EXHIBIT "K"

Santa Ana Police Department

Memo

To: Officer Dinh Nguyen #2542

From: Chief Paul M. Walters

CC: Professional Standards (Original), Employee via Server, Deputy Chief Levatino and the Chief's Office

Date: 11/19/2008

Re: **NOTICE OF INTENT TO DISCIPLINE – TERMINATION FROM THE SANTA ANA POLICE DEPARTMENT**

This memorandum will serve to inform you of my intention to **terminate you from the Santa Ana Police Department.**

Section 1000 of the Charter of the City of Santa Ana provides that the appointing authority may suspend, demote or dismiss an employee for "reasonable and sufficient cause." Section 9-118.7 of the *Santa Ana Municipal Code* ("SAMC") sets forth the specific grounds of "reasonable and sufficient cause." In this regard, SAMC Section 9-118.7(q) provides that: "Violation of any departmental or agency rule" constitutes reasonable and sufficient cause for discipline.

An administrative investigation into your conduct was completed and the investigation resulted in the determination that you violated the following Departmental Orders:

- Departmental Order 110, Section 1.6 (Conduct Personal) / (4) Counts
- Departmental Order 110, Section 1.3 (Compliance with Direction)
- Departmental Order 220, Section I-B-1 (Outside Employment Request)
- Departmental Order 220, Section I-A-2 (Not Eligible for Outside Employment While On Medical Leave Due to On-Duty Injury)

Based on the sustained allegations, you are charged with the following counts:

COUNT 1

VIOLATION OF DEPARTMENTAL ORDER 110
Standards of Conduct

Departmental Order 110, Section 1.6(Conduct Personal) states:

"Members of the Department shall conduct themselves in a proper manner and with appropriate demeanor at all times during the performance of their duties. Members shall not engage in any conduct, on or off duty, which adversely impacts the good order, morale, efficiency, public respect or confidence in public service."

FACTS

Filed False Worker's Compensation Claim:

In 2000 and 2001, you filed three workers' compensation claims. The first claim was for an injury to your left knee, the second was for an injury to your low back and the third was for an injury to your right knee. Your medical records indicated no permanent disability from any of the three claims and you returned to full duty each time with no further complaints regarding those injuries until 2003.

In September 2003 and October 2003, you filed three additional workers' compensation claims that covered injuries to your right knee, low back, and feet. One of the claims was for continuous trauma and you used two of your earlier claims from 2000 and 2001 to support the continuous trauma claim. The City's Workers' Compensation Section conducted an investigation into the alleged injuries and denied your claims of permanent disability. The City suspected the claims were fraudulent and discovered you were getting started in a lucrative real estate/loan business that coincided with the timing of your claims.

You took your claims to the Workers' Compensation Board and a trial was held in 2006. Judge Christine Nelson issued the findings and order on January 30, 2008, with a complete denial of all three claims filed in 2003 and a finding of no permanent disability on any of the three claims filed in 2000 and 2001.

The major contention in the Workers' Compensation case was your claim of permanent disability resulting from five of the six claims. One of the five claims was for continuous trauma with regard to your low back, right knee, and feet.

Judge Nelson's decision to deny all three claims that you filed in 2003 and a finding of no permanent disability on any of the three claims filed in 2000 and 2001 was based in part on the reports and opinions of Dr. Tepper, reporting on your behalf and Dr. Simpkins, reporting on behalf of the City, and heavily on your lack of credibility. Judge Nelson referred to a "plethora" of examples indicating your willingness to fabricate when there was financial gain to be obtained. She referred specifically to your denial of injuries when you enlisted in the Naval Reserve in 2002 and at the time of your annual physical while in the Reserves. She also referred to your failure to keep an accurate notary log, the false information provided on a home loan application, and collecting 4850 benefits while earning outside income.

Dr. Tepper and Dr. Simpkins did however come to the same conclusion as to your injuries sustained on 9/11/2003 and 10/22/2003 to the low back resulting in permanent disability. However, Judge Nelson disagreed and stated in her decision that Dr. Simpkins relied heavily on your account of your medical history and had not been privy to the financial documents detailing your lack of credibility. Therefore, Judge Nelson found that you did not sustain injury arising out of or occurring in the course of employment on 9/11/2003 and 10/22/2003.

Your apparent motive to file claims of disability was the start-up of a very lucrative real estate and loan business that coincidently started in September 2003, one month after you received your real estate license and the same month you signed a commission agreement with Pomecs Financial.

When you filed your final workers' compensation claim in October 2003 and went out on temporary total disability, your outside income began to raise substantially. You returned to work temporarily on modified desk duty but used several hours of sick time and eventually returned to Dr. Tepper and was again removed from work on temporary total disability. Dr. Tepper was not aware you were engaged in outside employment. You alleged you were unable to work modified duty at the front desk, but it appears you were doing similar office work as a loan officer for Pomecs, and based on the amount of income, it appeared you were engaged in full time work from Pomecs.

It was not until your outside employment began to take off that you decided to file a continuous trauma claim and rely on your earlier claims from 2000 and 2001 regarding your low back and right knee injury. The evidence of your activities between 2001 and 2003 are contrary to your claim of continuous trauma. You never complained to the City of low back, feet, or knee injuries until 2003 and when you completed a medical screening and annual recertification for the Naval Reserve, you reported that you had none of these injuries. You were engaged in similar law enforcement duties with the Naval Reserves with no claim of injury and you passed your annual physical fitness test in April 2003, which included sit-ups, push-ups and a one and one half mile run. When you did visit your own doctors for low back pain in 2001 and early 2003, the only contributing factors you reported were surfing, weightlifting, and picking up tennis balls.

COUNT 2

VIOLATION OF DEPARTMENTAL ORDER 110
Standards of Conduct

Departmental Order 110, Section 1.6(Conduct Personal) states:

"Members of the Department shall conduct themselves in a proper manner and with appropriate demeanor at all times during the performance of their duties. Members shall not engage in any conduct, on or off duty, which adversely impacts the good order, morale, efficiency, public respect or confidence in public service."

FACTS

Failed To Report Extra Earnings While Collecting LC 4850 Benefits:

You received LC 4850 benefits while on medical leave from October 23, 2003 to November 18, 2003 and again from December 12, 2003 to March 16, 2004.

You were involved in outside employment with Pomecs Financial and received two commission checks in February 2004 for doing work as a loan officer. You received $1,530 on February 25, 2004 and $3,780 on February 27, 2004. This income was not reported to the City until after you were under investigation and you reimbursed the City one day before your trial began in 2006.

According to you, the delay in reimbursement to the City was due to a disagreement with the City on the amount owed. The City believed you were working in the real estate/loan business while collecting 4850 benefits and they presented evidence that he earned $36,000 between February and May 2004. Although your benefits were only paid until March 16, 2004, your commission checks were not paid until the loans closed, while your efforts and work preceded the closing of the loans. Judge Nelson (Workers' Compensation Judge) believed you were engaged in full time employment that was not compensated until sometime after the actual work was performed. Therefore, she found that you were overpaid 4850 benefits and awarded the City credit against your permanent disability award for the full amount you were paid, which was $27,038.40.

COUNT 3

VIOLATION OF DEPARTMENTAL ORDER 110
Standards of Conduct

Departmental Order 110, Section 1.6(Conduct Personal) states:

"Members of the Department shall conduct themselves in a proper manner and with appropriate demeanor at all times during the performance of their duties. Members shall not engage in any conduct, on or off duty, which adversely impacts the good order, morale, efficiency, public respect or confidence in public service."

FACTS

Provided False Medical History to the Military:

You enlisted in the Navy Reserve on 04/26/2002. Your medical exam reports included a screening questionnaire completed by you during the enlistment process on 3/12/2002. The questionnaire included a warning that it would be a Federal violation to provide false statements. You signed an acknowledgment of the warning and also signed a certification that the information you provided was true.

In the questionnaire, you denied any recurrent back pain or any back problem, knee or foot trouble, and did not have any need to use corrective devices such as orthotics. You also denied any history of serious illness or injury, said you never had any illness or injury other than those already noted, and had not consulted or been treated by clinics, physicians, healers, or other practitioners within the past 5 years for other than minor illnesses. You indicated that you had wisdom teeth pulled at age 22, but neglected to report your previous low back pain, knee pain, foot trouble, or recent chiropractic care and visits to the foot specialist (December 2001) where you received orthotics for both feet.

When you were questioned during the Workers' Compensation trial on June 28, 2006, you denied that you lied on the questionnaire, but admitted to "patting the physical to get into the Navy."

COUNT 4

VIOLATION OF DEPARTMENTAL ORDER 110
Standards of Conduct

Departmental Order 110, Section 1.6(Conduct Personal) states:

"Members of the Department shall conduct themselves in a proper manner and with appropriate demeanor at all times during the performance of their duties. Members shall not engage in any conduct, on or off duty, which adversely impacts the good order, morale, efficiency, public respect or confidence in public service."

FACTS

Provided False Information on Residential Loan Application:

From February 2004 through December 2005 you worked as a loan officer for Pomecs Financial. During that time, you applied for a residential loan brokered by Pomecs Financial. You knowingly included false information on the Uniform Residential Loan application in order to overcome a conflict of interest regarding your employment with Pomecs and the Bank's minimum two-year employment requirement for stated income.

Your stated income of $30,000 per month was generated from your work as the owner of the Dinh Nguyen Corporation, which conducted private investigations, when in fact your income was from work as a loan officer for Pomecs and you never did work as a private investigator. You were subsequently granted the loan based on the false information.

Your actions amounted to a felony offense under a federal statute; specifically, United States Code, Title 18, Section 1001, Chapter 47 (Fraud and False Statements). The Federal Bureau of Investigations declined to investigate the incident only because of regional prosecutorial guidelines, which required a loss of one million dollars.

In March and June of 2006, you testified at the Workers' Compensation Trial and admitted to falsifying the loan document, but when questioned regarding your knowledge that it was a criminal offense, your attorney objected on 5th Amendment grounds. When Professional Standards interviewed you, you acknowledged your actions were wrong and unethical, but you were not aware of any criminal implications.

COUNT 5

VIOLATION OF DEPARTMENTAL ORDER 110
Standards of Conduct

Departmental Order 110, Section 1.3 (Compliance with Direction) states:

"Members of the Department shall promptly comply with any lawful direction communicated by a supervisor, on behalf of a supervisor, or through a written directive of a supervisor."

FACTS

On October 1, 2008, at approximately 1250 hours, you reported to Professional Standards with your Attorney for an interview. You invoked your rights per Miranda and were admonished with regard to the Lybarger Warning, which included an order to answer the Inspector's questions. You refused to answer the Inspector's questions.

COUNT 6

VIOLATION OF DEPARTMENTAL ORDER 220
Outside Employment

Departmental Order 220, Section I-B-1 (Outside Employment Request) states:

"The employee wishing to engage in outside employment shall submit a City of Santa Ana Outside Employment Request and a Police Department addendum to the Chief of Police via his/her chain of command.

FACTS

You worked as a loan officer for Pomecs Financial and signed a Commissions Addendum on September 3, 2003. You admitted your employment with Pomecs, but said you did not start working for them until January or February 2004 and separated from them in December 2005. You provided the Workers' Compensation Investigator with a stated earnings document dated February 26, 2004 to May 5, 2004, and an IRS Form 1099-MISC, which indicated you earned $205,737.59 in 2004. You represented yourself as the Custodian of Records for Pomecs Financial on November 4, 2004 when they were served with a subpoena for records regarding the Workers' Compensation investigation.

You received a Notary Commission on April 10, 2002 and a Bond of Notary on April 16, 2002, and did work as a Notary from April 16, 2002 to May 20, 2004. You admitted to your work as a Notary during the Workers' Compensation Trial on June 28, 2006.

You admitted during your deposition that you did not request authorization because you thought it did not apply to the type of work you were performing.

COUNT 7

VIOLATION OF DEPARTMENTAL ORDER 220
Outside Employment

Departmental Order 220, Section I-A-2 (Not Eligible for Outside Employment While On Medical Leave Due to On-Duty Injury) states:

Those employees who are on probation, or who are on medical or other leave due to sickness, temporary disability, or an on-duty injury, or whose duties are restricted shall not be eligible to engage in outside employment without the specific written permission from the Chief of Police.

FACTS

You were on medical leave from October 23, 2003 to November 18, 2003 and again from December 12, 2003 to March 16, 2004 due to an alleged on-duty injury. During that time you also worked as a loan officer for Pomecs Financial. You received $1,530 on February 25, 2004 and $3,780 on February 27, 2004 for work as a loan officer. You also performed work as a Notary Public while on medical leave.

DISCIPLINE

Based on the information contained in the administrative investigation under case #IAI 2007-23, the recommendation of Commander Steen as reflected in his memorandum concerning his review of this incident, and the recommendation of Deputy Chief Levatino, I have determined that the alleged violations of department policy have been sustained and that the appropriate penalty is termination from the Santa Ana Police Department.

In making my decision as to the discipline to be imposed, I have taken into consideration your actions during this incident, as outlined above, the internal investigation, and your personnel record. I have placed primary emphasis on your actions delineated in this investigation, and secondary emphasis on the remaining factors.

REQUEST FOR SKELLY HEARING

You have the right, **within ten (10) days** of service of this notice, to answer the above charges, either personally, in writing, or both personally and in writing. Your response may include statements, affidavits, or any other evidentiary matter you wish to submit. Your response will be considered in reaching a final decision.

YOUR ARE ENCOURAGED TO SUBMIT A WRITTEN RESPONSE IDENTIFYING THE SPECIFIC ISSUES YOU WISH TO ADDRESS PRIOR TO AN ORAL PRESENTATION.

The materials I relied upon in sustaining the charges against you are identified in the administrative investigation. The documents which were reviewed in determining the disciplinary recommendation, including prior sustained personnel complaints and your personnel file, are all available for review during normal working hours and with a prior appointment in the Professional Standards and Personnel Sections, respectively.

PAUL M. WALTERS
Chief of Police

ACKNOWLEDGMENT: _____ DATE: _____

Served by: _____