SONOMA COUNTY SHERIFF'S OFFICE

MARK ESSICK
Sheriff-Coroner

JAMES NAUGLE
Assistant Sheriff
Law Enforcement Division

EDDIE ENGRAM
Assistant Sheriff
Detention Division

HEIDI KEITH
Chief of Financial and
Administrative Services

NOTICE OF INTENDED DISCIPLINARY ACTION

September 15, 2022

Marlon Bhai
Deputy Sheriff

This Notice will inform you that your appointing authority, Sheriff Mark Essick, proposes to terminate your employment as an employee of the Sonoma County Sheriff's Office per Civil Service Rule 10.3.

It is recognized and understood you are a probationary employee and could be released from probation without cause; however, your appointing authority has decided to terminate your employment with cause, as if you were a permanent employee. This decision affords you certain rights, including the right to a response, which is described at the end of this Notice.

The proposed disciplinary action is based on your conduct, which in the opinion of your appointing authority, constitutes grounds for disciplinary action pursuant to the Rules of the Civil Service Commission, County of Sonoma, and/or pursuant to the General Rules and Regulations of the Sonoma County Sheriff's Office, as described below:

RULES OF THE CIVIL SERVICE COMMISSION

Rule 10.3: DISMISSALS

1. Dismissal of Permanent Employee

   Any employee who has attained permanent status may be dismissed for reasonable cause including, but not limited to:

   (3) Conduct which brings discredit to the County,
   (16) Hostile and discourteous treatment of the public or other employee,
   (17) Falsification of any records, such as medical forms, timecards or employment applications, or making material dishonest work-related statements to other employees at work or committing perjury.

and the following Sonoma County Sheriff's Office Policies and Procedures:

RULES AND REGULATIONS REGARDING CONDUCT

5.0 PROCEDURES

B. DUTIES, CONDUCT, AND RESPONSIBILITY

3. Obey Policies and Procedures: Members shall obey and carry out all lawful Sheriff's Office policies, procedures, and other order whether written or oral. Specifically:

Policy 306.5.1 – Firearms – Inspection and Storage

Handguns shall be inspected regularly and upon access or possession by another person. Shotguns and rifles shall be inspected at the beginning of the shift by the member to whom the weapon is issued. The member shall ensure that the firearm is carried in the proper condition and loaded with approved ammunition. Inspection of the shotgun and rifle shall be done while standing outside of the patrol vehicle. All firearms shall be pointed in a safe direction or into clearing barrels.

Policy 306.5.4 – Firearms – Storage in Vehicles

When leaving a handgun in an unattended vehicle, members shall ensure that it is locked in the trunk, or in a locked container that is placed out of view, or in a locked container that is permanently affixed to the vehicle's interior and not in plain view, or in a locked toolbox or utility box permanently affixed to the vehicle (Penal Code §16850; Penal Code §25140; Penal Code §25452).

If the vehicle does not have a trunk or a locked container, then the firearm should be locked within the center utility console that can be locked with a padlock, keylock, combination lock, or other similar locking device (Penal Code §25140).

Policy 320.5.1 Standards of Conduct – Laws, Rules and Orders

c. Violation of federal, state, local or administrative laws, rules or regulations.

Policy 320.5.8 – Standards of Conduct – Performance

c. Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a

supervisor or other person of authority, in connection with any investigation or in the reporting of any office related business.

Policy 320.5.9 - Standards of Conduct – Conduct

f. Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this office or the County.

h. Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this office.

STATEMENT OF FACTS:

On July 10, 2022, while driving home with your family, you were involved in a driving incident where the driver of another vehicle, later identified as [redacted], passed your vehicle on the right in an unsafe manner, nearly colliding with your vehicle. This understandably upset you.

As you continued driving home, you realized [redacted] was driving toward your neighborhood. You believed he was driving to your neighbor's residence. When you turned onto your street, you observed [redacted] park his vehicle across from your residence. This further upset you because you have had multiple issues with your neighbors. As [redacted] sat in his vehicle, you took it upon yourself to make a comment to him about his driving, which ultimately instigated this entire altercation.

You subsequently became involved in an altercation with [redacted], in the middle of the street, where multiple witnesses observed. During the altercation [redacted] told you to go back into your house and pointed over your shoulder. You responded by smacking his arm down and cursing at him. Later during the altercation, while at the rear of [redacted] vehicle, you shoved [redacted], causing him to be pushed backwards. Both of these incidents were caught on a cell phone video recording.

When deputies arrived, they began their investigation. During that investigation, Deputy P. Briggs contacted you in your driveway and he asked you questions about what had transpired. During this questioning, which was captured on his BWC footage, Deputy P. Briggs asked you, "who pushed who first?" Your response to him was, "I didn't never even put hands on that guy, he was shoving me." The cell phone videos of the incident show, on two separate occasions, you did in fact use physical force on [redacted] once by smacking his arm down and once by shoving him against his vehicle. Your statement to Deputy P. Briggs was determined to be false and misleading.

Also on the cell phone videos, you were heard repeatedly cursing at and threatening [redacted]. Examples of your statements to [redacted] during the altercation include:

- "Get the fuck outta here dude."
- "You're a little bitch, just like everybody else …[unintelligible]…you ain't shit."
- "Hey, the only reason why you're fucking ain't fuckin' snoring right now in the street, is because my little fuckin' kids are in the car."

- "I will see you…shut the fuck up…I will see you, when I'm not with my fucking kids, and I will fuck you up dude, I promise you."

It is recognized [redacted] was also rude and used profane language toward you throughout this incident, however, [redacted] was not an employee of the Sheriff's Office. Furthermore, your neighbors, who witnessed this altercation, knew you were a police officer and were taken aback by your conduct. Your conduct and this type of profane and threatening language toward a member of the public, was not only discourteous and disrespectful, but it also brought discredit to the Sheriff's Office and the law enforcement profession as a whole.

Regarding the concerns related to your department-issued handgun. On the day Sgt. Kidder and Sgt. Diehm responded to your residence to serve you with your Internal Affairs notice and place you on Administrative Leave, Sgt. Kidder asked you to turn in your handgun. You stated you needed to grab it and walked to the back of your house. Soon after, you returned and provided it to him. During your Internal Affairs interview, when asked where you retrieved your handgun from, you stated you retrieved your handgun from a cabinet in your garage. You also stated your handgun was not left unsecured in the back passenger area of your personal vehicle.

Unbeknownst to you, on the day Sgt. Kidder and Sgt. Diehm responded to your residence to serve you with your Internal Affairs paperwork, Lt. Cutting was sitting in an unmarked vehicle in front of your residence. As Lt. Cutting was waiting for Sgt. Kidder and Sgt. Diehm to return, he saw you exit through a side gate, holding your child in your left arm. He watched as you walked down your driveway, opened the rear passenger-side door of your personal vehicle and then reach into the passenger area. He then saw you emerge from the passenger area of the vehicle holding your handgun in your right hand. Based on the amount of time you spent retrieving your handgun from your vehicle, estimated to be a matter of seconds, there was not enough time for you to unlock a safe or other locking container. For these reasons, it was apparent to Lt. Cutting that you retrieved your handgun, which you left unsecured, from the back passenger area of your vehicle.

Not only was this statement to Sgt. Kidder and Lt. Cutting during Internal Affairs interview false, but leaving your handgun, unsecured, in the rear passenger area of your vehicle was a violation of Sheriff's Office Policy and California State Law.

Once Sgt. Kidder and Sgt. Diehm returned to Lt. Cutting's vehicle, Sgt. Kidder manipulated your handgun to make it safe. In doing so, he found your department-issued firearm was not properly loaded. Instead of having your handgun loaded with the appropriate, department-approved duty ammunition, the round loaded in the chamber was a training round. During your Internal Affairs interview, you admitted you did not know your handgun was loaded in such a manner. Members of the Sheriff's Office are required to carry their firearms in the proper condition and loaded with approved ammunition. Not doing so was a violation of Sheriff's Office Policy.

A preponderance of the evidence presented in this investigation suggests your off-duty conduct was criminal, dishonest, and disgraceful; therefore, you have been sustained on all allegations. Undoubtedly, your integrity has been compromised and your conduct adversely affected your relationship with this

office. For these reasons, it has been proposed to terminate your employment with the Sonoma County Sheriff's Office with cause.

YOUR RIGHT TO A RESPONSE

Under applicable law, and the Rules of the County Civil Service Commission, you have various legal rights in connection with this Notice that you should discuss with your attorney, union representative, or other representative.

You have the right to respond, verbally or in writing, or both, to this Notice. Your verbal or written response must be made within three (3) working days after the day this notice is delivered to you, pursuant to Rule 10, Section 10.5 A of the Rules of the Civil Service Commission. The time to respond may be extended if you make such a request to the appointing authority and the request is granted.

Your written or oral response, if any, must be communicated to Assistant Sheriff Eddie Engram, Sonoma County Sheriff's Office, 2796 Ventura Avenue, Santa Rosa, California, 95403, or by phoning him at 565-1423.

IF NO RESPONSE TO THIS WRITTEN NOTICE IS RECEIVED BY ASSISTANT SHERIFF ENGRAM WITHIN THREE (3) WORKING DAYS AFTER THE DAY THIS NOTICE IS DELIVERED TO YOU, OR ON THE LAST DAY OF ANY APPROVED EXTENSION OF TIME, YOU WILL HAVE WAIVED YOUR RIGHT TO MAKE SUCH RESPONSE.

If you wish to accept the proposed Order of Termination from Employment per Civil Service Rules 10.3 and not respond to Assistant Sheriff Engram, please advise Sergeant Brent Kidder at 565-5042 within three (3) working days so he can move forward with the disciplinary process.

This Notice may become part of your permanent personnel record if disciplinary action is, in fact, imposed as a result of the reasons set forth herein. Read this Notice carefully and sign or initial this notice on the line provided below.

MARK ESSICK
Sheriff-Coroner

9/15/22
Date Signed

Marlon Bhai
Deputy Sheriff

9/16/22
Date Received

Prepared by: Sgt. Brent Kidder