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County of San Diego
CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA
Tuesday, December 8, 2020, 5:30 P.M.
Remote Meeting via BlueJeans Platform

<https://primetime.bluejeans.com/a2m/live-event/pkwwyefc>

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 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. 220, San Diego, CA.

1. ROLL CALL

2. PUBLIC COMMENTS

This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction but not an item on today's open session agenda. Each speaker shall complete and submit an online "[Request to Speak](#)" form. Each speaker will be limited to three minutes. This meeting will be held remotely via the BlueJeans Platform. Click this link <https://primetime.bluejeans.com/a2m/live-event/pkwwyefc> to access the meeting. You will need to download the BlueJeans application prior to participating in the meeting or you may copy and paste the link using the Google Chrome web browser. Please contact CLERB at clerbcomplaints@sdcounty.ca.gov or 619-238-6776 if you have questions.

3. MINUTES APPROVAL (Attachment A)

4. PRESENTATION/TRAINING

a) N/A

5. EXECUTIVE OFFICER'S REPORT

- a) Overview of Activities of CLERB Executive Officer and staff
- b) Workload Report – Open Complaints/Investigations Report (*Attachment B*)
- c) Case Progress and Status Report (*Attachment C*)
- d) Pending Response(s) for Policy Recommendations:
 - * 17-020 / Lindhardt – SDS
 - * 17-150 / Horsey – SDS
 - * 19-018 / Thornton – Probation
 - * 19-021 / Pitoau – SDS
 - * 19-076 / Burgess -SDS
 - * 19-091 / Brooks – SDS

6. BOARD CHAIR'S REPORT

7. NEW BUSINESS

- a) None

8. UNFINISHED BUSINESS

- a) None

9. BOARD MEMBER COMMENTS

10. SHERIFF/PROBATION LIAISON QUERY

11. CLOSED SESSION

- a) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

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).

DEFINITION OF FINDINGS	
Action Justified	The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Sustained	The evidence supports the allegation and the act or conduct was not justified.
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 (6)

19-002

1. Death Investigation/Officer-Involved Shooting (OIS) – Deputies 1-3 shot and killed Adolfo Angel Gonzalez.

Recommended Finding: Action Justified

Rationale: On 01-05-19, Adolfo Angel Gonzalez entered a Del Taco restaurant in Lemon Grove and pointed a handgun at another patron. Gonzalez then ordered food and sat down inside the eatery. Deputies 1-3 were dispatched to the scene following 9-1-1 calls for assistance. After speaking to the victim, deputies formulated a plan to conduct a “high risk” pedestrian stop. Deputy 1 gave Gonzalez commands and said, “You in the hoodie put your hands up. Put your hands up.” Gonzalez reached down, pulled out a handgun, and pointed it in the deputies direction. All three deputies fired their department issued handguns while Gonzalez continued to point his handgun at deputies. Gonzalez was struck multiple times and transported to the hospital where aggressive resuscitation measures failed to revive him; he was pronounced deceased at 9:21pm. Deputies were not injured, and a victim was also uninjured, although struck by fragments to the back of the neck. An autopsy was conducted and documented eight gunshot wounds to Gonzalez’s head, torso, arms and legs; three additional wounds were grazing gunshot wounds. The manner of death was determined to be homicide and the cause of death was gunshot wounds. Toxicological studies indicated a blood-alcohol content of 0.25%. Homicide detectives interviewed Gonzalez’s family members who disclosed that Gonzalez had a severe hearing loss, but was trained to read lips. Gonzalez also suffered from mental illness and on the day of the incident reportedly stated that he was going to shoot officers. Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person whom he has reasonable cause to believe has committed a public offense. In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. Video evidence corroborated deputy, victim, and witness statements. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff’s Department sworn personnel.

19-101

1. Death Investigation/Suicide – Julian Vicente Escalante, also known as Julio Ortiz Lopez, choked while in the custody of the Sheriff’s Department at the Vista Detention Facility (VDF).

Recommended Finding: Action Justified

Rationale: On 08-23-19, Julian Vicente Escalante, booked under the alias of Julio Ortiz Lopez, was arrested by the Escondido Police Department for being under the influence, and unable to care for himself. Escalante had six prior arrests for public intoxication within the year and was a chronic alcoholic. He was medically screened at the Vista Detention Facility and cleared by nursing personnel after being questioned, but denying any type of suicidal ideation. While housed alone beginning at 5:17pm, surveillance video showed intermittent movement where Escalante stood in the doorway, walked around his cell, and at times had a white towel or T-shirt in his hands that he sometimes placed on his neck and later appeared to be twisting it. At approximately 6:48pm, Escalante appeared to be unraveling toilet paper while sitting on a bottom bunk. And at 6:50pm, movement inside the cell appeared to cease. Detentions Policy I.43, Inmate Count Procedures, in place at the time of this incident, mandated a signs of life check between 6:30 and 7:30pm. As explained by the deputy that conducted this check, it meant “during this check they are checking for signs of life, criminal activity, and counting the number of persons. If an inmate is sleeping in their bunk, there is an assessment that the inmate is moving/breathing.” The deputy did not recall any issues with Escalante or his cell at the time of this check. As reported in JIMS (Jail Information Management System) and confirmed on surveillance video, at approximately 7:04pm, the deputy checked on Escalante by looking into his cell. At 7:29pm, all inmates came out of their cells except for Escalante. During another security check at 8:03pm, Escalante’s cell door was opened, but a deputy did not enter for security reasons until approximately 8:05pm, when accompanied by another deputy. Escalante was nonresponsive with a towel twisted and loosely wrapped around his neck with the ends in a position to be pulled to tighten. CPR and emergency protocol procedures

were initiated in compliance with Medical (M.5) and Life Threatening Emergency (M.6) policies. Medical staff removed tissue paper from Escalante's mouth and paramedics also removed some from his throat. Resuscitative efforts continued without success until his death was pronounced at 8:32pm. The evidence supported that Escalante was properly classified. Escalante denied pre-existing medical conditions, mental health issues, consumption of drugs and alcohol, and suicidal or homicidal ideations. Upon being found in his cell, sworn personnel expeditiously responded and immediately initiated life-saving measures. The cause of death was choking and the manner of death was suicide. According to the Medical Examiner who conducted the autopsy, "the role, if any, that the towel around his neck played is unknown." Furthermore, "multiple soft tissue injuries were on the head, torso, and extremities, but were not associated with any lethal or contributory injuries." There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

19-112

1. Discrimination/Racial – Deputies 1, 2 and 3 made "racist/gender hateful" remarks.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "Vista court officers make racist-gender hateful remarks." The complainant did not identify which deputies she was referring to, nor did she specify what they said. During the course of CLERB's investigation, the deputies involved in the alleged incident on 09-18-19 were identified. According to SDSD P&P Section 2.48 titled, Treatment of Persons in Custody, Employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody. Employees shall handle such persons in accordance with law and established Departmental procedures. With no audio of the communication between the complainant and deputies, there was insufficient evidence to either prove or disprove the allegation.

2. Excessive Force – Deputies 1 – 3 restrained the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, "I was mis-restrained and attacked in court 09-18-19." According to SDSD Deputy reports, the complainant argued with the judge and became verbally abusive and aggressive toward her attorney. In his SDSD Crime/Incident Report, Deputy 3 stated, "The complainant made a credible threat to her attorney by stating in open court, 'I'm going to have somebody kill you, and ...her family.' As the complainant's attorney requested the court suspend criminal proceedings, the complainant leapt from her chair in an attempt to assault her attorney. At one point, the complainant attempted to move toward the judge's bench." Additionally, Deputy 2, in his Officer's Report stated, "The complainant began to denigrate and threaten her public defender. As we walked, the complainant struggled in an apparent attempt to remove herself from the grasp of deputies. At one point the complainant, in her struggle, veered towards the opening in the judge's podium, in the direction of the judge." According to PC§ 76 titled, Threatening State Officials or Judges, every person who knowingly and willingly threatens the life of, or threatens serious bodily harm to, any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, or the staff, immediate family, or immediate family of the staff of any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, with the specific intent that the statement is to be taken as a threat, and the apparent ability to carry out that threat by any means, is guilty of a public offense. According to SDSD CSB P&P Section C.1 titled, Duties and Responsibilities, the primary function of the bailiff is to provide security and maintain order in the courtroom, thereby ensuring the protection of the court and facilitation of courtroom procedures. The primary function of the cover deputy is to provide additional security. A secondary function is to provide safe and secure transportation of custodies to and from courtrooms or holding areas. According to SDSD P&P Section 6.48 titled, Physical Force, it shall be the policy of this Department whenever any Deputy Sheriff of this Department, while in the performance of his/her official law enforcement duties, deems it necessary to utilize any degree of physical force shall only be that which the Deputy Sheriff believes necessary and objectively reasonable to effect the arrest, prevent escape or overcome resistance (per 835(a) PC). Deputies shall utilize appropriate control techniques or

tactics which employ maximum effectiveness with minimum force to effectively terminate, or afford the Deputy control of, the confrontation incident. The courtroom surveillance video was reviewed and corroborated the deputies reports. Although there was no audio, the actions of the complainant, observed in the video, showed that she was verbally aggressive toward her attorney, as well as physically aggressive. The evidence showed that the use of force was justified. As a result of the complainant's aggressive and combative behavior and the need for use of force, the complainant as well as one of the deputies sustained minor injuries. The evidence showed that the alleged act did occur and was lawful, justified and proper.

19-113

1. Misconduct/Procedure – Deputy 2 “abused” his authority.

Recommended Finding: Action Justified

Rationale: The complainant stated, “Deputy 2 conducted an illegal investigation and utilized/employed Agency manpower as a personal favor and for personal gain. Deputy 2 coordinated San Diego Sheriff’s Office resources for a 2-3 month old ‘TIP’ and Deputy 2 had no corroborating evidence, no postings, no social media or any articulable suspicion other than a third hand statement, personal request that he used to justify an enforcement action.” SDCSD P&P Section 2.18 titled, Abuse of Position, states in part, employees are prohibited from using their official position, for personal or financial gain, or obtaining privileges not otherwise available to them except in the performance of duty. Deputy 2 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged per the Police Officer Bill of Rights (POBR) and cannot be publicly disclosed. According to California Education Code, EDC§ 32280 titled, Prevention of Campus Crime and Violence, states in part, It is the intent of the Legislature that all California public schools, in kindergarten, and grades 1 to 12, inclusive, operated by school districts, in cooperation with local law enforcement agencies, community leaders, parents, pupils, teachers, administrators, classified employees, and other persons who may be interested in the prevention of campus crime and violence, develop a comprehensive school safety plan that addresses the safety concerns identified through a systematic planning process. Law enforcement agencies include local police departments, county sheriffs’ offices, school district police or security departments, probation departments, and district attorneys’ offices. For purposes of this section, a “safety plan” means a plan to develop strategies aimed at the prevention of, potential incidents involving crime and violence on the school campus. The San Diego County District Attorney’s Office in collaboration with the San Diego County Office of Education, San Diego County Sheriff’s Department, Police Departments and Allied Agencies developed and implemented the San Diego County School Threat Protocol, which states in part, The overriding objective of this countywide protocol is risk reduction and violence prevention to promote the safety of students, parents/guardians, staff, and community members. The law enforcement response to school threats is a matter of concern being faced by agencies across the nation. One of the fundamental challenges to these investigations is that there is no single formula that will adequately cover the myriad of different circumstances that may be encountered. At the same time, an investigation into threats, particularly within the school environment, is something that could involve a number of different officers and detectives from within a variety of units throughout the various police agencies within San Diego County. A threat should be considered credible until we can reasonably articulate reasons why it is not. This determination should come through interviews and evidence collection where we gather specific plausible details that either support an increased concern for threat potential, or a lessening of concern. Additionally, the California Peace Officers Legal Sourcebook (CPOLS) Section 2.28 titled, Search and Seizure Persons, states in part, The facts supporting probable cause are not limited in the same way that evidence, such as hearsay, is limited at a jury trial. The Supreme Court requires the information relied upon to be “reasonably trustworthy” or bear “indicia of reliability.” In addition to your personal knowledge, training, expertise, experience, observations, etc., probable cause can include information conveyed from others (i.e., citizens, other officers, corroborated tipsters, etc.) if it is reasonable to rely on this information under the totality of the circumstances. Probable cause may be based on the “collective knowledge” of all the officers involved and all the inferences that may reasonably be drawn therefrom. “When police officers work together to build “collective knowledge,” the important question is not what each officer knew, but how valid and reasonable the probable cause was that developed in the officers’ collective knowledge.” SDCSD Detectives Procedural Manual Section A.1 titled, Area

Investigator Deputy Sheriff, states in part, Area Investigator Deputy Sheriffs play a critical role in gathering, interpreting, facilitating and acting on crime related information and/or intelligence within their affected jurisdictions. In direct partnership with patrol/court/detentions deputies, crime/intelligence analysts, ancillary support units, and outside agencies, the Area Investigator Deputy Sheriff shall be fully engaged in identifying crime trends, criminal associations, and/or any relevant information leading to a workable solution to targeted criminal activity within the station's/unit's jurisdiction. Deputy 2 is assigned as the Deputy for the school and was acting in accordance with State law, department policy and procedural mandates as directed in the San Diego County School Threat Protocol. The investigation conducted by Deputy 2 was legal, justified and proper.

2. Illegal Search and Seizure – Deputies 1, 3, 4 and 5 “illegally detained” and questioned the complainant.

Recommended Finding: Action Justified

Rationale: The complainant reported that on 08-21-19, four uniformed Sheriff deputies arrived at her place of employment, “illegally detained,” and questioned her about a “tip” they received, “third hand,” that she was carrying a loaded firearm in her purse while at work. The complainant stated, “I was illegally detained based on false information.” PC§ 833.5 titled, Detention for Firearms Offense, states in part, in addition to any other detention permitted by law, if a peace officer has reasonable cause to believe that a person has a firearm or other deadly weapon with him or her in violation of any provision of law relating to firearms or deadly weapons the peace officer may detain that person to determine whether a crime relating to firearms or deadly weapons has been committed. Incident to any detention permitted, a peace officer may conduct a limited search of the person for firearms or weapons if the peace officer reasonably concludes that the person detained may be armed and presently dangerous to the peace officer or others. Additionally, CPOLES Section 2.12 titled, Search and Seizure Persons, states in part, Information From Others: You can properly base a detention on information you receive from an eyewitness, victim, police officer, dispatcher, or if accurate other "official channels" because the law generally considers such persons or sources to be automatically reliable. The "collective knowledge" rule when probable cause for an arrest is based on information from other officers also applies to reasonable suspicion justifying a detention. The Body Worn Camera (BWC) footage was reviewed and revealed that the complainant voluntarily gave consent to have her vehicle searched. Deputy 3 asked the complainant if she could search her bag. The complainant gave her consent for the search without hesitation. According to CPOLES Section 2.48 titled, Search and Seizure Persons, Consent Searches: "Consent" is another valid basis for a warrantless search of a person (or place, vehicle, container, etc.), and you should always try to obtain consent. Police officers act in full accord with the law when they ask citizens for consent. Additionally, SDSO P&P Section 2.51 titled, Arrest, Search and Seizure, states, employees shall not make any arrest, search or seizure, nor conduct any investigation or official Department business, in a manner which they know or ought to know is not in accordance with law and established Department policies and procedures. Information obtained from a Department Information Source, during the course of CLERB's investigation, provided that it would not be unusual for four uniformed officers to be present when questioning a potential suspect, especially when it involved the safety of students in a school setting. The evidence showed there was no violation of policy, and the actions that occurred were lawful, justified and proper.

3. Misconduct/Procedure – Deputy 2 received a “tip” from a (law enforcement) friend.

Recommended Finding: Not Sustained

Rationale: The complainant stated, “Deputy 2 informed me that the San Diego Police officer was his friend, and was not acting in his official capacity as a police officer and that the SDPD officer asked for a personal favor to investigate the tip/report of me carrying a gun.” According to his Crime/Incident Report, Deputy 2 noted that a SDPD officer reached out to him because he knew he worked juvenile issues, the school was a SDSO managed school and the incident appeared to have occurred in his area. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged per the Police Officer Bill of Rights (POBR) and cannot be publicly disclosed. Absent audio of the conversation between Deputy 2 and the complainant, there was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 2 told the complainant a tip was “unfounded.”

Recommended Finding: Not Sustained

Rationale: The complainant stated, "Deputy 2 quickly mentioned that the tip/report was unfounded and not worry and that nothing further would come out of it." According to Deputy 2's Crime/Incident Report, he concluded and stated, "Since the subject did not possess a weapon and there was no additional information I will close this case as Department Closure." Absent audio of the conversation between Deputy 2 and the complainant, there was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Procedure – Deputy 2 did not disclose the source of his information to the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, "I asked for the name of the SDPD officer who gave him the stale third hand tip and again he would not provide it." According to SDSD P&P Section 6.62 titled, Informant Guidelines, the title "Informant," as well as the informant requirements, does not apply to "sources of information." A source of information is a person or organization, not under the direction of a specific deputy who provides information without becoming a party to the investigation itself (e.g., a business firm furnishing information from its records; an employee of an organization who, through the routine course of his/her activities, obtains information of value; a concerned citizen who witnesses an event of interest). Generally, a person or organization fitting within this definition can be identified by name in investigative reports. However, if there is cause to preserve anonymity, yet the circumstances do not warrant establishing the source as an informant, the term "source of information" may be used. Additionally, California Evidence Code, EVID§ 1040 titled, Privilege to Refuse to Disclose Official Information, states in part, a public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged per the POBR and cannot be publicly disclosed. Deputy 2 followed policy and his actions were lawful, justified and proper.

6. Misconduct/Discourtesy – Deputy 2 was "bothered" by the complainant's inquiry/questions.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "Deputy 2 seemed bothered that I was even talking to him and trying to gather information to understand why this event even happened." SDSD P&P Section 2.22 titled, Courtesy, states in part, employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged per the POBR and cannot be publicly disclosed. Absent audio of the conversation between Deputy 2 and the complainant, there was insufficient evidence to either prove or disprove the allegation.

7. Misconduct/Truthfulness – Deputy 2 was untruthful with the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "I could tell he was not being truthful and was hiding information regarding the origins of the whole event." SDSD P&P Section 2.46 titled, Truthfulness, states in part, all written and verbal reports shall be truthful and complete. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged per the POBR and cannot be publicly disclosed. Absent audio of the conversation between Deputy 2 and the complainant, there was insufficient evidence to either prove or disprove the allegation.

19-117

1. Misconduct/Discourtesy – Deputies 2, 3 and 4 "tossed" food through the complainant's tray slot.

Recommended Finding: Unfounded

Rationale: The complainant stated, "On 09-29-19, at breakfast, [Deputy 4] tossed food through my tray slot onto cell floor." SDSD P&P Section 2.48 titled, Treatment of Persons in Custody, mandates that deputies handle persons in accordance with the law and not mistreat anyone in their custody. The jail surveillance video was reviewed and showed Deputy 4 opened the tray slot and placed the food, not "tossed" the food, onto the tray. Deputy 4 closed the slot door and proceeded to distribute food to other inmates in the same manner. The video surveillance evidence refuted the complainant's allegation. Additionally, the complainant alleged that Deputies 2 and 3 also tossed her food through the tray slot onto the floor, however, there was no evidence discovered to corroborate the allegation. The evidence showed that the alleged act or misconduct did not occur.

2. Misconduct/Procedure – Deputy 4 filed a "criminal report" against the complainant.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 4 filed a criminal report against her and stated, "I should not be approached nor stalked by the 'false victim' / officer." A SDSD Crime/Incident Report was filed and Deputy 4 was the identified victim. The report indicated that the complainant purposely threw an unknown substance at Deputy 4 as she passed by the complainant's cell when another deputy opened the complainant's food port to give the complainant a lunch meal. The Crime/Incident Report indicated that the incident was the fifth, in which the complainant threw food or trash at deputies. Additionally, days prior to this incident, the complainant threw trash at Deputy 4 and threatened to kill her. The complainant's documented history while incarcerated showed a blatant disregard for staff and authority in general. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

3. Misconduct/Discourtesy – Deputy 2 "verbally assaulted" the complainant.

Recommended Finding: Unfounded

Rationale: The complainant stated, "Deputy 2 verbally assaulted me." The complainant failed to produce evidence to corroborate the alleged verbal assault and also failed to provide specific details as to date, time and place associated with this allegation. According to SDSD P&P Section 2.22 titled, Courtesy, employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Except when necessary to establish control during a violent or dangerous situation, no member shall use coarse, profane or violent language. Employees shall not use insolent language or gestures in the performance of his or her duties. There was no documentation discovered during CLERB's investigation pertaining to this allegation. Given the complainant's documented history and based upon being found to not be credible, there was no evidence that showed the alleged act of conduct occurred.

4. Criminal Conduct – Deputies 1, 5 and 6 "conspired" with local law enforcement.

Recommended Finding: Unfounded

Rationale: The complainant stated, "Deputies 1, 5 and 6 conspired with local law enforcement. My property was destroyed and stolen by the Police." The complainant failed to produce evidence to corroborate the alleged "conspiracy" and also failed to provide specific details as to date, time and place associated with this allegation. According to SDSD P&P Section 2.1 titled, Rules of Conduct for Members of the San Diego County Sheriff's Department, All employees shall conform to Federal, State, and Local laws, as well as to the policies of this Department. It shall be the responsibility of all employees to familiarize themselves and comply with all such policies, orders, directives, rules and regulations of this Department. There was no documentation discovered during CLERB's investigation to corroborate this allegation. Given the complainant's documented history and based upon being found to not be credible, there was no evidence that showed the alleged act of conduct occurred.

5. Misconduct/Intimidation – Deputies 1 and 4 "stalked, entrapped and profiled" the complainant.

Recommended Finding: Unfounded

Rationale: The complainant stated, "Deputies 1 and 4 are obviously stalking and entrapping as well as profiling. I want restraining orders against them ASAP!" The complainant failed to produce evidence to corroborate the alleged misconduct and also failed to provide specific details as to date, time and place associated with this allegation. Jail records included two specific incident reports indicating that the complainant targeted Deputies 1 and 4 as she threw trash and food at them, yelled racial slurs at them, and threatened to kill them. There was no evidence discovered in review of the jail records that indicated the complainant filed any grievances or alerted supervisors that she was being stalked, entrapped and profiled by the deputies. Given the complainant's documented history and based upon being found to not be credible, there was no evidence that showed the alleged act of conduct occurred.

19-142

1. False Arrest - Deputies 1 and 2 handcuffed the aggrieved.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, she reported that during their interaction with Deputies 1 and 2, the aggrieved, who had a fourth waiver, was searched by deputies. In review of Deputies 1's and 2's Body Worn Camera (BWC) recordings, when deputies approached the aggrieved, the aggrieved informed them that he had a fourth waiver. Upon learning this, Deputy 1 asked the aggrieved to step out of the vehicle and to place his hands behind his back so that he could place handcuffs on him and conduct a search. The aggrieved complied, and a pat down search was performed on the aggrieved. No weapons or contraband were found on the aggrieved and he was instructed to sit on the curb. According to the San Diego District Attorney's manual, when someone has a condition of a release on bail, he or she may be subject to a "Fourth Waiver." As such, the Fourth Amendment of the United States Constitution does not apply to them under certain circumstances. Essentially, the person has given prior consent to law enforcement to allow his or her person, home, vehicle, and other possessions to be subject to a search or seizure, at any time, without requiring law enforcement to obtain a warrant or substantiate the search with probable cause. Being in possession of a "Fourth Waiver" means the probationer/parolee is waiving their 4th Amendment right against unreasonable searches and/or seizures conducted by the government. In other words, law enforcement is allowed to search the subject, their auto, and/or their home without justification. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Illegal Search & Seizure – Deputy 1 searched the complainant.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, she reported, "[Deputy] 2 asked both of us to step out of the vehicle, and put my hands behind my back so she could pat me down and search for weapons. I stated that my fourth amendment right protecting me from illegal searches. She patted me down anyway." In review of Deputies 1's and 2's Body Worn Camera (BWC) recordings, it was learned that Deputy 1, not Deputy 2, instructed both the complainant and the aggrieved to step out of the vehicle. Deputy 1 ordered the complainant to place her hands behind her back so he could pat her down and search for weapons. In the BWC recording, the complainant was heard objecting to a search of her person and her vehicle, citing her fourth amendment right protecting her from illegal searches. Both Deputies 1 and 2 informed the complainant that the pat down search was to ensure that she did not have any weapons on her for their safety. The complainant complied and placed her hands behind her back while Deputy 1 performed a cursory pat down search. The complainant was not arrested; however, she was detained by the deputies while they investigated a report of a suspicious vehicle. According to the SDCS Communication Center documents, a passerby had reported the complainant's vehicle as suspicious, and deputies were dispatched to the location to investigate. The complainant's vehicle fit the description of the suspicious vehicle and the conditions of the call. As such, Deputies 1 and 2 contacted the complainant and the aggrieved to determine their possible involvement regarding the call of service. When it was learned that the aggrieved was a fourth waiver, Deputy 1 developed justification to detain the aggrieved and complainant pending his investigation. Deputy 1 had reasonable suspicion that: (1) criminal activity may be afoot and (2) the persons he had detained may have been connected with possible criminal activity. When Deputy 1 instructed the complainant and the aggrieved

to exit their vehicle and to have a seat on the curb, the contact became a detention, which was permissible based upon the nature of the call and the aggrieved being a fourth waiver. Deputies 1's and 2's stop, detention, and questioning the complainant and the aggrieved was lawful. The complainant and the aggrieved were not unlawfully detained, searched, nor were they questioned without reason. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

3. Illegal Search & Seizure – Deputy 1 searched the complainant's vehicle.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, she advised that Deputies 1 and 2 searched her vehicle. The complainant reported, "Then, the deputy said they had to search for weapons in the car. They argued because [the aggrieved] was a fourth waiver, they have the right to search me and the proximity of where he was. I said the van was in my name, and once again that my fourth waiver protected me from her searching the van. She [Deputy 2] said, "it's legal, you can look it up." Deputy 1 proceeded to search the entire vehicle..." In review of Deputies 1's and 2's BWC recordings, Deputy 2 was observed to inform the complainant that they were authorized to search the immediate area of where the aggrieved was. When someone has a fourth waiver, the protections included in the Fourth Amendment's prohibition against unreasonable searches and seizures are not applicable. This means, he or she cannot claim a violation under the Fourth Amendment if a search or seizure is conducted without a warrant or without probable cause. This search may include their person, their vehicle, and their home. This permission may impact not only the subject's privacy and possessory interest, but as well as other family members, friends, and colleagues' privacy and possessory interest that share a common space or area with the party who is a Fourth Waiver. The aggrieved not only occupied the complainant's vehicle, but he lived in her vehicle. As such, the complainant's vehicle, and the possessions within it, were subject to search. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

4. Illegal Search & Seizure - Deputy 1 searched the complainant's purse.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, she reported that Deputy 2 [Deputy 1] searched her purse. The complainant stated, "Then, the deputy said they had to search for weapons in the car. They argued because [the aggrieved] was a fourth waiver, they have the right to search me and the proximity of where he was. I said the van was in my name, and once again that my fourth waiver protected me from her searching the van. She said, "it's legal, you can look it up." Deputy 1 proceeded to search the entire vehicle, even my purse, which was in the car." In review of Deputy 1's BWC recordings, Deputy 1 searched the cargo area of the complainant's cargo van, which was where the aggrieved was seated when deputies arrived on scene. During his search, Deputy 1 was observed to search a backpack and wallet/clutch which were in the rear of the van. According to the San Diego District Attorney's manual, when someone is a Fourth Waiver, the protections included in the Fourth Amendment's prohibition against unreasonable searches and seizures are not applicable. This means, he or she cannot claim a violation under the Fourth Amendment if a search or seizure is conducted without a warrant or without probable cause. Being in possession of a "Fourth Waiver" means the probationer/parolee is waiving their 4th Amendment right against unreasonable searches and/or seizures conducted by the government. In other words, law enforcement is allowed to search the subject, their auto, and/or their home without justification. This search may include their person, their vehicle, and their home. This permission may impact not only the subject's privacy and possessory interest, but as well as other family members, friends, and colleagues' privacy and possessory interest that share a common space or area with the party who is a Fourth Waiver. The aggrieved not only occupied the complainant's vehicle, but he lived out of her vehicle and may have been in possession of all items housed in the rear of the cargo van. As such, the complainant's vehicle, and the possessions within it, were subject to search. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

5. Misconduct/Harassment - Deputies 1 and 2 stated the complainant's vehicle had expired registration tags.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, she claimed that Deputies 1 and 2 verbally reported that her vehicle had expired registration tags. The complainant reported, "After the vehicle was searched, one of

the deputies advised her that the vehicle had expired registration tags. The complainant provided the deputy documentation proving otherwise.” According to the Sheriff’s Communication Center documents, as well as the audio recordings of the passerby who called to report the vehicle, the reporting party advised that the vehicle was suspicious and had expired registration tags. In review of Deputy 2’s BWC recordings, on 12-12-19, upon arriving to the scene, she contacted the Sheriff’s Communication Center dispatch and requested they run the complainant’s vehicle license plate. Additionally, Deputy 2 photographed the vehicle’s temporary paper license. It was noted that the temporary license plate expired on 12-10-19, two days prior. During their contact, Deputy 2 informed the complainant and the aggrieved that they were unable to find a record for the vehicle’s license plate and asked the two for the vehicle’s registration documents. Both the complainant and the aggrieved advised that they did possess the vehicle’s registration document, which was placed within the vehicle. Deputy 2 asked a third deputy to locate the vehicle’s registration document within the vehicle. The documents were located, and Deputy 2 asked the third deputy to verify the documents through dispatch. The third deputy advised that he had previously run the vehicle on a prior contact with the complainant and the aggrieved and that the vehicle’s documents were unremarkable. Neither Deputies 1 or 2, nor the third deputy on scene, accused the complainant of having expired registration tags. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

6. Misconduct/Procedure - Deputies 1 and 2 made the complainant and the aggrieved sit on the curb.

Recommended Finding: Action Justified

Rationale: In the complainant’s written statement, she stated Deputies 1 and 2 made she and the aggrieved sit on the curb. In review of Deputies 1’s and 2’s BWC recordings, in the process of being detained, Deputy 1 instructed both the complainant and the aggrieved to sit on the curb while he searched the complainant’s van. The complainant and the aggrieved complied, and Deputy 2 stood by with them for officer safety, while Deputy 1 conducted a search of their vehicle. Neither the complainant nor the aggrieved were arrested; however, they were detained by the deputies while they investigated a report of a suspicious vehicle. The complainant’s vehicle fit the description of the suspicious vehicle and the conditions of the call. As such, Deputies 1 and 2 contacted the complainant and the aggrieved to determine their possible involvement regarding the call of service. When it was learned that the aggrieved had a fourth waiver, Deputy 1 developed justification to detain the couple pending his investigation. Deputy 1 had reasonable suspicion that: (1) criminal activity may be afoot and (2) the persons he had detained may have been connected with possible criminal activity. When Deputy 1 instructed the complainant and the aggrieved to exit their vehicle and to have a seat on the curb, the contact became a detention, which was permissible based upon the nature of the call and the aggrieved being a fourth waiver. Deputies 1’s and 2’s stopping and detention of the couple was lawful, justified, and proper. The complainant and the aggrieved were not unlawfully detained. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

7. Misconduct/Procedure - Deputy 1 photographed the complainant and the aggrieved.

Recommended Finding: Action Justified

Rationale: In the complainant’s written statement, she stated Deputy 1 photographed she and the aggrieved. In review of Deputies 1’s and 2’s BWC recordings, Deputy 1 was viewed interviewing and photographing both the complainant, the aggrieved, the complainant’s vehicle, as he gathered information and evidence to complete a Field Interview Report. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

End of Report