectation of privacy as to a private conversation had with a coworker while briefing was conducted (RT 420-422, 586, 630, 640, 658-659, 695, 763-764, 818, 847-848).

On September 11, 2014, Lieutenant then Sergeant Rhonda Cleggett of the Department's Professional Standards Bureau was assigned to conduct an Internal Investigation into the Appellant's actions regarding the September 6, 2014 briefing training (C. Ex. 5). Some 28 individuals, including the Appellant were interviewed. Captain Cleggett prepared a written report containing, among other things, witness interview summaries, and her findings whether the Appellant was "within policy" or "Not within policy" as to various sections of the Policy Manual (C. Ex. 5, pp. 001-0047). She also submitted a supplemental report dated January 29, 2015 that included a summary of her interview with Captain Rudisil (C. Ex. 5, pp. 048-052). Both reports were sent to Captain Rudisil leading to the issuance of the Department's January 29, 2015 Notice of Intent to Terminate (D. Ex. 2).

The matter of the Appellant recording the September 6, 2014 briefing was investigated by Sergeant Robert James of the Professional Standards Bureau. He interviewed some 20 individuals, including the Appellant, and prepared a report with interview summaries and his conclusions regarding whether the Appellant's recording of the briefing was violative of various provisions of the Policy Manual (D. Ex. 7 (A) pp. 001-018). This report was submitted to Captain Rudisil, who issued a Supplemental Notice of Termination dated July 8, 2016 (D. Ex. 7).

FINDINGS AND CONCLUSIONS

At the outset, it is first observed that although the negotiated Agreement describes the instant procedure as "Arbitration," these proceedings are not arbitration, for the undersigned does not issue a binding award. Instead, the Hearing Officer is tasked with preparing a report with findings and recommendations for initial review by the City Manager with a subsequent review by the City Council if so requested (Agreement, p. 44). As an administrative hearing, it is warranted and required, as argued by the Appellant, that the Hearing Officer follow and apply applicable decisions of competent courts of jurisdiction interpreting and applying relevant external law to the evidence of record regarding the Appellant's termination. Paramount in the relevant external law is the Peace Officers Procedural Bill of Rights ("POBR"), Government Code Sections 3300-3313.

With respect to the specific incidents underpinning the bases of termination as specified in the first Notice of Termination (D. Ex. 1), the Appellant alleges that his rights guaranteed under POBR Section 3303 were violated when he was questioned by Sgt. Gharah both before he gave briefing training on September 6, 2014 and after having done so. The Department denies

any violations of the POBR occurred during either discussion between the Appellant and Sgt. Gharah.

POBR Section 3303 states:

> When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

Sections 3303 (a) through (i), among other things, specify the procedures to be followed in an investigation and the due process protections afforded a peace officer under such investigation. Section 3303 (i) further provides:

> This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

In *City of Los Angeles v. Superior Court (Labio)* (1997) 57 Cal.App. 4th 1506,1517, 1518, the Court held that statements obtained in violation of Section 3303 were to be suppressed and excluded from an administrative hearing except for impeachment purposes. The Appellant asserts that since he was not provided his rights under Section 3303 during either discussion of September 6, 2014 with Sgt. Gharah involving possible misconduct that could result in punitive action, any statements he purportedly made must be excluded.

As to whether the Appellant's Section 3303 rights were violated during his discussion with Sgt. Gharah had before his briefing training, the relevant facts and circumstances in such regard differ significantly and substantially from those at issue in *City of Los Angeles v. Superior*

Court (Labio), supra. There, the lieutenant who had questioned Officer Labio was then in possession of sufficient information gleaned from inquiries made by other supervisors to have arrested him (*City of Los Angeles v. Superior Court (Labio)* at 1514). Although before questioning the Appellant his superiors were concerned that he "might go off" during briefing, this information was nothing more than unsubstantiated rumors. Moreover, the focus of Sgt. Gharah's questioning of the Appellant was limited to an inquiry about his briefing topic.[6] The pre-briefing questioning of the Appellant was more factually parallel to the questioning of the officer in *Steinert v. City of Covina* (2006) 146 Cal.App. 4th 458 than the questioning of the officer in *Labio* found to have violated the officer's POBR Section 3303 rights. On this evidence record, it is concluded that Sgt. Gharah's inquiry about the Appellant's training topic fits within Section 3303 (i)'s contemplation of the "interrogation of a public safety officer in the normal course of duty" such that POBR Section 3303 does not apply to the purported September 6, 2014 pre-briefing discussion had between the Appellant and Gharah. Any statements made by the Appellant during this discussion are therefore admissible in this proceeding and are part of the record under review.

Turning to the discussion had between Sgt. Gharah and the Appellant shortly after the end of briefing, the record reflects that Gharah had been directed by Captain Rudisil to meet with the Appellant to find out if he had lied about intending to provide training on the seatbelt policy (RT 1001-1002). If the Appellant had lied to Sgt. Gharah in such regard it follows that the Appellant would have committed an act of dishonesty. As is well known in law enforcement circles,

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[6]Again, the Appellant testified that he had no recollection of this purported discussion with Sgt. Gharah.

dishonesty is considered a "capital crime" in the police culture for which discharge is an often imposed penalty. The Hearing Officer's review of the *Labio* and *Steinert* cases and the courts' reasoning underpinning their respective decisions persuades that because of its focus Sgt. Gharah's discussion with the Appellant was such to comprise an interrogation within the meaning of POBR Section 3303. Since the Appellant was not afforded the procedural protections and due process safeguards required by POBR Sections 3303 (a) through (i), the Appellant's statements made during this meeting are properly suppressed and excluded from these administrative proceedings pursuant to *Labio, supra.*

In providing context to the charges of dishonesty leveled against the Appellant, the Hearing Officer first notes, as emphasized by the Appellant, that no written policy was in place regarding briefing training, including any prohibition against changing a briefing training topic. The Appellant's contention, flowing from the absence of any such proscription, that he had no motive to lie about his training topic as well as the favorable inferences to be drawn from the absence of a motive are acknowledged. However, it has been the undersigned's experience that at times employees will engage in various acts of misconduct in total disregard of their own interests and with no apparent or cognizable reason or motive. Any absence of motive therefore does not ineluctably compel the conclusion that the Appellant was not dishonest as charged. Although a factor, resolution of this issue turns on the consideration and weighing of all the relevant facts and evidence as developed in the record and the requisite credibility determinations.

The Appellant further asserts that internal affairs investigator Lieutenant Cleggett conducted a biased and speculation driven investigation, emphasizing that Cleggett accepted the

accounts of the supervisors that were contrary to the Appellant's accounts because of their higher rank. However, since the Hearing Officer here conducts a *de novo* administrative review, any credibility determinations that may have underpinned Cleggett's findings do not inform nor compel the Hearing Officer's findings in such regard. Instead, the Hearing Officer is tasked with using his independent judgment in assessing the credibility of the various witnesses, resolving the disputes as to the "facts" in the evidence record, and determining whether the Appellant was dishonest as charged by the Department.

The Hearing Officer's review of the record establishes that the Appellant did not provide training on seatbelts during the September 6, 2014 briefing session but instead trained on ethics. The dishonesty charges preferred against the Appellant have their genesis in several discussions involving the Appellant and Sgt. Gharah and Sgt. Petropulos and his statements made during his internal affairs investigation. In chronological sequence, the first such discussion occurred on the evening of September 5, 2014. In brief, Sgt. Petropulos testified that the Appellant specifically told him that his training topic would be seatbelts (RT 523), while the Appellant testified that he had told Petropulos that he "might" train on seatbelts (RT 78-79). The Appellant testified further that in their telephone discussion he had also told Sgt. Gharah that he "might" train on seatbelts (RT 74, 91-92); Gharah denied that he had asked the Appellant about his training topic and that the Appellant had said that he might train on seatbelts (RT 242-243).

As to the conflict between the respective recollections of Sgt. Petropulos and the Appellant, the Appellant's assertion that Petropulos was distracted during their discussion because he was then driving is noted as is the fact that he made no notes of this discussion. However, Sgt. Petropulos' followup questions to the Appellant essentially questioning the choice

of seatbelts as a training topic and his testimony that the Appellant had replied "Don't worry. It will be interesting" and his consistent internal affairs statements (RT 524, AIT 3-4) persuade that his attention was not so distracted that he could not accurately recall the Appellant's statement that he would be training on seatbelts.

As to the earlier telephone discussion that same evening between Sgt. Gharah and the Appellant, Sgt. Gharah's testimony that he did not ask the Appellant about his training topic is not so inherently unbelievable as to cause it to be rejected out of hand. For as he testified, Sgt. Gharah was not the Appellant's direct supervisor and it is therefore understandable that he did not inquire further as to his training topic.

In assessing the relative credibility of Sgts. Petropulos and Gharah on the one hand and the Appellant on the other, it is first noted that the Appellant has the greater interest at stake in the outcome of these proceedings, for it is his City employment and peace officer career that is on the line. Sgt. Gharah admitted, albeit reluctantly and only after being shown his internal affairs statements, that he no longer had a personal relationship with the Appellant but stated that they had maintained a professional relationship (RT 485-489). In such regard, no evidence was found that Sgt. Gharah, regardless of his views concerning the Appellant, had made any prior overt efforts to "paper" his file or to lodge baseless charges against the Appellant. Further, although both Sgts. Gharah and Petropulos when assigned to the ECHO unit were part of the group known as the "Untouchables," no evidence was found that its "members" bore such enmity

toward the Appellant that they would engage in an active conspiracy involving false statements and testimony to destroy his City career.[7]

After consideration of the relevant testimony and internal affairs interview statements, the Hearing Officer has found the accounts of Sgts. Gharah and Petropulos to be the more persuasive and accurate as to the discussions had on September 5, 2014 with the Appellant. Their credited accounts persuade that the Appellant during his September 5, 2014 discussion with Sgt. Petropulos stated that his briefing training would be on seatbelts and that he did qualify this statement by advising that he "might" do so. Further, he did not discuss the training topic with Sgt. Gharah. As such, in telling Sgt. Petropulos during their September 5, 2014 discussion that his training would be on seatbelts and subsequently training on ethics without advising any superior in such regard, the Appellant deliberately misled Sgt. Petropulos and lied to investigators when he denied having done so as charged in the first Notice of Termination.

Attention next turns to the September 6, 2014 pre-briefing discussion purportedly had between Sgt. Gharah and the Appellant. While it appears that numerous officers then in the briefing room did not recall observing any discussion between these two during their respective internal affairs investigations, none of these officers testified. Their accounts were therefore not subjected to cross-examination and the Hearing Officer had no opportunity to observe their demeanor under oath. Thus, little if any weight has been given to the statements made in such regard during these officers' administrative interviews.

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[7]The "Untouchables" also included Chief Hughes, before he became the Chief, and Sgt. Radus (RT 498-500). The poster of the "Untouchables" was made some ten years ago by a former employee of the Department (RT 562-563) and depicted the personnel then assigned to the ECHO unit.

Sergeant Gharah testified that after entering the briefing room at about 5:25 p.m. he asked the Appellant about his training topic and the Appellant pointed to the dry erase board with "seatbelt policy" written on it and said seatbelt policy (RT 246-249). His hearing testimony was consistent with his statements in such regard proffered during his administrative interview (AIT 4). The Appellant testified that he had no recollection of any discussion with Sgt. Gharah before his briefing training (RT 105-106). Throughout his administrative investigation, the Appellant repeatedly stated that he could not recall having any such discussion (D. Ex. 5, 091-093, 099, 103, 106-107, 161-162).

In addition to the accounts proffered by the Appellant and Sgt. Gharah regarding their purported pre-briefing discussion, Corporal Valdiserri, Corporal Pulido, and Sgt. Radus testified as to their respective recollections.[8] Corporal Alan Valdiserri testified that he could hear Gharah and the Appellant talking but could not hear their specific statements and that he saw the Appellant point to the board where "seatbelts" was written (RT 626, 633). In his administrative interview, Valdiserri stated that he remembered the Appellant pointing to the board and "basically saying that's what he was going to discuss in briefing" (AIT 3). While it appears from the comparison of his hearing testimony with his AIT interview that Corporal Valdiserri's recollections differ about what he heard the Appellant say, his accounts were consistent in that he saw them having a discussion and that the Appellant had pointed to the dry erase board. Thus, at minimum, Valdiserri's recollections support Sgt. Gharah's claim that he had a discussion with the Appellant before briefing.

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[8]Transcripts of their administrative interviews were also reviewed and considered by the Hearing Officer.

Although in his hearing testimony Corporal Emmanuel Pulido was at first unsure whether the Appellant had said seatbelt policy in response to a question from Sgt. Gharah, his recollection that the Appellant had pointed to the dry erase board on which was written "seatbelts" was definite and unqualified (RT 651-652). He was equally certain that Sgt. Gharah had entered the briefing room before briefing started and had engaged in a discussion with the Appellant (RT 651-652). In reply to further questioning by Counsel for the City, Pulido stated without any apparent reservations that in response to a question from Gharah the Appellant replied "seatbelt" or "seatbelt policy" while pointing to the dry erase board (RT 653-654). In his administrative interview, Corporal Pulido stated that he had heard the Appellant tell Gharah that his training topic would be seatbelt policy (AIT 3, 8). While Pulido's initial uncertainty during his hearing testimony is noted, review of his entire testimony and internal affairs interview provides further support for the conclusion that during their pre-briefing discussion the Appellant had told Gharah that his training would be on seatbelts. And at minimum, Corporal Pulido's account establishes that Sgt. Gharah had a discussion with the Appellant before the start of briefing. Similarly, although Corporal Jonathan Radus testified that he was unable to hear their conversation, he observed Sgt. Gharah and the Appellant engaged in conversation near the dry erase board before the start of briefing (RT 686).

It is noted, as pointed out by the Appellant, that none of the supervisory employees in attendance attempted to stop his presentation on ethics. However, their failure and/or decision not to have done so does not of itself warrant the rejection of the testimony of the Department witnesses as to the pre-briefing conversation between Sgt. Gharah and the Appellant. The Hearing Officer will not second guess the decision, whether deliberate or through oversight, not

to interrupt or put a halt to the Appellant's training on ethics, an action that may have resulted in a confrontation and public counseling.

After full consideration of the testimony and investigative interview statements of Sgt. Gharah, the Appellant, and the percipient witnesses, it is concluded that the Department has met its requisite burden to establish that Sgt. Gharah and the Appellant engaged in a discussion prior to the start of the September 6, 2014 briefing session and that the Appellant had told Gharah that his briefing training would be on seatbelts.[9] In so doing, the Appellant made an intentionally false statement to Sgt. Gharah as alleged in the March 6, 2015 Notice of Termination.

The March 6, 2015 Notice of Termination alleges that the Appellant had lied to investigators during his administrative interview by claiming that he did not recall speaking with Sgt. Gharah before the September 6, 2014 briefing. As noted, during both his administrative interview and in his hearing testimony the Appellant stated that he had no recollection of any such pre-briefing discussion with Gharah. In such regard, it is noted that the Appellant did not expressly deny having this conversation, asserting instead that he could not recall having any such discussion with Gharah. No direct evidence was presented, *e.g.*, a witness testifying to a conversation with the Appellant in which he had stated that he recalled the pre-briefing discussion or acknowledged its occurrence, to refute the Appellant's claim. However, the Appellant's claimed failure to recall must be viewed in the context of his testimony and administrative interview statements, which demonstrated a thorough recollection of many events

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[9]The Appellant's credibility is weakened by his explanation for his having written "seatbelts" or "seatbelt policy" on the dry erase board. In such regard, seatbelt policy appears to be a prosaic and noncontroversial subject matter. As such, the Appellant's claim that he had written these words on the board to "stimulate" and "engage" his audience and then "interject them" with ethics training is difficult to accept and credit (AIT 136, 159).

and discussions surrounding the September 6, 2014 briefing training. This includes, but is not limited to, his recollections of his attempts to access the seatbelt policy using both his Department computer and vehicle MDT, his discussions about his training topic with more than four individuals and his pronouncements that the training would be good, all recalled in some detail, his casual encounter with Officer Rios at the gas pumps, and how he had come to prepare the notes that he used to present his ethics training. The Appellant's ability to recall these matters while professing to have no recollection at all of his discussion with Sgt. Gharah substantially undermines his claimed inability to recall their discussion. Here, this circumstantial evidence is sufficient to establish that the Appellant's claim that he did not recall having the September 6, 2014 pre-briefing discussion with Sgt. Gharah was not a failed recollection but was instead a deliberate prevarication. The Department therefore has sustained the allegation that the Appellant had lied to investigators during his administrative interview as specified in the March 6, 2015 Notice of Termination.

For the reasons discussed above, it is the finding and conclusion of the Hearing Officer that the Appellant misled Sgts. Petropulos and Gharah about his briefing training topic, was dishonest in his September 6, 2014 pre-briefing discussion with Sgt. Gharah when he stated that he was going to train on seatbelts, and was dishonest with the investigators during his administrative investigation. The Appellant's proven dishonesty as hereinabove discussed was violative of Policy Manual Sections 340.3.5 (i), (l), (m), (n), and (o) as charged in the March 5, 2015 Notice of Termination.

Distilled, the Final Supplemental Notice of Termination dated August 12, 2016, as did the Supplemental Notice of Termination, alleged that the Appellant had violated Policy Manuals

Sections 450.3, 450.4, and 450.4 (a) by surreptitiously recording the September 6, 2014 briefing and failing to provide the recording to the Department. And that through various acts of commission or omission the Appellant had violated Policy Manual Sections 340.3.2 (f), and 340.3.5 (e), (l), (n), (o), (y), and (z) (D. Ex. 11). The Appellant was also charged with violating Penal Code Section 632 (a) that prohibits such alleged surreptitious recordings.

Regarding the allegations as set forth in the Final Supplemental Notice of Termination, it is undisputed that the Appellant had used his personal i-phone to record the entire September 6, 2014 briefing session, that he had placed it on the table near to where he was speaking, and that he did not advise anyone in the room that he was recording the briefing, nor did he obtain permission from any supervisor to have done so. Other than this recording, no evidence was presented that other Department employees have recorded briefing sessions. The briefing room has not expressly been identified as a confidential area and no written policy expressly provides that briefing sessions are confidential or prohibits their recording.

Attention first focuses on the Appellant's alleged violation of Penal Code Section 632 (a). The Department alleges the Appellant violated this provision by his surreptitious recording of the confidential briefing session while the Appellant asserts that communications attendant to the briefing were not "confidential" within the meaning of the Penal Code and that his recording was therefore not violative of the relevant Penal Code provisions.

Pertinent here are Penal Code Sections 632 (a) and 632 (c), which in relevant part read as follows:

Section 632 (a)

> Every person who, intentionally and without the consent of all parties to a confidential communication, by means of any electronic amplifying or recording device, eavesdrops upon or records the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding two thousand five hundred dollars ($2,500), or imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment . . .

Section 632 (c)

> The term "confidential communication" includes any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it be confined to the partes thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.

Some 19 Department employees attended the September 6, 2014 briefing. Review of their internal affairs interviews and the hearing testimony of the Department's seven witnesses reveals that most, if not all, these individuals stated that they had an expectation of privacy as to their communications during briefing. The witnesses' testimony was essentially that they had an expectation of privacy regarding any private conversation had with a coworker while briefing was conducted (RT 420-422, 586, 630, 640, 658-659, 695, 763-764, 818, 847-848).

Although sensitive and even confidential matters regarding ongoing investigations may be discussed at a briefing, civilians and non-department members with prior approval are allowed to attend briefing sessions. And, as noted, no notice is posted nor policy distributed identifying the briefing room as a confidential area and that discussions had therein are to be treated as confidential. Further, it does not appear that subsequent dissemination of matters discussed

during briefing is prohibited, for it was acknowledged by Sgt. Radus that information discussed during a briefing may later be shared outside the confines of the briefing room with other Department employees (RT 703-705, 737-738).

The question of whether a communication is confidential within the meaning of Penal Code Section 632 (c) is a question of fact to be determined in the first instance by the Hearing Officer. The undersigned has reviewed and considered the published opinions of various California courts explicating and deciding this very issue. As would be expected, none of these cases presented a factual pattern that squarely and fully comported with the facts developed in this matter. However, the facts before the court in *People v. Pedersen* (1978) 86 Cal.App.3d 987, 994 appear to most closely parallel those of the instant dispute. There, the court held that a covertly recorded meeting inquiring into some questionable checks was no different from other business meetings of the parties that were not confidential. Here, in light of the above-noted facts, it cannot be concluded that statements made by the briefing presenters and any communications exchanged between these presenters and those present were such that a reasonable expectation of privacy attached. Whether any "one-on-one" conversations had among those present at the briefing were confidential within the meaning of Penal Code Section 632 (c) need not be decided, for review of the briefing recording discloses that no such communications were captured on the Appellant's recording (D. Ex. 8).

For the foregoing reasons, it is concluded that the communications as recorded by the Appellant during the September 6, 2014 briefing were not confidential communications as contemplated by Penal Code Section 632 (c). As such, the Appellant did not violate Penal Code

Section 632 (a) as alleged in the Supplemental Notice of Termination.[10] This finding, however, does not end the inquiry into the Appellant's actions and conduct with respect to his having recorded the briefing. For Policy Manual Section 450.4 (a) prohibits a Department employee from "surreptitiously recording any conversation of any other member of this department without the expressed knowledge and consent of all parties." Notwithstanding the juxtaposition of this Section with Section 450.4, the recording prohibition as set forth in Section 450.4 (a) appears broader than Section 450.4's proscription in such regard. For noticeably absent from the language of Section 450.4 (a) is any reference to a party's reasonable belief or expectation that the conversation is private or confidential. As such, while the Appellant's surreptitious recording of the September 6, 2014 briefing was not found violative of Penal Code Section 632 (a), it was done in violation of Policy Manual Section 450.4 (a).

It was also alleged that the Appellant had violated various provisions of the Policy Manual by his failure to disclose or furnish his recording of the briefing session to the Department prior to its April 2016 disclosure. The Appellant asserts that despite the various Policy Manual Sections that the Department relies on as the bases for his required disclosure, he had 5th Amendments protections that allowed the withholding of any item that might be used in a criminal prosecution against him. The Department, citing to *Szmaciarz v. State Personnel Bd.* (1978) Cal.App.3d 904, maintains that while the Appellant may have withheld the recording for

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[10]It is noted that the Office of the Orange County District Attorney provided a legal opinion to Chief Hughes that the Appellant's recording of the briefing violated Penal Code Section 632 (a) (D. Ex. 7 (D)). Since the author of this "opinion letter" did not testify as to the basis of these conclusions and as it was based on certain assumptions of which the author was not subject to examination, this opinion was not afforded any weight.

fear of criminal prosecution he was required to turn over the recording as part of the internal affairs investigation.

As pointed out by the Appellant, the California Supreme Court's decision in *Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822 relates only to compelled spoken word protections and does not provide protection regarding the production of documents or tangible items. However, in *Szmaciarz v. State Personnel Bd., supra,* at 915-916, the court in addressing an investigation into a correctional officer's involvement in marijuana trafficking with prison inmates, a criminal offense, emphasized a peace officer's obligation to cooperate with an administrative investigation. Although the Appellant's 5th amendment assertions have been considered, the Hearing Officer is not persuaded that these rights serve to protect the Appellant from administrative sanctions for any improper failure to disclose or submit his recording of the September 6, 2014 briefing either during the administrative investigation, the discipline and administrative appeal procedures, or as required by the applicable Policy Manual provisions.

Policy Manual Section 450.3, in relevant part, provides that all recordings made by Department members regardless of the ownership of the recording equipment "shall remain the property of the Department and should not be considered private." Here, it is undisputed that the Appellant used his personal phone to record the September 6, 2014 briefing session and retained exclusive possession of this recording until at least April 2016. In so doing, the Appellant violated Policy Manual Section 450.3 as charged in the Supplemental Notice of Termination.

Regarding the Appellant's alleged violation of Policy Manual Section 340.3.2 (f) by his failure to disclose he had recorded the briefing session, the question whether his recording constituted an activity that may result in "criminal prosecution" implicates complex legal issues

with which the Appellant cannot reasonably be expected to have been knowledgeable.[11] However, Section 450.4 (a) is clear in its prohibitions and, as such, it was reasonable to expect that the Appellant knew that his recording of the briefing session may have resulted in discipline. In not disclosing the existence of the recording before April 2016, the Appellant violated Policy Manual Section 340.3.2 (f).

Review of the transcript of the Appellant's administrative interview reveals that he was questioned at length regarding the content of his briefing training and statements he had made during this training. Regardless that charges were not afterwards filed regarding the content of the briefing, the briefing itself was then being investigated and, as such, the existence of an audio recording of the briefing session was relevant to this investigation. Further, this recording was relevant within the meaning of Item 7 of the Notice of Administrative Investigation signed by the Appellant before his administrative interview (D. Ex. 5, p. 243). The Appellant had ample opportunity during his administrative interview to disclose that he had recorded the September 6, 2014 briefing, a recording that was relevant to the questions posed to the Appellant during his interview. In failing then to disclose that he had recorded the briefing and had retained a copy of this recording, the Appellant violated Policy Manual Sections 340.3.5 (e) and 340.3.5 (o).

As concluded above, the preponderance of the evidence establishes that the Appellant misled Sgts. Petropulos and Gharah about his briefing training topic, was dishonest in his September 6, 2014 pre-briefing discussion with Sgt. Gharah when he stated that he was going to train on seatbelts, and was dishonest with the investigators during his administrative

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[11]This Section requires an employee to "promptly and fully report activities on their own part or the part of any employee where such activities may result in criminal prosecution or discipline under this policy."

investigation. It was further concluded, as established by the preponderance of the evidence, that the Appellant's surreptitious recording of the September 6, 2014 briefing session violated Department policies and that his failure to disclose that he had recorded the session was also violative of Department policies. The evidence preponderates that the Appellant's proven misconduct and proven acts of omission and commission were violative of Policy Manual Sections 340.3.2 (f), 340.3.5 (e), (i), (l), (m), (n), (o), 450.3, and 450.4 (a). Further, his actions fall within the ambit of conduct proscribed by Policy Manual Section 340.3.5 (z) and, as such, the Appellant violated this Section. The Appellant did not violate Penal Code Section 632 (a) nor Policy Manual Section 340.3.5 (y).

Turning to the question of whether termination was the appropriate penalty for the sustained charges, it is first observed that the California courts have developed a rich tapestry of decisional law holding that peace officers are to be held to the highest standard of behavior and that credibility and honesty are essential requirements of a sworn officer's position.[12] The courts have consistently held that termination is an appropriate penalty for proven dishonesty by a police officer despite the quality of the officer's work record and length of service.[13] As succinctly stated by the *Paulino* court "a deputy sheriff [police officer] is held to the highest standards of behavior. His honesty and credibility are crucial to proper performance of his duties. Dishonesty in matters of public trust is intolerable" (*Paulino, supra*, 175 Cal.App.3d at

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[12]See, *e.g.*, *Ackerman v. State Personnel Board* (1983) 145 Cal.App.3d 541, *Paulino v. Civil Service Commission* (1985) 175 Cal.App.3d 962, and *Nicolini v. County of Tuolumne* (1987) 190 Cal.App.3d 619.

[13]Again, see for example, *Paulino v. Civil Service Commission* (1985) 175 Cal.App.3d 962, and *Nicolini v. County of Tuolumne* (1987) 190 Cal.App.3d 619.

972). This court further opined "dishonesty is not an isolated act; it is more a continuing trait of character" and that such repeated misconduct would "likely result to harm to the public service" (*Id.*). The holdings in *Paulino* as well the other cited court decisions apply with equal force and effect to the Appellant's proven acts of dishonesty.

In considering the relevant decisional law and noting in particular that the Appellant's proven misconduct comprises a severe breach of the public trust placed in him as a police officer, the Hearing Officer finds and concludes that termination was the appropriate penalty for the sustained charges of dishonesty in and of themselves. The additional sustained charges as hereinabove discussed provide further support for the appropriateness of the Appellant's termination. It is therefore concluded that the Appellant's termination was the appropriate penalty for the sustained charges and the following recommendation is issued.

RECOMMENDATION

It is the recommendation of the undersigned neutral Hearing Officer that the preponderance of the evidence supports the charges as found sustained above and that the Appellant's termination was the appropriate penalty.

Respectfully submitted,

Walter F. Daugherty
Hearing Officer

Dated: April 25, 2017