

## Written Rebuttal

This document is intended to respond to the Written Warning given to me on September 15, 2023, as a result of IA Case #2022-003, that included sixteen (16) witness interviews. This is also intended to serve as a formal EEO Complaint listing Assistant Chief Rudolph Tai, [REDACTED] [REDACTED] [REDACTED] and [REDACTED] for discrimination based on being a Hispanic female in a position of leadership that was targeted for doing my job: holding personnel accountable and ultimately for exercising my POSBR. Throughout this case, [REDACTED] made untruthful statements to Internal Affairs, [REDACTED] and IA failed to act and take corrective actions. [REDACTED] [REDACTED] made statements to IA about "she can retire" be "put in an office away from anyone and to think about what she has done." [REDACTED]

[REDACTED] These allegations were untruthful and IA allowed him to make such statements without supporting facts. It was clear his intentions were to attack me personally and defamation of character. [REDACTED]

[REDACTED] was untruthful and after three recorded interviews was unable to provide specific dates, times and witnessed to his untruthful statements. What was clear in all

recorded interviews was he was unable to do his job as an [REDACTED] And in an attempt to conceal this fact, Assistant Chief Rudolph Tai attempted to have [REDACTED] [REDACTED] approve an untruthful Performance Evaluation when I took a day off that was prepare by [REDACTED] They did this in an effort to conceal his lack of performance which was my reason for address him on the day of the "peeping tom" case, January 26, 2022.

The initial discipline in this case resulted from two sustained findings by the SDPD Internal Affairs Unit, under the command of Captain Anthony Dupree and overall management by Executive Chief Chris McGrath. Assistant Chief Rudolph Tai is the chief assigned to Patrol Operations and Captain Sainz' immediate supervisor. Assistant Chief Thomas Underwood was assigned as the Hearing Officer in the Appeal Hearing of a Written Reprimand, that was held on April 11, 2023 and on May 23, 2023.

#### **STATEMENT OF FACTS**

I am a 33-year veteran of the San Diego Police Department. I hold the rank of captain and am charge of the Southern Division for the SDPD. Under my command are approximately 100 employees which overall includes: supervisors, detectives, officers and civilian employees. One of my primary responsibilities is to

ensure criminal investigations are conducted in a legal, objective, professional, and ethical manner.

On January 26, 2022 SDPD [REDACTED] assisted in the arrest of a "peeping tom". The suspect was a prison guard at the Donovan State prison. This arrest had two very serious aspects to it. First, the arrestee was a law enforcement officer from another agency. This means that the employing agency must be notified, any actions taken coordinated with them, their assistance may be needed and it could have serious consequences to the arrestee's employment. The second serious aspect of the case was the fact that the crime was for "peeping tom". (California Penal code section 647(i). Although classified as a misdemeanor, officers are taught and learn, this actually is a very serious offense. That is because the likelihood the "peeping tom" will actually is or will become a rapist is high. When advised of the arrest, I monitored the on-going investigation at the Southern Division police station. After an effort was made by [REDACTED] to interview the suspect, he reported to me that the arrestee refused to talk. He also told me he had allowed the suspect to call his girlfriend, who immediately told him NOT to talk to the police. When I asked [REDACTED] why he allowed this phone call, [REDACTED] stated "Well God says to be kind and I was being kind". Believing this phone call, not standard

or accepted practice, interfered with the investigation, I responded that he should not let his religion get in the way of doing a criminal investigation. This conversation and addressing [REDACTED] performance deficiency, occurred within my office (Captain's office) at Southern Division. In the office was [REDACTED] and [REDACTED]  
[REDACTED]

On February 24, 2022 [REDACTED] filed an EEO complaint against me for religious discrimination based on that January 26, 2022 conversation. That charge was sustained in the investigation that followed. I was served with a Notice of Reprimand on February 9, 2023. I appealed the Reprimand and it was reduced to a Written Warning. Under Gov. C. §3304(d)(1) Chief Rudolph Tai had one year from the date of the incident (January 26, 2022) until January 26, 2023 to serve me with a Notice of Proposed Discipline, therefore Assistant Chief Rudolph Tai violated the one year statute of limitations. On September 15, 2023 I met with Assistant Chief Rudolph Tai for the purposes of being served the written warning. [REDACTED] my legal representative, in my presence, told Assistant Chief Rudolph Tai the Department had violated the statute of limitations in this case. [REDACTED] was also present in this meeting. Assistant Chief Rudolph Tai took no action regarding this assertion. Written into the warning was

the requirement for me attend an 8 hour supervision class. It was pointed out that Assistant Chief Thomas Underwood's decision in the appeal did not call for such discipline (letter dated August 9, 2023) Assistant Chief Rudolph Tai recognized his error and removed that requirement from the written warning and then served the warning to me. When it was pointed out to Assistant Chief Rudolph Tai there was additional inappropriate wording in the Warning, specifically written into the warning was "You used derogatory language expressing your prejudices towards [REDACTED] without supporting facts, he stated he would not make any additional changes. It is apparent that Assistant Chief Rudolph Tai inserted his personal beliefs, bias and impartiality in this case when he inserted this wording into the written warning. There were no allegations regarding prejudices in this case and none of which were a sustained finding(s) as such. Investigations are expected to be impartial, non-biased and fair. Instead, Assistant Chief Rudolph Tai inserted his own personal biases in this case without fact(s) to support his statement. In addition, Assistant Chief Rudolph Tai added 9.20, Courtesy Policy to the Written Warning.

**This charge was never included and a part of the IA**

**Investigation,** yet added by Assistant Chief Rudolph Tai. In addition, on page 6 of the narrative you included language that states, "...you are required to set an example of acceptable

conduct free from discourtesy, discriminatory, harassing and retaliatory behavior." By adding this language, you implied that I harassed and was retaliatory, none of which were sustained findings and none of which were supported by witnesses. This was a personal attack of words by Assistant Chief Rudolph Tai intended to personally harm my reputation and is abuse of position.

**Performance Deficiencies, [REDACTED]**

[REDACTED] admitted in this case that it was specifically God telling him to be kind and that was his reason for allowing the prisoner to make a phone call. There is no policy, procedure or law enforcement investigative practice that allows, suggest or directs any investigation in this manner. Facts, evidence and investigative processes determine outcomes in any investigation not an investigator's religious beliefs. For this reason, I was addressing [REDACTED] performance deficiency. ***It is clear after several recorded interviews that all witnesses in this case recognized that [REDACTED] had significant performance issues*** and over a long period of time and continued. Assistant Chief Rudolph Tai choose to completely disregard my specific addressing to [REDACTED] as a corrective measure of his deficiency.

[REDACTED] **Performance Plan**

During the appeal hearing, it was presented in testimony the Performance Evaluation of [REDACTED] prepared by [REDACTED]. I did not agree with the written performance plan as it misrepresented [REDACTED] performance omitting his deficiencies. Assistant Chief Rudolph Tai, while I was on a day off, requested [REDACTED] presence at his office in Police Headquarters. According to [REDACTED] Assistant Chief Rudolph Tai told [REDACTED] to approval and sign as the Appointing Authority of [REDACTED] Performance Evaluation. **But** [REDACTED] **refused to sign** it due to the misrepresentation through-out the document. Upon my return to work, [REDACTED] met with me and explained what had occurred and wanted me to know he told Assistant Chief Rudolph Tai he did not agree with the evaluation due to the misrepresentations. The Performance Evaluation was signed by Assistant Chief Rudolph Tai as the Appointing Authority with changes from the original document. [REDACTED] deficiencies were not included in the document signed by Assistant Chief Rudolph Tai. This is not common practice, past practice or appropriate. Assistant Chief Rudolph Tai was aware of the ongoing internal investigation and of the "peeping tom"

case, yet signed off as the Appointing Authority of [REDACTED]  
[REDACTED] Performance Evaluation knowing he had  
performance deficiencies. Assistant Chief Rudolph Tai was unable  
to provide a valid reason as to why he signed that document  
during the appeal hearing.

**Internal Affairs Investigator Sergeant Van Pen**

Internal Affairs Detective Sergeant Van Pen choose to ignore and  
omit witness statements that [REDACTED] had  
performance deficiencies and intentionally omitted witness  
statements of such that was provided repeatedly in the Internal  
Affairs investigation. By doing so, my addressing [REDACTED]  
[REDACTED] performance issue on January 26, 2022, the date  
of the "peeping tom" arrest became a crafted allegation with a  
sustained finding of religious discrimination.

[REDACTED]  
This allegation was sustained based on the [REDACTED]  
statement that I had allegedly talked with him following my  
discussion with [REDACTED] in my office about his  
performance deficiency. In the appeal hearing, we asked Sergeant  
Van Pen what witness coo berated [REDACTED]  
allegation. He explained that [REDACTED] stated I made  
statements regarding about [REDACTED] religion at  
work. [REDACTED] was unable to offer exactly what he heard. In  
fact, he provided the following:

1. **"maybe** about his religious views something like, **I don't remember the exact wording**, but it was something like don't bring, don't bring the church to your work or don't bring the bible your how to perform your duties, but that was kind of the only thing I heard." [REDACTED] [REDACTED] also stated, "I didn't know what that conversation was fully about...I didn't hear what she said." When asked further by Sergeant Van Pen for exactly it's very important, [REDACTED] provided the following statement, "right just like the criminals like people we're arresting um specifically this case, the peeping tom, so these creeps, um, use the phone an then she mentioned she told [REDACTED] to like the bible out of work, or don't bring don't bring your religious view to the job or something along those lines, the Christians out of work, I don't remember that specifically." When asked, "What else did she say, verbatim, just reiterate that for me." [REDACTED] **responded, "Verbatim I don't know. I can't recall the exact words she used or what happened after that..."** In addition, both Assistant Chief Rudolph Tai Assistant and Assistant Chief Thomas Underwood chose to ignore these statements omit as relevant and key evidence to support

my reason for addressing [REDACTED]  
performance deficiencies.

Experienced investigators provided testimony to the relevance of not allowing for the phone call to the prisoner's girlfriend. In the appeal hearing, it was clearly stated that because the "peeping tom" case was still ongoing, search warrant evidence were still pending review in this case and it was not clear as to the prisoner's girlfriends potential involvement.

#### **[REDACTED] Inconsistencies**

[REDACTED] provided statements that were inconsistent statements throughout the IA investigation regarding the alleged discrimination allegation. In fact, [REDACTED] was brought back three (3) to be reinterviewed by IA. This is not common. It was apparent that [REDACTED] was not providing specifics, dates, times, location and witnesses to substantiate his complaint. At one point in one of his three (3) interviews he is heard asking "help me" to the investigators. This was followed by a moment of silence. [REDACTED] provided many versions such as:

1. "how I can't be a Christian on duty and how you can, you can do your Christian thing and be godly at home..."
2. "you know when I was sitting there I want to say (6 seconds delay) one or both [REDACTED] either [REDACTED] or [REDACTED]"

may have been in the room when she told me that I can't um be Christian at work like I let them make a phone call..."

3. "...and I said we called his girlfriend and the first thing out her mouth were don't talk to them what a minute you called his girlfriend now **this is not verbatim** but pretty close to the conversation you called his girlfriend yeah, asked to call her, I called her on speaker let them, well why did you do that, and she went off about how I cannot be um a Christian I can't do this at work. I can't be a good [REDACTED] if I bring God into the equation..."

4. "how I can't I shouldn't have God...how I shouldn't bring God into the job."

5. When asked by Sergeant Van Pen, "what did you say exactly or is that essentially what she said thought right?" "I need to leave God at home essentially."

6. "and the religion the religion comes into conversations she'll, she'll go, you're a Christian and you're, you're a Christian an she'll say things, um, out of the blue that, that relate back to, to , um, **and I can't think of context right now, for any of those specific things.**"

But yet, after these many different versions, IA Investigator Van Pen chose to use "Can't be a Christian on duty" with the sustained finding against me. He intentionally left out the many different versions, because he knew that it would only appear

that [REDACTED] was unable to be specific and therefore not credible. In these cases, specifics are critical, yet [REDACTED] was unable to provide this.

**Untruthfulness by [REDACTED]**

[REDACTED] stated in his interview that he saw me talking with [REDACTED] when I allegedly made a religious comment and that [REDACTED] was present and **multiple people heard**. Specifically, Sergeant Van Pen asked, "was there anyone present when she made that comment (related to religion), just [REDACTED] right?" [REDACTED] answered, "na, he was inside the um detective bay the door was open, **multiple people heard it**, I would probably check with our um, Night Team, they're the ones who are there late, uh, so it'd be like, um [REDACTED] um, [REDACTED] or um, I can't remember, I remember **multiple people** being there an saying like, now we heard like, we hear that, uh when I walked out, um, but for sure [REDACTED] that was in, in, in his seat, he heard."

[REDACTED] was interviewed and stated he did not hear me make any such statements related to religion. During the appeal hearing evidence was presented that refuted the possibility that [REDACTED] saw [REDACTED] sitting at the bay while I allegedly spoke with [REDACTED]. Presented at the appeal hearing were the biweekly timesheets for the week of the arrest of the "peeping

tom" case (January 26, 2022). This evidence demonstrated

[REDACTED] was untruthful because [REDACTED]  
[REDACTED] was not at work for several days that included the  
day of the arrest of the "peeping tom." All other witnesses  
stated in their interviews they never heard me make such  
statements. Therefore, [REDACTED] statement that  
"multiple people heard" with no supporting statements is  
untruthful. In addition, [REDACTED] could not offer an  
exact statement he heard me say and there was no one that  
cooperated me talking with [REDACTED] It is [REDACTED]  
[REDACTED] word alone that the investigator Sergeant Pen Van relied  
upon to sustain this finding. At no time did IA Sergeant Van Pen  
make any effort to interview: [REDACTED] assigned  
to the Night Team, the transporting officers who brought in the  
"peeping tom" prisoner, check those officers body worn cameras  
for audio of such conversation as they were in close proximity,  
review the time of the prisoner phone call against the  
prisoner's interview time to determine what sequence of events  
occurred first to validate [REDACTED] version of  
events and my conversation regarding his performance deficiency.

**Subject Matter Expert Testimony:** [REDACTED]

San Diego Police [REDACTED] a 32-year law enforcement  
officer, a key Subject Matter Expert with investigative  
experience as the former Commanding Officer of Internal Affairs

and the Professional Standards Unit with previous experience in a variety of investigative units: Homicide, Sex Crimes, Internal Affairs, Vice Unit, Area Commands, thoroughly reviewed this case in its entirety. His review of the IA investigation, audio recorded interviews, photographs, cell phone text messages of all personal interviewed in this case, review of complainant transcribed interviews to include witness interviews resulted in his expert opinion that this case was biased against me from the onset, unfair, was not impartial, not prompt, not thorough and incomplete.

██████████ strongly suggested at the appeal hearing that Assistant Chief Thomas Underwood pay close attention to the audio taped interviews to evaluate this case. Specifically, he stated there were no specifics provided by the complainants, no dates, times, locations and witnesses to support these findings. At the appeal hearing, another Subject Matter Expert, ██████████ ██████████ was preparing to testify regarding the investigative errors, biases, unfair investigation and overall flawed investigation but was not allowed to by Assistant Chief Thomas Underwood. Assistant Chief Thomas Underwood told me on the record no more expert testimony was needed. This decision prevented me from exercising my due process in the appeal hearing by preventing testimony as exculpatory in this case. This decision limited expert testimony. This demonstrated

Assistant Chief Underwood had already determined to uphold the findings even before the appeal hearing was over.

### **Concealment of Evidence**

Assistant Chief Rudolph Tai testified at the appeal hearing there were meetings with the complainants: [REDACTED] [REDACTED] and [REDACTED] and him. Yet he failed to document the meetings. He admitted at the appeal hearing of having meetings, telephone calls and communication via text messages with them yet never recorded these meetings before [REDACTED] [REDACTED] and [REDACTED] recorded Internal Affairs interviews. In fact, Assistant Chief Rudolph Tai admitted during the appeal hearing that he had deleted the text messages from his cell phone and phone calls. In addition, he failed to submit any notes from these meetings and failed to formally report them during the course of the internal investigation. [REDACTED] [REDACTED] testified that his meetings were relevant and knowing what was said and why the chief (Tai) had these meetings "would have been important to know." In fact, Assistant Chief Rudolph Tai was never interviewed by Internal Affairs in this case. Assistant Chief Tai failed to provide notes, text messages between the he and the complainants and provide phone logs of such calls. Assistant Chief Rudolph Tai intentionally concealed with the intent to prevent me from obtaining relevant information and admitted he did so at the appeal hearing when he

stated calls were made, text messages were exchanged, and meetings occurred between he and the complainants. **This intentional omission and failure to do so, was negligent and interfered with the internal investigation.** This was a violation of 135 PC, which states;

A person who knowing that any book, paper, record, instrument in writing, digital image, video recording owned by another, or other matter or thing is about to be produced in evidence upon a trial, inquiry, or investigation, authorized by law, willfully destroys, erases, or conceals the same, with the intent to prevent it or its content from being produced, is guilty of a misdemeanor. By failing to document and provide material related to my investigation and intentionally delete it was a violation of my POSBR.

**Untruthfulness by [REDACTED]**

[REDACTED] alleged that I made an offensive comment related to him not being married. Specifically, he stated a time, but unable to state a date and time, or year, when he was talking with a civilian employee and mentioned his wife and I corrected him telling him it wasn't his wife but his girlfriend. This allegation was sustained as discrimination. The IA Investigator Sergeant Van Pen failed to describe how this was discrimination. I was never asked about making such a statement

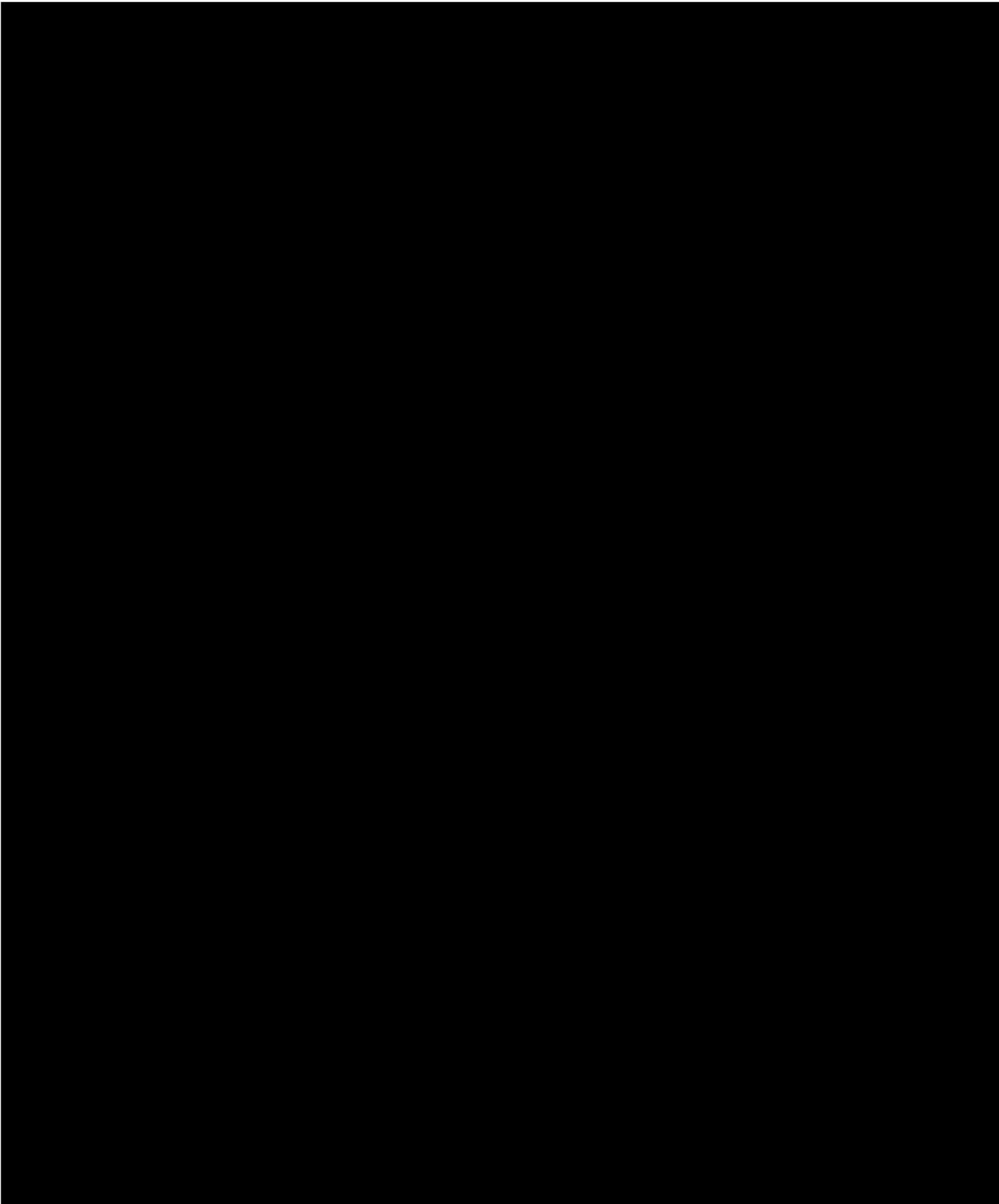
in the IA interview. This marked the beginning of **a number of untruthful statements and allegations** by [REDACTED]

[REDACTED] in this case in his IA interviews. [REDACTED]

[REDACTED] was interviewed three (3) separate times by IA. This is extremely unusual.

[REDACTED] stated in his Internal Affairs interview that **"everyone heard the captain"** make inappropriate comments. **The following allegations were made by** [REDACTED]

[REDACTED] and were proven to be false and untruthful with supporting evidence in the appeal hearing:



[REDACTED]

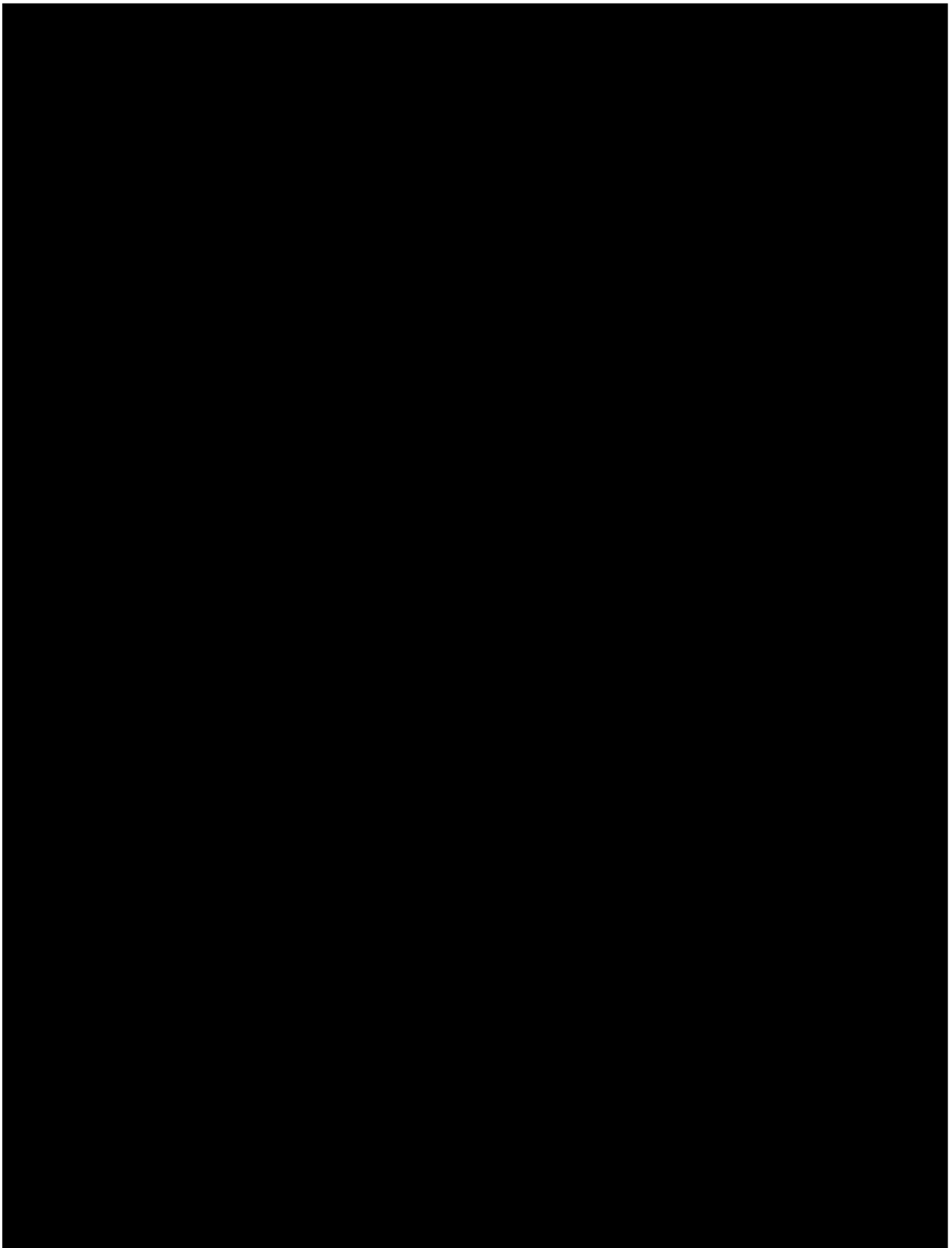
(See IA Report and

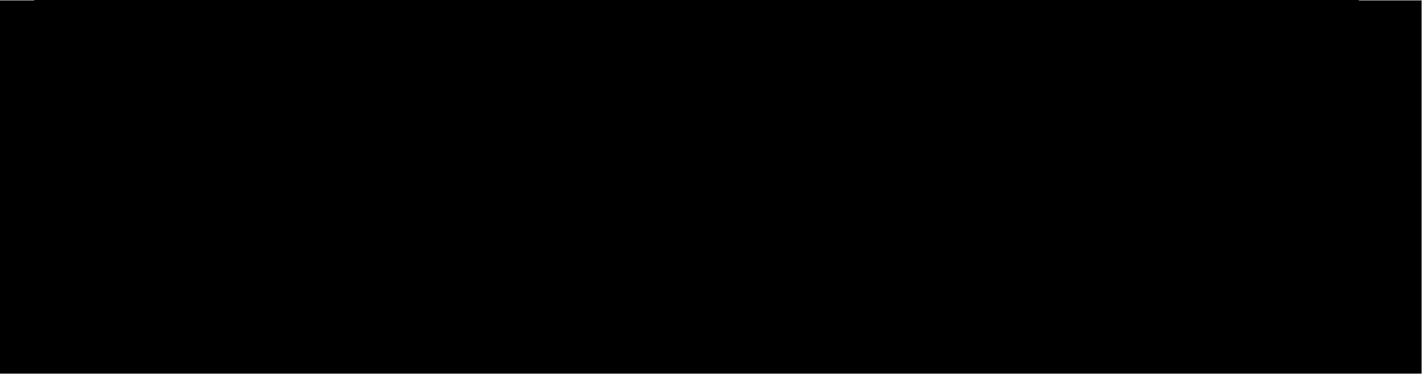
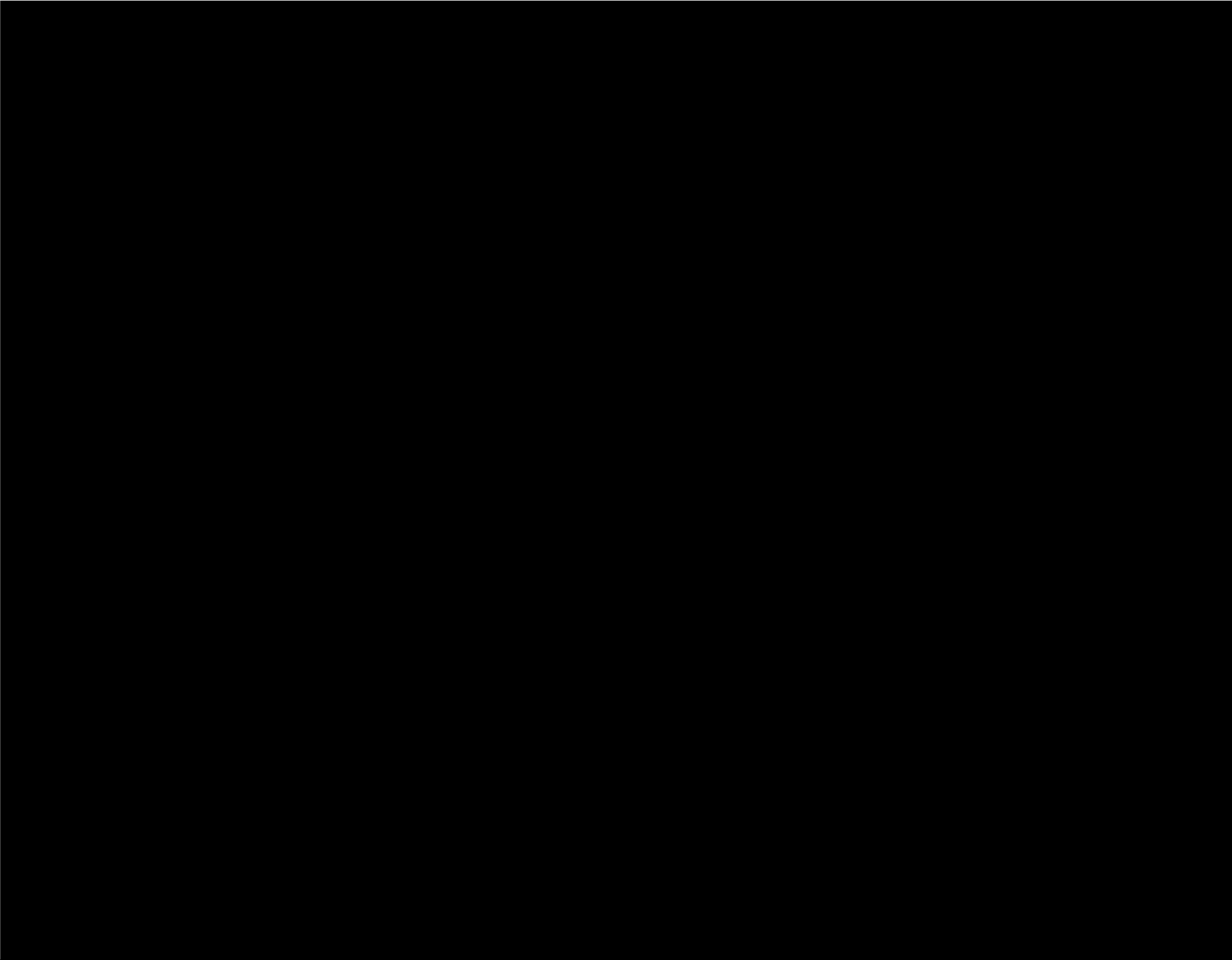
transcription for details) [REDACTED] committed an EEO and I reported this to Internal Affairs when I explained what had occurred in the interview. This EEO violation was never followed up on in this case and was never investigated as an EEO Violation. No follow up was made with [REDACTED] for a response. The department is well aware that [REDACTED] [REDACTED] has a history of such behavior. Sergeant Van Pen, the IA Investigator and a mandated reporter was negligent when he chose to ignore the information I provided and conduct no follow up interview with [REDACTED]

#### **A History and Pattern of EEO's**

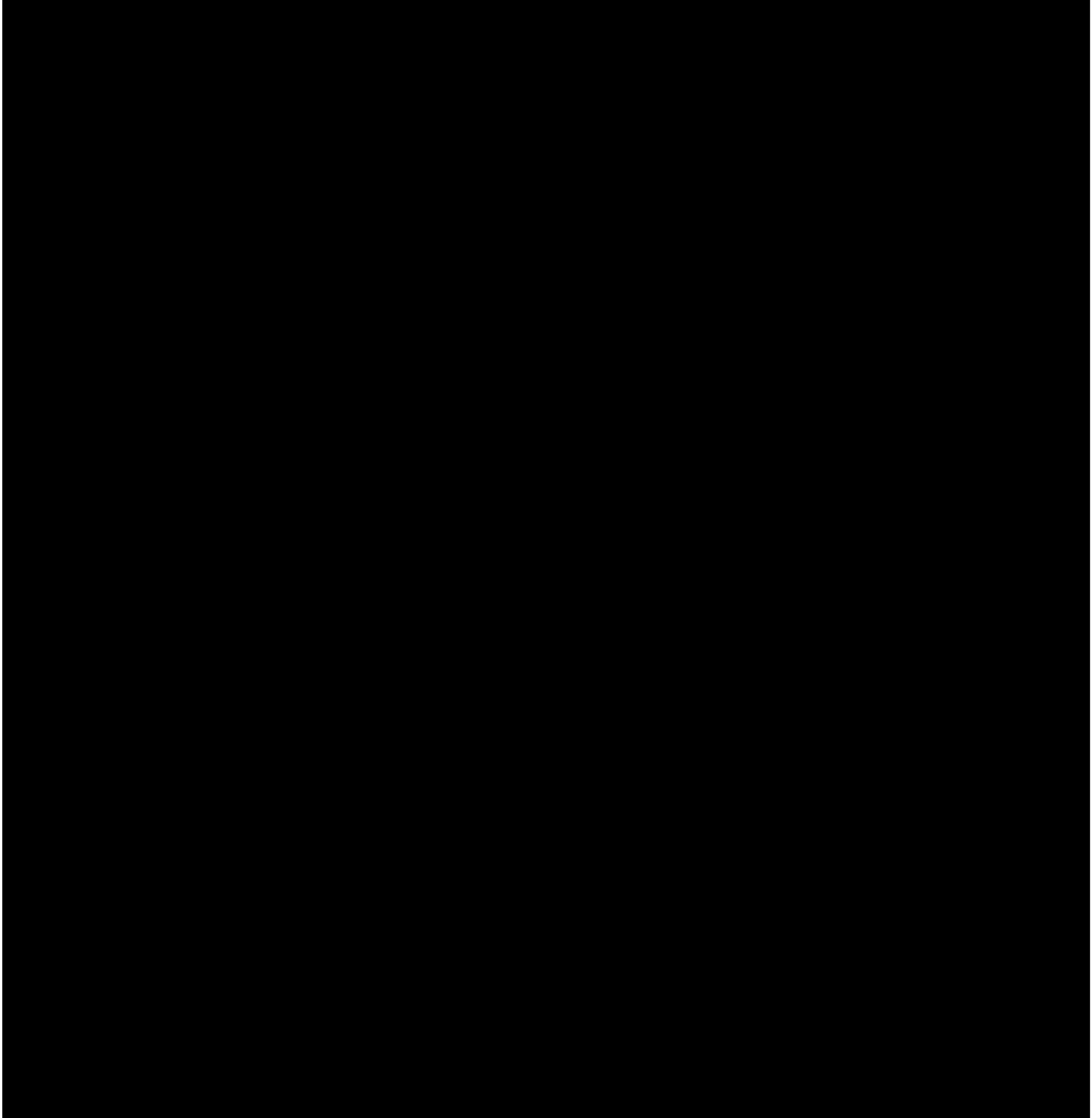
During [REDACTED] IA interview he stated that he has always treated women with respect. He lied. The IA Investigators had access to EEO Files and could have verified this information. Had they done so, they would have realized [REDACTED] was untruthful. [REDACTED]

[REDACTED]





I submitted into the record, two years of cell phone text messages between [REDACTED] and I that demonstrated he was untruthful.



Sergeant Van Pen testified at the appeal hearing that he agreed that [REDACTED] was untruthful when he saw photographic evidence proving he was untruthful. [REDACTED]



[REDACTED] When asked if now that he knew [REDACTED] was untruthful was everything else he alleged occurred not believable, Sergeant Van Pen explained he was investigating each allegation separately. This assertion demonstrates the investigators inability to recognize how credibility of complainants is relevant to any case and without it, you have a no case. The investigator was negligent, incompetent and failed to report and investigate an untruthful police lieutenant. Assistant Chief Thomas Underwood was negligent in failing to act.

**[REDACTED] Supported Martha Sainz for Police Lieutenant**

[REDACTED] stated in the IA interview that was upset with the [REDACTED] because they "did her wrong" and did not support me. [REDACTED]

[REDACTED] submitted a Sworn Affidavit contradicting [REDACTED]

[REDACTED] statement to IA. Once again, [REDACTED]

[REDACTED] provided an untruthful statement to IA. To date, no investigation and no accountability. This was submitted into evidence as exculpatory evidence in the appeal hearing.

[REDACTED]

[REDACTED]

**Retired SDPD [REDACTED] Sworn Affidavit**

Retired SDPD [REDACTED] provided a Sworn Declaration that described an encounter he had with [REDACTED] [REDACTED] on September 4, 2021, at a Class Car Show. This event involved [REDACTED] being untruthful about owning a classic car and presenting it as his own with details. The true owner of the class cars arrived, and it was then that Retired [REDACTED] realized [REDACTED] has lied about owning theses classic cars. Once again, another untruthful incident by [REDACTED] This was entered into evidence in the appeal hearing as exculpatory and against [REDACTED] credibility. No action has been made by the police department to hold him accountable.

[REDACTED]

[REDACTED]

### **Hearing Officer Chief Thomas Underwood**

Chief Thomas Underwood became aware these violations of the law, abuse of position, misconduct, bias against me, and concealment at the appeal hearing. To date, Chief Thomas Underwood has failed to act and in doing so, has abused his position as the appointed hearing officer.

Exculpatory evidence in this case was presented at an overwhelming level. Witnesses provided interviews countering the claims by [REDACTED] and I received no explanation as to why Assistant Chief Thomas Underwood did not consider the evidence presented. In addition, to date, there has been no investigation on [REDACTED] for untruthfulness by IA or any other agency regarding this matter. The police department has the ability to request outside agencies to investigate. There has been no IA investigation or any other agency to conduct an investigation of [REDACTED] [REDACTED] for untruthfulness and lack of performance of his duties. To date, there has been no IA investigation or other agency to conduct a formal investigation of [REDACTED]

[REDACTED] In fact, he was completely removed as a Complainant. The reason for this removal on this case remains unknown. I was not provided an explanation as to why this changed.

It is clear that this case was biased against me from the onset,  
I was personally targeted.

I was discriminated against by [REDACTED] based on  
my age. I demand a formal EEO investigation into this corrupt  
investigation. I also submit this written rebuttal to the  
written warning I received as my formal response with the  
expectation that it is attached to the written warning.

There were no further appeals allowed by law or policy. A writ  
was therefore filed requesting a judicial review regarding the  
statute of limitations.

Respectfully,

Martha G. Sainz

October 12, 2023