

MICHAEL P. STONE, SBN 91142,
MUNA BUSAILAH, SBN 166328,
ROBERT RABE, SBN 72312, and
SHERRY H. LAWRENCE, SBN 151795
Members of **STONE BUSAILAH, LLP**
A Partnership of Professional Law Corporations
1055 E. Colorado Boulevard, Suite 320
Pasadena, CA 91106
Telephone: (626) 683-5600
Facsimile: (626) 683-5656
Email: d.danial@police-defense.com

Attorneys for Petitioner,
MIZRAIN ORREGO

FILED
Superior Court of California
County of Los Angeles
12/16/2020

Sherri R. Carter, Executive Officer / Clerk of Court
By: N. DiGiambattista Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MIZRAIN ORREGO,
Petitioner,
vs.

LOS ANGELES COUNTY CIVIL
SERVICE COMMISSION,
Respondent.

COUNTY OF LOS ANGELES, a political
subdivision of the State of California, and
LOS ANGELES COUNTY SHERIFF'S
DEPARTMENT, A Department within the
County of Los Angeles, ALEX
VILLANUEVA, in his official capacity as
the Sheriff, DOES 1 through 10, inclusive,
Real Parties in Interest.

Case No.: 19STCP04567

**FIRST AMENDED VERIFIED
PETITION FOR PEREMPTORY WRIT
OF ADMINISTRATIVE MANDAMUS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Code of Civil Procedure §§ 1094.5 and
1085]

COMES NOW the Petitioner, Mizrain Orrego (“Petitioner” or “Orrego”), moving this
Court for a Peremptory Writ of Mandate, or other appropriate relief, directed to Respondent, Los
Angeles County Civil Service Commission (“Commission”), and Real Parties in Interest, County

1 of Los Angeles (“County”), Los Angeles County Sheriff’s Department (“Department”), and Alex
2 Villanueva, in his official capacity as the Sheriff of Los Angeles County (“Sheriff”).

3 Petitioner alleges as follows:

4 1. The true names and capacities, whether individual, corporate, associate or otherwise,
5 of Real Parties in Interest Does 1 through 10, inclusive, are unknown to Petitioner, who,
6 therefore, sues said Real Parties in Interest by such fictitious names. Petitioner will ask leave
7 of this Court to amend this Petition to show the true names and capacities of such Real Parties
8 in Interest when the same have been ascertained.

9 2. Respondent, Commission, is an administrative agency expressly created by the Los
10 Angeles County Charter for the purposes of adjudicating disciplinary matters between the
11 County of Los Angeles and its employees. The Commission has quasi-judicial responsibility
12 and its determination with respect to administrative adjudication is final.

13 3. Real Party in Interest, the County of Los Angeles, is now, and all times herein
14 mentioned, was a duly chartered County of the State of California and a legal subdivision of the
15 State, charged with governmental powers.

16 4. Real Party in Interest, Los Angeles County Sheriff’s Department, is now, and at all
17 times herein mentioned, was the agency of the County charged with maintaining peace and order
18 in the community. In its capacity as a peace keeping agency, Real Party in Interest, Department,
19 is responsible for hiring, maintaining and promoting employees in the capacity of peace officers,
20 whose function is to protect, as well as, serve the public at large.

21 5. At times herein mentioned, Real Party in Interest, Alex Villanueva, is now, and has
22 been, since he was sworn in on December 3, 2018, the duly elected Sheriff of Los Angeles
23 County. In his capacity as Sheriff of the Los Angeles County and the Department Head of the
24 Los Angeles County Sheriff’s Department, Villanueva is responsible for the establishment and
25 implementation of the policy and procedures of the Los Angeles County Sheriff’s Department,
26 Former Sheriff Jim McDonnell (“McDonnell”) was Sheriff of Los Angeles County, from on or
27 about November 4, 2014, until Alex Villanueva assumed office in December, 2018. McDonnell
28

was Sheriff of Los Angeles County at all times relevant to this action, and was responsible for Petitioner's discharge from employment.

6. On or about October 5, 2007, Petitioner Mizrain Orrego, was hired by the County of Los Angeles as a Deputy Sheriff and thereafter, and at all times relevant herein, was employed by the County of Los Angeles in the capacity of Deputy Sheriff Generalist. Petitioner, at all times herein mentioned, had completed his probationary period and held his position as a Deputy Sheriff with the County of Los Angeles as a permanent employee.

STATEMENT OF FACTS

7. On or about October 2, 2015, Petitioner attended an off-duty Sheriff's Department celebration at a restaurant in Orange County. Being new to the Compton Station and feeling uncomfortable, Petitioner ended up drinking in the bar area apart from the other celebrants. When he left, he was intoxicated. Shortly after leaving the restaurant, Petitioner was arrested for driving under the influence. During a two and a half hour detention on the sidewalk, body worn camera footage shows that he was quiet and cooperative with the City of Orange officers.

8. On or about June 8, 2017, Petitioner was served with a Letter of Intent to discharge him from his position as Deputy Sheriff on the grounds that he had driven under the influence, made false statements during the investigation, and failed to cooperate with arresting authorities.

9. Petitioner exercised his right to respond, and a *Skelly* hearing¹ was held by former Chief Joseph Gooden. On or about August 1, 2017, however, Petitioner was notified that his discharge would be effective on August 1, 2017.

10. In accordance with the Los Angeles County Civil Service rules and regulations, Petitioner requested, and was granted, a full evidentiary hearing.

11. The Commission appointed Hugo S. Rossiter as the Hearing Officer. Mr. Rossiter heard the matter over three days, commencing on April 5, 2018, and ending on April 13, 2018.

//

¹ See *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 (“*Skelly*”).

1 12. County of Los Angeles Civil Service Rules, Rule 4.07, “Rights of Petitioner,”
2 affirmatively affords petitioners in administrative hearings the right to subpoena witnesses to
3 testify.

4 13. Petitioner’s Captain, Michael Thatcher, expressed to Petitioner a desire to testify
5 on his behalf at the Civil Service Commission (“CSC”) hearing, but said he was prevented from
6 doing so by Los Angeles Sheriff’s Department Manual of Policy and Procedure Section 3-
7 1/030.40 which provided that: “Executives shall not advise subordinates of a Department policy
8 or management decision while at the same time criticizing the policy, directive, or decision or
9 otherwise expressing his/her disapproval of it. A violation of this policy may result in
10 discipline.” Such policy was in effect *only* during the administration of former Sheriff Jim
11 McDonnell, and essentially constituted a “Code of Silence for Managers.” This policy expressly
12 prohibited managers from testifying truthfully, even if subpoenaed to testify under oath at a legal
13 proceeding. This policy violated CSC Rule 4.07, which affords petitioners the right to subpoena
14 and call witnesses, thereby depriving Petitioner of due process of law under the U.S. and
15 California Constitutions.

16 14. An email written by Captain Michael Thatcher² articulating the hearing testimony
17 he would have provided but for Policy 3-01/030.14, was obtained by Petitioner via a Public
18 Records Act Request served upon the County of Los Angeles; such email is attached hereto as
19 Exhibit “A”. Had Captain Thatcher *not* faced discipline if he had expressed his opinion
20 regarding the real reason Petitioner was discharged, and articulated Appellant’s outstanding
21 work history with the Department, it is highly likely that the Hearing Officer would have found
22 in Petitioner’s favor.

23 15. At Petitioner’s CSC hearing, former Chief Joseph Gooden testified that but for
24 Petitioner’s alleged “false statements”, he would have been suspended for 25 days. He also
25 testified that to be deemed a “false statement”, three elements must be met: (1) The deputy must
26 know the statement to be false when it is made; (2) the statement must be made with the intent
27

28 ² Captain Thatcher was subsequently promoted to Commander, and later retired.

1 to deceive; and (3) the statement must involve an issue material to the charges and/or policy
2 violation. Chief Gooden then admitted under oath that the statements alleged to be false in this
3 case were not material to any charges or policy violations.

4 16. Former Chief Joseph Gooden also testified that part of the Department's process
5 for determining whether discharge is appropriate requires a review of the involved deputy's
6 performance history with the Department. He then acknowledged, under oath, that he gave *no*
7 *consideration whatsoever* to Petitioner's exemplary performance as a deputy when making this
8 decision. The Chief acknowledged that he failed to take into consideration Petitioner's (1)
9 "Outstanding" Performance Evaluations; (2) seventeen Commendations; (3) a positive profile
10 written about him in the New York Times; (4) the outstanding work he did on the Summer
11 Enforcement Team; or (5) Captain Thatcher's handwritten note about Petitioner's exceptional
12 post-D.U.I. work; (6) being invited to train law enforcement officials in Mexico; (7) being
13 assigned to a foreign dignitary detail, and more. When asked whether Petitioner's performance
14 as a deputy was average or above average, Chief Gooden testified that he didn't know because
15 he did not review it. In violation of express Departmental policy, Chief Gooden testified that
16 "[p]ast excellence as a Deputy Sheriff has nothing to do with the mitigating factors of this
17 incident."

18 17. On or about November 12, 2018, the Hearing Officer issued Findings of Fact,
19 Conclusions of Law and a Recommended Decision to uphold the discharge; such decision
20 contains several errors of both fact and law. He erroneously stated, for example, that Deputy
21 Orrego was "seen drinking by others" from the Department on the night at issue. There was no
22 such testimony. The Hearing Officer also stated that Chief Gooden "referenced the likelihood
23 of Brady and Pitchess motions concerning Appellant's testimony as the arresting officer" if he
24 were not discharged. The Department's "Guidelines for Discipline" do not list the possibility
25 of Brady and Pitchess motions as a basis for discharge. Moreover, a simple D.U.I. would not
26 lead to inclusion on such lists. Petitioner maintains that the Hearing Officer exceeded his
27 authority in making that consideration part of his decision. In addition to other errors, the
28 Hearing Officer's Recommended Decision *completely fails* to analyze the elements of a false

1 statement, elements which Chief Gooden acknowledged must be met. In his decision, Mr.
2 Rossiter made *no findings* regarding knowledge, intent, and materiality of the statements at issue.

3 18. On January 30, 2019, the Commission announced its proposed decision to accept the
4 findings and recommendation of the Hearing Officer. Petitioner was allowed to, and did, serve
5 Objections to such recommended decision.

6 19. In his Objections to the Hearing Officer's Findings of Fact, Conclusions of Law and
7 Recommended Decision, Petitioner admitted he had driven under the influence, but denied
8 making false statements or failing to cooperate with arresting authorities. Petitioner argued that
9 the Department failed to meet its burden of establishing that discharge for a first time D.U.I. was
10 warranted, and requested that a 25-day suspension be imposed instead.

11 20. Moments before commencement of the July 24, 2019 Civil Service Commission
12 hearing on Petitioner's Objections, Petitioner was approached by Chief Eli Vera and others.
13 Chief Vera asked whether the matter could be settled for a 25-day suspension. Seconds after
14 Petitioner agreed thereto, the Commission called the matter. On the basis that the parties had
15 reached a preliminary settlement agreement, Petitioner requested a two week continuance of the
16 hearing on his Objections. The Commission summarily denied such request. *See Transcript*
17 *of Civil Service Commission Hearing*, attached hereto as Exhibit "B", at pages 3-7. It is also
18 noteworthy that the Civil Service Commission rules state that requests for continuances should
19 be liberally construed.
20

21 21. Petitioner then explained to the full Commission that but for now-rescinded Policy
22 3-01/030.14, Captain Thatcher would have testified at Petitioner's Civil Service Commission
23 hearing. In light of the revocation of such policy, Petitioner requested that Chief Eli Vera and
24 Captain Michael Thatcher be allowed to speak to the Commissioners and explain what they
25 would have testified to at hearing had policy not prevented them from doing so. Petitioner
26 explained that Captain Thatcher had personally paid for a flight to return from an out-of-state
27 vacation to be present that day. A Commissioner said, "We can continue it or we can go
28 forward. We can just ignore whatever she's saying and just go forward." The Commission then

1 refused to hear from either Chief Vera or Captain Thatcher. See Exhibit "B".

2 22. In light of the denial of continuance and refusal to hear from Chief Vera and then-
3 Commander Thatcher, Petitioner argued that the Hearing Officer failed to address the elements
4 of a false statement, which were the basis upon which discharge had been premised. The
5 Commission again failed to address those arguments before deciding to uphold appellant's
6 discharge. See Exhibit "B".

7 23. The Commission, as its final action, provided the parties a copy of its signed formal
8 Order, dated July 31, 2019, upholding the discharge.
9

10 **FIRST CAUSE OF ACTION**

11 **California Code of Civil Procedure § 1094.5**

12 24. Petitioner hereby asserts and alleges each and every fact and allegation set forth in
13 Paragraphs 1 through 23, inclusive, of this Petition.
14

15 25. This Petition for Administrative Mandamus is filed pursuant to Petitioner's right
16 under California Code of Civil Procedure § 1094.5 to obtain judicial review of Respondent's
17 final decision. This inquiry extends to the questions of whether the Respondent proceeded
18 without, or in excess of, jurisdiction; whether there was a fair trial which afforded Petitioner due
19 process; whether the Sheriff's Department and the Civil Service Commission violated their own
20 policies and procedures, and whether there was any prejudicial abuse of discretion.
21

22 26. At all times herein mentioned, Petitioner was entitled to the protections afforded by
23 the Public Safety Officers' Procedural Bill of Rights Act, *Government Code*, Section 3300, *et*
24 *seq.*, including the right to an "administrative appeal" of the imposed punitive action, pursuant
25 to Section 3304(b).

26 27. At all times herein mentioned, Petitioner had a vested and substantial property right
27 in his position as a Deputy Sheriff with the County, and to the compensation and remuneration
28 which attaches thereto. Because Petitioner has a vested and substantial property right in his

1 position with the County, this Court is required to exercise its independent judgment on the
2 evidence.

3 28. At all times herein mentioned, Respondent Commission abused its discretion when
4 it overruled Petitioner's objections to the Hearing Officer's Findings of Fact, Conclusions of
5 Law and Recommended Decision, refused to grant Petitioner's request for a brief continuance,
6 refused to hear previously-unavailable evidence from Chief Eli Vera and Commander Michael
7 Thatcher, and refused to address the issue of materiality relating to the alleged "false
8 statements".

9 A. The County of Los Angeles proceeded in excess of its jurisdiction by failing to
10 provide Petitioner a fair hearing which met due process requirements;

11 B. The actions of Respondent and Real Parties in Interest, before, during and subsequent
12 to the administrative appeal hearing, in sustaining the charges against Petitioner, resulted in a
13 prejudicial abuse of discretion, in that Respondent did not proceed in the manner required by
14 law, the findings are not supported by the evidence adduced at the hearing, and the order or
15 decision of the Respondent is not supported by the findings;

16 C. Respondent's findings are not supported by the weight of the evidence, and the
17 evidence presented does not support a determination that Petitioner engaged in the dishonesty
18 or failed to cooperate, or that he violated the Sheriff's Department Manual of Policy and
19 Procedures as articulated in the Department's Letter of Intent and Letter of Imposition of
20 Discharge; and/or

21 D. Under all of the facts and circumstances of this case, Respondent Commission's
22 decision to discharge the Petitioner is disproportionately harsh and plainly excessive, even
23 assuming *arguendo* that the weight of the evidence had supported the findings, and as such
24 constitutes a clear abuse of discretion by Respondent.

25 29. At all times herein mentioned, Petitioner was a beneficially interested party in the
26 outcome of this Petition, because the relief sought, reversal of the sustained disciplinary decision
27
28

1 and administrative penalty, restoration of full back pay, benefits and seniority, is relief within
2 this Court's jurisdiction under § 1094.5 of the *Code of Civil Procedure*. Petitioner has done all
3 things necessary and satisfied all conditions precedent to the maintenance of this action,
4 including the filing of all applicable claims and notices under the rules, regulations and policies
5 of the County, and has exhausted all administrative remedies available. Petitioner has no plain,
6 speedy, or adequate remedy in the ordinary course of the law, other than the relief sought by this
7 Petition.

8
9
10 **SECOND CAUSE OF ACTION**

11 ***California Code of Civil Procedure § 1085***

12 30. Petitioner hereby asserts and alleges each and every fact and allegation set forth in
13 Paragraphs 1 through 29, inclusive, of this Petition.

14 31. By maintaining a written policy which threatened Captain Thatcher with discipline
15 if he testified to a view contrary to that of the Department's official position, the County of Los
16 Angeles Sheriff's Department violated Appellant's right to due process and a fair hearing
17 guaranteed by both State and Federal law.

18 32. The Hearing Officer failed his duty by not addressing Chief Joseph Gooden's
19 sworn testimony that (1) Appellant's allegedly false statements were not material to any crime
20 or policy violation; and (2) he failed to follow Departmental policy by not taking Appellant's
21 employment history and mitigating circumstances into consideration before imposing discharge.

22 33. The Civil Service Commission failed its duty and position of trust by (1)
23 unreasonably denying the requested two week continuance; (2) by refusing to consider newly
24 developed and relevant evidence; and (3) by declining to address the issue of whether the
25 statements at issue could be constituted as "false" pursuant to Chief Gooden's testimony.

26 //
27

28 //

1 34. The County of Los Angeles also failed its duty and position of trust by discharging
2 Appellant on the pretext of his D.U.I. when, in reality, it did so for political reasons wholly
3 unrelated to such offense.

4 35. Petitioner has a good faith belief that, in addition to the documents already released
5 pursuant to his Public Records Act Request which support his allegations, there are many more
6 documents which, if ordered produced by the Court, will further support the fact that his
7 discharge was pretextual. Upon receipt of the requested documents, Petitioner may amend this
8 petition to include any additional relevant information.

9 WHEREFORE, Petitioner prays for judgment as follows:

10 1. That this Court issue a Peremptory Writ of Mandate commanding Respondent
11 Commission to vacate and set aside the decision to sustain the charges in the Department's Letter
12 of Imposition and order Real Parties in Interest to restore Petitioner to his position in good
13 standing, free of prejudice arising from this disciplinary action;

14 2. That this Court issue a Peremptory Writ of Mandate commanding Real Parties in
15 Interest to remove the record of the misconduct charges, the proposed disciplinary penalty, any
16 other adverse comments, and all references to the complaint, investigation and adjudication of
17 these matters from Petitioner's personnel package and all other Department records, and to
18 maintain said documents in sealed envelopes separate and apart from any and all of Petitioner's
19 personnel and employment records, and to pay Petitioner back salary and benefits, together with
20 interest at the legal rate, and to restore to Petitioner all other emoluments of employment; and
21

22 3. That this Court award attorney's fees in accordance with law; and

23 4. That this Court order Respondent and/or Real Parties in Interest to pay costs of suit
24 incurred herein;

25 //

26 //

27 //

28 //

1 5. That the Court order this case related to, and consolidated with, a writ filed
2 concurrently herewith entitled, “Mizrain Orrego v. County of Los Angeles”, because the issues
3 contained therein are related to the issues addressed above; and

4 6. For such other and further relief as the Court may deem just, necessary and proper.
5

6 Dated: December 15, 2020

Respectfully Submitted,

8 STONE BUSAILAH, LLP

9 /s/ Sherry H. Lawrence

10 SHERRY H. LAWRENCE, Attorneys for
11 Petitioner Mizrain Orrego
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 A Writ of Mandate may issue from any final administrative order or decision rendered
3 at a hearing required by law when there was a prejudicial abuse of discretion. (*Code of Civil*
4 *Procedure* § 1094.5 (a) and (b).)

5 The issue is to be brought before the Court on a notice of motion. (See *California Code*
6 *of Civil Procedure*, § 1094.) When the administrative record becomes available to Petitioner,
7 he will supplement his Points and Authorities at that time.
8

9
10 Dated: December 15, 2020

Respectfully Submitted,

11 STONE BUSAILAH, LLP

12 /s/ Sherry H. Lawrence

13 SHERRY H. LAWRENCE, Attorneys for
14 Petitioner Mizrain Orrego
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.


MIZRAIM OROZCO

EXHIBIT A

From: Thatcher, Michael E.
To: Vera, Eliezer
Subject: For Sherry
Date: Monday, July 22, 2019 11:19:50 AM
Attachments: Document to Sherry Lawrence.docx

Ms. Lawrence,

This is in response to your request for an overview of what I intend to testify about should I be called before the Civil Service Commission with regard to the discharge of Mizrain Orrego from the Los Angeles County Sheriff Department.

I believe Mr. Orrego's firing was a targeted and deliberate act which took place after various Executives and high ranking Civilian members of the Sheriff Department deduced that his discharge would enhance the Department's public perception and ability to deal with civil litigation that arose after the tragic killing of Mr. [REDACTED] [REDACTED] by Orrego and his partner, [REDACTED] [REDACTED] during a deputy involved shooting. Also, during and after the investigative and discipline process, I was treated in such a manner as to discourage me from sharing my thoughts/opinions about Orrego with others.

Mr. Orrego arrest for DUI occurred on 10-02-15. On 06-17-16, he plead guilty.

On 07-20-16 Deputies Orrego and [REDACTED] were directed to allow two journalists from the New York Times to participate in a ride along with them. On 07-24-16, the Department's Strategic Communications Director, Carol Lin, sent an e-mail to the Sheriff, Executive Officer, Assistant Sheriff of Patrol, the Chief Central Patrol Division, the two Commanders (Gooden and Rivero) of Central Patrol Division, the Captain of Sheriff's Information Bureau, the Public Information Officer and the Lieutenant Aide to the Sheriff. Ms. Lin included a copy of the New York Times article about the ride-along and prefaced it with "Our deputy (Orrego) took liberties to generalize about Hispanics as car thieves and African Americans as meth users." The actual quote of Deputy Orrego was, "The reality is that people who steal cars are mostly Hispanics who are involved in criminal activity, they use methamphetamine. So now they need to support their habit. Where African-Americans, they don't do that for the most part. They don't consume methamphetamine." Ms. Lin obviously misquoted the article to the highest level of our Executives in her e-mail.

As the "first" Administrative Investigation of Orrego's DUI arrest was near completion and our Division Executives had been notified of such, the Department's Constitutional Policing Advisor, Diana Teran, sent me an e-mail (dated 08-25-16) informing me she was going to add the case to her monitored cases list. This meant she was to be provided with the case disposition paperwork, to include my recommended discipline. The paperwork was forwarded to her with my recommendation that Orrego be suspended for twenty (20) days. She was dissatisfied with the quality of the investigation and issued several directives on how to proceed.

In November 2016, the Station Lieutenant who was handling the investigation told me he was unable to complete it due to the burdensome requests being made of him by Ms. Teran. I reassigned the case to be completed by Internal Affairs Bureau (IAB). During their investigation, it was learned the Lieutenant I had assigned to investigate the case originally, was present at the location Deputy Orrego had visited prior to his arrest. This was, of course, problematic as well.

As the case is nearing statute date, Advocacy is assisting with the disposition paperwork and Ms. Teran is providing guidance on verbiage and content. I have become increasingly frustrated with knowledge that Gooden's intent to recommend discharge for Orrego. We have several conversations and I do not relent on my insistence that Orrego not be fired. I also recommend that Orrego remain on the

department to assure all that he will then be compelled to answer questions during Administrative Investigation and available during each phase of the civil lawsuit (brought by [REDACTED] family) process.

In an effort to hopefully bring influence over Gooden, I typed an e-mail to then Commander Perez with an attachment that summarizes Orrego's career the Friday before Case Review. The chronological list included discipline as well as examples of his quality police work. Gooden is cc'd on the e-mail. Perez does not respond however, three hours later, Gooden does. He states in his e-mail "Mike if, and only if the opportunity presents itself a brief overview from the Captain's perspective may be appropriate. What you have attached is what I routinely see at Skelly Hearings presented by counsel. It's a bit much for Case Review."

It should be noted that during Case Review, a Unit Commander (Captain) is present. The panel inquires of the Captain about the employee. This allows the panel to be fully informed prior to reaching their decision.

I was asked about Orrego during the Case Review. I began to state that he was a quality deputy and that I liked him. Gooden touched my leg as I spoke. I looked at him and saw him glaring at me. I looked at the other Executives present. All had obvious looks of displeasure on their faces. I stated that I now knew they had made their decision already and that any input I may have to offer would not be considered. Nobody disagreed or asked me to continue. A decision was then stated by the Executives.

It should also be noted that when employees are the subject of an Administrative Investigation and discharge is a possibility, they are relieved of duty. I did not relieve Orrego nor did I receive any order to do so. He worked up until the letter of intent was served on 06-08-17 as he arrived at the Station.

Orrego's Skelly Hearing was on 06-30-17. I was not invited to attend.

As the months followed, I spoke with Gooden on several occasions with respect to the Orrego case. On 07-11-18, Maya Lau called and left a voice mail on my county phone. She requested that I be interviewed. I advised Gooden of the request. He replied that I should call her and see if I could answer what she needed. I did so and then advised Gooden. He requested that I write a memo recalling our entire conversation. I did so.

On 07-12-18 I, along with Captains Carter, Tardy and Perez were summoned to Assistant Sheriff Denham's office. He told us that we were not to speak with Lau if called. We were instead to refer her to Sheriff's Information Bureau. He then berated Gooden, in front of us, for not passing along that information/directive to us.

On 07-13-18, Lau's article was published. In it, she quoted me as saying Orrego was fired. I did not say that. I told her that he no longer worked for the Department and when pressed as to why, I declined to answer. On 08-02-18, Gooden directed Commander Perez to open an Administrative Investigation on me. The charge was releasing confidential information to the media.

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT OF
COUNTY OF LOS ANGELES
CIVIL SERVICE COMMISSION HEARING ON OBJECTIONS
RE: MIZRAIN ORREGO
JULY 24, 2019

Prepared by:

JAMS CERTIFIED TRANSCRIPTION
16000 Ventura Boulevard, Suite 1010
Encino, California 91436
Julie Messa, CET**D-403
Job No. S19-07

1 PRESIDENT AFRIAT: All right. Are we ready?

2 COMMISSION CLERK: Uh-huh.

3 Item (inaudible) findings and objections are
4 submitted in Petitioner Case Number 17-181.

5 MR. CARMICHAEL: Dan Carmichael on behalf of the
6 sheriff's department. Behind me is Chris Keosian, County
7 Counsel, Sheriff's Advocacy; Ali Bati (phonetic), County
8 Counsel Sheriff's Department; Georgina Dunn, who is the
9 Constitutional Policing Advisor to Sheriff Villanueva.

10 PRESIDENT AFRIAT: And this other individual is not with
11 you.

12 MS. GARCETII-BOLDT: No. I'm with OIG. My name is
13 Dana Garcetti-Boldt. I'm with the Office of the Inspector
14 General.

15 PRESIDENT AFRIAT: Okay. And do you object to her being
16 here?

17 MS. LAWRENCE: No, I don't.

18 PRESIDENT AFRIAT: Okay.

19 And you are?

20 MS. LAWRENCE: Sherry Lawrence on behalf of Appellant
21 Mizrain Orrego.

22 PRESIDENT AFRIAT: Who is present, just for the record.

23 MS. LAWRENCE: Yes.

24 PRESIDENT AFRIAT: All right. Welcome, everyone. We
25 have findings submitted to sustain the Department and

1 petitioner's objections. So we'll hear from you.

2 MS. LAWRENCE: Commissioners, we have reached a
3 settlement that we hope will be finalized, and so appellant
4 has accepted a tentative settlement, and we would like to ask
5 for a continuance so we can actually finalize and execute
6 that, and if that doesn't happen within whatever specified
7 period the Commission suggests, then we would ask to allow
8 our objections to be heard.

9 PRESIDENT AFRIAT: How much time do you need?

10 MS. LAWRENCE: Two weeks?

11 MR. CARMICHAEL: I -- and I would like to speak to that
12 just very briefly.

13 PRESIDENT AFRIAT: Okay. Can I first find out how much
14 time you need?

15 MS. LAWRENCE: Two weeks?

16 PRESIDENT AFRIAT: Okay.

17 UNIDENTIFIED COMMISSIONER: Can we hear what the
18 settlement is also?

19 MR. CARMICHAEL: Yeah, I am not aware of the settlement.
20 This is the first that I've heard of it. I have not seen it.

21 UNIDENTIFIED COMMISSIONER: Who have you been talking
22 to?

23 MS. LAWRENCE: We've been talking to Chief Eli Vera,
24 Commander Michael Thatcher, who's been in consultation with
25 Sheriff Villanueva. So we've reached a tentative settlement

1 for a 25-day suspension.

2 MR. CARMICHAEL: And I have not heard any of this before
3 right now. I -- I also do not believe that it would have
4 been seen or approved by County Counsel or the Department of
5 Human Resources, and I'm ready to proceed.

6 UNIDENTIFIED COMMISSIONER: Well, you would have been
7 the first ones that they would have contacted; right?

8 MR. CARMICHAEL: According to -- I've been an attorney
9 for a long time -- legal ethics, it should have been
10 communicated through me, and then I would communicate to my
11 client.

12 UNIDENTIFIED COMMISSIONER: County counsel handles those
13 settlements? You sign off on them; right?

14 MR. CARMICHAEL: Yes.

15 UNIDENTIFIED COMMISSIONER: You would have been part of
16 the negotiation?

17 MR. CARMICHAEL: And -- and -- I have been assigned to
18 represent the Department in this case, and any settlement
19 negotiations would typically be handled through me, and I
20 have not heard of this before just a few moments ago when she
21 spoke.

22 COMMISSIONER TEVRIZIAN: Is this a short circuit around
23 the civil service procedure where the Sheriff has taken it
24 into his own hands to determine what's going to be done in
25 this case?

1 MS. LAWRENCE: I don't believe so. I think that this --
2 this hearing was conducted, you know, a year ago, and there's
3 -- there is an issue about a policy that was in place at the
4 time of the hearing that was only in place under
5 Sheriff McDonnell and that policy -- and I can give you the
6 number of it -- did not allow anyone within the Department to
7 voice any objection to a departmental disciplinary decision.

8 So while at hearing we could have had
9 Capt. Michael Thatcher appear as a witness on behalf of
10 appellant, he would have faced discipline if he had done that
11 pursuant to Policy Section 3-01/030.14. The new
12 administration has rescinded that policy, and so that changes
13 the dynamics here because, had that policy not been in place,
14 Captain Thatcher, now Commander Thatcher, would have
15 testified on appellant's behalf. He would have testified
16 that discharge is not appropriate in this case. He would
17 have testified to this deputy's excellent reputation within
18 the Department. He was number one in 2016 in weapons
19 confiscation. So that is the testimony that we would have
20 obtained but for this policy. So --

21 UNIDENTIFIED COMMISSIONER: We don't want to hear the
22 case today.

23 UNIDENTIFIED COMMISSIONER: Yeah.

24 MS. LAWRENCE: Right. I understand.

25 UNIDENTIFIED COMMISSIONER: Unless we go forward.

1 MS. LAWRENCE: Right. I'm just addressing the issue of,
2 you know, why this is being raised now.

3 UNIDENTIFIED COMMISSIONER: I have a question of our
4 attorney.

5 Hi.

6 COMMISSION COUNSEL: Hello.

7 UNIDENTIFIED COMMISSIONER: Irrespective of what they've
8 said, none of that really matters. We have a case before us.
9 We can either continue it, or we can go forward.

10 COMMISSION COUNSEL: That is absolutely correct.

11 UNIDENTIFIED COMMISSIONER: We can just ignore whatever
12 she's saying and just move forward.

13 UNIDENTIFIED COUNSEL: You can deny the request for
14 continuance and hear the -- and hear the objections. I -- I
15 --

16 UNIDENTIFIED COMMISSIONER: I mean, I don't see what
17 good would be in continuing this. It's still going to be in
18 the ether zone arguing over all of this. I think we should
19 move ahead with the hearing officer's report and -- and hear
20 the case.

21 UNIDENTIFIED COMMISSIONER: Colin, do you want to weigh
22 in on this?

23 UNIDENTIFIED SPEAKER: I agree.

24 COMMISSIONER NIGHTINGALE: Is that an amendment? I
25 mean, a -- a motion?

1 UNIDENTIFIED COMMISSIONER: No. I'm just --

2 PRESIDENT AFRIAT: There has -- there's been no motion --

3 - COMMISSIONER DONNER: There's been no motion. I just --

4 PRESIDENT AFRIAT: So you --

5 UNIDENTIFIED COMMISSIONER: But I would move to deny the

6 --

7 UNIDENTIFIED COMMISSIONER: -- motion to deny this --

8 UNIDENTIFIED COMMISSIONER: -- deny the continuance, and

9 let's hear the case.

10 COMMISSIONER NIGHTINGALE: I'll second that.

11 PRESIDENT AFRIAT: Second that we deny the request for a
12 continuance. All in favor please say "aye."

13 UNIDENTIFIED COMMISSIONER: Aye.

14 UNIDENTIFIED COMMISSIONER: Aye.

15 PRESIDENT AFRIAT: Any opposed?

16 Okay. We're going to proceed.

17 So we'll hear from you.

18 MS. LAWRENCE: All right.

19 As we stated in our objections, then Chief Gooden
20 testified at the hearing in this matter that but for his
21 finding that Mizrain Orrego had made false statements during
22 the investigation, the appropriate discipline in this case
23 would have been a 25-day suspension. This testimony can be
24 found in the transcript at page 182, lines 9 through 19, and
25 is stated in the hearing officer's recommended decision at

1 page 10. As such, we must consider what elements must be met
2 before a statement may be deemed false.

3 At the hearing, Chief Gooden testified that for a
4 statement to be deemed false or dishonest, it must be proven
5 that, one, Deputy Orrego knew it was false when he made it;
6 two, that he made such statement with the intent to deceive;
7 and, three, that the statement concerns a matter which is
8 material to a criminal or administrative investigation. This
9 testimony can be found in the transcript at page 184, lines
10 16 through 25; page 185, lines 1 through 9; and page 187,
11 lines 23 through 25.

12 So Chief Gooden, a decision maker in this case, and
13 the Department's Guidelines for Discipline, which were
14 introduced as Appellant's Exhibit A at hearing, establish
15 that the Department had the burden of proving that any
16 statement alleged to be false must contain those three
17 elements: knowledge of falsity, intent to deceive, regarding
18 a material matter.

19 The Notice of Discharge in this case states that
20 Deputy Orrego made two false statements during the IA
21 investigation. The first is that Deputy Orrego didn't see
22 anyone at the party except for his partner, while
23 Deputy Reynoso told investigators that he and Deputy Orrego
24 had greeted each other in the parking lot entering the
25 restaurant. The second alleged false statement was that

1 Deputy Orrego told investigators that he intended to drive a
2 short distance, park his vehicle, and get a ride home with
3 his partner.

4 Looking to the first -- first, to the question of
5 whether Deputy Orrego did or did not greet Deputy Reynoso in
6 the parking lot, Commissioners, it does not matter. It is
7 not material to anything in this case. It had no relevance
8 to the criminal investigation. It had no relevance to
9 whether the deputy violated Departmental policy by driving
10 while intoxicated.

11 There was evidence at hearing, moreover, that
12 Deputy Orrego was fairly new to the station, that he worked
13 the early morning shift, is naturally shy, and did not know
14 many people at the Department yet. The IAB investigator
15 admitted at hearing that he had just assumed that these two
16 deputies knew each other. He didn't ask them whether they
17 did or not. But much more importantly, the Department
18 offered no evidence to prove that Deputy Orrego knowingly and
19 intentionally lied about seeing Deputy Reynoso in the parking
20 lot and that such lie was material to a criminal or
21 administrative investigation and that such -- oh, I'm sorry
22 -- and the hearing officer's recommended decision does not
23 even mention, much less find, that these statements were
24 intentionally false or material to any investigation.

25 With respect to the second alleged false statement

1 that Deputy Orrego didn't intend to drive all the way home
2 that night, Chief Gooden agreed at hearing that the distance
3 Deputy Orrego intended to drive that night was wholly
4 immaterial. The chief acknowledged at hearing that the
5 elements of a DUI do not take into consideration how far one
6 drives. Whether he drove an inch or 50 miles, it's a DUI.
7 So that statement was immaterial.

8 And, again, it's very significant that the hearing
9 officer's recommended decision did not make a single finding
10 of fact that Deputy Orrego knew these statements were false
11 when he made them, that he made them with the intent to
12 deceive investigators, or that these statements were material
13 to a criminal or administrative investigation.

14 I submit that those omissions of fact and findings
15 are fatal to any claim the Department has that it met its
16 burden of proving false statements in this case.

17 Today -- oh.

18 UNIDENTIFIED COMMISSIONER: Go ahead.

19 MS. LAWRENCE: Okay.

20 Today we have Chief Eli Vera, who's present, and we
21 have Cdr. Michael Thatcher. Last Monday Commander Thatcher
22 went on vacation to Idaho, but he flew in at personal expense
23 to be here for this hearing today because he feels that a
24 wrong has been perpetuated in this case, and he wanted to be
25 heard.

1 If the Commission would allow the chief and the
2 commander to be heard, they would -- I would like to make an
3 offer of proof that they would state, one, that
4 Commander Thatcher would have testified at the appellant's
5 hearing in this case and that testimony would have been that
6 this deputy should never have been discharged; that the
7 discharge was actually politically motivated; and that, given
8 his excellent history as a deputy with a first-time DUI, this
9 was not a discharge case; this case was approved for a 20-day
10 settlement by County Counsel; and that it was only after this
11 deputy was involved in an officer-involved shooting ten
12 months later that the decision was made to turn this from a
13 20-day suspension into discharge.

14 So he will explain to the Commission that, while
15 there was agreement that this would be a 20-day suspension,
16 when another incident happened ten months later, internal
17 discussions, you know, were made -- the decision was made to
18 turn this into a discharge. So he was actually discharged
19 for another event. That shooting was determined to be within
20 policy and reasonable and within the law.

21 PRESIDENT AFRIAT: So I'm going to ask my question now.
22 And before we decide on whether you can bring in other
23 witnesses, which I'll get some guidance on, you focused on
24 the false statements, but can you also address the carrying a
25 firearm while intoxicated, can you address trying to use his

1 influence as a peace officer to prevent the other police
2 officers from issuing the DUI, and also not originally
3 agreeing to take a field sobriety test.

4 UNIDENTIFIED COMMISSIONER: Commissioner, I'd just like
5 to make one statement. I -- what she just said is irrelevant
6 -- this shooting. I don't even think -- those aren't --
7 those objections weren't even in the documents --

8 PRESIDENT AFRIAT: Yeah. We --

9 UNIDENTIFIED COMMISSIONER: -- therefore we -- we should
10 just ignore them.

11 PRESIDENT AFRIAT: I was going to get there on the
12 witnesses, quite frankly, because we can't really hear unless
13 counsel --

14 UNIDENTIFIED COMMISSIONER: I don't know anything about
15 shootings but --

16 PRESIDENT AFRIAT: But we also can't -- we also can't
17 hear witnesses and take additional testimony when we're
18 supposed to make our decision based on the moving papers and
19 the hearing officer's recommendation and findings of fact so
20 --

21 MS. LAWRENCE: This is just newly discovered evidence.
22 This was evidence I had --

23 UNIDENTIFIED COMMISSIONER: But you're asking us to go
24 outside the record. You're asking us -- I mean, that's just
25 a blatant, you know, off sides.

1 PRESIDENT AFRIAT: I -- I was going to ask, Counsel --

2 MS. LAWRENCE: I am.

3 PRESIDENT AFRIAT: -- but I see you nodding. Just for
4 the record, you're agreeing that we can't take new testimony
5 outside of the moving papers?

6 COMMISSION COUNSEL: Yes, I agree. I -- I don't know
7 why this is just coming up now, but there was never a motion
8 to admit newly discovered evidence or any notice at all that
9 this other witness was --

10 PRESIDENT AFRIAT: And -- and counsel wasn't notified of
11 it or even of -- there might be a disconnect in the
12 Department, which I won't opine on now, but I would think
13 that -- and -- and I'm not a lawyer -- that you could have
14 let them know --

15 MS. LAWRENCE: This just came up this morning just
16 before the hearing.

17 PRESIDENT AFRIAT: -- request for the settlement
18 discussions and the request for the continue --

19 MS. LAWRENCE: Just this morning.

20 PRESIDENT AFRIAT: It all just --

21 MS. LAWRENCE: Yes.

22 PRESIDENT AFRIAT: Okay.

23 MS. LAWRENCE: Yeah. And to address your concern about
24 --

25 PRESIDENT AFRIAT: Yeah. Back -- back to my question.

1 MS. LAWRENCE: Right. All of that came up at the
2 hearing, and Chief Gooden, on the stand, said that, taking
3 all of that into consideration, this would have been a 25-day
4 suspension but for the false statements, and we have no
5 problem accepting a 25-day suspension.

6 What I would ask is to again be allowed to request
7 a continuance to see if we can settle this matter. There
8 have been wrongs which had been perpetuated in this case, and
9 I think the right decision is to just give us an opportunity
10 to resolve these matters, give us a chance to try to settle
11 it, and then this Commission doesn't have to make a decision
12 regarding whether discharge is appropriate.

13 In this case, everyone who knows this deputy wants
14 him back. The sheriff wants him back. His former captain
15 wants him back and flew in today just for this hearing at his
16 own expense and -- and Chief Eli Vera has spent at least ten
17 hours studying this case and wants him back. So --

18 UNIDENTIFIED COMMISSIONER: I think, as in mediation,
19 ideally, you have both parties participate in the process,
20 and unfortunately it didn't happen here and --

21 MS. LAWRENCE: Can we be given an opportunity for that
22 to happen? Now, this came up just before it.

23 UNIDENTIFIED COMMISSIONER: -- to allow you to do that.

24 PRESIDENT AFRIAT: Well, let's hear from the Department
25 and -- I'm sorry?

1 UNIDENTIFIED COMMISSIONER: I thought you were waiting
2 for her to answer your questions, or did you get them?

3 PRESIDENT AFRIAT: I got the answer.

4 UNIDENTIFIED COMMISSIONER: Okay.

5 PRESIDENT AFRIAT: Let's hear from the Department, and
6 as part of your reaction, could you also respond to whether
7 you'd be willing to continue this, to enter in settlement --

8 MR. CARMICHAEL: No, and because these matters have to
9 have finality. It's been -- it was originally scheduled for,
10 I believe, May and continued at the request of appellant. So
11 this is something that's been known to appellant and to
12 opposing counsel for a long time, that this hearing was going
13 to occur today. This hearing is for the Commission to
14 consider objections to the hearing officer's report. I know
15 nothing about settlement, and settlement, you know, can
16 occur, as you know, at any time in the proceeding. They have
17 a right to go across and file a writ if the objections were
18 denied -- to file a writ with the superior court. So I don't
19 know why there's a need right now to -- for the Commission to
20 continue its -- this agenda item. So that -- that's what I
21 would say on that issue.

22 Substantively, I would just say, without getting
23 into the specifics, a lot of what she said she did refer to
24 statements or comments or what she's claimed were evidence
25 that is not part of the -- not part of the record, and as you

1 know, the Commission, as you've identified, can only rely on
2 what is in the record.

3 Substantively, the -- it's not disputed -- all of
4 the allegations which you've read in the hearing officer's
5 report as to seeking a favor that would not ordinarily be
6 available to a citizen, being obstreperous, delaying the
7 criminal investigation, making derogatory comments, swearing
8 -- all of that is not in dispute. As you mentioned, the gun
9 is also a very serious issue, but I want to focus on her
10 arguments that the false statements' allegations were not
11 adequately sustained by the hearing officer.

12 As you have read, I'm sure, in the notice of
13 discharge, there were false statements which occurred at two
14 different occasions, one to the arresting officers from the
15 City of Orange when they were doing their DUI investigation.
16 Those false statements were totally not addressed by opposing
17 counsel. So let me just briefly identify those and those --
18 the hearing officer made a specific finding of fact that
19 those allegations were true and that the policy was
20 sustained.

21 The first one was that he told arresting officers
22 that he was driving his friend's truck because his friend was
23 at the party but had left the party earlier. That was a
24 false statement. The friend testified -- who is a sheriff's
25 deputy -- testified at the hearing and denied that he was at

1 the party at all. The arresting officer was asked about the
2 materiality of that false statement. She testified that it's
3 material because it is a standard question on the DUI form
4 that she is required to ask suspects, and it's designed to
5 elicit further investigation as to who knew about his
6 drinking, how much, witnesses.

7 The -- as I argued in my closing, he lied because
8 he wanted to shut off the investigation, and he even said,
9 "I" -- "I lied because I didn't think it was material." It's
10 not for him to decide. The arresting officer was the one who
11 asked the question. She testified that it was, and the
12 hearing officer found that it was.

13 The second false statement to the arresting
14 officers is he originally said that he was at the restaurant
15 the Tilted Kilt celebrating a sergeant's promotion -- he was
16 drinking with them -- and then later during the DUI
17 investigation, he said he wasn't drinking with anyone. The
18 -- that's also -- there were witnesses who came in and said
19 that there were between 15 and 30 employees assigned to
20 Compton station who were at the party. It's undisputed that
21 he was at the party for approximately six or seven hours.

22 It's in evidence that he specifically took the day
23 off, as did his friend Deputy Aldama (phonetic), so that he
24 could attend the party. The argument is simple. You take
25 the day off, there's 30 people from your unit of assignment

1 who attend, and then you get to the party, and his testimony
2 simply was "Oh. Well, I didn't see anybody. I'm shy." That
3 doesn't pass the smell test. It's unbelievable. It's not
4 worthy of any credence. You go -- you take the day off to go
5 to a work party and you don't look at the -- look in the
6 restaurant to see who is there?

7 It's also true and it's undisputed that another
8 Department member greeted him as they were walking into the
9 restaurant, and the other Department member testified that
10 they were both kind of excited to be going to the party.

11 The third false statement to the arresting officers
12 is he claims that he did not see any other officers at the
13 party. The hearing officer was pretty clear that that was --
14 he considered that to be an intentionally false statement.

15 It's somewhat in the false statements to the IAB.
16 Let me briefly address those.

17 The first statement to IAB that the Department
18 determined was false is that he only saw Aldama at the party.
19 I've already addressed those when I was talking about the
20 false statements during the criminal investigation.

21 And the second false statement was that his intent
22 was to park his vehicle. While it's true that that may not
23 be an element of DUI, the reason it's material -- and it goes
24 really to his state of mind -- is he doesn't have to know the
25 elements of DUI. He was trying to make an excuse. "I was

1 only intending to drive for a little while and then my" -- "I
2 was going to park my car when I found a spot, and my friend
3 was going to drive me home. So I really didn't" -- "I was
4 driving while intoxicated but not very far. Please let me
5 go." That was an excuse, and that's a false statement. It
6 was intentional. It was material in Deputy Orrego's mind.

7 UNIDENTIFIED COMMISSIONER: So would there be a
8 separation between a first-time DUI and the false statements?
9 In other words, if he had just hit the DUI and not the false
10 statements, we'd be in a different position --

11 MR. CARMICHAEL: Okay. Two -- two quick responses to
12 that.

13 The -- and the first statement is -- she is correct
14 -- Chief Gooden said that he considered all of the other
15 misconduct to be 25 days. The hearing officer even wrote
16 that he thought that was light. But Gooden did say that the
17 false statements, for him, was the reason why he thought that
18 it was a discharge case. So, yes, that is correct.

19 But what I would also tell the Commission is, as I
20 stated in my response, it's a lot of misconduct which is very
21 serious: asking for favors, because you're a -- a peace
22 officer, not to be arrested; demeaning the arresting officer;
23 swearing; delaying -- all of those shenanigans, that's all
24 extremely serious misconduct, and the Commission has the
25 authority because you can decide the appropriateness of the

1 discipline. If you chose, you could decide that that in
2 itself was sufficient. That's not what the chief said, but
3 it is within your authority.

4 UNIDENTIFIED COMMISSIONER: You know, this -- this whole
5 thing stinks. It seems just like it's a last-second attempt
6 to settle before the Commission rules, an obvious attempt by
7 the Sheriff to undercut the Commission's autonomy and our
8 authority, and I think we need to move forward. I -- I -- I
9 think, if we make a decision today one way or the other,
10 either side can appeal.

11 MS. LAWRENCE: May I be --

12 UNIDENTIFIED COMMISSIONER: (Inaudible.)

13 MS. LAWRENCE: May I be heard?

14 UNIDENTIFIED COMMISSIONER: No. I'm not finished yet,
15 please.

16 MS. LAWRENCE: Okay.

17 UNIDENTIFIED COMMISSIONER: I mean, it stinks. I -- you
18 know, you -- the County Counsel who represents the Department
19 was totally unaware of this and -- and remained, you know --
20 and if we do make a decision, County Counsel would have to be
21 part of any settlement agreement. They would have to sign
22 off on it. I'm not sure that they would sign off on it if we
23 found in support of the Hearing Officer's decision. So I
24 think we just -- I think we need to move forward and not
25 delay this any longer. It's been delayed long enough.

1 UNIDENTIFIED COMMISSIONER: I guess I should make a
2 motion.

3 PRESIDENT AFRIAT: Why don't you make a motion. We'll
4 see if it's seconded and --

5 UNIDENTIFIED COMMISSIONER: All right. I -- I'd like to
6 make a motion to overrule petitioner's objections and stay
7 with the Hearing Officer's decision.

8 PRESIDENT AFRIAT: Is there a second?

9 UNIDENTIFIED COMMISSIONER: Second.

10 PRESIDENT AFRIAT: Seconded.

11 We'll hear from you briefly.

12 MS. LAWRENCE: As to the points that counsel brought up,
13 the statements to the Orange officers that were -- you know,
14 at hearing, described as false statements were also
15 immaterial. The question of whose truck he was driving, who
16 the party was for, and who he saw at the gathering had no
17 relevance whatsoever to either the DUI investigation or the
18 administrative investigation, and I would like to point out
19 as well that he was intoxicated at that time. He
20 acknowledges that. So, you know, intoxicated people don't
21 always give the clearest answers or the best answers.

22 Now, as far as seeing people at the party, I
23 believe, if I recall correctly, there were about 15 people
24 interviewed who were at that party, and nobody recalls
25 talking to Mizrain or having him around them that night other

1 than Deputy Reynoso, who said he thought he saw him on the
2 way in, that they briefly said "hello" in the parking lot.
3 And as I said, at hearing, the investigator stated that he
4 didn't even ask whether they knew each other. He just
5 assumed they did, and Deputy Orrego was new to the Department
6 at that time. So he's the only person. You know, of all the
7 people interviewed, nobody said that Mizrain was with them
8 that night, drank with them that night, talked to them that
9 night at the restaurant.

10 So, again, to be a false statement according to the
11 Department, the decision maker, and the Guidelines for
12 Discipline, the statement made has to be intentionally false,
13 made to deceive, and to a material matter and the -- and the
14 hearing officer did not draw those conclusions. He never
15 said --

16 PRESIDENT AFRIAT: Can you wrap it up.

17 MS. LAWRENCE: Okay.

18 PRESIDENT AFRIAT: Thank you very much. I think we're
19 okay.

20 MR. CARMICHAEL: Okay. It --

21 PRESIDENT AFRIAT: (Inaudible.)

22 MR. CARMICHAEL: Thank you. I won't -- I'll -- I'll
23 take the cue.

24 PRESIDENT AFRIAT: (Inaudible) say something --

25 MR. CARMICHAEL: I'll take the cue.

1 PRESIDENT AFRIAT: -- say something --

2 MR. CARMICHAEL: I'll take the cue.

3 PRESIDENT AFRIAT: -- bring in dinner.

4 MR. CARMICHAEL: I'll take the cue.

5 PRESIDENT AFRIAT: Okay. We have a motion and second.

6 Is there any further discussion on the part of the

7 Commission?

8 Let's call the roll.

9 COMMISSION CLERK: I'll now call the Commission for a
10 vote.

11 Commissioner Donner?

12 COMMISSIONER DONNER: Aye.

13 COMMISSION CLERK: Commissioner Tevrizian?

14 COMMISSIONER TEVRIZIAN: Aye.

15 COMMISSION CLERK: Commissioner Duran?

16 COMMISSIONER DURAN: No.

17 COMMISSION CLERK: Commissioner Nightingale?

18 COMMISSIONER NIGHTINGALE: Aye.

19 COMMISSION CLERK: President Afriat?

20 PRESIDENT AFRIAT: Aye.

21 COMMISSION CLERK: The motion carries with a vote of
22 4-1.

23 PRESIDENT AFRIAT: Thank you all very much.

24 (Conclusion of recorded material.)

25 -o0o-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, Julie Messa, do hereby certify:

That the foregoing audiotaped proceeding was received
and transcribed into typewriting under my direction and
supervision;

And I hereby certify that the foregoing transcript is a
full, true and correct transcript of the audiotaped recording
given to me.

I further certify that I am neither counsel for nor
related to any party to said action, nor anywise interested
in the outcome thereof.

In witness thereof, I have hereunto subscribed my name
this 26th day of November, 2019.

/s/ Julie Messa
Julie Messa, CET**D-403
Transcriber

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Stone Busailah, LLP, 1055 E. Colorado Blvd, Suite 320, Pasadena, California 91106.

On **December 16, 2020**, I served the foregoing document(s) described as **FIRST AMENDED VERIFIED PETITION FOR PEREMPTORY WRIT OF ADMINISTRATIVE MANDAMUS; MEMORANDUM OF POINTS AND AUTHORITIES** in the manner checked below on all interested parties in this action addressed as follows:

William Balderrama, Esq. Daniel Claude Carmichael, Esq. Law Offices of William Balderrama 670 Monterey Pass Road, Suite 188C Monterey Park, CA 91754 Email: <u>dcarmichael@socal.rr.com</u>	
--	--

- ☐ **(BY U.S. MAIL)** I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☒ **(BY ELECTRONIC SERVICE)** By electronically mailing a true and correct copy through Green Filing mail system to the email address(es) set forth above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- ☐ **(BY PERSONAL SERVICE)** the foregoing document was personally served by attorney service, Express Network, to the addressee(s).
- ☒ **(State)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- ☐ **(Federal)** I declare that I am employed in the office of a member of the bar of this Court at which direction the service was made.

Executed on **December 16, 2020**, at Los Angeles, California.

/s/ Dina M. Danial

DINA M. DANIAL