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SAN DIEGO COUNTY, CA

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103

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10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 WILLIAM D. GORE, as Sheriff of
13 San Diego County,

14 Petitioner,

15 v.

16 SAN DIEGO COUNTY CIVIL SERVICE
17 COMMISSION,

18 Respondent

19 JEFFREY HORNACEK,

20 Real Party in Interest

Case No.: 37-2017-00023098-CU-WM-CTL

PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS
PURSUANT TO CODE OF CIVIL
PROCEDURE 1094.5

1 duties in the Sheriff's Department's Detentions Services Bureau (jails)
2 and Court Services Bureau (courtrooms and court holding areas), and
3 was given training relating those assignments.

4 6. It is the practice of the San Diego County Sheriff's Department to assign
5 some Deputy Sheriffs graduating from the Regional Law Enforcement
6 Academy to work in Detentions assignments and Court assignments at
7 the start of their employment. This is done largely to address a perpetual
8 shortage of deputies needed to staff jails, and it allows deputies to
9 become more comfortable in their law enforcement positions before
10 heading out to patrol.

11 7. As with all deputies during HORNACEK's first 18 months of
12 employment, HORNACEK was a probationary employee of the County
13 of San Diego, subject to termination at-will, with or without cause.

14 8. HORNACEK completed his probationary period while assigned to
15 Detentions and Courts.

16 9. Sometime after completing his probationary period, HORNACEK was
17 transferred to patrol. As mandated by the Commission on Peace Officer
18 Standard and Training (POST), HORNACEK was required to complete
19 law enforcement field training (sometimes called "phase training")
20 before he could be assigned full patrol duties.

21 10. There are three phases of Patrol training, in addition to three weeks of
22 specialized training in Traffic, Community Policing, and Investigation,
23 typically in between phases 2 and 3. Trainees during all phases are given
24 daily evaluations. Trainees are assigned a Field Training Officer who is
25 responsible for evaluating and training the trainee deputies.
26 HORNACEK was originally assigned to the Vista Patrol station for his
27 Patrol training.
28

- 1 11. HORNACEK struggled greatly during his phase training. At the end of
2 phase 1, his FTO found that HORNACEK was not proficient enough to
3 advance to the second phase of his training, so the FTO made
4 HORNACEK repeat phase 1.
- 5 12. HORNACEK also had trouble during phase 2 of his training, and was
6 not meeting expectations. He met with a Career Path Sergeant in the
7 Sheriff's Personnel Division about his difficulties. At that time, he also
8 voiced dissatisfaction with his FTOs in Vista. The Career Path Sergeant
9 gave HORNACEK the benefit of the doubt, and decided that
10 HORNACEK would benefit from a "Fresh Start" at a new patrol station,
11 with new FTOs. He then was assigned to the Santee/Lakeside patrol
12 station and allowed to re-start his phase training, with phase 1.
- 13 13. HORNACEK completed training phases 1 and 2 at the Santee/Lakeside
14 stations, however, he still showed numerous deficiencies which were
15 described in detail in the daily evaluations he received. He next
16 participated in the trainings for Traffic, Community Policing, and
17 Investigations.
- 18 14. HORNACEK commenced Phase 3 of Patrol training. During phase 3,
19 the goal is to ensure that the trainee is "capable of becoming an
20 independently functioning unit. Retention through performance is the
21 main objective". The trainee is expected to be able to handle all tasks
22 with "very little or no assistance". HORNACEK was assigned Deputy
23 Jacob Wilson as his FTO for phase 3. Deputy Wilson was a 10 year
24 veteran of the Sheriff's Department.
- 25 15. HORNACEK did not perform well during phase 3 of his training. On
26 day 1, HORNACEK demonstrated a failure to safely and properly
27 conduct searches on individuals encountered in the field. HORNACEK
28 and Wilson contacted a male individual who was subject to search on a

1 "Fourth Waiver". HORNACEK removed a pocketknife from the
2 suspect's person, which was in view. But rather than "patdown" the
3 individual to make sure there were no other weapons, HORNACEK
4 simply continued about the rest of the business with respect to the
5 contact, and had to be reminded by Deputy Wilson that it was necessary
6 to conduct a patdown. As Wilson testified at the Commission hearing,
7 "Based on our training and experience, usually if someone has a pocket
8 knife, they're likely to have another knife or other weapon secreted on
9 them." HORNACEK then conducted his patdown, checking the pockets
10 and lower body, but not patting down his upper body.

11 16. On that same day, HORNACEK proved to be deficient on yet another
12 search. A female was arrested for being drunk in public, HORNACEK
13 performed a search incident to arrest, but conducted such a poor search
14 that he failed to find incense and tobacco rolling papers in one of the
15 woman's pockets. These items were found by a Detentions deputy when
16 the arrestee was booked into custody.

17 17. The consequences of failing to perform an adequate search on an
18 individual contacted in the field, or as part of a search incident to arrest,
19 can be significant and catastrophic if that individual is in possession of a
20 weapon, or something that can be used as a weapon. Conducting
21 adequate, proper, and thorough searches is one of the more important
22 (and consequential) things that is taught in training. Moreover, the
23 ability to conduct a proper search does not require a special level of skill
24 (e.g., witness interrogation tactics, marksmanship, hand-to-hand
25 combat). Anyone can conduct proper searches. The goal of training is to
26 make sure employees know what constitutes a proper search, and have
27 the presence of mind to always conduct proper searches.
28

- 1 18. On the very next day, after Deputy Wilson had emphasized to
2 HORNACEK that if there is a knife in plain view, the subject may be
3 armed, and to therefore conduct a patdown, HORNACEK again failed to
4 conduct a proper patdown in similar circumstances. Deputy Wilson and
5 HORNACEK responded to a call from a loss-prevention officer who
6 had detained a shoplifter. The loss prevention officer told Deputy
7 Wilson and HORNACEK that the shoplifter had a knife on her person.
8 Just as he had done the day earlier, HORNACEK proceeded to go about
9 the business of gathering information without first conducting a patdown
10 for additional weapons.
- 11 19. In the first seven days of HORNACEK's phase 3 training, Deputy
12 Wilson noted at least six different incidents in which HORNACEK
13 needed to be admonished as to some aspect of patdown searches. Wilson
14 debriefed HORNACEK after every incident and at the end of each day
15 regarding his deficient performance issues.
- 16 20. On day 3 of his phase training, Deputy Wilson noticed that
17 HORNACEK had applied multiple sets of handcuffs to an individual in
18 a way that not only did not secure the individual, but also made it easier
19 for the individual to use the handcuffs as a pair of makeshift "metal
20 knuckles" to injure someone, an event that had previously occurred in
21 the field a few months earlier.
- 22 21. HORNACEK also performed poorly on day 6 of his phase training. In
23 one incident, HORNACEK and Wilson responded to a Domestic
24 Violence disturbance call at around 2:00 AM from a male who was
25 seeking to get his property from his girlfriend's house. He had recently
26 come to believe that she was cheating on him. When HORNACEK and
27 Wilson arrived, they made contact with the male, who was wearing
28 bulky clothing, and had gang-related tattoos on his face and neck. The

1 man approached the deputies and immediately volunteered the fact that
2 he was on parole for carrying a loaded firearm in a public place.
3 Because he was on parole, the man was subject to a "Fourth Waiver", as
4 this is a statutory condition of a grant of parole. (California Penal Code
5 section 3067)

6 22. As Deputy Wilson testified at the Commission hearing, "Right away
7 when the guy told him he was on parole, it should have triggered in his
8 mind that this individual...has a Fourth Waiver. And in the past, he's
9 been arrested with weapons, so it's very likely that he could have a
10 weapon, especially when he's going to confront his girlfriend about
11 cheating on his. So he should have handcuffed the individual and patted
12 him down right away."

13 23. Instead of HORNACEK immediately cuffing the individual and
14 conducting a pat down, HORNACEK talked to the individual for
15 approximately two minutes. Eventually, Deputy Wilson stepped in and
16 conducted the pat-down for weapons that HORNACEK should have had
17 the presence of mind to conduct right away.

18 24. Later that evening, HORNACEK and Wilson went back to the scene
19 after the man called a second time. This time, the man stated the location
20 of his vehicle. Deputy Wilson went to the (unoccupied) vehicle and
21 looked through the windows. He saw that inside the vehicle, in plain
22 view, was a hypodermic needle, and a small plastic baggie containing
23 residue in it. Sensing that this would be a good training opportunity,
24 Deputy Wilson told HORNACEK to go check out the vehicle and report
25 back what he saw. HORNACEK went to the car, but failed to notice that
26 there was drug paraphernalia in plain view.

27 25. During this same incident, Deputy Wilson also expected Deputy
28 HORNACEK to have the presence of mind to initiate a search of the

1 vehicle. Deputy Wilson pointed out to Hornacek that they had a parolee,
2 likely a gang member, who had been previously arrested for weapons
3 and drugs. In pedagogic fashion, Deputy Wilson asked HORNACEK
4 what should be done, and what they could use as lawful authority to
5 search the vehicle. Rather than respond that they should conduct a
6 search of the vehicle based *inter alia*, the presence of drug paraphernalia
7 in plain view, HORNACEK indicated that he wanted to tow the vehicle.
8 He also told Deputy Wilson that he thought the vehicle was parked too
9 far from the curb.

10 26. Earlier that same day, Deputy Wilson and HORNACEK had gone to a
11 Domestic Violence call involving a suspect having a knife inside a hotel
12 room. At the scene it was decided that HORNACEK would attend to the
13 victim-witness, while Deputy Wilson and another cover deputy would
14 cover the door to the hotel room. After Deputy Wilson and the cover
15 deputy apprehended the suspect, Deputy Wilson went back to
16 HORNACEK to see how he had done in dealing with the victim-
17 witness. He discovered that all HORNACEK had done in dealing with
18 the domestic violence victim was take her statement. He had not
19 performed any of the other victim-related tasks that Deputy WILSON
20 and the Sheriff's Department expect a Deputy Sheriff to perform when
21 dealing with a domestic violence victim, and for which HORNACEK
22 had been trained. He had not taken photos. He had not sought to obtain a
23 medical records release from the victim. He had not given her a
24 domestic violence victim's pamphlet. He had not asked the victim if she
25 needed medical assistance (a likely possibility given that she had
26 reported being choked). He had also not "run" a records check on the
27 witness to see if the victim had wants or warrants. Deputies have, in
28

1 their patrol vehicles, Mobile Data Terminals that allow them to run
2 records checks at the scene, and they are expected to do so.

3 27. Even after Deputy Wilson told HORNACEK to give the victim a copy
4 of the domestic violence victim's pamphlet, HORNACEK did not do so,
5 claiming that the victim had said she didn't want one. Deputy Wilson
6 explained that it was Sheriff's Department policy to give every domestic
7 violence victim a copy of the pamphlet whether they want one or not.

8 28. About four or five hours later, towards the end of their shift,
9 HORNACEK approached Deputy Wilson and asked how to handle a
10 missing person call. Deputy Wilson was taken aback because he did not
11 know why this was of concern to HORNACEK because the two had not
12 been involved in any missing person calls that shift. HORNACEK then
13 explained that he had not run the victim at the earlier domestic violence
14 call until around 12:30 AM, after they had completed their work on the
15 call, and that the victim was a missing person.

16 29. Not only had HORNACEK failed, at the scene, to initiate a records
17 check on the victim, he had also failed to run the records check at the
18 scene even after being told by Deputy Wilson to do so, and then failed to
19 let him know about the missing person 'hit' yielded by the records check
20 until many hours after he learned of the missing persons 'hit'.

21 30. On another incident, Deputy Wilson observed HORNACEK respond to
22 a possible domestic violence call. HORNACEK was talking to a male
23 suspect who was describing a conversation he had with his estranged
24 wife. The male said that the wife was coming home from work and that
25 she had said she wanted to kill herself "and take all of us out with her".
26 The male then surmised that his estranged wife may be on her way to
27 Lakeside where the babysitter was with their young children. Deputy
28 Wilson had to point out to HORNACEK that it was necessary to contact

1 the patrol unit of the Sheriff's Department responsible for Lakeside and
2 have them check on the welfare of the children to make sure everyone
3 was safe.

4 31. On another incident, Deputy Wilson had to dissuade HORNACEK from
5 falsely arresting a woman for public drunkenness (PC 647(f)). The two
6 were called to respond to a call of a woman who refused to leave a
7 business establishment. Deputy Wilson was familiar with the subject.
8 She had been previously arrested in similar scenarios. Deputy Wilson
9 believed her to have psychiatric issues, and that she engaged in this kind
10 of activity for the purpose of being arrested so that she would have a
11 place to sleep for the night. The practice is to have the business owner
12 request a citizen's arrest for trespass.

13 32. Deputy Wilson allowed HORNACEK to handle the call. After several
14 minutes of HORNACEK talking to the woman, Deputy Wilson, once
15 again in pedagogical fashion, asked HORNACEK how he intended to
16 handle this. HORNACEK responded that he wanted to arrest the woman
17 for PC 647(f), drunkenness in public. The woman had displayed no
18 signs whatsoever of being under the influence of alcohol. She did not
19 smell of alcohol. She did not slur her words. She was not having trouble
20 with balance. Deputy Wilson had to explain to HORNACEK that law
21 enforcement officers cannot arrest a person for a violation of PC 647(f)
22 without there being probable cause to believe that the person is drunk in
23 public. He also had to explain that the basis to arrest her was for trespass
24 since she was on private property and had refused to leave after being
25 asked.

26 33. During another incident on Day 8 of his phase 3 training, HORNACEK
27 missed a syringe while conducting a search.
28

1 34. During the phase 3 training, Deputy Wilson provided an evaluation to
2 HORNACEK involving the earlier incident in which HORNACEK was
3 unable to come up with correct reasons to search the vehicle. (FTOs
4 must personally hand the evaluations to the deputies and request the
5 deputies to sign that they received the evaluation, as such evaluations
6 are critical for training.) HORNACEK refused to sign this evaluation.
7 He claimed that he never said to Deputy Wilson that the car was too far
8 from the curb. Deputy Wilson turned the issue over the Training
9 Coordinator Sergeant, Sgt. Passalacqua. At that time, Sgt. Passalacqua
10 also became aware of the multiple deficiencies HORNACEK had been
11 showing in Phase 3.

12 35. After eight days of Phase 3 training, Deputy Wilson concluded that
13 HORNACEK had "demonstrated minimal knowledge with little or no
14 retention in the areas of searches and patdowns". Deputy Wilson was
15 also upset over what he perceived to be HORNACEK spreading
16 untruthful criticism of him (Wilson) to another FTO. Deputy Wilson
17 made his concerns known to the Training Sergeant Passalacqua and
18 recommended HORNACEK be terminated.

19 36. The Training Sergeant decided to re-assign HORNACEK to two
20 different FTOs, Nulton and Collins, for the remainder of phase 3 Patrol
21 training.

22 37. Corporal Collins, on those days when he supervised HORNACEK
23 (Days 10, 13, 14, and 15) observed very similar performance
24 deficiencies that Deputy Wilson observed. Deputy Nulton did not
25 document any serious performance deficiencies with HORNACEK on
26 the days (Days 9, 11, and 12) that he (Nulton) supervised HORNACEK.

27 38. In one incident reported by Corporal Collins, HORNACEK contacted a
28 man who was standing in front of a business establishment, possibly

1 under the influence of drugs or alcohol. HORNACEK had the man stand
2 against a wall in a location where there were two large sticks near a
3 window sill, which the suspect could have grabbed and used as
4 weapons. When Corporal Collins spoke to him about it, HORNACEK
5 stated that he had not seen the sticks. Corporal Collins regarded this as a
6 serious deficiency that he did not demonstrate he could properly observe
7 his surroundings for potential weapons.

8 39. In another incident on the same day, HORNACEK contacted a drunk
9 male in front of a fast food restaurant. He placed him under arrest and
10 searched him incident to arrest. However, his search was ineffective, as
11 he missed the fact that the arrestee had a cigar in his right tube sock.

12 40. In another incident on the same day, with potentially very serious safety
13 ramifications, HORNACEK initiated a traffic stop of a vehicle with
14 three males inside. After asking for the IDs, the males began to make
15 quick movements in the vehicle, reaching into their backpacks.
16 HORNACEK told them to slow down, but he was unable to prevent
17 them from reaching into their backpacks. Corporal Collins was forced to
18 intervene in order to prevent the males inside the car from reaching into
19 the backpacks, possibly to obtain weapons. It is one of the most basic
20 training points with regard to traffic stops that a law enforcement officer
21 must not allow, under any circumstances, a person inside the vehicle to
22 reach into bags because of the obvious possibility that a weapon may be
23 inside the bag.

24 41. In another incident on the same day, Corporal Collins and HORNACEK
25 brought an arrestee to San Diego Central Jail. HORNACEK removed
26 the arrestee from the patrol vehicle without locking the vehicle, leaving
27 a law enforcement vehicle unsecured in an area where prisoners are
28 present.

1 42. In an incident that occurred on Day 15 of HORNACEK's phase 3
2 training, Corporal Collins and HORNACEK responded to a radio call of
3 a an unknown male looking into a residence. HORNACEK (with Collins
4 in the passenger seat) drove to the residence. As their vehicle
5 approached the residence, the radio dispatcher put out twice over the
6 radio that the suspect was now in the backyard. HORNACEK, after
7 locating the residence, started to drive away. Deputy Collins asked him
8 what he was doing, and HORNACEK replied that he was looking for the
9 male. Collins told HORNACEK that the dispatcher had twice put out
10 over the radio that the male was in the backyard. HORNACEK said that
11 he didn't hear the dispatcher say that, even though it had been put out
12 over the radio twice by the dispatcher. At Collins' urging, HORNACEK
13 drove the car back to the residence and waited for cover officers to
14 arrive, after which time they safely contacted the male in the backyard.

15 43. On those days, Corporal Collins rated HORNACEK a "1" (lowest
16 possible ranking) in several key areas due to these issues. Collins
17 testified at the Civil Service Hearing that he had never seen a trainee
18 struggle this much with these issues during phase 3 of training, at which
19 time, according to Collins, "a trainee should be handling most things
20 with little to no assistance from the training officer."

21 44. The lapses in judgment and mistakes by HORNACEK, to a certain
22 extent, may have been tolerated, and may possibly have bene considered
23 part of a deputy "learning curve" during training, had they occurred
24 during phase 1 and even phase 2 of training. However, the mistakes that
25 HORNACEK made repeatedly during phase 3 of his training were not
26 mistakes that the FTOs expected phase 3 trainees to be making. During
27 phase 3, it is expected that deputies will be able to perform Sheriff's
28 patrol duties competently with little or minimal supervision. Patrol

1 deputies, by and large, work independently, and in order to pass their
2 training and become a full Deputy Sheriff, a trainee must demonstrate an
3 ability to work independently. HORNACEK demonstrated throughout
4 his phase 3 training that he was not capable of working independently,
5 and that if he were sent out on patrol without direct supervision, he
6 would likely make mistakes that would cause either himself, his fellow
7 deputies, or the public to be placed in greater danger.

- 8 45. The Sheriff's Department terminated HORNACEK's employment. At
9 the time that it did so, HORNACEK had been in Patrol phase training
10 for more than 100 days. As the Commission observed, "Training for
11 Patrol ordinarily averages 60 days."

12
13 **The Commission's decision**

- 14
15 46. HORNACEK appealed the Sheriff's Department's termination of his
16 employment to the San Diego County Civil Service Commission, which
17 heard the appeal on March 9 and March 10, 2017. Commissioner A.Y.
18 Casillas sat as Hearing Officer.
- 19 47. HORNACEK's termination was based on charges by the Sheriff's
20 Department of violating Sheriff's Policy and Procedure Section 2.30 –
21 Failure to Meet Standards, (Civil Service Rule 7.2(a) – incompetency)
22 as well as violating the San Diego County Sheriff's Department
23 Executive Order and the statement of its Mission, Vision, Values and
24 Goals. (Civil Service Rule 7.2(s) – acts incompatible with or inimical to
25 public service). The predicate conduct for both of these charges was his
26 failure to perform adequately and competently during phase training, as
27 described herein.
28

- 1 48. The accounts of HORNACEK's poor performance during phase training
2 were not disputed. Nevertheless, HORNACEK argued to the
3 Commission that, as whole, his performance was not incompetent
4 because he was graded "satisfactory" on public safety on 51 of 57 days
5 of training at Santee, and graded "satisfactory" on "acceptance of
6 criticism" on 55 of his 57 days of training. HORNACEK also pointed
7 out to the Commission that even though FTO Deputy Wilson had
8 specifically recommended he be terminated, no other FTO had made
9 such recommendation.
- 10 49. The Commission found that HORNACEK demonstrated a problem with
11 searches, and had difficulty with offering justifications for a legal basis
12 for a search. The Commission also found that HORNACEK has been
13 taught this area of the law and "should have known it and retained it."
- 14 50. The Commission also found that with regard to public safety,
15 employee's mistakes, unlike other trainee mistakes, "persisted
16 throughout Phase 3. He was having more problems with this than the
17 normal trainee, although he was showing improvement at the end." The
18 Commission's finding that HORNACEK was showing improvement at
19 the end is not supported by substantial evidence, as the safety mistakes
20 that HORNACEK made with Deputy Wilson during the first half of his
21 phase 3 training were made on the last and third-to-last days of his phase
22 3 training.
- 23 51. The Commission also found that HORNACEK "demonstrated a problem
24 with retention of training in that his performance was inconsistent. After
25 getting good evaluations in areas like public safety, he would then make
26 mistakes on later shifts that one would not expect."
- 27 52. The Commission also found that HORNACEK was a "marginal trainee"
28 and found that HORNACEK's criticism of FTO Deputy Wilson to be

1 "unacceptable." The Commission called FTO Wilson "a rising star in the
2 Department" and a "high-performer."

3 53. Nevertheless, the Commission concluded that HORNACEK's poor
4 performance during training did not rise to the level of incompetency or
5 acts inimical to public service. Despite finding that HORNACEK "has
6 had problems with searches, which could affect public safety" and
7 "needs to improve," the Commission determined he was guilty only of
8 "inefficiency", and that "the principles of progressive discipline should
9 apply". The Commission reduced the Sheriff's termination to a two-day
10 suspension.

11
12 **First Cause of Action**

13 **Petition for Writ of Administrative Mandamus**

14 **(CCP 1094.5)**
15

16 54. Petitioner SHERIFF GORE realleges all prior paragraphs as though
17 fully set forth herein.

18 55. As the elected Sheriff of San Diego County, SHERIFF GORE is
19 charged with discharging the duties and responsibilities of his office.
20 Towards that end, the Sheriff is vested with a significant degree of
21 discretion concerning the persons he chooses to deputize to perform
22 those duties.

23 56. Petitioner SHERIFF GORE's decision to discipline an individual is
24 subject to review by the Commission to insure that his decisions are
25 based on proven facts and not arbitrary determinations.

26 57. Petitioner SHERIFF GORE's decision to terminate Real Party in Interest
27 HORNACEK was based on his inability, during his training, to perform
28 the duties of the Deputy Sheriff at a minimally satisfactory level. His

1 deficiencies and his inability to pass patrol phase training were proven
2 during the Commission hearing. Further, the fact that HORNACEK was
3 provided additional Patrol phase training, over and above what other
4 deputies receive, was proven during the Commission hearing.

5 58. The order of the Commission to reinstate Real Party in Interest
6 HORNACEK to the position of Sheriff's Deputy, despite its findings
7 that the incidents alleged by the Sheriff constituted incompetence, is an
8 abuse of discretion and contrary to law, and therefore must be reversed.

9 59. The Commission is bound and obligated to follow the laws of the State
10 of California in conducting its hearings and making determinations
11 therein. The California Supreme Court has stated that in determining the
12 level of penalty in a public employee discipline case, the overriding
13 factor is the degree of harm to the public service. *Skelly v. State*
14 *Personnel Bd.* (1975) 15 Cal. 3d 194, 218. The Commission's decision
15 glossed over the enormous harm to the public service caused by this
16 employee, as well as the likely enormous harm to the public service that
17 will occur by the Sheriff having to keep a deputy sheriff who, by his
18 own actions and admissions, is deficient. It is difficult to conceive of a
19 greater harm to the public service than allowing an unsafe deputy sheriff
20 to be responsible for the safety of the public and his partners. Such
21 harm is magnified exponentially by the fact that a deputy sheriff is likely
22 to face dangerous situations every day on patrol. The Court of Appeal
23 has stated that "[t]he public is entitled to protection from unprofessional
24 employees whose conduct places people at risk of injury and the
25 government at risk of incurring liability" *Hankla v. Long Beach Civil*
26 *Service Commission*, (1995) 34 Cal. App. 4th 1216, 1222-1223. The
27 Commission's decision ignored *Hankla* by forcing the Sheriff to return
28 an employee with a demonstrated history of being unable to perform the

1 extremely important task of sentence computation, to a position where
2 he is supervising others, and is expected to perform at a higher level.

3 60. This incident was not the first time or the second time that the San
4 Diego County Civil Service Commission has failed to follow *Hankla*. In
5 2005, the Commission was reversed by the Fourth District Court of
6 Appeal when the Commission disregarded the potential harm to the
7 public service by ordering the reinstatement of a Deputy Sheriff who
8 had lied during an investigation in order to protect another deputy who
9 had used excessive and unnecessary force on an inmate. (*Kolender v.*
10 *San Diego County Civil Service Commission (Berry)* (2005) 132 Cal.
11 App. 4th 716, 721). (hereinafter, "Berry")

12 61. In a case with facts that are analogous to this case, the San Diego
13 County Civil Service Commission also failed to follow *Hankla* in the
14 case, *Kolender v. San Diego County Civil Service Commission (Gant)*
15 (2007) 149 Cal. App. 4th 464. In that case, the Sheriff demoted a
16 Detentions Processing Supervisor for a pattern of sentence-calculation
17 errors which revealed that employee Gant, like HORNACEK in this
18 case, was not performing at a level expected by the Sheriff of those
19 hired for the position. As the Commission did with HORNACEK, the
20 Commission in *Gant* found the predicate errors and mistakes were
21 proven, but refused to find that they amounted to misconduct. The trial
22 court and the Court of Appeal found that the Commission had once
23 again failed to follow the teachings of *Hankla*, in that their decision
24 "fails to adequately account for the overriding goal of preventing harm
25 to the public service."

26 WHEREFORE, Petitioner SHERIFF GORE prays for relief as follows:

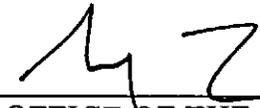
- 27 1. A Writ of Mandamus directing Respondent SAN DIEGO COUNTY CIVIL
28 SERVICE COMMISSION as follows:

- 1 a. Vacate its order directing Petitioner SHERIFF GORE to reinstate Real
2 Party in Interest HORNACEK to his position as Deputy Sheriff;
3 b. Enter a new order upholding Petitioner SHERIFF GORE's termination of
4 Real Party in Interest HORNACEK.

5 2. For all other relief that the court may deem just and proper.
6

7 Dated: June 23, 2017

Respectfully submitted,

8
9 By: 

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