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County of San Diego
CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA
TUESDAY, NOVEMBER 14, 2017, 5:30 P.M.
San Diego County Administration Center
1600 Pacific Highway, Room 302/303, San Diego, 92101

(Free parking is available in the underground parking garage, on the south side of Ash Street, in the 3-hour public parking spaces.)

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to CLERB at (619) 238-6776 at least 24 hours before the meeting.

WRITINGS DISTRIBUTED TO THE BOARD

Pursuant to Government Code Section 54957.5, written materials distributed to CLERB in connection with this agenda less than 72 hours before the meeting will be available to the public at the CLERB office located at 555 W Beech Street, Ste. 505, San Diego, CA.

1. ROLL CALL

2. MINUTES APPROVAL

- a) Minutes of the October 2017 Regular Meeting (*Attachment A*)

3. PRESENTATION / TRAINING

- a) N/A

4. EXECUTIVE OFFICER'S REPORT

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

5. BOARD CHAIR REPORT

6. NEW BUSINESS

a) N/A

7. UNFINISHED BUSINESS

a) N/A

8. BOARD MEMBER COMMENTS

9. PUBLIC COMMENTS

a) This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to up to five minutes.

10. SHERIFF / PROBATION LIAISON QUERY

11. 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).

- 16-027 / Boulanger – SDSA Response to CLERB Policy Recommendation

DEFINITION OF FINDINGS	
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 (32)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

11-079

1. Death Investigation/Homicide – While in the custody of the San Diego Sheriff’s Department at the George F. Bailey Detention Facility, Russell Hartsaw was assaulted by other inmates and subsequently died from his injuries.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the

circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

13-011

1. Death Investigation/Barricade – After shooting two deputies and barricading himself inside of his mother’s home, which was subsequently surrounded by the San Diego Sheriff’s Department, Evan Kwik died from a self-inflicted shotgun wound of the head.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

13-048

1. Death Investigation/Positional Restraint – After leading San Diego Sheriff’s Department deputies on a vehicle pursuit, Hugo Barragan resisted arrest, was eventually subdued from a combination of Taser deployment, K-9 deployment, knee strikes, and attempted application of carotid restraint. He was placed in maximum restraints and he was placed on his right side. Upon the arrival of paramedics, Barragan was unresponsive and, despite aggressive resuscitative efforts, was pronounced dead at the scene. The cause of death was sudden cardiac arrest with acute methamphetamine and quetiapine intoxication during law enforcement restraint.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

13-079

1. Death Investigation/Officer-Involved-Shooting – While responding to a call of an emotionally disturbed person, San Diego Sheriff’s Department deputies contacted David Lee Brown. During the contact, Brown, armed with at least one knife, lunged at a deputy. Another deputy, fearing for his partner’s safety, shot Brown, who was subsequently pronounced dead at the scene. The cause of death was multiple gunshot wounds.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

13-081

1. Death Investigation/In-Custody Suicide – While in the custody of the San Diego Sheriff’s Department at the Vista Detention Facility, Aaron Stitt hanged himself with a bedsheet attached to his bunk. The cause of death was hanging and the manner of death was suicide.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

13-085

1. Death Investigation/Barricade – After shooting at deputies and barricading himself inside of his home, which was subsequently surrounded by law enforcement agencies to include sworn members of the San Diego Sheriff's Department, Lionel Silva II died from a self-inflicted gunshot wound of the head.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

13-098

1. Death Investigation/In-Custody Suicide – While in the custody of the San Diego Probation Department at the Kearney Mesa Juvenile Detention Facility, Rosemary Summers hanged herself by the neck with a bed sheet attached to an air vent in her cell. The cause of death was anoxic encephalopathy due to asphyxia due to hanging and the manner of death was suicide.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

13-100

1. Death Investigation/Barricade – After shooting two people and barricading himself inside of his apartment, which was subsequently surrounded by sworn members of the San Diego Sheriff's Department, Sebastian Zatarain died from a self-inflicted gunshot wound.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

13-101

1. Death Investigation/In-Custody Natural Death – While in the custody of the San Diego Sheriff's Department at the Vista Detention Facility, Zdzislaw Bieruta was found lying unresponsive in his cell and subsequently pronounced

dead at the scene. His cause of death was sudden cardiac death due to acute coronary syndrome due to multivessel coronary artery atherosclerosis due to atherosclerotic cardiovascular disease and the manner of death was natural.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

14-006

1. Death Investigation/Officer-Involved Shooting – Deputies 2 and 3 shot and killed Michael Napier while attempting to arrest him.

Recommended Finding: Action Justified

Rationale: There was no complaint of wrongdoing in this death investigation; a review was conducted in accordance with CLERB Rules & Regulations, 4.6 Citizen Complaint Not Required: Jurisdiction with Respect to Actions Involving Death. On the date of the incident, Napier was wanted on an outstanding felony warrant for 11377 (a) H&S - Possession of a Controlled Substance; he was also the suspect in a recent theft and a burglary in and around the complex where he resided. The Gang Enforcement Team (G.E.T.) deputies had intelligence that Napier was a dangerous suspect who was known to carry weapons and had a history of violent confrontations with law enforcement officers, including a prior incident in which he shot at officers during a traffic stop. Intel further indicated that Napier was living in his father's detached garage and according to a recent social media post, "would possibly be leaving town soon." The team decided that they would surveil Napier's complex and if found, they would serve the felony warrant and take Napier into custody. Deputies 2 - 5 contacted Napier at the garage and instructed him to show them his hands. Three of the four deputies who actually saw and heard Napier's initial response when contacted, provided differing accounts of Napier's responses prior to Deputies 2 and 3 discharging their weapons. The research shows that during critical incidents, the substantial majority of officers experience specific perceptual distortions, causing their recollection of the events of the shooting to be imperfect. Deputies 2 and 3's account of this critical incident, while different in some respects, culminated with reports of Napier reaching toward or in his pocket or waistband after being ordered to keep his hands up. Fearing for their safety, Deputies 2 and 3 reacted to this threat by discharging several rounds from their duty weapons, fatally injuring the decedent. The discharge of their firearms was legal, justified and proper under the Sheriff Department's Policies & Procedures, and state law.

POLICY RECOMMENDATION

1. It is recommended that the San Diego Sheriff's Department (Department) review Policy and Procedure 6.111, High Risk Entries, and clarify any ambiguity pertaining to the completion of a High Risk Entry Checklist (Checklist) prior to serving an arrest warrant when there is no plan to enter a structure to do so. The first sentence of the Procedure section mandates that "prior to serving a search warrant, arrest warrant, or conducting a 4th waiver search, the deputy responsible for the case will complete the Checklist." Despite the "Entry" caveat in the Policy and Procedure title and Checklist name, the Procedure sentence quoted above appears to mandate Checklist completion on search warrants, arrest warrants, and 4th waiver searches, regardless of whether there is intent to enter a structure during the performance of the action. If the Department does not intend for the Checklist to be completed prior to serving an arrest warrant when there is no plan to enter a structure to do so, it is recommended that the first sentence of the Procedure section be revised to emphasize mandatory Checklist completion only if there is intent to enter a structure.
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14-017

1. Death Investigation/In-Custody Suicide – While in the custody of the San Diego Sheriff's Department at the Vista Detention Facility, Kristopher Nesmith hanged himself with a bedsheet attached to light fixture in his cell. The cause of death was hanging and the manner of death was suicide.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

14-036

1. Death Investigation/In-Custody Suicide – While in the custody of the San Diego Sheriff's Department at the San Diego Central Jail, Bowman hanged himself with a bedsheet attached to ceiling mounted fire sprinkler. The cause of death was anoxic encephalopathy due to asphyxia due to hanging and the manner of death was suicide.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

14-039

1. Death Investigation/Barricade – Robert DeLeon barricaded himself inside of a La Mesa motel room after U.S. Marshals attempted to arrest him on a federal warrant. Law enforcement officials surrounded the room and the San Diego Sheriff's Department's Crisis Negotiation Team and Special Enforcement Detail (SED) responded. Over the next few hours, law enforcement officers attempted to negotiate his surrender without success. Upon forcing entry into the room, SED personnel found DeLeon dead inside. The cause of death was contact gunshot wound of the head and the manner of death was suicide.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

14-067

1. Death Investigation/In-Custody Natural Death – While in the custody of the San Diego Sheriff's Department at the Vista Detention Facility, Martin Mora was found on the floor with labored breathing and bloody stools. While being transported to Tri-City Medical Center (TCMC) he became unresponsive and was pronounced dead later that evening at TCMC. His cause of death was complications of upper chronic gastrointestinal bleeding due to cirrhosis of the liver/hepatitis C with contributing causes of cardiomyopathy, hypertension, chronic heroin abuse, and obesity and the manner of death was natural.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

14-070

1. Death Investigation/In-Custody Suicide – While in the custody of the San Diego Sheriff’s Department at the San Diego Central Jail, Hector Lleras hanged himself with a bedsheet attached to the top bunk in his cell. The cause of death was asphyxia by hanging and the manner of death was suicide.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

14-107

1. Death Investigation/In-Custody Natural Death – While in the custody of the San Diego Sheriff’s Department at the San Diego Central Jail, Jerry Cochran became disoriented and was transported to UCSD Medical Center. Upon arrival he became unresponsive and, despite aggressive resuscitative efforts, was pronounced dead shortly thereafter. The cause of death was diabetic ketoacidosis due to diabetes mellitus with a contributing cause of acute cellulitis and the manner of death was natural.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

15-046

1. Death Investigation/Suicide in the Presence of Deputies – While investigating a report of trespassing, San Diego Sheriff’s Department deputies contacted Scott Hillen. A struggle ensued when the deputies attempted to search him for weapons. During the struggle, Hillen pulled a firearm from his waistband and shot himself in the head. He was transported to Palomar Medical Center and pronounced dead several hours later. The cause of death was penetrating gunshot wound of the head and the manner of death was suicide.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

15-052

1. Death Investigation/Officer-Involved-Shooting – While searching for Simon Hubble, who had expressed suicidal ideation and indicated his willingness to force officers to shoot him, a San Diego Sheriff’s Department deputy subsequently contacted him. During the contact, Hubble exited his vehicle with a screwdriver in his hand. The deputy reportedly attempted to tase Hubble twice but to no avail. As Hubble continued to move towards him, the deputy shot him. Medics responded but, despite aggressive resuscitative efforts, Hubble was pronounced dead at the scene. The cause of death was gunshot wounds of the chest.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

15-089

1. Death Investigation/In-Custody Suicide – While in the custody of the San Diego Sheriff's Department at the San Diego Central Jail, Sergio Valenzuela hanged himself with a bedsheet attached to a bunk in his cell. The cause of death was complications of resuscitated hanging and the manner of death was suicide.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

15-108

1. Death Investigation/In-Custody Suicide – While in the custody of the San Diego Sheriff's Department at the George F. Bailey Detention Facility, Martin Dozal wrapped a torn and braided bedsheet around his neck. He was transported to a hospital and died three days later. The cause of death was acute diffuse anoxic/ischemic encephalopathy due to resuscitated cardiac arrest due to ligature strangulation and the manner of death was suicide.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

15-118

1. Death Investigation/In-Custody Suicide – While in the custody of the San Diego Sheriff's Department at the George F. Bailey Detention Facility, Nicholas Medel hanged himself by the neck with bedding attached to a vent in his cell. The cause of death was hanging and the manner of death was suicide.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

16-057

1. Death Investigation/In-Custody Natural Death – While in the custody of the San Diego Sheriff's Department at the San Diego Central Jail, Ruben Nunez was found unresponsive on his cell floor. Despite aggressive resuscitative efforts, death was pronounced while at the scene. The cause of death was complications of diabetes insipidus (water intoxication) and the manner of death was natural.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

16-060

1. Death Investigation/In-Custody Suicide – While in the custody of the San Diego Sheriff's Department at the Vista Detention Facility, Heron Moriarty stuffed a t-shirt in his mouth and tied a t-shirt around his neck. Despite aggressive resuscitative efforts he was pronounced dead at the scene. The cause of death was asphyxia due to airway obstruction and neck compression and the manner of death was suicide.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of potential misconduct that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the circumstances surrounding this death revealed that the one year time limitation has expired and no current exceptions apply. As this death investigation was not completed within the one year period, the Review Board lacks jurisdiction.

16-089

1. Misconduct/Procedure – Deputy 2 did not arrest a suspect accused of committing a crime.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 failed to arrest his landlord who had been accused of committing multiple crimes. The complainant and his girlfriend were allowed by their landlord to reside in a trailer on his property. The complainant and his girlfriend began to have multiple arguments and disagreements with their landlord and his girlfriend resulting in 9 calls for service to the property within a 30 day period of time, with allegations flying back and forth from the multiple parties involved. Deputies had been out to this property on several occasions, but the problems persisted. Case Law 2.23, Search and Seizure – Persons, requires that for an arrest to be valid, it must be supported by probable cause. Moreover, Sheriff's Policy 2.51, Arrest, Search and Seizure, forbids employees to *"make any arrest, search or seizure, ... in a manner which they know or ought to know is not in accordance with law and established Department policies and procedures."* The complainant accused his landlord of committing several crimes. During the course of CLERB's investigation, Deputy 2 provided information supportive of the recommended finding. Deputy 2 did not arrest the complainant's landlord, and her actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 allegedly failed to investigate the complainant's reported crimes against a subject.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 did not investigate crimes reported against his landlord. Without supporting evidence, the complainant reported to deputies and to CLERB that his landlord: locked him inside his property; denied him access to his stored property; possessed stolen property from other neighbors, including heavy equipment and several recreational vehicles; possessed stolen guns and had a house full of marijuana. Deputy 2 provided information during the course of CLERB's investigation that conflicted with information reported by the complainant. Absent audio or video recordings of the multiple contacts between the complainant and Deputy 2, or the testimony of an independent witness to these contacts, there was insufficient evidence to either prove or disprove the allegation.

3. False Arrest – Deputy 2 arrested the complainant's girlfriend for accessing their shared storage.

Recommended Finding: Action Justified

Rationale: The complainant reported that Deputy 2 arrested his girlfriend for accessing their shared storage. In her

Arrest Report, Deputy 2 documented that the complainant's girlfriend had been instructed by deputies on three separate occasions, not to enter the storage trailer without law enforcement or the property owner being present. The complainant's girlfriend admitted breaking the trailer window with a hammer on two occasions, entering the trailer and removing property, while acknowledging that she had been directed not to enter the trailer without proper escort. Deputy 2 arrested the complainant's girlfriend for PC§§ 459, Burglary and 594(B) (2) (A) - Vandalism less than \$400 for the commission of these crimes. The evidence showed that the act did occur but was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 2 refused to take a complaint from the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 refused to take a complaint from him against his landlord. Deputy 2 provided information during the course of CLERB's investigation that conflicted with information reported by the complainant. Absent audio or video recordings of the multiple contacts between the complainant and Deputy 2, or the testimony of an independent witness to these contacts, there was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Procedure – Deputy 2 entered the complainant's trailer without a warrant.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 entered his trailer without a warrant. Deputy 2 arrested the complainant's girlfriend who was also his caregiver. The complainant is a paraplegic, and Deputy 2 believed that without the assistance of his caregiver, he would not be able to adequately care for himself. Case Law, 3.10c, Search and Seizure – Premises, permits law enforcement personnel to enter a home without a warrant if they have probable cause to believe (1) that an imminent threat exists to the life or welfare of someone or (2) that a person reliably reported as missing is inside. Under the related "emergency aid doctrine," officers may enter and search a residence without probable cause if they have "a reasonable basis for believing" that an occupant is seriously injured or threatened with serious injury. Deputy 2 documented in her Arrest Report that she detained the complainant for psychiatric evaluation per WI§ 5150, In-custody 72-hour treatment and evaluation for mentally disordered person, after observing the complainant confined to a wheelchair or bed, residing in unhealthy and unsafe living conditions, unable to obtain food or water for himself and with no one to assist him. Deputy 2 entered the complainant's trailer subsequent to his caregiver's arrest, and her actions were lawful, justified and proper.

6. Illegal Search & Seizure – Deputy 2 confiscated property from the complainant's trailer without a warrant.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 confiscated property from his trailer without a warrant. Deputy 2 provided information during the course of CLERB's investigation that conflicted with information reported by the complainant. Absent an audio or video recording of the contact within the complainant's trailer between the complainant and Deputy 2, or the testimony of an independent witness to these contacts, there was insufficient evidence to either prove or disprove the allegation.

7. False Arrest – Deputy 2 arrested the complainant on a 5150 charge.

Recommended Finding: Action Justified

Rationale: The complainant reported that Deputy 2 arrested him on a 5150 hold without cause. Deputy 2 arrested the complainant's caregiver, leaving him without assistance. She documented in a subsequent Arrest Report that she detained the complainant for psychiatric evaluation per WI§ 5150, In-custody 72-hour treatment and evaluation for mentally disordered person, after observing the complainant confined to a wheelchair or bed, residing in unhealthy and unsafe living conditions, unable to obtain food or water for himself and with no one to assist him. Deputy 2 also documented in her application for the complainant's assessment and evaluation for treatment that the complainant was paralyzed, ridden with bed sores, and unable to care for himself. Deputy 2 arrested the complainant on a 5150 hold, and her actions were lawful, justified and proper.

8. Misconduct/Procedure – Deputy 1 refused to take a complaint from the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 refused to take a complaint from him. Deputy 1 provided information during the course of CLERB's investigation that conflicted with information reported by the complainant. Absent audio or video recordings of the contacts between the complainant and Deputy 1, or the testimony of an independent witness to these contacts, there was insufficient evidence to either prove or disprove the allegation.

9. Misconduct/Procedure – Deputy 3 refused to take a complaint from the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 3 refused to take a complaint from him against his landlord. Deputy 3 provided information during the course of CLERB's investigation that conflicted with information reported by the complainant. Absent audio or video recordings of the contacts between the complainant and Deputy 3, or the testimony of an independent witness to these contacts, there was insufficient evidence to either prove or disprove the allegation.

16-092

1. Misconduct/Procedure – Deputies 1 and 2 allegedly “interrogated” the complainant and his wife.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputies 1 and 2 “interrogated” him and his wife when they were contacted. The complainant was parked in his RV in a remote area of the Cleveland National Forest when he was approached by Deputies 1 and 2, who stated to the complainant that they were doing drug interdiction work in the area. Detectives asked the complainant and his wife what they were doing at that location and how long they had been there. Deputy 1 asked if the complainant was on probation and if he had any outstanding warrants. The complainant reported remaining calm during this questioning and only became frustrated when Deputy 1 asked for his identification. Case Law 2.6, Search and Seizure-Persons, permits peace officers to contact members of the public through consensual encounters. A "consensual encounter" is a contact between an officer and an individual that is strictly voluntary. During this type of contact, a “peace officer may approach an individual in a public place, identify himself as a law enforcement officer and, in a non-coercive manner, ask the individual a few questions without reasonable suspicion of criminal activity.” The complainant did not report any information that suggested that he was not free to leave and terminate the conversation at any time. Deputies 1 and 2 provided information during the course of CLERB's investigation supportive of the recommended finding, and their actions were lawful, justified and proper.

2. Illegal Search & Seizure – Deputy 1 obtained the complainant's identification against his will.

Recommended Finding: Action Justified

Rationale: The complainant alleged that he reluctantly provided his identification to Deputy 1 when requested. The complainant reported that he protested providing his identification feeling that Deputy 1 did not need it, as he was doing nothing wrong. He reported relinquishing his identification against his will. Case law 2.6c, Search and Seizure – Persons, permits peace officers to request identification during a consensual encounter. The complainant reported remaining calm during this contact and did not indicate to what extent he communicated his objections to providing his identification to Deputy 1. Deputy 1 provided information during the course of CLERB's investigation that conflicted with information reported by the complainant and was supportive of the recommended finding. Deputy 1 acted within case law provisions when he requested the complainant's identification during a consensual encounter, and his actions were lawful, justified and proper.

3. Misconduct/Intimidation – Deputy 1 allegedly forced the complainant to provide his identification through intimidation.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 “intimidated” him into providing his identification. Deputy 1 provided information during the course of CLERB's investigation that conflicted with information reported by the complainant. Absent a video or audio recording of this contact, or an independent witness to this conversation between the complainant and Deputy 1, there was insufficient evidence to either prove or disprove the allegation.

16-094

1. Illegal Search & Seizure – Deputies 1 and 2 entered and searched the complainant’s apartment without her consent.

Recommended Finding: Action Justified

Rationale: The complainant reported that Deputies 1 and 2, along with members of a Fugitive Task Force “unlawfully entered” and searched her apartment while neither she nor a probationer residing in her home, were present. The probationer had been released on Post Release Community Supervision (PRCS), pursuant to Penal Code Section 3450, Post Release Community Supervision Act of 2011, and was subject to community supervision to be provided by the San Diego County Probation Department. One probationary condition required that the probationer submit his person, vehicle, residence, property, personal effects, computers and recordable media to search at any time, with or without a warrant and with or without reasonable cause, when required by his Probation Officer or law enforcement officers. The complainant’s home had been surveilled over numerous days, and despite the complainant’s assertion to the contrary, the probationer was found to be living in the home of the complainant. Pursuant to 4th waiver provisions, case law allows for the entry and search of a probationer’s home even if no one is present, and where there is a joint tenant or roommate involved, all shared areas of the residence are permitted to be searched; consent is not required. The evidence showed that Deputies 1 and 2 entered the complainant’s home to execute a 4th Waiver Search, and this act was lawful, justified and proper.

2. Misconduct/Procedure – Deputies 1 and 2 damaged some of the complainant’s furniture during the search of her apartment.

Recommended Finding: Unfounded

Rationale: The complainant alleged that her couch, a dresser and two beds were broken when Deputies 1 and 2 and other members of a Fugitive Task Force entered and searched her apartment. An arrest report from this incident documented that no property was damaged during this search; photos of the complainant’s apartment taken the date of the incident confirmed this report. The complainant was to provide photos of the broken furniture, but at the time of this report, had not done so. Absent photographic evidence of this alleged damage, coupled with information provided by Deputies 1 and 2 and other members of the task force; in addition to credibility issues associated with the complainant, the preponderance of evidence – which weighs the balance of probabilities and the likelihood of a statement being true or not true – shows that the alleged act or conduct did not occur.

16-096

1. Illegal Seizure – Deputy 3 detained the complainant.

Recommended Finding: Action Justified

Rationale: The complainant said that when deputies contacted him, Deputy 3 kept asking him questions that he "did not feel like answering." Deputy 3 yelled at him so he requested to speak to a supervisor. Someone then handcuffed him and put him on the ground. He said that his “feelings were deeply hurt” and he was scared. Deputies were dispatched to this call for two men breaking into a residence; one male crashed an RV into a truck and was running around the yard with a chainsaw. Deputies reported that due to the nature of the call, and because it was unknown if there were more subjects in the residence, the complainant was handcuffed for officer safety. While there was no dispute that the complainant was handcuffed, deputies did not specifically recall who handcuffed the complainant. The act of handcuffing the complainant turned this consensual encounter into a detention, which was permissible based upon the nature of the call and the complainant’s unwillingness to cooperate until after deputies determined there were no threats. The evidence showed the alleged act or conduct did occur and was lawful, justified and proper.

2. Illegal Seizure – An unidentified deputy searched the complainant’s person and wallet.

Recommended Finding: Not Sustained

Rationale: The complainant’s written statement was that an unidentified deputy handcuffed him, put him on the ground, and then reached into his pocket and took out his wallet for his ID. An audio recording between the complainant and Deputy 4 described that Deputy 3 asked for ID, which the complainant declined upon prior advice of counsel. Deputy 3 then went into the complainant’s pocket, got his wallet, got the license, then dumped the rest of the

contents on the ground. The complainant did not respond to CLERB's request for clarification of this issue. The law is clear that questions regarding identity and a request for identification are allowed during a consensual contact, and when you have detained a suspect, you are allowed to take whatever investigative actions are reasonable under the circumstances, including questioning a suspect about their identity. However, all of the deputies, including Deputy 3, denied searching the complainant's person and/or wallet and there was insufficient evidence to investigate this allegation further.

3. Misconduct/Procedure – Deputy 3 refused to provide his name and badge number upon request.

Recommended Finding: Not Sustained

Rationale: The complainant stated that Deputy 3 refused to provide his name and badge number upon request. Witness deputies reported that they did not hear or remember this occurring, but one stated that their names are clearly visible on their uniforms. Deputy 3 confirmed that his name was visible, he verbally supplied the requested information, and that he complied with Sheriff's Policy & Procedure, 2.20 Identification. The policy does not require deputies to write down any requested information. There was insufficient evidence to either prove or disprove the allegation.

4. Illegal Search – Unidentified deputies entered, searched, and ransacked the complainant's home without permission.

Recommended Finding: Not Sustained

Rationale: The complainant reported that deputies searched and ransacked his home. According to CAD records, Deputies 1-8 were dispatched for this call. All of the on-scene deputies refuted entering the residence, but reported the house was in complete disarray. Deputy 5 did not respond to the location and Deputy 4 handled a complaint that was generated from the incident. Absent a video recording, there was insufficient evidence to corroborate the complainant's allegation.

16-097

1. Misconduct/Procedures – Jail Staff disregarded the complainant's disability and medical needs.

Recommended Finding: Summary Dismissal

Rationale: The complainant said he informed the jail medical staff of all his medical issues; including that he could not be exposed to unsanitary conditions, and must have clean sanitary water and a certain diet. The complainant said that staff disregarded his disability and his medical needs. General jailhouse conditions are not within CLERB's purview unless directly linked to deputy misconduct. Medical staff are non-sworn personnel over whom CLERB does not have jurisdiction.

2. Misconduct/Discourtesy – Deputy 1 allegedly refused to provide the complainant with water and stated, "I can't go around wasting our good bottled water on something like you," or words to that effect.

Recommended Finding: Not Sustained

Rationale: The complainant stated that Deputy 1 refused to give him water and said, "I can't go around wasting our good bottled water on something like you." The complainant said he repeatedly requested water throughout the deputy's shift, but was refused. Deputy 1 provided information during the course of CLERB's investigation that resulted in the recommended finding. Cells are equipped with a sink to access water, and per policy there are weekly hygiene inspections. Review of surveillance video determined there was debris thrown in the sink, but that it was still in working order and inmates accessed it for water. Maintenance issues are not within CLERB's authority unless directly linked to deputy misconduct. Surveillance video did not capture the complainant's contact with Deputy 1, nor does it contain audio. Attempts to reach potential witnesses were unsuccessful and there was no available evidence to either prove or disprove the allegations as stated.

3. Misconduct/Discourtesy – Deputy 2 allegedly refused to provide the complainant with water and stated, "I have water in my vehicle," and when asked how that helps the complainant, Deputy 2 responded, "It doesn't," or words to that effect.

Recommended Finding: Not Sustained

Rationale: The complainant said he was not given water for 24 hours and that Deputy 2 belittled him. Deputy 2 allegedly said, "I have water in my vehicle." When I asked how does that help me here, he replied, "It doesn't." He laughed and slammed the door shut and continued laughing as he walked down the corridor. Deputy 2 provided information during the course of CLERB's investigation that resulted in the recommended finding. Cells are equipped with a sink to access water, and per policy there are weekly hygiene inspections; maintenance issues are not within CLERB's authority unless directly linked to deputy misconduct. Surveillance video did not capture the complainant's contact with Deputy 2, nor does it contain audio. Attempts to reach potential witnesses were unsuccessful and there was no available evidence to either prove or disprove the allegations as stated.

17-001

1. Illegal Search & Seizure – PO 1 entered and searched the complainant's apartment without her consent.

Recommended Finding: Action Justified

Rationale: The complainant reported that PO 1, along with members of the San Diego County Sheriff's Department "unlawfully entered" and searched her apartment while neither she nor a probationer residing in her home, were present. The probationer had been released on Post Release Community Supervision (PRCS), pursuant to Penal Code Section 3450, Post Release Community Supervision Act of 2011, and was subject to community supervision to be provided by the San Diego County Probation Department. One probationary condition required that the probationer submit his person, vehicle, residence, property, personal effects, computers and recordable media to search at any time, with or without a warrant and with or without reasonable cause, when required by his Probation Officer or law enforcement officers. PO 1 had surveilled the complainant's apartment for numerous days, and despite the complainant's assertion to the contrary, the probationer was found to be living with the complainant. Pursuant to 4th waiver provisions, case law allows for the entry and search of a probationer's home even if no one is present, and where there is a joint tenant or roommate involved, all shared areas of the residence are permitted to be searched; consent is not required. The evidence showed that PO 1 entered the complainant's home to execute a 4th Waiver Search, and this act was lawful, justified and proper.

2. Misconduct/Procedure – PO 1 damaged some of the complainant's furniture during the search of her apartment.

Recommended Finding: Unfounded

Rationale: The complainant alleged that her couch, a dresser and two beds were broken when PO 1 and other members of a Fugitive Task Force entered and searched her apartment. An arrest report from this incident documented that no property was damaged during this search; photos of the complainant's apartment taken the date of the incident confirmed this report. The complainant was to provide photos of the broken furniture, but at the time of this report, had not done so. Absent photographic evidence of this alleged damage, coupled with information provided by PO 1 and other members of the task force; in addition to credibility issues associated with the complainant, the preponderance of evidence – which weighs the balance of probabilities and the likelihood of a statement being true or not true – shows that the alleged act or conduct did not occur.

17-010

1. Misconduct/Discourtesy – Deputy 4 "taunted" the complainant while he was being escorted to medical.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 4 "taunted" him while supervising his escort to medical. The complainant was heard by detentions staff making suicidal and homicidal remarks that required evaluation by medical for possible re-housing in a Safety Cell or Enhanced Observation Housing. While being escorted to medical, deputies corroborated the complainant's account that he kicked over a trash can and began challenging Deputy 4 to a fight. He called Deputy 4 racial names, threatened him stating, "I will fuck you up," and was even heard threatening to kill Deputy 4. Deputy 4 and other deputies present during this contact provided information during the course of CLERB's investigation that conflicted with information reported by the complainant. Absent an audio recording of this contact or an independent witness to this incident, there was insufficient evidence to accurately ascertain the

content and tone of Deputy 4's comments, and therefore insufficient evidence to either prove or disprove the allegation.

2. Excessive Force/Other – Deputies 1, 2 and 3 “Slammed” the complainant to the ground, fracturing his right rib and reinjuring his shoulder.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputies 1, 2 and 3 “Slammed” him to the ground during a force incident. Deputies 1, 2 and 3 documented in their reports that the complainant was being escorted to medical when he suddenly turned and lunged at Deputy 4 in an assaultive manner. Believing that the complainant was attempting to strike Deputy 4, deputies used their body weight and soft hand controls to take the complainant to the ground, where he could be neutralized and more effectively controlled. Detentions Policy I.89, Use of Force, allows detentions deputies to use any physical force necessary and objectively reasonable in the defense of self or others, and to overcome resistance. Deputies 1, 2 and 3 utilized department-approved force to control an assaultive inmate, and their actions were lawful, justified and proper

3. Excessive Force/Other – Deputies 1, 2 or 3 allegedly pulled the complainant's knees to his shoulders.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputies 1, 2 or 3 pulled his knees to his shoulders during a force incident. The involved deputies documented in their written reports that they placed the complainant in a prone position – lying on his stomach - in order to more effectively control his movements. Placement in this position provided deputies a tactical advantage as they were able to control the complainant's legs and movements, preventing him from kicking and getting up from the floor. It is also a position that is directly opposite of the position described by the complainant. Absent a video recording of this force incident, it could not be determined whether or not both positional placements – the one described by the complainant and the one described by deputies – occurred with one position possibly following the other. There is therefore insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 4 instructed medical staff not to transport the complainant to the hospital following a force incident.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that following a force incident, Deputy 4 instructed medical personnel to not transport him to the hospital, where he could receive treatment for his injuries. Deputy 4 and other deputies on scene provided information related to this allegation that conflicted with information reported by the complainant. Medical treatment provided to inmates is a function performed by medical staff. Sworn members of the sheriff's department are not involved in the decisions related to an inmate's medical treatment. Following this force incident, the complainant was seen by medical and treated for his injuries. Despite lacking authority to do so, it cannot be definitively determined whether or not Deputy 4 issued the alleged instructions to medical staff. There is insufficient evidence to either prove or disprove the allegation.

17-109

1. Illegal Search & Seizure – A Chula Vista Police Officer had the complainant's vehicle towed.

Recommended Finding: Summary Dismissal

Rationale: The named officer is not a member of the Sheriff's Department and therefore CLERB has no authority to investigate this matter per CLERB Rule Section 4: Authority, Jurisdiction, Duties And Responsibilities Of Review Board. 4.1 Citizen Complaints: Authority

17-117

1. False Arrest – A Department of Corrections Parole Agent arrested the complainant.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged on behalf of her son, that personnel from the California Department of Corrections and Rehabilitation arrested the aggrieved without cause. She further reported that while incarcerated at San Diego Central Jail, medical staff failed to provide her son necessary medication for his mental health issues. CLERB does not have authority to investigate this complaint based upon the following CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties, and Responsibilities of Review Board, Section 9: Screening of Complaints, and Section 15: Summary Dismissal. CLERB does not have jurisdiction over the subject matter of the Complaint.

2. Misconduct/Medical – Medical staff at San Diego Central Jail failed to provide the aggrieved his medication.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

End of Report