

Michael L. Rains
Attorney at Law
MRains@RLSlawyers.com

May 8, 2012

Paul A. Cappitelli, Executive Director
Commission on POST
1601 Alhambra Boulevard
Sacramento, CA 95816-7083

Re: Appeal from Decertification Decision by POST Executive Director Paul A. Cappitelli and Request for Hearing Before the Full Commission, International Training Resources

Dear Mr. Cappitelli:

Internal Training Resources (ITR) has retained this office to assist in an appeal of the decertification of a series of courses previously taught by ITR and its principal instructors, Mr. Ben Tisa and Mr. David Bliss. ITR was initially advised of the decertification of twenty one separate courses previously taught by ITR for over 15 years in a letter dated October 24, 2011 signed by Assistant Executive Director Michael C. DiMiceli. Mr. Tisa filed a timely appeal from the decertification pursuant to Section 1058 of the POST Administrative Manual.

By letter dated January 23, 2012, POST Executive Director Paul A. Cappitelli, concurred with the initial decision to certify all courses taught by ITR. Since November 4, 2011 Mr. Tisa has repeatedly requested to be allowed to receive and review an investigatory report prepared by Senior Consultant Don Lane, upon which the decision to decertify these courses was based. Mr. Tisa had hoped to receive a copy of Mr. Lane's report and incorporate a brief response concerning that report in this appeal and request for hearing. However, he was advised by letter dated February 3, 2012 signed by Assistant Executive Director Alan B. Deal that the requested investigative report "...is not yet available for release." As of this date, the report of Mr. Lane has still not been provided to ITR.

For a number of years, I have had the honor and pleasure of teaching legal issues relating to the formation and deployment of SWAT teams and SWAT team operations, one of the courses ordered decertified by POST. I am certainly aware of the tragic event which occurred on July 21, 2011, which resulted in injury to Visalia Police Officer Michael Short, who was and is by all accounts an exceptionally fine law enforcement officer, and whose Basic SWAT training was also done by ITR. Although ITR has accumulated approximately 20,250 hours of training with over 8,500 participants for a total of over 171 million hours of combined training without an incident or injury to any personnel, Mssrs. Tisa and Bliss fully understand that this singular injury was devastating to Officer Short, despite the extraordinary measures employed by ITR to ensure that such an incident and injury would not occur.

Paul A. Cappitelli, Executive Director

**Re: Appeal from Decertification Decision by POST Executive Director Paul A. Cappitelli
and Request for Hearing Before the Full Commission, International Training Resources**
May 8, 2012

Page 2

The totality of the information contained in the documents and material provided POST to date, substantiate the factual conclusion that the cause of the accident was such an unpredictable event that was so unusual and extreme in the manner of its occurrence, that no objectively reasonable examination of the facts and circumstance involved in this accident, can or will support:

- a. Allegations of improper training procedures
- b. Allegations of wrongful acts
- c. Allegations of willful cause
- d. Allegations of negligence on the part of instructor staff

This appeal respectfully requests the Commission to reconsider the decertification of ITR relating to other separate courses which have nothing whatsoever to do with the use of distraction devices, even though we readily acknowledge the importance of educating SWAT team members on this most important subject, and the paucity of POST certified courses which provide this important instruction.

At this juncture the Commission is effectively revoking the license and certification of ITR and Instructors Tisa and Bliss to participate in the profession they have been a part of for almost 70 years combined. As such, we believe that the Commission on POST bears the burden of establishing proof and justification for the decertification of all of the courses previously taught by ITR and the right of Mssrs. Tisa and Bliss to teach *any* POST certified courses. Further, the burden of proof, pursuant to the Administrative Procedure Act (California Govt. Code section 11500 et seq.) requires the Commission to have sufficient reliable and credible evidence to decertify all of the courses previously taught by ITR which are unrelated to the Distraction Device Breaching Instructor course which involved the July 21, 2011 injury to Officer Short. In other words, we do not believe that the unsubstantiated "findings" asserted by POST thus far sufficiently meets the Commission's requirement to establish justification for ordering all of the ITR courses decertified.

Naturally, we would be happy to discuss this or other issues with legal counsel for the Commission prior to the full Commission hearing on this matter. Also, in closing, let me indicate that within the next two or three days, we intend to supply the Commission with a packet of appeal materials for each individual member of the Commission. Since we have yet to receive Mr. Lane's investigative report, we are at a disadvantage to respond to this decertification. Nevertheless, please advise me how many copies of appeal packets to send, and to whom they should be addressed.

Paul A. Cappitelli, Executive Director

**Re: Appeal from Decertification Decision by POST Executive Director Paul A. Cappitelli
and Request for Hearing Before the Full Commission, International Training Resources**

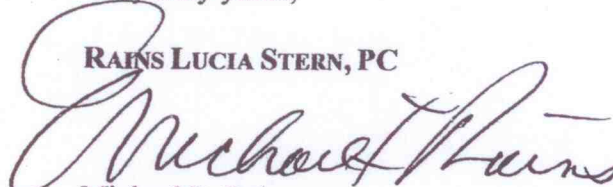
May 8, 2012

Page 3

We thank you and the honorable commissioners for your continuing courtesy and cooperation in this matter and look forward to an opportunity to present this appeal at the next Commission hearing on June 28, 2012.

Very truly yours,

RAINS LUCIA STERN, PC



Michael L. Rains

MLR:jl

Cc: Ben Tisa
Dave Bliss