

State of California

Transportation Agency

Memorandum

C O N F I D E N T I A L

Date: July 29, 2013

To: State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

From: DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
Internal Affairs Section

File No.: 031.11731.A12434.Decserv.A2013-0059

Subject: NOTICE OF ADVERSE ACTION, ASSISTANT CHIEF
SHELDON (KYLE) SCARBER, ID 12499

Attached is a *Notice of Adverse Action* served on Assistant Chief Sheldon (Kyle) Scarber, ID 12499. The action requested is a dismissal with an effective date of August 29, 2013, at 1700 hours.

The *Notice of Adverse Action* was served on the employee as indicated by the attached *Declaration of Service* (CHP 7C).

The action taken in this case was approved by the appointing power.

As a result of a California Supreme Court decision (Copley Press, Inc. vs Superior Court of San Diego County) we understand peace officer personnel materials will be treated as confidential documents that are not subject to disclosure under California's Public Records Act (Government Code 6250).


R. J. JONES, Assistant Chief
Commander

Attachments

cc: Human Resources Section, Personnel Transactions Unit



STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
DECLARATION OF SERVICE

CONFIDENTIAL

CHP 7C (New 1-13) OPI 008

SIGNATURE OF PERSON SERVING DOCUMENT

DATE DOCUMENT SERVED

Nancy Johnstean

07/26/2013

TYPE OF DOCUMENT SERVED (CHECK ALL THAT APPLY)

- Notice of Adverse Action
- Amended Notice of Adverse Action
- Notice of Rejection During Probation
- Amended Notice of Rejection During Probation
- Notice of Non-Punitive Action
- Predisciplinary Hearing Officer's Decision
- Copy of Investigative File

NAME OF EMPLOYEE SERVED

Kyle Scarber

HOW DOCUMENT WAS SERVED

Personal Service, by personally delivering to and leaving with said person the original thereof at the address set forth below.

Service by Mail, by placing the original thereof in a sealed envelope addressed to the last known address of said employee at the address set forth below and depositing said envelope in the United States Mail, registered, with return receipt requested and postage thereon fully prepaid, at 601 North 7th Street Sacramento, CA 95811, California.

ADDRESS (WHERE SERVICE IS MADE)

I am and was at the time of the service of the attached paper(s) over the age of 18 years and not a party to the proceedings involved.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 07/26/2013 at Sacramento, California.

SIGNATURE OF PERSON SERVING DOCUMENT

DATE

Nancy Johnstean

07/26/2013

- The original CHP 7C and a copy of the Notice shall be faxed to the Office of Internal Affairs as soon as possible, with the documents to follow
- A copy of CHP 7C and Notice shall be forwarded to Division
- A copy of CHP 7C and Notice shall be placed in the investigative file at Area
- A copy of the CHP 7C and Notice shall be placed in the employee's personnel folder
- The original Notice shall be provided to the employee

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NOTICE OF ADVERSE ACTION

Sheldon K. Scarber
Assistant Chief, ID 12499
Department of California Highway Patrol
5179 N. Gates Avenue
Fresno, CA 93722

Please note that the subject is a Peace Officer and his home address must be kept confidential (Penal Code Section 146e[a]).

I

STATEMENT OF THE NATURE OF ADVERSE
ACTION AND EFFECTIVE DATES

You are hereby notified that in accordance with Section 19590 of the California Government Code, you are dismissed from your position as an Assistant Chief with the Department of California Highway Patrol in the Central Division. Said dismissal is to be effective on AUGUST 29, 2013, at 1700 hours.

II

ADVISEMENT

All of the causes and acts for which this adverse action is being taken are alleged separately and severably, and occurred during your course of employment as a Captain assigned to the Merced Area, as a Captain assigned to the Fresno Area, and as an Assistant Chief assigned to Central Division, with the Department of California Highway Patrol (CHP), hereafter known as the Department.

III

CAUSE FOR ADVERSE ACTION

This action is being taken against you for the causes set forth in the following subsections of Section 19572 of the California Government Code:

- (d) Inexcusable neglect of duty.
- (e) Insubordination.
- (f) Dishonesty.

- 1 (m) Discourteous treatment of the public or other employees.
2 (o) Willful disobedience.
3 (p) Misuse of state property.
4 (r) Violation of the prohibitions set forth in accordance with Section 19990.
5 (t) Other failure of good behavior either during or outside of duty hours
6 which is of such a nature that it causes discredit to the appointing
7 authority or the person's employment.

8 IV

9 ACTS UPON WHICH THE CAUSES ARE BASED

10 While on and off duty you accessed and viewed pornographic images and adult
11 related content on your departmentally issued laptop computer. You used or attempted to use
12 for private gain or advantage your prestige or influence as a member of this Department.
13 You directed a subordinate employee to unlawfully access the California Law Enforcement
14 Telecommunications System (CLETS) in order to run a driver history check on a family
15 member. You misused the departmental electronic mail (email) system by sending and
16 receiving non-work related materials through your departmental email account. You were
17 insubordinate and willfully disobeyed a direct order given to you directing you to not discuss
18 the nature of an ongoing investigation involving yourself. You aided in and conspired to assist
19 your son Spencer Scarber, evade prosecution, you filed a false missing persons report, and you
20 made dishonest statements to Fresno County Sheriff's Office (FSO) personnel. You made
21 dishonest statements to United States Postal Inspection Service (USPIS) personnel. All times
22 and dates are approximate.

23 A.

24 You accessed and viewed pornographic images and adult related content on your
25 departmentally issued laptop computer.

1 Specifically, on or about December 19, 2012, FSO served a search warrant at
2 your residence and seized your departmentally issued laptop computer, an IBM ThinkPad with
3 CHP tag #143709. FSO personnel examined the computer and located pornographic images
4 and other adult related content.

5 On March 28, 2013, your departmentally issued laptop computer was released to
6 CHP investigators, and subsequently provided to CHP Officer William Mason, ID 17819, of
7 the CHP Computer Crimes Investigation Unit (CCIU) for forensic examination. Officer Mason
8 examined the computer and located fifteen (15) pornographic images located within a personal
9 file on the computer. The personal file contained your CHP identification number (ID), and the
10 CHP tag number issued to the computer. The forensic examination report of the computer
11 indicated the date and time the images were accessed and saved to the computer hard drive.

12 They were for the following:

- 13 ○ On May 11, 2011, at approximately 1925 hours, a pornographic image
14 (52193_Module1x1_634407035902006666[1].jpg) was accessed and subsequently
15 saved on the computer hard drive.
- 16 ○ On May 11, 2011, at approximately 1925 hours, a pornographic image (image[4].jpg)
17 was accessed and subsequently saved on the computer hard drive.
- 18 ○ On May 11, 2011, at approximately 1925 hours, a pornographic image (96[1].jpg) was
19 accessed and subsequently saved on the computer hard drive.
- 20 ○ On May 18, 2011, at approximately 2003 hours, a pornographic image
21 (EFA0E1B92E25406CFC276790CC211A[1].jpg) was accessed and subsequently
22 saved on the computer hard drive.
- 23 ○ On May 18, 2011, at approximately 2003 hours, a pornographic image (fbb599ba-
24 c113-4b27-a4f8-9a00a3d86b57.jpg) was accessed and subsequently saved on the
25 computer hard drive.

- 1 o On May 18, 2011, at approximately 2003 hours, a pornographic image (cab31f8-
- 2 f85f-49d5-87d6-2399bc6c7a62.jpg) was accessed and subsequently saved on the
- 3 computer hard drive.
- 4 o On June 1, 2011, at approximately 2036 hours, a pornographic image (ef1c1017-dc89-
- 5 4902-a41b-6d83d6e64a7d.jpg) was accessed and subsequently saved on the computer
- 6 hard drive.
- 7 o On June 1, 2011, at approximately 2037 hours, a pornographic image (4fa3a09d-b5ec-
- 8 4d1f-a7ad-0ee3a5c1d1f0.jpg) was accessed and subsequently saved on the computer
- 9 hard drive.
- 10 o On June 1, 2011, at approximately 2037 hours, a pornographic image (c1fa59aa-1095-
- 11 47d2-915e-f5e2b5d4133f.jpg) was accessed and subsequently saved on the computer
- 12 hard drive.
- 13 o On June 1, 2011, at approximately 2037 hours, a pornographic image (3b8978aa-a8ff-
- 14 4af3-a2da-3a327736513d.jpg) was accessed and subsequently saved on the computer
- 15 hard drive.
- 16 o On June 1, 2011, at approximately 2037 hours, a pornographic image (image[7].jpg)
- 17 was accessed and subsequently saved on the computer hard drive.
- 18 o On June 1, 2011, at approximately 2037 hours, a pornographic image (image[4].jpg)
- 19 was accessed and subsequently saved on the computer hard drive.
- 20 o On June 1, 2011, at approximately 2037 hours, a pornographic image (image[6].jpg)
- 21 was accessed and subsequently saved on the computer hard drive.
- 22 o On June 1, 2011, at approximately 2037 hours, a pornographic image (060111-NBA-
- 23 Dirk-Nowitzki-OFF-HAND-IW-PI_2011060117473413_335_220[1].jpg) was
- 24 accessed and subsequently saved on the computer hard drive.

1 o On July 26, 2011, at approximately 1413 hours, a pornographic image (100403-biz-
2 jag-511p.thumb[1].jpg) was accessed and subsequently saved on the computer hard
3 drive.

4 Additionally, four (4) personal type postings soliciting a sexual "casual encounter" for the
5 website Craigslist.com, were located within a personal file on the computer. The personal file
6 contained your CHP ID, and the CHP tag number issued to the computer. The forensic
7 examination report of the computer indicated the date and time the postings were accessed and
8 saved to the computer hard drive. They were for the following:

9 o On May 18, 2011, at approximately 2003 hours, a Craigslist posting for a personal
10 advertisement was accessed and viewed, creating a copy of the posting as an image
11 (39E9F616B56922CE2A49171FCB52[1].jpg) and subsequently saved on the
12 computer hard drive.

13 o On May 18, 2011, at approximately 2003 hours, a Craigslist posting for a personal
14 advertisement was accessed and viewed, creating a copy of the posting as an image
15 (c_luxury_incentives_101222.thumb[1].jpg) and subsequently saved on the computer
16 hard drive.

17 o On May 18, 2011, at approximately 2003 hours, a Craigslist posting for a personal
18 advertisement was accessed and viewed, creating a copy of the posting as an image
19 (64265350D48747EC41E5D3905C577[1].jpg) and subsequently saved on the
20 computer hard drive.

21 o On May 18, 2011, at approximately 2003 hours, a Craigslist posting for a personal
22 advertisement was accessed and viewed, creating a copy of the posting as an image
23 (3AB32A2317BC152D11D1261A77F0[1].jpg) and subsequently saved on the
24 computer hard drive.

25 Your actions, as described above, violated policy as contained within Highway
26 Patrol Manual (HPM) 40.4, *Information Security and Administration Manual*, Chapter 1,

1 *General*, which states in part, "Storing or transmitting files (including data or programs) not
2 used for departmental purposes...using CHP-owned equipment or CHP networks is
3 prohibited." Additionally, Chapter 2, *Network Security and Administration*, states in part,
4 "The Department's network resources may only be used in the course of conducting approved
5 departmental business." Additionally, Chapter 3, *Electronic mail*, states in part, "Misuse of
6 computing, networking or automated information resources may result in loss of computing
7 privileges and may be cause for prosecution under applicable state or federal statutes and/or
8 disciplinary action." Finally, it states in part, "Examples of inappropriate use of departmental
9 email include: Conducting activities that are not work related. Performing functions which do
10 not constitute approved business practices."

11 Your actions, as described above, violated policy as contained within HPM 10.3,
12 *Personnel Transactions Manual*, Chapter 14, *Inconsistent and Incompatible Activities*,
13 Annex A, *General Conduct and Misuse of Position*, which lists the following activity to be
14 incompatible with or unfavorable to public service insofar as all employees of the CHP are
15 concerned: "Using for private gain or advantage, or the private gain or advantage of another the
16 time, facilities, equipment, or supplies of the state."

17 Your actions, as described above, violated policy as contained within General
18 Order (GO) 0.9, *Use of state owned equipment and resources*, which states in part, "All
19 employees, regardless of rank, classification, position or assignment shall: Use state owned
20 equipment and resources for business purposes only in the furtherance of the Department's
21 Mission."

22 B.

23 You used or attempted to use for private gain or advantage your prestige or
24 influence as a member of this Department.

25 1. Specifically, on or about July 30, 2011, your son Spencer Scarber, was
26 arrested by FSO for rape. Upon his arrest, FSO Undersheriff Scott Jones made arrangements

1 for you to visit Spencer in a bond room so you could help arrange for his bail and release.
2 When you arrived for the visit, you called Undersheriff Jones and advised him that you were in
3 the bond room with glass separating you from Spencer. You further advised that there was a
4 sign stating all conversations would be recorded. You told Undersheriff Jones that it was your
5 understanding that you would be allowed to have a physical contact visitation with Spencer,
6 and a private conversation where no one could listen. Undersheriff Jones told you that those
7 conditions were not appropriate, and the rules in place were for everyone to follow. You then
8 asked him again if there was any way you could have an in person visit with Spencer.
9 Undersheriff Jones informed you of the laws which regulated the visitation of prisoners, and
10 denied your request. Additionally, you contacted Undersheriff Jones and inquired about
11 Spencer's inmate classification. You requested that Spencer be reclassified and moved to a
12 single jail cell, and for you to be allowed extra visitation privileges.

13 Sometime after this initial visit, FSO Lieutenant Ron Vega, ID 0117, was
14 contacted by Undersheriff Jones and directed to allow you extra visitation privileges above
15 what was normally allowed by FSO policy. Lieutenant Vega explained to Undersheriff Jones
16 that FSO policy is that inmates are only allowed two, half hour visits per week.
17 Undersheriff Jones directed Lieutenant Vega to provide you the courtesy of making Spencer
18 available for visits by you as often as you would like. Within the first full week of Spencer's
19 incarceration (July 31, 2011, through August 6, 2011), Spencer had the following visits:

- 20 o Gail Scarber: July 31, 2011 1349-1413 24 minutes
- 21 o Kyle Scarber: August 1, 2011 1316-1318 2 minutes
- 22 o Kyle Scarber: August 1, 2011 1626-1636 10 minutes
- 23 o Gail Scarber: August 2, 2011 1337-1341 4 minutes
- 24 o Kyle Scarber August 3, 2011 1100-1126 26 minutes
- 25 o Kyle Scarber August 4, 2011 1135-1314 1 hour, 39 minutes

1 You exceeded the maximum number of allowable visits on three occasions and exceeded the
2 maximum length of a visit by one hour and nine minutes on one occasion. Additionally, on or
3 about August 8, 2011, you visited Spencer from 1325 hours to 1522 hours, for a total of one
4 hour and 57 minutes. This exceeded the maximum length of a visit by one hour and 27
5 minutes.

6 Upon you visiting your son on either the second or third time, you asked
7 Lieutenant Vega if you could meet with your son in an area where you could have contact with
8 him and where the conversation would not be recorded. Lieutenant Vega explained to you that
9 the jail does not allow contact visits and denied your request. You then responded with the
10 statement, "Could I have a little bit of professional courtesy here." Lieutenant Vega advised
11 you that you were already receiving more visits than would normally be allowed. You then
12 advised Lieutenant Vega that you would speak to Undersheriff Jones about the issue.

13 On or about April 8, 2012, you contacted Undersheriff Jones and again requested
14 for a contact visit with Spencer so you could give him a hug, which your request was denied.

15 2. On or about August 30, 2012, FSO Detective Jesse Gloria, ID 7648, was
16 investigating an alleged crime of sex with a minor committed by Spencer Scarber. At the time
17 of this alleged crime, Spencer was out on bail from a previous arrest in July 2011.
18 At approximately 1900 hours, on August 31, 2012, you transported Spencer to FSO
19 headquarters. Upon your arrival, you requested to speak with Detective Gloria in private.
20 While speaking with Detective Gloria, you asked him if the second charge of California Penal
21 Code (PC) Section 12022.1 (c), *Committing a felony while out on bail*, against Spencer Scarber,
22 "...can kind of fall off the paper?" Additionally, you used the term "Courtesy" when speaking
23 to Detective Gloria in relation to the charge being dropped. You encouraged Detective Gloria
24 not to answer the question right away. Detective Gloria was aware of your position and rank
25 with the CHP and perceived the term "Courtesy" and the request to drop the charge as an
26 attempt to influence the investigation.

1 3. On or about December 10, 2012, you contacted CHP Officer Brett Boss,
2 ID 13273, of the Fresno Area, and requested him to attend Spencer Scarber's criminal court
3 proceeding the following day. On or about December 11, 2012, Officer Boss along with
4 Officer David Alvarado, ID 13696, and Officer Paul Truitt, ID 14218, met you at the Fresno
5 County Main Courthouse. The three officers were in their full CHP uniform, were there for
6 approximately thirty (30) minutes, and sat on the side of the defense behind you during your
7 son's criminal court proceeding.

8 4. On or about December 11, 2012, you called Officer Boss and stated that your
9 wife (Mrs. Scarber) needed to register a car at the Department of Motor Vehicles (DMV).
10 At the time of the call, Officer Boss was responsible for patrolling the DMV. During this
11 conversation, you asked Officer Boss if there was a line at the DMV, and you asked him to help
12 facilitate your wife's registration of a vehicle. Upon your request, Officer Boss responded to
13 the DMV and waited for your wife to show up. Instead of your wife showing up to register her
14 car, a male family friend of yours showed up. Officer Boss arranged for a friend of his working
15 at the DMV to assist your male friend.

16 Your actions, as described above, violated policy as contained within HPM 10.3,
17 Chapter 14, Annex A, which lists the following activity to be incompatible with or unfavorable
18 to public service insofar as all employees of the CHP are concerned: "Using or attempting to
19 use for private gain or advantage, or the private gain or advantage of another the badge,
20 identification card, uniform, equipment, prestige, or influence of a state position."

21 C.

22 You directed a subordinate employee to unlawfully access CLETS in order to
23 run a driver history check on a family member.

24 Specifically, on or about November 26, 2012, at approximately 2026 hours, you
25 called the Fresno Area Dispatch Center and spoke with Communications Operator II (CO II)
26 Letitia Rodriguez, ID A5709. You requested CO II Rodriguez to run a driver's license history

1 check, and provided the name and date of birth (D.O.B) for Crystal Reynoso. CO II Rodriguez
2 utilized CLETS in order to run the query, obtained the driver license history information, and
3 provided the information to you. Additionally, it was documented on the driver license history
4 that the name and D.O.B. of Crystal Reynoso, has an a.k.a (also known as) of Crystal Scarber.
5 It was determined that Crystal Reynoso is your step-daughter.

6 Your actions, as described above, violated policy as contained within HPM 40.4,
7 Chapter 6, *California Law Enforcement Telecommunications System (CLETS)*, which states in
8 part, "Government Code Section 15153 states, in part, *The system (CLETS) shall be used*
9 *exclusively for the official business of the state...Any use of the system for functions other than*
10 *conducting the business of the California Highway Patrol (CHP) is a violation of this section."*
11 Additionally, it states in part, "Use of the system or information from the system for private or
12 personal purposes is strictly forbidden. Running inquiries for *nice to know* or *to satisfy*
13 *curiosity* reasons is not permissible."

14 Your actions, as described above, violated policy as contained within HPM 10.3,
15 Chapter 14, Annex A, which lists the following activities to be incompatible with or
16 unfavorable to public service insofar as all employees of the CHP are concerned: "Using or
17 attempting to use for private gain or advantage, or the private gain or advantage of another the
18 badge, identification card, uniform, equipment, prestige, or influence of a state position."
19 Additionally, "Using for private gain or advantage, or the private gain or advantage of another
20 the time, facilities, equipment, or supplies of the state." Finally, "Divulging information, data,
21 or intelligence from departmental reports, records, correspondence, or manuals when the release
22 of such has not been authorized."

23 Your actions, as described above, violated policy as contained within HPM 60.1,
24 *Communications Operations Manual*, Chapter 10, *California Law Enforcement*
25 *Telecommunications System*, which states in part, "Use of the system or any information

1 provided for private or personal purposes is strictly forbidden. Permissible access of the system
2 must be on a need to know, right to know basis only."

3 Your actions, as described above, violated Section 15153 of the California
4 Government Code (GC), which states in part, "The [CLETS] system shall be under the
5 direction of the Attorney General, and shall be used exclusively for the official business of the
6 state, and the official business of any city, county, city and county, or other public agency."

7 Your actions, as described above, violated Section 502 (c)(2) of the California
8 Penal Code (PC), which states in part, "Any person who...knowingly accesses and without
9 permission takes, copies, or makes use of any data from a computer, computer system, or
10 computer network, is guilty of a public offense."

11 Your actions, as described above, violated the Department of Justice (DOJ)
12 CLETS Operating Manual, section 1.6.4, *Confidentiality of Information from the CLETS*,
13 which states in part, "Any information from the CLETS is confidential and for official use
14 only." Additionally, it states in part, "Information from the CLETS is on a right-to-know and
15 need-to-know basis...Accessing and/or releasing information from the CLETS for non-law
16 enforcement purposes is prohibited..."

17 D.

18 You misused the departmental email system by sending and receiving non-work
19 related materials through your departmental email account.

20 Specifically, on or about September 30, 2012 through December 17, 2012, you
21 sent and received the following personal emails and attachments utilizing your departmental
22 email account (KScarber@chp.ca.gov):

- 23 o On September 30, 2012, at approximately 1208 hours, you sent a non-work related
24 email from your personal email address (lscarber@aol.com), containing the subject
25 line "Fwd: police reports" to your departmental email account, with a file attached,

- 1 "SKMBT_60112092816210.pdf." The file attachment contained copies of the court
2 complaint and FSO reports regarding Spencer Scarber's arrest on August 30, 2012.
- 3 ○ On October 9, 2012, at approximately 2309 hours, you sent a non-work related email
4 from your personal email address, containing the subject line "Emailing grand jury
5 complaint forma-1.pdf" to your departmental email account, with a file attached,
6 "grand jury complaint forma-1.pdf." The file attachment contained a complaint form
7 for the Fresno County Grand Jury.
- 8 ○ On October 22, 2012, at approximately 1536 hours, you sent a non-work related email
9 from your personal email address, containing the subject line "Fwd: Spencer Scarber -
10 Complaint" to your departmental email account, with a file attached, "Scarber
11 transcript.pdf." The file attachment contained a copy of the court reporter's transcript
12 of a preliminary examination related to Spencer Scarber's arrest on July 30, 2011.
- 13 ○ On December 6, 2012, at approximately 0951 hours, you sent a non-work related
14 email from your departmental email account, containing the subject line "Yas Things
15 to pound home" to your personal email address. The email contained information
16 regarding Spencer Scarber's trial.
- 17 ○ On December 6, 2012, at approximately 0959 hours, you sent a non-work related
18 email from your departmental email account, containing the subject line "Report" to
19 your personal email address. The email contained information regarding a trespass
20 report you filed with FSO on December 5, 2012.
- 21 ○ On December 8, 2012, at approximately 2215 hours, you sent a non-work related
22 email from your departmental email account, containing the subject line "Fw:
23 Report" to your personal email address. The email contained information regarding a
24 supplemental report (tracking #T12000736) you filed with FSO on December 8, 2012.
- 25 ○ On December 8, 2012, at approximately 2217 hours, you sent a non-work related
26 email from your departmental email account, containing the subject line "RE: Your

- 1 Online Police Report T12000735 Has Been Submitted" to FSO
2 (OnlineReports@fresnosheriff.org). The email contained information on errors you
3 observed regarding a report (tracking #T12000735) you filed with FSO.
- 4 o On December 10, 2012, at approximately 1518 hours, you received a non-work related
5 email from FSO (CAFresnoCountySo@coplogic.com), containing the subject line
6 "Your Online Police Report T12000735 Has Been Rejected" to your departmental
7 email account. The email contained information regarding the submission of a report
8 (tracking #T12000735) you filed on-line with FSO.
 - 9 o On December 12, 2012, at approximately 0145 hours, you sent a non-work related
10 email from your departmental email account, containing the subject line "Fw: Report"
11 to your departmental email account. The email contained information regarding the
12 submission of a report (tracking #T12000749) you filed on-line with FSO.
 - 13 o On December 14, 2012, at approximately 1548 hours, you sent a non-work related
14 email from your departmental email account, containing the subject line "Fw:
15 Executive News Clip for Friday, December 14, 2012" to your personal email address.
16 The email contained information regarding news articles about Spencer Scarber's
17 disappearance.
 - 18 o On December 17, 2012, at approximately 0644 hours, you sent a non-work related
19 email from your departmental email account, containing the subject line "Media" to
20 your personal email address. The email contained a prepared statement to the media
21 regarding the disappearance of Spencer Scarber.

22 Your actions, as described above, violated policy as contained within HPM 40.4,
23 Chapter 1, which states in part, "Storing or transmitting files (including data or programs) not
24 used for departmental purposes...using CHP-owned equipment or CHP networks is
25 prohibited." Additionally, Chapter 3 states in part, "For business use only. CHP employees
26 may use email to correspond with others in the course of conducting departmental business.

1 Email is to be used for official business purposes only." Additionally, it states in part, "Misuse
2 of computing, networking or automated information resources may result in loss of computing
3 privileges and may be cause for prosecution under applicable state or federal statutes and/or
4 disciplinary action." Lastly, it states in part, "Examples of inappropriate use of departmental
5 email include: Conducting activities that are not work related. Performing functions which do
6 not constitute approved business practices."

7 Your actions, as described above, violated policy as contained within HPM 10.3,
8 Chapter 14, Annex A, which lists the following activity to be incompatible with or unfavorable
9 to public service insofar as all employees of the CHP are concerned: "Using for private gain or
10 advantage, or the private gain or advantage of another the time, facilities, equipment, or
11 supplies of the state."

12 Your actions, as described above, violated policy as contained within GO 0.9,
13 which states in part, "All employees, regardless of rank, classification, position or assignment
14 shall: Use state owned equipment and resources for business purposes only in the furtherance of
15 the Department's Mission."

16 E.

17 You were insubordinate and willfully disobeyed a direct order given to you,
18 directing you to not discuss the nature of an ongoing investigation involving yourself.

19 Specifically, on or about December 21, 2012, you were served with a CHP 51,
20 *Memorandum*, Notice of Removal of Peace Officer Powers and Administrative Reassignment.
21 The Memorandum served as notice that due to an investigation being conducted by the
22 Department, your peace officer powers were suspended. Furthermore, the notice stated, "This
23 investigation is related to your knowledge of and/or possible involvement in suspicious
24 circumstances relating to the disappearance of your son, Spencer Scarber." The notice also
25 stated, "Additionally, upon your return to work, you will be administratively reassigned to work
26 at the Central Division office as directed by your supervisor, Chief J. R. Abrames, ID#11497.

1 and such work will not involve peace officer or supervisory duties until further notice.”
2 The notice also contained a direct order, “Additionally, you are directed not to discuss the
3 nature of this investigation with any member of this Department, other than your chosen
4 representative and managers in your chain of command.”

5 On or about December 21, 2012, and after you had been served the above
6 mentioned notice, you asked Officer Boss if there were any “rumors about you.” Officer Boss
7 informed you that he overheard a conversation involving CHP Officer Mike Higgins, ID 13001,
8 of the Fresno Area. Officer Boss told you that Officer Higgins was talking about the fact that
9 FSO had tapped your telephone, and that FSO had recordings with you and other
10 CHP personnel. You told Officer Boss that FSO had confiscated a memory flash drive that
11 contained recordings about your son Spencer Scarber’s missing person investigation.

12 On or about February 1, 2013, you called Officer Higgins on his personal
13 cellular telephone and informed him that you heard him talking about an unrelated Equal
14 Employment Opportunity (EEO) complaint conducted by you. You advised Officer Higgins
15 that the EEO complaint was sensitive in nature, and cautioned him that if there had been any
16 unauthorized release of information related to the EEO complaint, that an internal investigation
17 would be conducted. Although you had been removed of all supervisory duties, you asked
18 Officer Higgins specific questions in regards to what he heard or said about the EEO complaint,
19 which Officer Higgins believed he was compelled to answer. Additionally, you accused Officer
20 Higgins of leaking information regarding the FSO investigation of witness intimidation
21 involving your family.

22 Your actions, as described above, violated policy as contained within HPM 10.2,
23 *Internal Investigations Manual*. Chapter 1, *Introduction and Notifications*, which states in part,
24 “Employees must promptly obey any lawful orders or directives from a supervisor, manager, or
25 officer in charge.” Additionally, it states in part, “Any employee who disobeys or disregards a

1 lawful order or directive (verbal or written) given by a supervisor, manager, or officer-in-charge
2 may be subject to disciplinary action.”

3 F.

4 You aided in and conspired to assist your son Spencer Scarber evade
5 prosecution, you filed a false missing persons report, and you made dishonest statements to
6 FSO personnel.

7 Specifically, on or about December 11, 2012, you attended court with your son,
8 Spencer Scarber. Spencer was on trial for several felony charges at the Fresno County Main
9 Courthouse. At the conclusion of the day's testimony, you left the courthouse with your son.
10 You conspired with your wife, Mrs. Gail Scarber, and your step-daughter, Crystal Reynoso, and
11 arranged for the two of them to drive Spencer into Mexico.

12 On or about December 12, 2012, at approximately 0324 hours, a vehicle
13 registered to you (Toyota Avalon with license plate [REDACTED]) entered Mexico through the San
14 Ysidro Point of Entry. The information on this vehicle was recorded by United States Customs
15 and Border Protection. Within this vehicle was Mrs. Scarber, Crystal Reynoso, and Spencer
16 Scarber. At approximately 0444 hours, Mrs. Scarber and Crystal Reynoso re-entered the United
17 States of America by way of the San Ysidro pedestrian border crossing. During this same
18 timeframe, you arranged items around your residence to give the appearance that Spencer had
19 been abducted.

20 On or about December 12, 2012, at approximately 0505 hours, you contacted
21 FSO and reported that Spencer Scarber was missing. Deputies from FSO responded and
22 initiated an investigation. You stated to the deputies that you had last seen your son at
23 approximately midnight on the night of December 11, 2012. Specifically, you stated,
24 “I could hear him shuffling around. He took a shower. I want to say it was around midnight-
25 ish, maybe, maybe a little bit before midnight, maybe.” However, the distance from your house

1 to the San Ysidro Point of Entry is 352 miles. and would take approximately 5 hours 54
2 minutes to drive.

3 The investigation conducted by FSO determined your report that Spencer
4 Scarber was missing was unfounded, and was an attempt to thwart the investigation into
5 Spencer's unlawful flight to avoid prosecution. The statements you provided to FSO were
6 dishonest, and aided in Spencer Scarber fleeing the country. On or about February, 14, 2013,
7 Spencer Scarber was apprehended by Mexican Immigration officials in Acapulco, Mexico.
8 On or about February 16, 2013, at approximately 1000 hours, you were arrested by FSO for 32
9 PC, *Accessory*, 182 (a)(1) PC, *Conspiracy*, 1320.5 PC, *Willfully failing to appear in court*, and
10 148.5 (a) PC, *False report of a criminal offense*.

11 Your actions, as described above, violated Section 32 PC, which states in part.
12 "Every person who, after a felony has been committed, harbors, conceals or aids a principal in
13 such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction
14 or punishment, having knowledge that said principal has committed such felony or has been
15 charged with such felony or convicted thereof, is an accessory to such felony."

16 Your actions, as described above, violated Section 182 (a)(1) PC, which defines
17 the crime of conspiracy as, "Two or more persons conspire: (1) To commit any crime."

18 Your actions, as described above, violated Section 1320.5 PC, which states in
19 part, "Every person who is charged with or convicted of the commission of a felony, who is
20 released from custody on bail, and who in order to evade the process of the court willfully fails
21 to appear as required, is guilty of a felony."

22 Your actions, as described above, violated Section 148.5 (a) PC, which states in
23 part, "Every person who reports to any peace officer listed in Section 830.1 or 830.2, or
24 subdivision (a) of Section 830.33, the Attorney General, or a deputy attorney general, or a
25 district attorney, or a deputy district attorney that a felony or misdemeanor has been committed,
26 knowing the report to be false, is guilty of a misdemeanor."

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G.

You made dishonest statements to United States Postal Inspection Service (USPIS) personnel.

Specifically, on or about January 18, 2013, you claimed to have received a threatening letter in the mail. On or about January 24, 2013, you reported the threatening letter to USPIS investigators and requested they investigate the possible crime. You were subsequently interviewed by USPIS investigators, and provided statements to the investigators that you had last seen your son at approximately one or one-thirty within the early morning hours of December 12, 2012. Specifically, you stated, "He was on crutches because he just had a, from the beating he had his, a, a torn meniscus and so there was, he just had surgery so he was on crutches. And so, he was, I either heard him or it was him or the dogs you know creaking around the house there about, between one, 1:30 in the morning." Additionally, you provided statements regarding a possible homicide that your son Spencer witnessed. Specifically, you stated, "And uh, he said there was a tarp, or piece of plastic in the back of the vehicle. And he didn't pay no attention to it, and uh, he said at one point when they're driving up, he turned around and looked and he saw what looked like a body in this plastic or this bag. And uh, he said they kept driving up in the park, and he kind of gave me a description of where it was... And uh, so they drove up there, pulled into this little area, Cody and Thomas pulled this plastic bag out of the back and it was a body, this guy, it was a white male, probably mid-twenties, early twenties, dark hair, my son said he didn't know who he was. And uh, he was unconscious. And uh, then he started moving a little bit. And he said that Cody took a shovel and hit him in the head with the shovel... And then, uh, Cody, or Thomas was saying something to the fact that I should have capped his ass, if I had a piece I'd take care of him, take him out. At that point, Cody DePriest raised up his shirt and said here you go bro, it's your mess, you clean it. And uh, pulled out a nine millimeter, gave it to uh, Thomas, he chambered a round, and Cody, my son said Cody walked over, lifted the guy up by his shoulder because he was

1 unconscious, and Thomas Sweet walked up there and put a bullet in his head. And uh. um.
2 Thomas and Cody dug a little shallow grave, and dumped him in it. Dumped the body in it."
3 This statement contradicted the previous statement you gave to FSO Detectives when you
4 stated, "Spencer's a firm believer that uh. and I couldn't get it out of him if he actually saw it or
5 not...I don't know if he was there, or they bragged about it, but Thomas Sweet killed
6 somebody." FSO followed up on the information regarding a possible homicide and
7 determined the information to be unfounded. As a result, your statements have been deemed to
8 be dishonest.

9
10 Your misconduct, as described, is contrary to the ethics subscribed to by a
11 member of this Department, was without excuse or justification and cannot be tolerated.
12 Your actions were the result of poor judgment and constitute inexcusable neglect of duty,
13 insubordination, dishonesty, discourteous treatment of the public or other employees, willful
14 disobedience, misuse of state property, violation of the prohibitions set forth in accordance with
15 Section 19990 of the Government Code, and other failure of good behavior either during or
16 outside of duty hours which is of such a nature that it causes discredit to the appointing
17 authority or the person's employment. It is therefore in the best interest of the Department and
18 the people of the State of California that you be dismissed from your position as an
19 Assistant Chief with the California Highway Patrol.

20 V

21 OTHER MATTERS

22 Your actions violated the ideals expressed in GO 0.1, *Departmental Mission*
23 *Statement and Organizational Values*, as it relates to *Maximizing Service to the Public and*
24 *Assistance to Allied Agencies*; and the Organizational values of *Respect for others, Fairness,*
25 *Ethical practices, and Equitable treatment for all.*
26 ///

1 AUGUST 19, 2013, at 1700 hours, to present a response to CHIEF DAN BOWER
2 of SOUTHERN Division. Should you wish to present a verbal response, you must contact
3 the above individual or his/her alternate in order to arrange a mutually convenient conference
4 time during the above period. If you choose to respond in writing, your response must be
5 received within the time period described above.

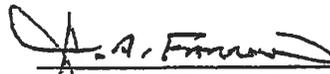
6 Your response will become a permanent part of the file and will be considered
7 prior to the effective date of the action.

8 VII

9 YOUR RIGHT TO ANSWER THIS NOTICE
10 AND THE TIME PERMITTED FOR ANSWERING
11 IF YOU WISH TO APPEAL

12 You are further notified and advised that you have the right to file a written
13 answer to this notice with the State Personnel Board, P. O. Box 944201, Sacramento, California
14 94244-2010, no later than thirty (30) calendar days after the effective date of this adverse action
15 (as specified in Section I of this notice). An answer shall be deemed to be a request for a
16 hearing or investigation as provided in Section 19575 of the Government Code. If you file an
17 answer as provided, the Board or its authorized representative shall, within a reasonable time,
18 hold a hearing and shall notify the parties of the time and place thereof. If you fail to answer
19 within the time specified, the adverse action taken by the appointing power shall be final.

20
21
22
23 Dated: 7-22-13

24
25 
26 J. A. FARROW, Commissioner
27 Department of California
28 Highway Patrol