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*County of San Diego*  
**CITIZENS' LAW ENFORCEMENT REVIEW BOARD**

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**FINAL NOTICES - AMENDEMENT**

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its March 12, 2013 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at [www.sdcounty.ca.gov/clerb](http://www.sdcounty.ca.gov/clerb).

**CLOSED SESSION**

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

<b>DEFINITION OF FINDINGS</b>	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

**CASES FOR SUMMARY HEARING (17)**

**ALLEGATIONS, FINDINGS & RATIONALE**

**12-009**

- 1. False Arrest – Deputy 1 wrote (6) frivolous and erroneous citations against the complainant and neighboring vehicles on Lamar St. in Spring Valley during the week of Christmas.

Board Finding: Action Justified

Rationale: Deputy 1 wrote ten (10) parking violations for various vehicles on Lamar Street in Spring Valley during the time period in question. The complainant was cited on December 20th for not having a front plate, being parked near a fire hydrant, and current registration not displayed. She was then given an additional citation on the 26th for still not having her front plate. The investigation determined the complainant was in violation of all the noted infractions, but permitted to have the fines reduced and/or dismissed. California law requires license plates to be affixed to the front and back of vehicles. The law does not require posted signage and/or color coded curbs to designate a fire hydrant and vehicles parked within 15 feet of a hydrant are in violation of this code. Lastly, the complainant was in compliance with her current registration, but mistakenly believed she had until the end of the month to affix her registration tab of 2012 to her license plate. Notably, the complainant's current registration came into effect on December 8th as recorded on her Validated Registration Card issued by DMV and accessed by Deputy 1 on December 20th. The evidence shows the identified parking violation notices given to the complainant by Deputy 1 were lawful, justified and proper.

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**12-010**

1. Excessive Force – Deputy 1 violently twisted the complainant’s hand causing nerve and tendon damage.

Board Finding: Summary Dismissal

Rationale: Inmates in Housing Units 1 & 2 at the George Bailey Detention Facility responded in defiance to a new Green Sheet policy requiring them to be on their bunks after night count. Approximately 20 deputies were deployed to escort over 50 inmates off the modules into a holding area until the disturbance could be quelled. The complainant did not identify the deputy involved in his movement and did not seek medical treatment for the alleged injury for more than 90 days after the incident. There is no video tape of this incident, and many of the deputies each escorted 2 to 3 inmates to holding areas, making it virtually impossible to identify the specific deputy who escorted the complainant. Hence, a recommendation for summary dismissal of this allegation, as there is no identification of the accused member and the allegation lacks merit

2. Misconduct/Intimidation – Deputy 1 threatened to throw the complainant down a set of stairs while he was handcuffed.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

3. Misconduct/Procedure – Deputy 1 failed to provide appropriate medical treatment to the complainant.

Board Finding: Unfounded

Rationale: The complainant reported that his left hand was severely injured during a use of force occurring on August 1, 2011. Detentions Policy M.15, Sick Call, provides inmates a procedure by which medical services can be secured. There were no documented requests for medical services filed by the complainant until November 2011, and of the five requests filed during that month, none related to his alleged hand injury. It was not until December 20, 2011 that the complainant requested medical services for his hand injury, and he was seen by medical staff on December 29, 2011. The complainant underwent a radiology exam on January 4, 2012 and it was revealed that there was no fracture or dislocation in his left hand. There is no evidence that deputies denied the complainant access to medical care; the evidence shows that the alleged act did not occur.

4. Misconduct/Procedure – Deputy 1 lost and/or discarded the complainant’s personal documents that were evidence in defense of his case.

Board Finding: Not Sustained

Rationale: Several Deputies could have been involved in the movement of the complainant from the 8th to the 4th floor at San Diego Central Jail. Of the deputies questioned, none recalled moving the complainant on the date in question. It was unanimously reported however, that an inmate being moved would have been responsible for packing his possessions in a bag and carrying the bag with him during the movement. Any deputy involved would have only checked the bag for contraband, in the inmate’s presence, prior to movement. The 8th floor at Central Jail presents an additional complication in that it is an open dormitory housing floor with no individual cells. Unfortunately, this arrangement provides inmates access to other inmate’s belongings. That withstanding, there was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Procedure – Deputy 1 failed to properly document in JIMS all of the complainant’s movements while at Central Jail.

Board Finding: Action Justified

Rationale: The complainant reported his date of movement from the 8th to the 4th floor at San Diego Central Jail as September 23, 2011. Per review of the Inmate History Report, movement took place on September 24, 2011, and this movement was properly documented in the jail information management system (JIMS). The evidence shows that the detentions staff’s actions were lawful, justified and proper.

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**12-016**

1. False Arrest – Deputies 1 and 2 falsely arrested the complainant.

Board Finding: Action Justified

Rationale: Deputy 1 arrested the complainant pursuant to an arrest warrant signed and issued by a San Diego Superior Court Judge after a criminal complaint had been issued by the San Diego County District Attorney’s Office. The evidence showed that the alleged act did occur but was lawful, justified and proper.

2. Criminal Conduct - Deputy 1 made false statements to the San Diego Superior Court.

Board Finding: Unfounded

Rationale: The complainant contended that Deputy 1 made false statements in San Diego Superior Court during the Preliminary Hearings related to the gathering of evidence in the initial 1996 shooting incident. Deputy 1 stated that he located evidence identifying the complainant as the suspect in the shooting incident, and that his testimony at the Preliminary Hearing was truthful and accurate. A statement made by a former investigator contradicted the testimony of Deputy 1, but his testimony was not challenged by the court and there were no findings offered concerning his honesty. There was no evidence to demonstrate that Deputy 1 made false statements to the San Diego Superior Court, therefore the alleged act did not occur.

3. Criminal Conduct - Deputy 2 made false statements to the San Diego Superior Court.

Board Finding: Summary Dismissal

Rationale: The complainant did not provide any alleged facts to support a prima facie showing of misconduct by Deputy 2. CLERB Rules and Regulations, Section 9.2(a)5., Screening of Complaints, authorizes such allegations to be referred to the Review Board for Summary Dismissal.

4. Criminal Conduct - Deputy 1 produced a false witness before the San Diego Superior Court.

Board Finding: Unfounded

Rationale: Deputy 1 located and interviewed a number of witnesses that had not previously been identified or interviewed during the initial investigation. The complainant contended that one specific witness produced by Deputy 1 deliberately gave false testimony. Deputy 1 believed that the statements offered by the witness were truthful and accurate and thus were included in his reports. Investigative files and documentation were presented to the District Attorney for use at trial. There was no evidence to demonstrate that Deputy 1 introduced a witness to give false testimony, therefore the alleged act did not occur.

5. Criminal Conduct - Deputy 2 produced false witnesses before the San Diego Superior Court.

Board Finding: Summary Dismissal

Rationale: The complainant did not provide any alleged facts to support a prima facie showing of misconduct by Deputy 2. CLERB Rules and Regulations, Section 9.2(a)5., Screening of Complaints, authorizes such allegations to be referred to the Review Board for Summary Dismissal.

6. Illegal Search and Seizure – Deputy 1 searched and seized the complainant’s property without a search warrant on May 30, 1996.

Board Finding: ~~Sustained~~ Not Sustained

Rationale: The complainant stated that Deputy 1 illegally seized evidence during a search. Deputy 1 has maintained that the entry into the residence was under exigent circumstances and that the evidence seized was out in the open, in plain sight, and was therefore obtained lawfully. Conflicting deputy accounts were offered as to the location of the evidence, and how it was obtained, and San Diego Superior Court Judge George “Woody”

Clarke suppressed the evidence seized at trial. The evidence supports the allegation and the act was not justified.

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## 12-025

1. Illegal Search or Seizure – Deputy 2 barged into the complainant’s home.

Board Finding: Action Justified

Rationale: An anonymous caller contacted the Sheriff’s Communication Center and reported hearing loud noises and screaming sounds emanating from a neighbor’s residence. When Deputy 2 arrived on scene, he peered through the identified residence windows and observed a male and female subject pushing and yelling at each other. Deputy 2 requested the male subject to unlock the security screen door and grant him entrance, which he did. Pursuant to Constitutional Law and case law rulings related to entry into premises, law enforcement officers are authorized to enter homes where consent has been granted. The evidence shows that the alleged act did occur, but was lawful, justified and proper.

2. Excessive Force/Taser - Deputy 2 targeted a Taser gun on Morris’ chest.

Board Finding: Action Justified

Rationale: When Deputy 2 informed the complainant that she was under arrest for domestic violence, he was challenged by the complainant’s boyfriend. Fearing for his safety and in an effort to control Morris, Deputy 2 drew his Taser, pointed it at Morris and ordered him to sit down. Deputy 2 reasoned that had he not drawn his Taser to control Morris, a physical confrontation within small confines would have ensued, possibility resulting in a potential injury to him or the male subject. Pursuant to Sheriff’s Policy 6.48, Physical Force, a deputy is authorized to utilize any degree of physical force deemed necessary and objectively reasonable to effect an arrest, prevent escape or overcome resistance (per 835(a) PC). Deputy 2 employed a department approved Use of Force control compliance technique in order to control a subject, and his actions were lawful, justified and proper.

3. Misconduct/Discourtesy - Deputy 2 yelled, “Shut the fuck up!” to the complainant, or used words to that effect.

Board Finding: Not Sustained

Rationale: Deputy 2 reported that during this heated incident, several words were exchanged between him and the male and female subjects. He did not recall making this alleged statement and Deputy 4, who was also on scene, denied that he heard Deputy 2 make this reported statement. Absent any uninvolved witnesses to this incident or audio or video recordings, there was insufficient evidence to either prove or disprove the allegation.

4. Excessive Force - Deputy 4 threw Morris to the ground.

Board Finding: Action Justified

Rationale: Deputy 4 arrived on scene as Deputy 2 attempted to control both a male and female subject. The male subject attempted to avoid a lawful detention by leaving his seated position and running toward the kitchen area where weapons could have been readily available. Deputy 4 grabbed the fleeing subject’s arm and directed him to put his hands behind his back, but he refused. Deputy 2 deployed his Taser, causing the subject to drop to his knees. Deputy 4 maintained control of the subject’s arm while guiding his body to the back portion of the couch. Deputy 4 used reasonable force to prevent a suspect from escaping. The evidence shows that his actions were lawful, justified and proper.

5. Excessive Force/Taser - Deputy 2 tazed Morris while he was on the ground with his hands cuffed behind his back.

Board Finding: Action Justified

Rationale: Deputies 2 and 4 reported that Deputy 2 deployed his Taser after the male subject attempted to evade detention by fighting and resisting Deputy 4. Both deputies reported that Deputy 2 did not deploy his Taser or

execute another charge cycle after Deputy 4 had successfully placed the male subject into handcuffs, and there is no video evidence to refute their statements. Pursuant to Sheriff's Policy 6.48, Physical Force, a deputy is authorized to utilize any degree of physical force deemed necessary and objectively reasonable to effect an arrest, prevent escape or overcome resistance (per 835(a) PC). Deputy 2 employed a department approved Use of Force control compliance technique in order to control a subject, and his actions were lawful, justified and proper.

6. Excessive Force - Deputy 4 hit Morris with his flashlight while his hands were cuffed behind his back.

Board Finding: Action Justified

Rationale: Deputies 2 and 4 denied that Deputy 4 hit Morris with his flashlight after his hands had been handcuffed behind his back. Prior to successfully handcuffing Morris, Deputy 4 reported that he delivered several strikes to Morris' left arm using his patrol flashlight after Morris exhibited verbal non-compliance, passive resistance, active resistance, and assaultive behavior. Morris would not comply with Deputy 4's verbal directions and actively struggled with Deputy 4 as he attempted to control and handcuff the subject. Pursuant to Sheriff's Policy 6.48, Physical Force, a deputy is authorized to use reasonable force to effect the arrest, to prevent escape or to overcome resistance. Deputy 4 employed a department approved Use of Force control compliance technique in order to control a subject, and his actions were lawful, justified and proper.

7. Excessive Force - Deputy 2 pressed the complainant's face into the couch pillows, making it difficult for her to breathe.

Board Finding: Not Sustained

Rationale: Deputy 2 denied that he pressed the complainant's face into couch pillows, and deputies on scene denied observing this alleged occurrence. Deputy 2 reported that he struggled to control the complainant and placed body weight on her legs and stomach to minimize her movement. The complainant continued to flail from side to side to escape Deputy 2's control, eventually taking the efforts of three deputies to successfully handcuff the complainant. There was insufficient evidence to either prove or disprove the allegation.

8. Excessive Force - Deputy 2 pressed his knee into the complainant's elbow and fractured her arm while her hands were cuffed behind her back.

Board Finding: Not Sustained

Rationale: Deputies 2, 3 and 4 struggled with the resisting complainant in an effort to control and handcuff her, as she continued to refuse to comply with the deputies' commands to put her hands behind her back. Deputy 2, using a Sheriff's Academy instructed maneuver, used his extended expandable baton as a fulcrum to prevent the complainant from pulling her arm inward. During this struggle, the complainant forcibly pulled her arm downward and Deputy 2 heard a slight "pop" sound, at which point the complainant's arm was presumably fractured. Deputy 2 denied pressing his knee into the complainant's elbow and witness deputies on scene denied that any of the involved deputies committed this act. The complainant was transported to a local medical facility for treatment and subsequently released to custody. Based on all reported accounts, there is insufficient evidence to either prove or disprove the allegation.

9. False Arrest – Deputy 2 arrested the complainant and Morris for Domestic Violence and Resisting Arrest.

Board Finding: Action Justified

Rationale: Deputy 2 responded to an "unknown trouble" call, and upon arriving on scene observed the complainant and a male subject pushing and yelling at each other. When the complainant was informed that she would be arrested for domestic violence, she resisted and refused to step outside with Deputy 2 and later refused to place her hands behind her back. Pursuant to Penal Code § 836, Peace Officer Arrests, a deputy is authorized to arrest a person if that officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence. The complainant was also in violation of Penal Code § 148(a)(1), Delaying a Peace Officer. Deputy 2 arrested Morris on a number of charges including: Penal Code § 243(e)(1), Spousal Abuse, Penal Code § 148(a)(1), Delaying a Peace Officer, Penal Code § 166(c)(4), Violation of a Criminal Protective Restraining Order, and Penal Code § 848, Arrest with Warrant, for an outstanding Domestic

Violence Bench Warrant issued out of South Bay Court on 02/03/2012. Deputy 2's arrests of the complainant and Morris did occur, but were lawful, justified and proper.

10. Misconduct/Procedure – Deputy 2 failed to provide paperwork for the complainant's release from the hospital.

Board Finding: Action Justified

Rationale: Deputy 2 arrested the complainant for a domestic violence incident, but due to her medical needs, and after consulting with Deputy 1, decided to release her per Penal Code § 849.5, Release if No Charges Filed; Detention. Deputy 1 subsequently consulted with his superiors and the decision was made to rescind the 849.5 release due to liability issues, and to take the complainant back into custody. This new course of action obviated the need for the 849.5 release form and its provision to the complainant. The evidence shows the alleged act did occur, but was lawful, justified and proper.

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## **12-028**

1. Misconduct/Procedure – Deputy 2 refused to take a report from the complainant regarding the alleged commission of a crime.

Board Finding: Action Justified

Rationale: Deputy 2 was in the process of investigating a battery when contacted by the complainant and requested to take a report. The complainant admitted to having consumed several alcoholic beverages throughout the evening, and per Deputy 2 and other deputies on scene, displayed the objective signs of being heavily under the influence of an intoxicant. Deputy 2 informed the complainant that he was investigating another incident and would speak to her when he was finished, but the complainant insisted on immediately filing a report, became rude and argumentative, and would not allow Deputy 2 and other deputies to speak. Based on this behavior and belligerent conduct toward bystanders in the area, Deputy 2 assessed that the complainant was unable to care for her own safety and arrested her for violation of Penal Code § 647(f), Disorderly Conduct. The evidence shows the alleged act or conduct did occur, but was lawful, justified and proper.

2. Excessive Force/Handcuffs – Deputy 2 placed handcuffs on the complainant so tightly as to cause extreme pain.

Board Finding: Not Sustained

Rationale: Deputy 2 arrested the complainant for Penal Code § 647(f), Disorderly Conduct, after determining that she was not able to care for her own safety. He reported that force was not used in executing this arrest, and did not recall the complainant stating that the handcuffs were placed on her too tightly. It was not until the complainant was being transported, that she stated to the transporting deputy that her cuffs were too tight. There was insufficient evidence to show that Deputy 2 was aware that the complainant suffered pain due to the handcuffs and insufficient evidence to either prove or disprove the allegation.

3. Excessive Force - Deputy 2 pushed the complainant's head into the hood of a police unit while striking her in the back of the head.

Board Finding: Not Sustained

Rationale: Deputy 2 denied that he pushed the complainant's head into the hood of a police unit while striking her in the back of the head. Deputies on scene, as well as the complainant's witness, deny having observed this alleged occurrence and photos provided by the complainant failed to show any marks or bruises consistent with this allegation. A medical report from two days after the incident lists only small bruising to the right knee and left post scalp of the complainant's head. There was insufficient evidence to either prove or disprove the allegation.

4. Excessive Force - Deputy 2 pulled the complainant's arms toward her shoulders while they were cuffed behind her back.

Board Finding: Unfounded

Rationale: Deputy 2 reported that he and another deputy held the complainant's arms to steady her after she had slipped on the curb. Other deputies on scene denied having seen any use of force during the execution of this arrest. The complainant's witness observed the complainant fall to the ground, and while he felt that deputies lifted her too roughly, he did not see them raise the complainant's arms toward her shoulders. A medical report from two days after the incident failed to show any injuries to the complainant's shoulder area consistent with the allegation nor did the complainant report any shoulder injuries in subsequent correspondence with CLERB investigator. The evidence shows the alleged act did not occur.

5. Excessive Force - Deputy 2 pushed the complainant's head into the roof of a police unit while placing her in the back seat.

Board Finding: Not Sustained

Rationale: Deputy 2 denied that he pushed the complainant's head into the roof of a police unit while placing her in the back seat. Deputies on scene, as well as the complainant's witness deny having observed this alleged occurrence, and photos provided by the complainant fail to show any marks or bruises consistent with this incident. A medical report from two days after the incident lists only small bruising to the right knee and left post scalp of the complainant's head. There was insufficient evidence to either prove or disprove the allegation.

6. Excessive Force - Deputy 2 smashed the complainant's knees into the bottom opening of the car door while placing her in the back seat.

Board Finding: Not Sustained

Rationale: Deputy 2 and other deputies on scene reported that force was not used to arrest the complainant, escort her to a patrol unit and place her into custody. Deputy 2 denied that he smashed the complainant's knees into the bottom opening of the car door while placing her in the back seat. A medical report from two days after the incident showed only slight bruising to the right knee of the complainant which could have occurred during a fall suffered by the complainant, due to her intoxicated condition. There was insufficient evidence to either prove or disprove the allegation.

7. Misconduct/Procedure – Deputy 1 refused to administer a breathalyzer, urine or blood test.

Board Finding: Action Justified

Rationale: The complainant requested the administration of various sobriety tests while in transport to the Vista Detention Facility. The complainant had been arrested for Penal Code § 647(f), Disorderly Conduct, after the arresting deputy determined that she was not able to care for her own safety. This determination was made because the complainant displayed objective signs and symptoms of alcohol intoxication. There is no blood alcohol content level required to determine if a subject is or is not able to care for their own safety; therefore Deputy 1 was under no requirement to administer any of these tests. The evidence shows the alleged act did occur, but was lawful, justified and proper.

8. Misconduct/Procedure – Deputy 3 disclosed confidential information about the complainant.

Board Finding: Summary Dismissal

Rationale: Pursuant to the provisions of GC§ 6254, Exceptions to Disclosure of Records, state and local law enforcement agencies are required to make public the name of the arrestee and other information regarding their charges. This function is not performed by sworn members of the Sheriff's Department and therefore the Review Board lacks jurisdiction.

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**12-029**

1. Misconduct/Procedure – Deputy 2 failed to take a report from the complainant.

Board Finding: Summary Dismissal

Rationale: Deputy 2 is no longer employed by the San Diego Sheriff's Department, effective July 13, 2012. Pursuant to Section 15: Summary Dismissal, of CLERB's Rules and Regulations, the Review Board does not have jurisdiction over the subject matter of the Complaint.

2. Misconduct/Procedure – Deputy 1 failed to take a report from the complainant.

Board Finding: Action Justified

Rationale: The complainant provided digital recordings of threats made by his ex-wife that were date and time stamped approximately 3 years prior to his report of the incident. A criteria of Penal Code § 422, Terrorist Threats, is that there is an immediate prospect of execution of the threat that reasonably causes the threatened person to be in sustained fear for his or her own safety. The complainant lived with his ex-wife long after the threats were made, implying he could not have been afraid to the extent required by law. Deputy 1 did not take a report regarding the threats because the criteria of the crime had not been met. The evidence shows the alleged conduct did occur, but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 2 took an incomplete and inadequate report from the complainant.

Board Finding: Summary Dismissal

Rationale: Deputy 2 is no longer employed by the San Diego Sheriff's Department, effective July 13, 2012. Pursuant to Section 15: Summary Dismissal, of CLERB's Rules and Regulations, the Review Board does not have jurisdiction over the subject matter of the Complaint.

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## 12-031

1. Misconduct/Discourtesy – Deputy 1 was rude and discourteous while serving the complainant with a legal notice.

Board Finding: Not Sustained

Rationale: Deputy 1 denied that he was rude and discourteous while serving a legal notice. The complainant stated that Deputy 1 called her son a liar and was rude in the manner which he delivered a Temporary Restraining Order. The involved parties offered conflicting accounts of statements made by Deputy 1 and disagree over his conduct throughout the contact. There was insufficient evidence to provide or disprove the allegation.

2. Excessive Force – Deputy 1 pushed the complainant's son twice.

Board Finding: Action Justified

Rationale: The complainant's son retrieved a cell phone camera from inside the home and attempted to take pictures of Deputy 1's face and identification by extending his arm toward the deputy's face. Deputy 1 acknowledged that he made contact with the complainant's son after he advised him to step back and remove the camera from his face. Because of the proximity of the camera to his face, Deputy 1 stated he did not push the complainant's son, but moved his hand away from his face on two occasions. Deputy 1's actions were reasonable and necessary, per Department Policy and Procedure, Addendum Section F, Use of Force Guidelines, to overcome the aggressive behavior of the complainant's son. The evidence showed that the alleged conduct did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 told the complainant's son that he was not allowed to take the deputy's picture.

Board Finding: Not Sustained

Rationale: Deputy 1 denied making the alleged statement. The complainant's son retrieved a cell phone camera from inside the home and attempted to take Deputy 1's picture. As he photographed the deputy, he said he was told to, "...get your hands out of my face," and "Don't take my picture." Deputy 1 said that he did not object to being filmed or photographed, rather the complainant's son had extended the camera too close to the his face

which he deemed a hazard to his safety. No audio or video evidence was available to support this allegation; as such there was insufficient evidence to either prove or disprove the allegation.

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**12-038**

1. False Arrest – Deputy 3 pulled the complainant over for expired tags then arrested her for DUI.

Board Finding: Action Justified

Rationale: Deputy 3 stated he observed the complainant's vehicle weaving from left to right and the vehicle did not display current registration tabs in violation of California Vehicle Code § 5204, Registration Tabs. He conducted a traffic stop and after making contact with the complainant smelled a strong odor of alcoholic beverage and had the complainant step out of the car for evaluation. The complainant did not pass the Field Coordination Tests administered by Deputy 3 and refused to blow into a Preliminary Alcohol Screening (PAS) device. The complainant was arrested for violation of California Vehicle Code § 23152(a) and (b), Driving Under Influence of Alcohol or Drugs, and California Penal Code § 148(a)(1), Resisting a Peace Officer. The complainant acknowledged that her registration tabs were not displayed, but denied that she was Driving Under the Influence of alcohol. The Sheriff's Department Crime Lab reported the complainant's Blood Alcohol Concentration (BAC) at 0.23%, and an independent blood test reported a BAC of 0.19%, both exceeding the legal limit under California Vehicle Code § 21152(a) and (b). The evidence showed that the alleged act did occur but was lawful, justified and proper.

2. Excessive Force – Deputy 3 threw the complainant to the ground by sweeping her legs out from under her and then kned her in the back.

Board Finding: Action Justified

Rationale: Deputies 3 reported that the complainant pulled away from him as he attempted to apply handcuffs. The complainant said that as Deputy 3 grabbed her wrist which shocked her and caused her to jerk at his touch. Deputies 1 and 3 used pressure on each of her shoulders to guide her to the ground and then Deputy 3 used body weight to control the complainant as she continued to resist the deputies. Deputies 1 and 3 used reasonable and necessary force to regain control of the complainant, handcuff her, and take her into custody. The force used was in compliance with Department Policy 6.48, Physical Force, and Addendum F, Use of Force Guidelines. The evidence showed the alleged act or conduct did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 3 failed to advise the complainant she was under arrest and/or read her Miranda rights upon request.

Board Finding: Action Justified

Rationale: Deputy 3 stated that he advised the complainant she was under arrest for Driving Under the Influence and asked her to place her hands behind her back. The complainant denied that this statement was made. Deputy 1 observed the contact and confirmed that Deputy 3 told the complainant she was under arrest as he attempted to handcuff her. The field investigation conducted prior to her arrest did not require Miranda warnings and once the complainant was arrested deputies made no effort to interrogate her. The evidence showed the alleged acts did occur but were lawful, justified and proper.

4. Misconduct/Discourtesy – Deputy 2 said to the complainant, "is this our Patriot."

Board Finding: Unfounded

Rationale: Deputy 2 was not present during the incident or during the complainant's processing at the Sheriff's Station prior to transportation to Las Colinas Detention Facility. Deputy 2 did not appear on deployment reports, unit histories, or event histories associated with this incident. The evidence shows that the alleged act or conduct did not occur.

5. Misconduct/Intimidation – Deputy 3 told the complainant, "I'll get you," when she said she was going to fight this arrest.

Board Finding: Not Sustained

Rationale: Deputy 3 denied making the alleged statement. The complainant stated that this comment was made while she was being transported to Las Colinas Detention Facility. There were no audio/video recordings of the contact and no independent witnesses to this allegation. There was insufficient evidence to prove or disprove the allegation.

6. False Reporting – Deputy 3’s Arrest Report is inaccurate and full of mistruths.

Board Finding: Action Justified

Rationale: Deputy 3 stated that his report was truthful and accurate. The complainant contested the length of time Deputy 3 followed her prior to the traffic stop, that her eyes were bloodshot, her reported physical condition, the use of force, and whether she refused to continue elements of the Field Coordination Tests. Deputy 3 documented specific facts of the incident and his personal observations of the complainant. Additional Department of Motor Vehicles reports prepared by Deputy 3 were consistent with the arrest report and Deputy 1’s Officer Report. The evidence showed the alleged acts did occur but were lawful, justified and proper.

7. Misconduct/Truthfulness – Deputy 3 “lied at a DMV hearing.”

Board Finding: Unfounded

Rationale: Deputy 3 denied making any false statements during the Department of Motor Vehicles Administrative Per Se – Refusal Hearing. The hearing was conducted by telephone, and the complainant and deputy were not directly connected to hear each others’ statements. The complainant, represented by private counsel, believed that Deputy 3 lied about her refusal to give blood, her physical condition prior to performing the Field Coordination Test, and the results of test administration. The complainant admittedly refused to give blood pending her demand to review her rights because she did not believe blood could be taken by force. Deputy 3 documented that the complainant initially denied having any physical impairment, and later during the Field Coordination Tests she reported having surgery six months prior for an Achilles tendon injury. The complainant stated that she told Deputy 3 the surgery had been for an anterior cruciate ligament (ACL) injury. The complainant offered no further information to contradict the conduct of the Field Coordination Tests administered by Deputy 3. The evidence shows that the alleged act or conduct did not occur.

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**12-040**

1. Illegal Search or Seizure – Deputy 1 confiscated the complainant’s purse.

Board Finding: Action Justified

Rationale: Deputy 1 arrested the complainant for violation of Penal Code § 32, Accessory After the Fact, for her role in aiding her boyfriend avoid capture when she was aware that he was a suspect in a felony case. Pursuant to Constitutional law and case law rulings related to the seizure of personal property, a Peace Officer is authorized to seize and search all personal property "immediately associated" with the arrestee's person and under his or her immediate control at the time of the arrest. At the time of the arrest, the complainant was in possession of her purse and a cell phone contained therein that had been used in the commission of a crime. The evidence showed the alleged act did occur, but was lawful, justified and proper.

2. Illegal Search or Seizure – Deputy 1 searched the complainant’s purse and cell phone.

Board Finding: Action Justified

Rationale: Deputy 1 arrested the complainant for violation of Penal Code § 32, Accessory After the Fact, for her role in aiding her boyfriend avoid capture when she was aware that he was a suspect in a felony case. Using her cell phone, the complainant transmitted text messages to a felony suspect advising him of deputies’ movements and assisting him in avoiding capture. Pursuant to Constitutional law and case law rulings related to the search and seizure of personal property, a Peace Officer is authorized to search all personal property "immediately associated" with the arrestee's person and under his or her immediate control at the time of the arrest. At the time of the complainant’s arrest, her purse and her cell phone contained therein, was in an area immediately

accessible to the suspect. The evidence showed the alleged act did occur, but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 took items out of the complainant’s purse and tossed them into a trash can.

Board Finding: Action Justified

Rationale: Following her arrest, the complainant was processed at the Santee Patrol Station before being transported to the Las Colinas Detention Facility for booking. The complainant’s personal items were placed in a property bag, excluding those items prohibited at Las Colinas. Detentions Policy O.3, Inmate Rules and Regulations, Section 300 – Contraband, prohibit the possession of tobacco products or smoking related products, lighters, matches and/or other ignition devices. These were the items reported by Deputy 1 and the complainant to have been discarded. The evidence showed the alleged act did occur, but was lawful, justified and proper.

4. Criminal Conduct – Deputy 1 grabbed and rubbed the complainant’s breasts, groin area, inner thighs and buttocks while conducting a pat down.

Board Finding: Unfounded

Rationale: Deputy 1 denied that he inappropriately touched the complainant while conducting a search of her person. He reported that he conducted the search per training guidelines for searching female prisoners, using the back of his hand and blade of his hand while searching the complainant. A video surveillance camera located in the room, captured the entire search of the complainant and showed Deputy 1 conducting the search as he described, with no inappropriate touching observed. The evidence showed that the alleged act did not occur.

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**12-047**

1. Misconduct/Procedure – P.O. 2 failed to communicate scheduled court dates for the complainant’s son causing her to be absent from court.

Board Finding: Action Justified

Rationale: P.O. 2 stated she contacted the complainant in advance of the scheduled April 25, 2012 court date and was told the complainant would attend. Additionally, the complainant attended Court Review Hearings on January 20, 2012 and February 7, 2012 which established the scheduled April 25, 2012 court date. The complainant later told a Supervising Probation Officer that she was aware of the April 25, 2012 court date, but became confused about the second hearing which followed two days later. There were no violations of Department Policy or Procedure. P.O. 2’s actions were lawful, justified and proper.

2. Misconduct/Procedure – P.O. 3 accepted medication from the complainant for the aggrieved and failed to administer the medications.

Board Finding: Summary Dismissal

Rationale: The complainant did not provide the Medical Records Release form necessary to conduct a review of her son’s medical records. Medications at juvenile detention facilities are accepted and administered by non-sworn professional staff and therefore not subject to CLERB’s jurisdiction per Rules and Regulations Section 4.1 Citizen Complaints: Authority...the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff’s Department or the Probation Department; as such, the Review Board lacks jurisdiction.

3. Misconduct/Procedure – P.O. 1 did not notify the complainant of a reported suicide attempt.

Board Finding: Action Justified

Rationale: P.O. 1 contacted the complainant by telephone and related the circumstances which resulted in her son’s transfer to another juvenile facility. There was no reported suicide attempt. The complainant’s son had made suicidal statements, and the department took appropriate action to ensure his safety. P.O. 1 complied with

notification procedures required by Probation Department Juvenile Ranch Facility Manual, Section 4.4.1, Incident Reports. The evidence shows the alleged act did occur but was lawful, justified and proper.

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### 12-053

1. Misconduct/Retaliation – Deputy 1 threatened and/or arranged to have the complainant beaten for filing a complaint.

Board Finding: Not Sustained

Rationale: Deputy 1 acknowledged the brief contact with the complainant during a security check, and denied she made any threat concerning the complainant's safety. The complainant and Deputy 1's statements concerning this allegation are in conflict and there is insufficient evidence to either prove or disprove the allegation.

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### 12-062

1. Misconduct/Procedure - Deputy 2 failed to secure the complainant's vehicle.

Board Finding: Not Sustained

Rationale: Deputy 2 observed the complainant's vehicle parked along a fire lane curb subsequent to a traffic stop. Deputy 2 stated he moved the vehicle to a parking stall in a well-lit area, per California Vehicle Code § 22654, Authorization for Moving a Vehicle. He rolled up the windows, locked the vehicle, and manually tested the driver's exterior door handle to ensure the vehicle was secure. The vehicle keys were placed in the complainant's personal property and returned to him upon release from jail. When the complainant returned to his vehicle the following morning he discovered that his personal property was missing from the vehicle. There was no evidence available to corroborate the deputy's reported actions or to see show that another party broke into the vehicle. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure - Deputies 1 and 3 failed to secure the complainant's vehicle.

Board Finding: Unfounded

Rationale: Deputies 1 and 3 were not involved with the movement or securing the complainant's vehicle; the alleged conduct did not occur.

3. Misconduct/Discourtesy - Deputy 2 said to the complainant, "You must be a "baller." I've never been in a Cadillac before."

Board Finding: Not Sustained

Rationale: Deputy 2 moved the vehicle from a fire lane to a parking stall and recalled making a complimentary statement to complainant concerning the vehicle. Deputy 2 denied making the alleged comment, and Deputies 1 and 3 stated they did not hear any such comment. There was insufficient evidence to prove or disprove the allegation.

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### 12-126

1. Misconduct/Procedure – Deputies 1-4 and 6 searched the complainant's cell and privileged communications not in his presence.

Board Finding: Summary Dismissal

Rationale: The complainant formally withdrew the complaint against Deputies 1 -6 on January 28, 2013. CLERB no longer has authority to investigate this complaint based upon the following CLERB Rules &

Regulations: 5.7 Withdrawal of Complaints. A complaint may be withdrawn from further consideration at any time by a written notice of withdrawal signed and dated by the complainant.

2. Misconduct/Retaliation – Deputy 5 caused the complainant’s cell to be searched in retaliation to legal matters the complainant filed against San Diego Sheriff’s Department.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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### **12-141**

1. Misconduct/Procedure – Deputy 1 refused to allow professional visits between the complainant and his attorney.

Board Finding: Summary Dismissal

Rationale: The complainant formally withdrew the complaint against Deputy 1 on January 28, 2013. CLERB no longer has authority to investigate this complaint based upon the following CLERB Rules & Regulations: 5.7 Withdrawal of Complaints. A complaint may be withdrawn from further consideration at any time by a written notice of withdrawal signed and dated by the complainant.

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### **12-147**

1. Misconduct/Procedure – Deputy 1 raised the classification level of the complainant based on a rumor.

Board Finding: Action Justified

Rationale: Detentions Investigations Unit (DIU) detectives received information that the complainant intended to attack and kill a deputy. The complainant was found to be in possession of contraband that he appeared to be fashioning into stabbing instruments. Pursuant to Detentions Policy R.1, Inmate Classification, Deputy 1 elevated the complainant to Level 6 and placed Dayroom Chains (DRC) restrictions on him based on threats made by the complainant to detentions staff and contraband found in his cell. The reclassification was approved by the Facility Commander. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

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### **12-153**

1. Misconduct/Procedure – Deputy 2 failed to produce the complainant telephonically as required by the court.

Board Finding: Summary Dismissal

Rationale: The complainant formally withdrew the complaint against Deputies 1 and 2 on May 7, 2012. CLERB no longer has authority to investigate this complaint based upon the following CLERB Rules & Regulations: 5.7 Withdrawal of Complaints. A complaint may be withdrawn from further consideration at any time by a written notice of withdrawal signed and dated by the complainant.

2. Misconduct/Retaliation – Deputy 1 arbitrarily reassigned the complaint to George Bailey Detention Facility.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputy 2 denied the complainant access to the Law Library.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – Deputy 2 withheld the complainant’s personal property (legal publications).

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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### **13-005**

1. Misconduct/Discourtesy – Deputy 1 told the 70-year-old complainant to buy a smaller car and if he caught her again he would revoke her driver’s license.

Board Finding: Action Justified

Rationale: Deputy 1 disputed the context of the conversation as reported by the complainant. The complainant admittedly had difficulty seeing behind her vehicle, and has subsequently purchased a smaller one. Deputy 1’s examination of the complainant’s vehicle noted other damage not consistent with this incident. Deputy 1 conducted an evaluation to ensure the complainant was capable of driving safely on the roadways. Deputy 1 was obligated to determine if a “Re-Examination of Driver” was warranted, but ultimately did not issue one. The evidence shows the alleged act or conduct was lawful, justified and proper.

2. Misconduct/Intimidation – Deputy 1 “bullied” the complainant.

Board Finding: Unfounded

Rationale: The 70-year-old complainant, a small statured woman, believes she was “bullied” by Deputy 1, a much larger man. Bullying is defined as the use of force or coercion to abuse or intimidate others. No force or coercion was used during this incident. Deputy 1 conducted an investigation where both parties were cooperative and agreed to handle the incident informally. An independent witness corroborated Deputy 1’s account of this incident. The evidence shows that the alleged conduct did not occur.

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*End of Report*