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Michael J. Sellers  
Chief of Police

**NOTICE OF PROPOSED DISCIPLINARY ACTION**

August 4, 2015

RECEIVED  
AUG 18 2015

Kiet Nguyen  
Police Officer



SANTA CLARA POLICE DEPARTMENT  
CITY OF SANTA CLARA

Dear Officer Nguyen,

**I**

You are hereby notified that it is the intention of the City of Santa Clara to terminate your employment effective August 16, 2015.

**II**

These actions are being taken against you for cause specified in the following sections of the City of Santa Clara Civil Service Rules and Regulations:

6.4 (6) Dishonesty

6.4 (15) Failure to Observe City Manager's Directives (CMDs), Departmental Rules and Regulations, and all City Rules and Policies, to wit:

- Santa Clara Police Department Operations Manual Section 26.3.3 AV, Violation of Law
- Santa Clara Police Department Operations Manual Section 26.3.3 AL, Conduct Unbecoming of an Employee
- Santa Clara Police Department Values Statement

6.4 (17) Any other failure of good behavior or acts either during or outside of duty hours which is incompatible with or inimical to the public service

**III**

The above causes are based on the following acts or omissions as reviewed and documented in Santa Clara Police Department Internal Affairs Investigation 2015-03 investigated by Sgt. Gary Hosman, and others who have documented incidents contained in your personnel file, which you have had the opportunity to review. Through your attorney, Allison Berry Wilkinson, you have declined to come in for an interview in this matter:

On May 16, 2015, you were employed as a Santa Clara Police Officer assigned to the Operations Division. You were off-duty on a regularly scheduled day off. Sometime after 1500 hours, you entered an open Target store located at 1600 Saratoga Avenue in the City of San Jose. You used a shopping cart and selected merchandise throughout the store. While shopping, you stopped in the aisle displaying high-end electronic items and smart

watches. You used a specifically designed tool, called a magnetic key, to remove the sensor security tag from a \$250 Motorola smart watch.

You continued to shop, selecting various items and placing them in your shopping cart. You stopped near the Men's fitting room and concealed the watch in your left waistband area. At the time, you were wearing an untucked shirt that covered your waistband.

You went to a cash register and paid for miscellaneous items in your shopping cart at the front of the store. You did not, however, pay for the watch that was concealed on your person. You exited the store and were immediately detained by several Loss Prevention Officers and uniformed security guards, who brought you to their office.

During an interview by Loss Prevention Officers, you admitted to stealing the watch and using the magnetic key to defeat the sensory tag. You also admitted buying the magnetic key off of the e-Bay website. Your actions were also captured on the store's surveillance cameras.

Loss Prevention officers contacted the San Jose Police Department to take you into custody. Officer Foster of the San Jose Police Department eventually cited and released you for two misdemeanor crimes of 459.5 PC (shoplifting) and 466 PC (possession of burglary tools).

On July 13, 2015, you failed to appear in Superior Court Department 54 on charges of 484/488 P.C. (Shoplifting) and 466 P.C. (Possession of Burglary Tools). A \$1,000 bench warrant was issued for your arrest for a Failure to Appear (FTA).


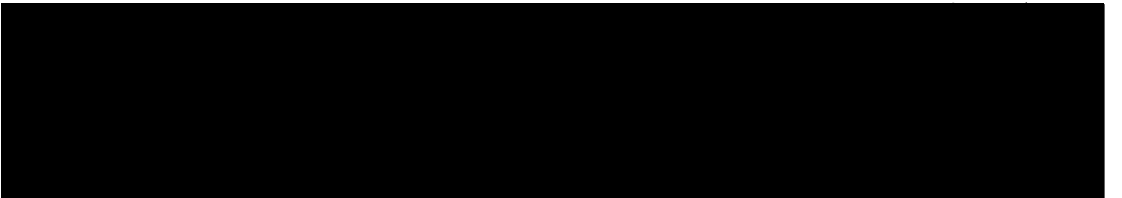

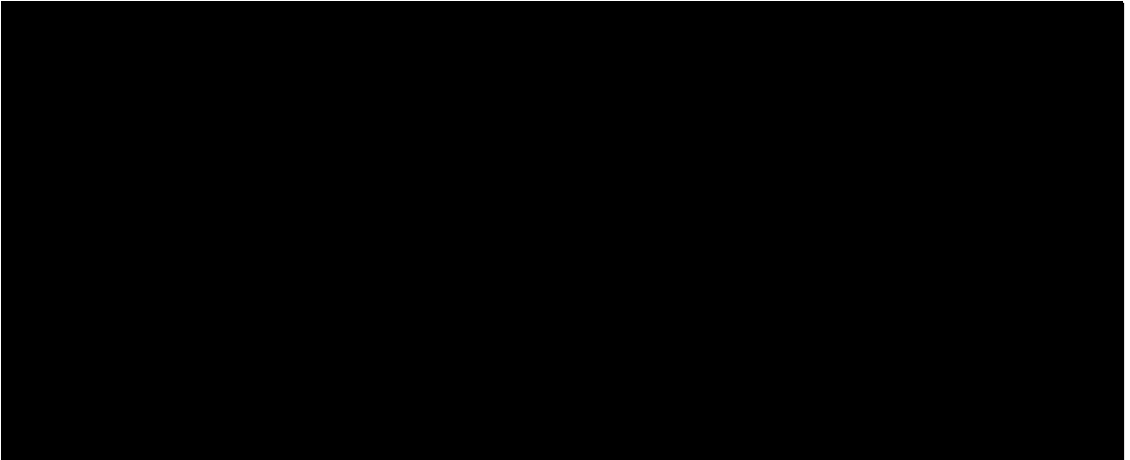
While you have yet to be convicted of any crime, your misconduct in this matter is Conduct Unbecoming an Employee. Your actions adversely affected the morale and efficiency of the Department. In addition this criminal conduct brought you and the Department into disrepute. It also reflected discredit upon you as an element of the Department. News of your arrest circulated in the local media making it public knowledge to countless people in and out of Santa Clara County.

In addition, it is clear from the Target Loss Prevention and San Jose Police Department investigations that you intentionally violated state law while off duty. You specifically purchased burglary tools in order to complete this criminal behavior. The initial observations by Target Loss Prevention agents, a subsequent investigation by the San Jose Police Department and your own admissions prove you committed theft and were in possession of burglary tools (magnetic key).

There is no room in the law enforcement profession for those that intentionally commit crimes. You have violated the law, department policy, and City policy. You have destroyed your ability to be an effective member of this department.

In addition to the above violation of City and department rules, you have been disciplined five additional times throughout your career.

A brief description of your prior disciplinary actions is below:

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- In May of 2010, you were given a 44 hour suspension for violating CMD 131. This involved a series of ongoing issues where you made insensitive racial comments to one of your assigned subordinate employees.
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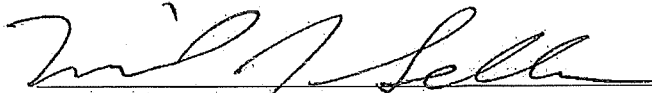
Lastly, on July 30, 2015, the police department received formal notification from the State of California Department of Justice that you are prohibited from possessing a firearm until August 13, 2020. Santa Clara police officers are required to possess a firearm. This firearm prohibition prevents you from performing the basic duties required of a Santa Clara police officer.

Your current and sustained pattern of inappropriate conduct constitutes a violation of the Santa Clara Police Department Operations Manual and City of Santa Clara Civil Service Rules and Regulations. You have demonstrated an ongoing inability to model the behavior demanded of a police officer. Your continued employment would be detrimental to the Police Department, the City, and its residents. Because of this pattern of misconduct, it is our intention to terminate your employment.

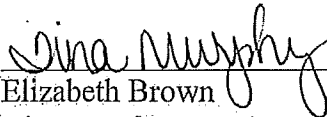
IV

Right to Respond to Issuing Authority. As an employee with this Department you are entitled to five (5) calendar days within which to respond to this notice. To request an Administrative Review ("Skelly Hearing"), you may respond either orally or in writing to the Chief of Police. You are entitled to a reasonable amount of City time to prepare your response to the charges. You are not, at this time, entitled to a formal hearing with the examination of witnesses. However, one (1) representative may represent or accompany you in presenting your response.


Right to Respond Pursuant to Government Code Section 3306. If you fail to answer within the time specified, the action taken by the Issuing Authority shall be final. You are however, entitled to respond in writing to this document within thirty (30) days as guaranteed in section 3306 of the California Government Code.

  
\_\_\_\_\_  
Michael J. Sellers  
Chief of Police

Reviewed by:

  
\_\_\_\_\_  
for Elizabeth Brown  
Director of Human Resources

Approved by:

  
\_\_\_\_\_  
Julio Fuentes  
City Manager

I acknowledge receipt of a copy of this notice:

\_\_\_\_\_  
Kiet Nguyen  
Police Sergeant

Date: \_\_\_\_\_

Attachments (2):

Civil Service Rules and Regulations, Sections 6 and 7

## City of Santa Clara

### Civil Service Rules and Regulations

#### SECTION 6 SEPARATIONS AND DISCIPLINE

- 6.1 TENURE OF PERMANENT EMPLOYEES: METHODS OF SEPARATION: The tenure of every permanent employee in the classified service is contingent upon satisfactory performance, adherence to all the rules and regulations of the City and the existence of the position. Any classified employee may be temporarily separated from the service through lay-off, leave of absence, or suspension; or permanently separated through resignation, removal for cause, or through retirement.
- 6.2 REDUCTION IN FORCE: The Appointing Authority shall determine the number of positions and the classes in which the reduction in force is to be made. Among classified employees holding permanent appointments, the order of reduction in force shall be according to the applicable Memorandum of Understanding.
- 6.3 RESIGNATION: An employee in good standing who shall decide for any reason to leave the employ of the City shall submit a formal resignation in writing to the Appointing Authority at least fourteen (14) calendar days before leaving the service. If any classified employee leaves the employ of the City without submitting such a written resignation, the employee may be deemed to have resigned with prejudice, and a record of the same shall be made in employee's personnel records:
- 6.4 REMOVAL FOR CAUSE: No cause is necessary for termination, demotion, suspension, or reduction in pay of any employee other than a permanent employee in the classified service.

The Appointing Authority may cause the termination, demotion, suspension, or reduction in pay of any permanent employee in the classified service for each of, but not limited to, the following causes:

- (1) Fraud in securing appointment
- (2) Incompetence
- (3) Inefficiency
- (4) Inexcusable neglect of duty
- (5) Insubordination or willful disobedience
- (6) Dishonesty
- (7) Under the influence of or the consumption of any alcoholic beverages during working hours
- (8) Under the influence of, or the use of narcotics or habit-forming drugs during working hours, unless prescribed by a licensed California medical doctor or physician
- (9) Absence without leave, or failure to report after leave of absence has expired, or after such leave of absence has been disapproved or revoked or cancelled by the Appointing Authority; provided, however, that if such absence or failure to report is excusable, the Appointing Authority may dismiss the charges
- (10) Conviction of a felony
- (11) Conviction of a misdemeanor involving moral turpitude
- (12) Discourteous treatment of the public or other employees

- (13) Political activities as proscribed by law and which are in violation of City policy
- (14) Misuse or abuse of City property
- (15) Failure to observe City Manager's Directives (CMDs), departmental rules and regulations, and all City rules and policies
- (16) Failure to adhere to the City's Code of Ethics
- (17) Any other failure of good behavior or acts either during or outside of duty hours which is incompatible with or inimical to the public service
- (18) Failure to satisfactorily perform the duties of the position, with or without reasonable accommodation
- (19) Failure to cooperate reasonably with superiors or other employees
- (20) Falsification of City records
- (21) Possession or storage of firearms on City premises or work sites, or in City vehicles, excluding sworn law enforcement personnel
- (22) Unlawful manufacture, distribution, dispensation, possession or use of controlled substances as defined by section 102 of the Controlled Substances Act, 21 USC Section 802, in the workplace by employees
- (23) Violation or disregard of published safety rules
- (24) Sleeping on the job
- (25) Violence in the workplace

6.5 MEDICAL ACTION: The Appointing Authority may cause the termination, demotion, reduction in pay, suspension of any permanent employee in the classified service for: Inability to perform the essential functions of the job, even with reasonable accommodation:

6.6 NOTICE: Written notice of termination, demotion, suspension, or reduction-in-pay, taken by the Appointing Authority under this Section 6, and the specific reasons therefor shall be furnished in writing by 1st class and certified mail to the address on file with the Human Resources Department within three (3) days after such termination, demotion, suspension or reduction-in-pay. Any permanent employee in the classified service against whom such action is taken may appeal the termination, demotion, suspension, or reduction in pay as provided in Section 7 of these rules.

## SECTION 7 - BOARD OF REVIEW

7.1 ORGANIZATION: The Civil Service Commission (here after called Board) shall meet and act as a Board of Review when required. The Director of Human Resources shall serve as Recording Secretary of the Board, and the Notice of Decision and Findings of the proceedings shall be signed by the members present and voting. Three (3) members shall constitute a quorum. The concurring vote of at least three (3) members shall be required for any decision or recommendation of the Board, other than to adjourn or postpone a meeting.

7.2 POWERS:

- (a) In any hearing conducted by the Board, it shall have the power to subpoena and require the attendance of witnesses, the production of books, papers and other evidence pertinent to the investigation, to administer oaths to witnesses, to examine witnesses under oath in the name of the City. It shall be the duty of the Secretary of the Board to cause all such subpoenas to be served and the refusal of a person to attend or testify in answer to such subpoena shall subject said person to prosecution as provided by law.

- (b) Each member of the Board of Review shall have the power to administer oaths or affirmation to witnesses and to sign subpoena.
- (c) Within thirty (30) calendar days after the proper filing of a written request for a hearing or as soon as possible thereafter as is practicable, the Board shall conduct a hearing.
- (d) The hearing before the Board may be public or private at the option of the employee but the hearings of the Board shall be informal and the rules of evidence shall not apply.

7.3 REVIEW PROCEDURE FOR DISCIPLINE: Any permanent classified employee who has been terminated, suspended, demoted, or received a reduction-in-pay by the Appointing Authority shall be entitled to be heard before the Board of Review at a duly constituted meeting thereof provided a written request therefor has been filed with the Secretary of the Board and the Appointing Authority within ten (10) calendar days from the date of receipt or posting of the written notice of the action taken, as set forth in Section 6.6, whichever occurs first. If the employee fails to file a response within the ten (10) calendar days, or withdraws his/her appeal, the disciplinary action taken by the Appointing Authority shall be final.

7.4 BINDING FORCE OF BOARD'S DECISION: In any case involving a termination, suspension, demotion, or reduction-in-pay the decision of the Board shall be binding upon the employee and the Appointing Authority. It shall not be subject to review by any Court, or other tribunal, except in cases where the decision was procured through fraud, or lack of jurisdiction. Before any such review shall occur in such cases, a petition for reconsideration shall first be presented to the Board wherein such alleged fraud or lack of jurisdiction is set forth, and verified by the petitioner. Petitions for reconsideration of any such decision of the Board shall be filed with Board not later than ten (10) calendar days after rendition of such decision. A decision shall be deemed to have been rendered as of the date of mailing to the employee.

In the event the Board revokes or modifies a termination, suspension, demotion, or reduction-in-pay and orders the employee reinstated, it may direct payment of salary to the employee for the period of time the Board finds the termination, lay-off, suspension, demotion, or reduction in pay was improperly in effect. Refer to Section 7.5 of current CSCR&R, page 50.

7.5 REVIEW PROCEDURE FOR GRIEVANCES: Any employee whose duly processed grievance, and not a termination, suspension, demotion, or pay reduction that has not been resolved to his/her satisfaction by the Appointing Authority, may petition and at the discretion of the Board of Review may be heard before the Board at a duly constituted meeting thereof provided the Board has not previously heard the case, and provided a written request therefore has been filed with the Secretary of the Board and the Appointing Authority within ten (10) calendar days from the date of receipt of the Appointing Authority's final decision on the grievance.

The Appointing Authority may also refer an unresolved grievance to the Board for their consideration and recommendation, whereupon the Board shall hear the case at a duly constituted meeting.

The Board shall, within fourteen (14) calendar days after the hearing is closed and the matter is submitted, render its decision in writing. Copies of said decision shall be directed by the Secretary of the Board to the Appointing Authority and to the employee.



- 7.6 APPEARANCE REQUIREMENT: Unless incapacitated, the appellant making the complaint shall appear personally before the Board of Review at the time of the hearing.
- 7.7 NON-BINDING FORCE OF BOARD'S DECISION: In any case involving a grievance and not a termination, suspension, demotion, or pay reduction, the decision of the Board shall not be binding upon the Appointing Authority but shall be submitted in the form of a recommendation for consideration by the Appointing Authority.
- 7.8 FALSE STATEMENTS UNDER OATH AND REFUSAL TO TESTIFY FORBIDDEN: If any appellant or witness in the classified service makes any false statement under oath relative to the matter being heard by the Commission or the Director on any grounds, he/she shall be terminated from City service and shall not be eligible for appointment to any position in City service for a period of five (5) years. If any appellant or witness in the Classified Service willfully refuses to testify or answer any questions relative to the matter being heard by the Commission or the Director on any grounds, he/she shall be subject to disciplinary action, up to and including, termination. The false statement under oath or refusal to testify shall be incorporated in the employee's personnel record and shall be considered as a factor at any time in the future in which he/she may make application for appointment to City Service.



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Return Receipt Fee (Endorsement Required)	
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Total Postage & Fees	\$



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PS Form 3800, June 2002 (Reverse)

- A mailing receipt
- A unique identifier for your mailpiece
- A record of delivery kept by the Postal Service for two years

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- Certified Mail is *not* available for any class of international mail.
- **NO INSURANCE COVERAGE IS PROVIDED** with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS® postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "*Restricted Delivery*".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

**IMPORTANT: Save this receipt and present it when making an inquiry. Internet access to delivery information is not available on mail addressed to APOs and FPOs.**

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <span style="float: right;"><input type="checkbox"/> Agent</span></p> <p>X <u>K. Nguyen</u> <span style="float: right;"><input checked="" type="checkbox"/> Addressee</span></p> <p>B. Received by (<i>Printed Name</i>) <span style="float: right;">C. Date of Delivery</span></p>
<p>1. Article Addressed to:</p> <p style="font-size: 1.2em; color: blue;">Kiet Nguyen Police Officer</p> <div style="background-color: black; width: 100px; height: 20px; margin: 5px 0;"></div> <div style="text-align: center;">  </div>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <div style="text-align: center; margin: 10px 0;">  </div> <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <span style="margin-left: 20px;"><input type="checkbox"/> Express Mail</span></p> <p><input type="checkbox"/> Registered <span style="margin-left: 20px;"><input checked="" type="checkbox"/> Return Receipt for Merchandise</span></p> <p><input type="checkbox"/> Insured Mail <span style="margin-left: 20px;"><input type="checkbox"/> C.O.D.</span></p> <p>Restricted Delivery? (<i>Extra Fee</i>) <span style="float: right;"><input type="checkbox"/> Yes</span></p>
<p>2. Article Number (<i>Transfer from service label</i>)</p>	<p style="font-size: 1.2em; text-align: center;">7004 0550 0001 4294 1822</p>
<p>PS Form 3811, February 2004 <span style="margin-left: 150px;">Domestic Return Receipt</span> <span style="float: right;">102595-02-M-1540</span></p>	