ATTACHMENT O

Rebuttal Letter written by Assistant Sheriff Steve Kea (Ret.)

Assistant Sheriff C. Martino
550 N. Flower St.
Santa Ana, CA 92703

Steven Kea
[redacted]

Re: Deputy Jared Brittain

Dear Assistant Sheriff Martino,

At the request of Deputy Jared Brittain, I have reviewed OCSD's Notice of Intent to Dismiss him, dated December 14, 2023. I also took the time to listen to the recordings of all Internal Affairs interviews related to the dismissal. At the conclusion of my review I found some areas of concern in the Notice of Intent to Dismiss that I shared with Deputy Brittain. He subsequently asked that I share them with you.

Deputy Brittain's policy violations related to DUI, Firearms Storage In Vehicles, and Driving On A Suspended License (both on and off duty) are violations that are proven and he does not dispute them. That said, I don't believe they are necessarily fatal to his career and can be mitigated if you take into consideration his exemplary record as a Deputy Sheriff prior to these incidents, and his expressed desire to return to those standards if given an opportunity to redeem himself.

In reading the Notice of Intent to Dismiss, I believe the primary causation for Deputy Brittain's dismissal rather than significant suspension is the alleged policy violation of Untruthfulness. It is interspersed throughout the letter and in that regard, I offer the following thoughts as to the language in the letter:

- *Page 2, bullet point 2 (second paragraph), highlighting OCSD Policy 1018.6-Obedience To Laws and Regulations.* This section of the policy requires employees to report to their immediate supervisor within 24 hours of any arrest, incident or other misconduct which could result in the employee being criminally prosecuted. Deputy Brittain did in fact notify his supervisor about his lost weapon when notified by Anaheim PD, which complies with the policy. Adding it to the Notice of Intent to Dismiss insinuates that he failed to comply with the policy and creates a bias that lends credence to his dismissal for untruthfulness. It should not have been included.

- *Page 3, paragraph 4 discusses the two interviews during the DUI personnel investigation and states that, "In both interviews, you explained that you had friends drive you to and from work and that you had a trainee drive the patrol car during your shift."* These statements were made by Deputy Brittain and he has told me that they are factual. Obviously he failed to disclose that he also sometimes drove to and during work, a clear omission, however he was never asked specifically if he ever drove to or at work. His answers were incomplete but not "untruthful". He did in fact have others drive him to work and while at work. Furthermore, there is no information contained in the Skelly packet that the department contacted any friends or trainees to verify or debunk the validity of this statement. Therefore labeling it a lie is unsubstantiated.

- *Page 4, paragraph 4 states in part, "Due to you renting a vehicle while your license was suspended and "your statements in the prior investigation that you **did not** drive to or from work, or while at work..."* While listening to Deputy Brittain's personnel interviews, there is not a single statement or comment where he says he did not drive to work, from work, or while at work. That was a conclusion that the investigator drew but was never stated by him. Once again, it is not factual but it lends credence to the perception that his statement in the first investigation was a blatant lie rather than an omission.

- *Page 6, paragraph 2 states, "Subsequent to the first interview, Internal Affairs reviewed your Body Worn Camera footage and determined that you drove a patrol vehicle during the period that your license was suspended, **in contradiction** to your statement to investigators during the initial investigation into the* DUI. Again, Deputy Brittain's statements during his first DUI investigation, that his trainee drove during his suspension period is factually accurate. It has not been contradicted as stated in the notice to dismiss by either video or interviews with the trainee. Certainly his omission about his own occasional driving led them to that conclusion, but his statements were not **contradicted** (as stated above) by any evidence provided in the Skelly packet.

- *Page 7, paragraph 5 states in part, "(Moreover, it again indicates a dismissive attitude towards the law and the courts and gives the appearance that you place yourself above and out of the reach of the criminal justice system..."* This is pure conjecture and not based on any direct facts, statements, or comments made by Deputy Brittain. It was misguided and completely wrong, to be sure. However, it wasn't done out of arrogance or attempting to place himself above the law. Deputy Brittain indicated that driving while suspended was done in a sincere effort to get to work and perform his required assignments.

- *Page 7, last sentence, and continuing through to page 8, paragraph 1 states in part,*

"...you stated that you were driven to and from work while your license was suspended, which was untrue. You also stated that you were driven by your trainee while at work, which you also knew to be untrue. During the second interview..., you again made false statements about whether you drove to and from work and whether you drove your patrol car. Again the statements that Deputy Brittain made were factually accurate and not proven to be untrue. He was driven to work by friends and family on some days. His trainee also drove during the period of his suspension. His omission about his own driving does not make his statements regarding other drivers untrue.

- *Page 8, paragraph 2 states in part, "...you were again untruthful when you initially confirmed that you were being driven to work while your license was suspended. It was not until you were told there was surveillance footage showing that you drove yourself to work that you responded truthfully about driving to work.* Deputy Brittain did state that he was driven to work while his license was suspended. This was factual albeit an incomplete description of that time period. However it was not untrue. Furthermore, when asked directly if he drove himself to work and during work, he did admit to doing so. But until that point, the question was vaguely asked and vaguely answered, amounting to an omission, not an untruth.

- *page 8, paragraph 4 states in part, " As demonstrated above, you have **clearly and repeatedly lied** during the course of these two investigations. Not only did you **blatantly lied** during the investigations..."* While there were several omissions about his driving that were interpreted by investigators as lies, the actual statements made by Deputy Brittain in the interviews were factual and not directly discredited.

- *Page 8, paragraph 4 further states, "... but in essence you lied to the court and the Department by continuing to drive to and from work and during your patrol shift, despite having a suspended license, and failing to disclose that fact to supervision."* Not being forthright in volunteering drivers license suspension information is certainly a shortcoming, but it does not correlate to the department's policy manual as it describes "untruthfulness". This declaration that driving while suspended is tantamount to lying, is a stretch clearly intended to further color Deputy Brittain as a liar and misrepresents his failures. It should not have been added in this manner.

CONCLUSIONS:

Policy violations related to DUI, failure to properly store a weapon, and driving on a suspended license are proven and acknowledged by Deputy Brittain. While they are significant, the Notice of Intent to Dismiss was clearly and deliberately interspersed with

perceived instances of untruthfulness. Even to go so far as to say that driving on a suspended license was tantamount to lying. All of this would be obvious *Brady v. Maryland* material and inhibit his ability to perform his duties in the future.

In the context of this discussion I think it's important to look at the exact wording in OCSD Policy 1018.27-UNTRUTHFULNESS: *No Member shall knowingly make false statements or misrepresentations to other Members or superiors.*

Deputy Brittain's statements, when questioned about how he got to work and who drove at work, were incomplete answers. He was not forthcoming, and there were serious omissions that the department (and ultimately even Deputy Brittain when confronted) stated are tantamount to a lie. Certainly when speaking about ethics in general, the argument is valid. However, against the backdrop of the plain text of the policy, Jared's statement that friends, family, and his trainee drove him were not false statements and they did not misrepresent the truthful fact that they did in fact drive him. It should also be noted that the investigating sergeants did discover video of him driving on some days but never discredited his statements that others drove him on alternate occasions.

I subsequently offer for your consideration that the more appropriate policy violation would have been Policy 1001.2 Canons of Ethics/Canon Two-Ethical Standards: "*Peace Officers shall truthfully, **COMPLETELY**, and impartially report, testify, and present evidence in all matters of an official nature*".

This obviously does not absolve Deputy Brittain of his actions, but it does remove the dark cloud of Policy 1018.27-UNTRUTHFULNESS and allows room for considering his conduct as an omission, rather than a lie, as described in the Notice of Intent to Dismiss. It would also then allow the totality of his failures to be measure against his 6 years of honorable service when determining the outcome of his Skelly Hearing.

I thank for your consideration of the issues I have raised.

Respectfully,

Steve Kea
Assistant Sheriff (retired)
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