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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its February 12, 2019, meeting held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at [www.sdcounty.ca.gov/clerb](http://www.sdcounty.ca.gov/clerb).

**CLOSED SESSION**

## a) 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	
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 (13)****ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE****17-035**

1. Death Investigation/Officer-Involved Shooting (OIS) - On 05-15-17, Emmanuel Omar Ibarra was a suspect in an assault with a deadly weapon incident that occurred at a fast food restaurant in Solana Beach. He fled the scene and was later found by deputies holding a knife in his hand. Ibarra was given commands to relinquish the weapon but refused to comply. He failed to follow deputies' commands and advanced toward deputies with the knife. Deputy 1 fired five rounds from his service weapon and struck Ibarra who then fell to the ground. Paramedics arrived and rendered aid to Ibarra, who was transported by ambulance to the hospital where he died from his injuries. The cause of death was multiple gunshot wounds and the manner of death was homicide.

**Board Finding:** Action Justified

**Rationale:** Emmanuel Omar Ibarra, who had a history of mental illness and violent behavior, often frequented a fast food restaurant in Solana Beach. He regularly asked for food which was provided on multiple occasions by staff members. On one occasion, Ibarra pulled out a knife and displayed it to an employee. On the day of the incident, Ibarra returned to the restaurant and when asked to leave he became violent and stabbed an employee in the head with a knife. He fled the scene and subsequently was pursued by Deputies 1 and a second deputy. The deputies found Ibarra next to a cement pillar, adjacent to train tracks, located across the highway from the fast food restaurant. Ibarra surprised deputies and charged at the second deputy who lost his footing and fell. Deputy 1 drew Ibarra's attention away from his partner, and Ibarra charged at Deputy 1 with a "possessed" look in his face. Deputy 1 saw

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Ibarra holding a knife and fired his duty weapon five times at the suspect. The second deputy could not confirm in his report that he saw a weapon, but he did see Ibarra “charge” at Deputy 1. After the suspect was shot, deputies handcuffed Ibarra and provided medical aid until paramedics arrived. A knife was later found where Ibarra had been shot and that fit the description of what Deputy 1 stated he saw prior to the shooting. According to PC835a, deputies had the right to use reasonable force to effect the arrest, prevent escape and overcome resistance. They also are not required to retreat or desist from their efforts due to the actions of the suspect. The deputies also had their right to self-defense and cannot be deemed an aggressor. They had every right to pursue Ibarra and attempt to arrest him. Once Ibarra pulled a knife and charged at deputies, the reasonable use of force escalated to that of deadly force to stop the threat. Deputy 1 was justified in his actions, per PC196, which stated that homicide is justifiable when committed by public officers in arresting persons charged with felony and who are fleeing from justice or resisting such arrest. In this case, Ibarra was suspected of committing a felony; he stabbed a fast food restaurant employee in the head with a knife and fled. Deputies pursued him and he then failed to follow commands, resisted arrest, and charged at deputies with a weapon. SDSA P&P Addendum F entitled, “Use of Firearms Force” states that deputies shall use deadly force only after a deputy reasonably believes that the force is necessary in defense of human life, including the deputy’s own. Also, it can be used in defense of any person in immediate danger of death or the threat of serious physical injury. In this matter, Deputy 1 and a second deputy pursued a fleeing suspect who was in possession of a knife. The suspect refused to follow commands. Deputy 1 stated he was in fear for his life when the suspect charged at him with a knife and he fired his weapon at the suspect to protect himself and the second deputy. The use of lethal force utilized by Deputy 1 was in compliance with policy and case law. The evidence showed the use of deadly force by Deputy 1 was justified and there was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff’s Department sworn personnel.

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## **17-043**

1. Death Investigation/Officer Involved Shooting – On 06-04-17, Bruce Wayne Dawley called Sheriff’s Communication Center and advised the dispatcher of his intent to commit suicide. Sheriff deputies were dispatched to Mr. Dawley’s residence and, upon their arrival, they attempted to communicate with him. During their interaction, Mr. Dawley produced a gun. He aimed the gun at both Deputy 1 and another deputy. Additionally, he shot at Deputy 1. Deputy 1 responded by discharging his department issued shotgun at Mr. Dawley who retreated back into his residence. Mr. Dawley was subsequently found unresponsive in his residence and was pronounced dead at the scene.

### Board Finding: Action Justified

Rationale: San Diego Sheriff’s Department (SDSD) Communication Center received a call from Mr. Dawley. During the telephonic conversation, Mr. Dawley advised of his intent to commit suicide. Deputy 1 and two other deputies were dispatched to the residence. Upon their arrival, they surrounded the residence and attempted to communicate with Mr. Dawley. Sheriff deputies attempted to communicate with Mr. Dawley in an attempt to resolve the situation without incident. Mr. Dawley acknowledged the deputies, but yelled obscenities at them and refused to comply with their verbal commands to exit the home. Mr. Dawley instructed deputies to leave his residence, advised that he had a gun, and made suicidal statements. During a verbal confrontation with deputies, Mr. Dawley presented a gun and pointed it at one of the deputies who ducked under cover. Mr. Dawley then turned the gun towards Deputy 1 and fired two rounds toward Deputy 1. Deputy 1 discharged his firearm at Mr. Dawley immediately after Mr. Dawley shot at him. Deputy 1 returned fire with his department issued shotgun. According to Deputy 1’s documented statement, Deputy 1 returned fire for his safety and the safety of his fellow deputies; Deputy 1 said he had to fire his shotgun to stop the threat as he or his partners might have been shot. After Deputy 1 fired his shotgun, a second deputy stood up to re-acquire the target with his handgun; however, Mr. Dawley had fallen out of view of both deputies. Special Enforcement Detail (SED) deputies were subsequently requested and responded to the residence. SED deputies made entry into Mr. Dawley’s residence and found Mr. Dawley down and unresponsive with a gunshot wound. Paramedics were summoned to the residence and confirmed Mr. Dawley’s death without medical intervention. A pathologist from the Medical Examiner’s Office performed an examination. The cause of death was listed as “Shotgun Wound of the Abdomen” and the manner of death was Homicide. For death certification purposes, a “homicide” manner is not synonymous with murder or manslaughter and implies no criminal culpability.

In this case, deputies were called to the scene by an individual who threatened to shoot himself while intoxicated and under the influence of marijuana. Mr. Dawley’s actions on the day of the incident indicated he had intent on shooting any deputy that responded to his residence and or having deputies kill him. His pointing and firing his pistol at deputies caused deputies to realize they were in danger of being killed or seriously injured. Deputy 1’s use of deadly force in this instance was reasonable and he bore no criminal liability for his actions. The evidence confirmed that Mr. Dawley did fire his weapon during the incident. Mr. Dawley’s actions posed a clear threat to on-scene deputies and nearby residents, thus resulting in the deputies’ use of lethal force against Mr. Dawley. The facts, evidence, and perceptions of Deputy 1 justified the use of deadly force against Mr. Dawley. Deputies expeditiously responded to this incident

and despite their timely, lawful and proper actions, Dawley was shot and killed. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

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## **17-102**

1. Death Investigation/Overdose – While an inmate at the Vista Detention Facility (VDF), Michael Macabinlar was found dead inside of his cell.

Board Finding: Not Sustained

Rationale: On 09-19-17, 34-year-old Michael Macabinlar, was arrested and booked into VDF, at 9:09pm. At that time, he denied drug usage and reported he was noncompliant with Diabetes protocol. Medical staff ordered five different medications, as well as a diabetic and cardiac diet. Medical records confirmed Macabinlar refused sick call on 09-20-18. On 09-25-17, at about 9:00am, Macabinlar did not respond to medication distribution and an inmate found him lying unresponsive in his bunk. Help was summoned and nursing staff found Macabinlar not breathing with rigor mortis. Per protocol, staff transferred him to the floor and began life-saving measures. Paramedics responded to the scene and confirmed death without further medical intervention at 9:26am. The evidence indicated that the inmate was properly classified upon his entry into jail. Per video surveillance, Macabinlar was last seen alive in his cell on 09-24-17 at 1:00pm; 20 hours later his body was discovered. Based on the autopsy findings, the cause of death was acute methamphetamine intoxication with dilated cardiomyopathy and hypertensive and atherosclerotic cardiovascular disease listed as contributing, and the manner of death was accidental. Toxicological testing detected methamphetamine and amphetamine in the peripheral blood, but it was undetermined how Macabinlar attained the illicit drugs while in custody. During the review of this death investigation, policy violations were discovered and are addressed below. There was inadequate evidence to prove that the failure to conduct proper Hard and Soft Counts would have led to a sooner initiation of CPR or would have prevented this death, and therefore, there was insufficient evidence to either prove or disprove this allegation.

2. Misconduct/Procedure – Deputy 3 failed to conduct a proper Soft Count.

Board Finding: Sustained

Rationale: When conducting Soft Counts, on the date of this incident, deputies were required to verify Macabinlar's well-being through "verbal or physical acknowledgement" from Macabinlar. During Soft Counts, one deputy conducts the Soft Count of the cells on the top tier and one deputy simultaneously conducts the Soft Count of the cells on the bottom tier. Video surveillance showed Deputy 3 appeared to look in Macabinlar's cell and checked the handle on the door. He did not stop at the door. He continued walking, after checking the door, towards the next cell and did not return to Macabinlar's cell. Deputy 3 admitted in an investigative report that he was "looking for obvious signs from the inmates including checking to make sure everyone's alive, not hanging, bleeding or in medical distress." Based on surveillance video, a follow-up investigative report and information provided by Deputy 3 during the course of CLERB's investigation, there was a violation of DSB P&P I.43 with regard to conducting a Soft Count of Macabinlar's cell on 09-25-17 at around 5:03pm. There was no evidence that showed Deputy 3 obtained a physical or verbal acknowledgement from Macabinlar during the Soft Count in violation of the Sheriff's Department Policies and Procedures.

3. Misconduct/Procedure – Deputy 2 failed to conduct a proper Soft Count.

Board Finding: Sustained

Rationale: When conducting Soft Counts, on the date of this incident, deputies were required to verify Macabinlar's well-being through "verbal or physical acknowledgement" from Macabinlar. During Soft Counts, one deputy conducts the Soft Count of the cells on the top tier and one deputy simultaneously conducts the Soft Count of the cells on the bottom tier. Video surveillance and reports provided by the SDSD showed that at approximately 6:58pm, on 09-24-17, a Soft Count was conducted by Deputy 2 at Macabinlar's cell which was on the top tier. Based on the surveillance video, and information provided by Deputy 2 during the course of CLERB's investigation, evidence showed there was a violation of DSB P&P I.43 "Inmate Count Procedures" with regards to conducting a Soft Count. Deputy 2 failed to obtain a physical or verbal acknowledgement of Macabinlar during the Soft Count and the conduct was not justified.

4. Misconduct/Procedure – An unidentified deputy failed to conduct a proper Soft Count.

Board Finding: Sustained

Rationale: On the date of this incident, when conducting a Soft Count, deputies were required to verify Macabinlar's well-being through "verbal or physical acknowledgement" from the inmate. During this process, one deputy conducts a Soft Count of the cells on the top tier, and one deputy simultaneously conducts a Soft Count of the cells on the

bottom tier. Video surveillance showed that at 4:23am, on 09-25-17, a deputy opened Macabinlar's cell and brought breakfast inside. According to a follow-up investigative report, a cellmate stated the deputy delivered breakfast in the cell. He entered and said "breakfast, breakfast," but Macabinlar did not move. Based on surveillance video that could not conclusively identify the responsible deputy, audio recordings of interviews with deputies, follow-up investigative reports, and information provided by Deputies 1 and 2 during the course of CLERB's investigation, there was a violation of DSB P&P I.43 with regard to conducting the Soft Count. However, there was conflicting information with regard to which deputy failed to perform this action, either Deputy 1 or Deputy 2. The evidence showed that a deputy left Macabinlar's cell without obtaining a physical or verbal acknowledgement from the inmate during the Soft Count, and the action was not justified.

5. Misconduct/Procedure – Deputy 2 failed to conduct a proper Hard Count.

Board Finding: Not Sustained

Rationale: When conducting Hard Counts on the date of this incident, deputies were required to verify Macabinlar's well-being through "verbal or physical acknowledgement" and use a Bar Code Reader, an Emergency Evacuation List, Face Cards or Floor Sheets to confirm the identity of Macabinlar. During Hard Counts, one deputy conducts the Hard Count of the cells on the top tier and one deputy simultaneously conducts the Hard Count of the cells on the bottom tier. Video surveillance and reports provided by the SDSA revealed that at 9:42pm, on 9-24-17, a Hard Count was conducted by Deputy 2 on the top tier. He stopped at Macabinlar's cell for about eight seconds. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Based on Deputy 2's responses and video surveillance, it was unclear whether he obtained a physical or verbal acknowledgment from Macabinlar. Therefore, without further evidence it was not possible to determine whether there was a violation of DSB P&P I.43 with regards to conducting a proper Hard Count.

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**18-026**

1. False Reporting - Deputy 6 lied in his written report.

Board Finding: Unfounded

Rationale: According to the complainant, Deputy 6 lied in his written report when he wrote, "Deputy 4 arrived on scene and attempted to detain [the complainant]." The complainant alleged that that was incorrect and stated, in third person, "Deputy 4 attempted to deprive [the complainant] from exercising his first amendment and attempted detainment to stop [the complainant] from recording with his phone." According to the complainant, Deputy 6 covered up and systematically concealed the truth in his written report in an attempt to support other deputies' false allegations and reporting. More in depth, the complainant advised that Deputy 6 "covered up the facts" by reporting "false allegations and wrote a bias report backing up his brothers in blue." The complainant went on to state that Deputy 6's report was "a conspirator cover up of the facts of the case." According to Deputy 4's written report, he articulated his reasonings for initially detaining the complainant; he was the suspect of an assault case. While interviewing a witness, Deputy 4 noticed that the complainant was recording the witness. The witness was reluctant to speak with Deputy 4 and advised that he felt intimidated by the complainant recording him. For those reasons, Deputy 4 detained the complainant and advised that he would be impounding the complainant's cell phone as evidence. Neither in his written report, nor viewed in his Body Worn Camera (BWC), did Deputy 4 attempt to stop the complainant from recording with his phone. In reading Deputy 6's report, and in comparison to the other deputies report, coupled with the BWC recordings, Deputy 6's report was found to be truthful, comprehensive, and factual. The allegation that Deputy 6 covered up and systematically concealed the truth in his written report in an attempt to support other deputies' false allegations and reporting" was found to be untrue. The evidence showed that the alleged act or conduct did not occur.

2. False Reporting - Deputy 6 accused the complainant of crimes he did not commit.

Board Finding: Unfounded

Rationale: The complainant alleged that in Deputy 6's written report, Deputy 6 stated that the complainant "assaulted several deputies" when he was taken into custody. In his written statement, the complainant wrote in third person, "[The complainant] did not combat with Sheriffs. [The complainant] did not resist Sheriff's. [The complainant] did not even attempt to have altercations with Sheriff's." In his written report, Deputy 6 stated that the complainant "physically resisted deputies" when they escorted him down the hillside. In the BWC of numerous deputies on scene, the complainant was observed to assault the deputies when he fought when they attempted to detain him. The complainant was observed to attempt to pry off the deputies grasp by pulling their fingers, hands, and wrist, from off him. Additionally, the complainant was observed to physically resist deputies when they escorted him down the hillside. Moreover, in the deputies' BWC the complainant was heard explaining his reasons for him pushing deputies. Lastly, in the deputies' BWC, the complainant was observed to forcefully and aggressively pull away from Deputy 4

when Deputy 4 initially attempted to detain him. When the complainant forcefully pulled away from Deputy 4, he swung his elbow back toward Deputy 4, nearly missing Deputy 4's head. Numerous BWC recordings were viewed and the complainant's actions, as well as the deputies' actions, corroborated with what was reported by the deputies and by Deputy 6. The evidence showed that the allegation that Deputy 6 accused the complainant of crimes he did not commit did not occur.

3. Misconduct/Procedure - Deputy 6 attempted to conceal the injuries to the complainant's face and body.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 6 attempted to conceal the injuries to his face by cleaning his face prior to being interviewed. In his written statement, the complainant wrote, "Deputy 6 shut off his BWC upon his arrival so that he could first clean me up for his bias interview. Deputy 6 cleaned me up to hide the taser prong mark in my face and all the other seemingly endless bruises, lesions, injuries covering my face and torso. Deputy 6 did this for only one purpose and that purpose was to hide the fact of cop brutality." Deputy 6 responded to a Sheriff's Employee Response Form (SERF) and provided information that was used in determining the recommended finding. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure - Deputy 4 detained the complainant in an attempt to stop him from recording the incident.

Board Finding: Action Justified

Rationale: The complainant detailed that on 11-23-17, he arrived at the property he owned and managed to ensure it was being maintained. While he was there, he engaged in an altercation with one of his tenants and Sheriff's deputies were summoned to the scene. During his interaction with Deputy 4, he videotaped the deputy in the performance of his duties. Once Deputy 4 noticed he was being videotaped, Deputy 4 "immediately [became] enraged and wrongfully ordered me to put my hands behind my back as he 'bull-rushed' me." The complainant further stated that Deputy 4 attempted to "deny" him of his First Amendment Right "by abusing his authority" to stop the complainant from filming. According to Deputy 4's Deputy Report, Deputy 4 advised that he was interviewing a witness when he noticed a female and the complainant using her cellular phone to record the witness. Based on the witness' apprehensiveness to speak with Deputy 4 in front of other people, Deputy 4 suspected that the complainant was attempting to intimidate the witness by filming him. For this reason, Deputy 4 stated to the complainant, "Just so you know, everything you're videotaping is evidence, so I need to take your phone when I am done." As previously stated, Deputy 4 believed that if the complainant was allowed to record the witness while he spoke with him that the witness would no longer be willing to provide a statement implicating the complainant in a crime or that the complainant would video recordings against the witness. For this reason, coupled with preliminary information that the complainant was the aggressor in the altercation, Deputy 4 attempted to detain the complainant. Deputy 4 ordered the complainant to put his hands behind his back. The complainant responded, "No!" The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper

5. Excessive Force - Deputy 4 deployed his CED on the complainant.

Board Finding: Action Justified

Rationale: The complainant stated Deputy 4 deployed his Conductive Energy Device (CED) on him. Per the complainant's recount of events, he admitted to evading the deputies. He stated that he ran from Deputy 4 and Deputy 2 to the safety of his security gate, which was on his property. Upon reaching the security gate, the complainant secured himself on the other side of the gate. In the complainant's written statement, he advised, "Deputy 4 attempted to rip off the gate off its hinges, but when that failed, he retrieved his taser, pointed it at me, and point blank shot me in the face and chest." The complainant advised that he evaded the deputies because he was afraid for his safety. In Deputy 4's written statement, he advised that he instructed the complainant to put his hands behind his back. The complainant refused to comply with his orders and ran from him. When Deputy 4 caught up with the complainant, Deputy 4 detailed how the complainant "swung his right elbow back towards my head." Deputy 4 ducked from the strike, drew his department issued CED, and reengaged the complainant who ran away. The complainant entered his backyard and closed the gate behind him. Deputy 4 and the complainant struggled back and forth over control of the fence/gate. As illustrated in Deputy 4's written report, the complainant displayed his willingness to continue fight with Deputy 4. Based on that fact, coupled with the complainant's angry and combative demeanor and his attempted assault on Deputy 4, Deputy 4 deployed one cartridge from his CED. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

6. Illegal Search & Seizure - Deputy 4 confiscated the complainant's cellular phone.

Board Finding: Action Justified

Rationale: The complainant stated Deputy 4 confiscated his cellular phone. While investigating the altercation between the complainant and his tenants, Deputy 4 said to the complainant, "Just so you know, everything you're videotaping is evidence, so I need to take your phones when you're done." The complainant responded, "You can't stop us from recording. You're not gonna take our phones." In his written statement, the complainant advised, "I know my right of the First Amendment that's why I refused to stop recording." The complainant alleged that Deputy 4 attempted to detain and arrest him because he was recording the deputy's interview of the witness. The complainant stated, "I refused to stop recording so Officer [Deputy] 4 tried to put handcuffs on me for videotaping." In Deputy 4's written report, he articulated his reasons for confiscating the complainant's cell phone. Deputy 4 advised that he was interviewing the witness when he noticed a female and the complainant using her cellular phones to record the witness. Deputy 4 noticed the flash on the phone was illuminated, leading him to believe that the phone was recording. Based on the witness' apprehensiveness to speak with Deputy 4 in front of other people, Deputy 4 suspected that the complainant was attempting to intimidate the witness by filming him. For this reason, Deputy 4 stated, "Just so you know, everything you're videotaping is evidence, so I need to take your phone when I am done." Deputy 4 believed that if he allowed the complainant to continue to record his interview with the witness, that the witness would no longer be willing to provide a statement implicating the complainant in a crime or that the complainant would video recordings against the witness. After the complainant's arrest, Deputy 4 secured the complainant's cell phone into evidence. Deputy 4's written report, he advised that the cell phone was seized as evidence in the event that the phone contained video evidence of the initial incident between the complainant and his tenants, recorded statements from the witnesses, or injury information discussed between the witness and the paramedics. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

7. Excessive Force - Deputy 4 deployed his CED on the complainant's dog.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 4 assaulted his dog. In his written statement, the complainant stated, "Officer 4 assaulted my dog who was posing zero threat." In Deputy 4's written report, he stated that the complainant's dog had already bitten two people prior to his arrival on scene. While Deputy 4 attempted to apprehend the complainant, the complainant's dog began barking at the deputies while "displaying signals of agitation." Deputy 2 noticed that the complainant's dog was approaching Deputy 4 and they both believed that the dog was going to bite Deputy 4. For this reason, Deputy 2, not Deputy 4, deployed a cartridge from her CED at the dog to prevent the dog from attacking Deputy 4. According to Deputy 2's and Deputy 4's BWC, Deputy 4 did not deploy his CED towards the complainant's dog, nor did he assault the dog in any way. The incident, which was captured on the deputies' BWC, correlated with their statements. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

8. False Reporting - Deputy 4 lied in his written report.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 4 lied in his written report. In the complainant's written statement, he wrote, "Officer 4's police report is a complete fabrication of events." He further explained that Deputy 4 "created a false foundation for his reasoning; a false premise" to justify his actions and his arrest of the complainant. The complainant claimed that Deputy 4's entire report was "false documentation." "Officer [Deputy] 4 slants his entire police report against me in an effort to condone his unlawful assaultive actions attempting to falsify make me the assaultive person to cover up his psychotic episode. Upon viewing the BWC and reading Deputy 4's written report, it was found that Deputy 4 clearly articulated the chronological sequence of events in his written report. Deputy 4's report corroborated with the BWC that was obtained from numerous deputies and the statements from the witnesses.

9. Criminal Conduct - Deputy 4 deleted the recordings off the complainant's cellular phone.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 4 deleted the recordings from off of his cellular phone. The complainant claimed that Deputy 4, "confiscated his cell phone then committed a federal offence" when he "erased my video recording off my phone once he gained possession of it." The complainant said he reviewed his recordings on his cell phone of Deputy 4's physical attack on him while he was on the mountainside and he "personally witnessed" that he did indeed have the evidence recorded. The complainant advised that he kept the phone recording through all of Deputy 4's assaults, and only stopped the camera to climb the mountain. He then reviewed the footage while on the mountain and verified that it had recorded. However, since obtaining his cell phones from the SDSD Evidence on 01-08-2018, the complainant noticed the recordings were missing. Additionally, the complainant claimed that Deputy 4 altered the evidence by making still photos and erasing other photos. The complainant alleged that Deputy 4 tampered with evidence. Deputy 4 responded to questioning with a signed statement and provided relevant information in response to CLERB questions. Absent any additional audio or video recordings of the contact between

the complainant and Deputy 4 or the testimony of an independent witness to these contacts, there was insufficient evidence to either prove or disprove the allegation.

10. Excessive Force - Deputies 1, 4, and 5 executed excessive force when they took the complainant into custody.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputies 1, 4, and 5 used excessive force when they took him into custody. The complainant claimed that Deputies 1, 4, and 5 assaulted him by hitting and punching him in the face, by “gouging” his pressure points, and by tasing him. In his written statement, the complainant described the use of force techniques as “torture tactics.” In the complainant’s written statement, he acknowledged and confirmed that he was noncompliant with the deputies’ verbal commands, that he was passively resistant to their commands, and that he actively resisted the deputies’ directions; he evaded arrest, he refused to comply with their commands, and he assaulted the Sheriff’s canine by punching him numerous times. The complainant denied being assaultive towards the deputies. According to the SDSD Addendum F, which described the use of force guidelines, deputies are authorized to use force “that which is necessary and objectively reasonable to effect the arrest, prevent escape, or overcome resistance.” According to the deputies’ written reports, the aforementioned deputies articulated the various and escalating control techniques they implemented while trying to overcome the complainant’s passive and active resistance, his attempt to escape, and his numerous attempts to elude arrest. The force that was implemented by the deputies was documented in the deputies’ written reports and it correlated with what was observed on the deputies’ BWC. The deputies utilized appropriate control techniques and tactics which employed effectiveness for the deputies to take control of the complainant. In the BWC, the deputies were observed to employ various hand techniques, which included punching the complainant with a closed fist, use of pressure points, and deploying their Conducted Energy Devices (CED) which proved effective in temporarily immobilizing the combative complainant who was ultimately subdued for arrest. All use of force was accurately documented in writing. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

11. Misconduct/Intimidation - Deputy 4 “intimidated” a witness by threatening to impound her cellular phone if she did not cease recording the incident.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 4 intimidated a witness by threatening to impound her cellular phone if she did not cease recording the incident. The complainant advised that Deputy 4 threatened to take the witness’ phone from her, claiming it was evidence. “He physically stepped towards her in an act of intimidation, stating that he would take her phone for his investigation. He did this to stop her from videotaping the incident.” According to the complainant, “Deputy 4 was “trying to use his position of invested authority to criminally prevent me [and the female] from exercising our first amendment right.” During the course of this investigation CLERB was unable to contact the female witness for a statement/interview. As such, her opinion was not included in this investigation. In Deputy 4’s BWC recording entitled, “2017-11-23-21-08-45-97b19e6325.mp4,” at the 11 minute, 43 second mark, Deputy 4 was observed to inform an unidentified female that her cellular phone would be impounded as evidence in the case. Deputy 4 was heard to say, “Just so you know everything you are videotaping is evidence, so I need to take your phone when you are done.” The unidentified female said, “I’m not videotaping nothing.” Deputy 4 responded, “Absolutely you are. You had a light on your phone. I was born at night, but not last night. Thank you.” The unidentified female replied to Deputy 4, but it was unintelligible on Deputy 4’s BWC due to their distance apart. Deputy 4 responded, “Okay, well I will need to see that you didn’t and I won’t take your phone as evidence. Is that clear?” At this time, the complainant, who was standing some distance away from both Deputy 4 and the unidentified female, was heard to chime into the conversation. Deputy 4 turned to face the complainant; he directed his attention and his BWC towards the complainant. Deputy 4 did not engage the unidentified female any further. He was not observed to instruct or demand that the female witness cease using her cellular phone to record. Deputy 4 did not “physically stepped towards her in an act of intimidation,” as stated by the complainant. According to the BWC, Deputy 4 did not “trying to use his position of invested authority to criminally prevent” neither the complainant, nor the unidentified female from exercising their first amendment right. The evidence showed that the allegation that Deputy 4 intimidated a witness did not occur.

12. Criminal Conduct - Deputies 1, 4, and 5 “conspired” against the complainant and collaborated their stories to conceal the truth of the incident.

Board Finding: Unfounded

Rationale: The complainant stated that Deputies 1, 4, and 5 conspired against the complainant and collaborated their stories to conceal the truth of the incident. The complainant advised that Deputies 1, 4, and 5 physically assaulted him, battered, and harmed him. They then conspired against the complainant and collaborated their stories to conceal the truth of the incident. The deputies articulated their actions and reasonings in their perspective reports. The written

reports corroborated with what was observed in their BWC recordings of the incident. The allegation that Deputies 1, 4, and 5 conspired against the complainant and collaborated their stories to conceal the truth of the incident was found to be untrue/unfounded.

13. Misconduct/Procedure - Deputy 4 "coached" witnesses.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 4 "coached" two witnesses in their interviews and he assisted in the wording of their Citizen's Arrest Declarations in their arrest against the complainant. According to the complainant's written statement, a witness "admitted" to the complainant that Deputy 4 turned off his BWC and coached her in saying that she witnessed the complainant attempt to punch Deputy 4. In a telephonic interview with the witness, she advised that Deputy 4 did not "coach" neither she nor the second witness in their interviews, nor did Deputy 4 assist in the wording of their Citizen's Arrest Declarations in their arrest against the complainant. Deputy 4 responded to questioning with a signed statement and provided relevant information in response to CLERB questions. The evidence showed that the alleged act or conduct did not occur.

14. Misconduct/Intimidation - Deputy 4 "threatened" the complainant with bodily harm if he did not comply with his orders.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 4 "threatened" him with bodily harm if he did not comply with his orders. The complainant advised that Deputy 4 "menacingly stated that they [Deputies 1, 3, and 5] were going to use pressure points to get me to stand up and walk down the hill." In Deputy 4's written report, he stated, "Deputy 1 again advised the complainant that force would be used against him if he fled or disobeyed commands." Deputy 4 confirmed that he did advise the complainant that if he did not comply with their orders, control tactics, including the use of pressure points, would be used. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

15. Excessive Force - Deputy 4 attempted to choke the complainant.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 4 attempted to choke him. The complainant stated that while on the hillside, "The officers attempted to choke me out, but I would not let them do so." In Deputy 4's written report, he detailed what force he implemented on the complainant during the use of force. According to the SDSD Addendum F, the carotid restraint technique is a method of rendering a subject unconscious by restricting the flow of blood to the brain by compressing the carotid sheath on the side of the subject's neck. Deputy 4 did not note in his written report that he attempted to place the complainant in a carotid restraint in his report. Upon viewing the BWCs, Deputy 4, was not observed place his arm around the complainant's neck. In the BWC recording titled, "2017-11-23-21-32-55-240ecb0903.mp4," the deputies were seen engaging in a use of force with the complainant. During the use of force, no deputy was observed to place his arm around the complainant's neck. The evidence showed that the alleged act or conduct did not occur.

16. Criminal Conduct - Deputy 4 stole money from the complainant.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 4 stole money from him. The complainant advised that when Deputy 4 impounded his cellular phone, he also witnessed Deputy 4 take his bank envelope, which the complainant claimed contained \$3,500. In Deputy 4's written report, he advised that after the incident, he returned to the Sheriff's Substation where he secured the complainant's cell phone into an evidence locker. The complainant's cell phone was later turned over to Deputy 7. Deputy 4 did not impound any other property from off the complainant's person. According to Deputy 7's Arrest Report, hospital staff located the complainant's wallet in the hospital room that he was treated in, prior to him going to jail. The wallet was later impounded by the SDSD. According to Deputy 7's written report, she impounded a compact disc (CD) with photos, a "K9 unit CD with photos," two Citizen Arrest Declarations, the deputies' BWC videos, the complainant's wallet, his cell phone, and the complainant's currency. According to her report, the currency was listed as Property Item #7 and noted that 32 bills were impounded, totaling \$581.00. The complainant's wallet and money were confiscated for "safekeeping," and were not seized as evidence. The evidence was impounded at the Sheriff's Substation and the items confiscated for safekeeping were released to the complainant. Furthermore, and according to Deputy 4's BWC, he was viewed to conduct a pat down search on the complainant when he was first arrested on the hillside. Deputy 4 was observed to locate the complainant's cellular phone and a set of keys in the complainant's right front pant pocket. The cellular phone was impounded, and the keys were placed back in the complainant's pocket. Deputy 4 responded to questioning with a signed statement and

provided relevant information in response to CLERB questions. The evidence showed that the alleged act or conduct did not occur.

17. False Arrest – Deputy 4 “arrested and falsely imprisoned” the complainant.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 4 “arrested and falsely imprisoned” him. In his written statement, the complainant claimed, “Officer [Deputy] 4 not only falsely charged me with crimes I did not commit, but also arrested me and falsely imprisoned me in jail.” According an Arrest/Juvenile Contact Report, written by a deputy, the complainant was arrested for California Penal Code Sections: PC§ 69 – Obstruct/Resist Executive Officer with Minor Injury, PC§ 245(A)(4) – Assault with a Deadly Weapon with Force: Possible Great Bodily Injury, PC§ 243(A) – Battery on Person, PC§ 243(B) – Battery on Peace Officer/Emergency Personnel, PC§ 600(A) – Willfully Harm Peace Officers Horse/Dog without Serious Injury, and PC§ 835a – Peace Officer Use of Force to Arrest. The following California Penal Code Sections read as follows: Per the complainant’s own admission in his written statement, he confirmed that willfully resisted and attempted to prevent Deputy 4 from performing the duty imposed upon the officer. Additionally, the complainant knowingly resists Deputy 4, by the use of force or violence, in the performance of his duty. In Deputy 4’s written report, he illustrated how the complainant refused to put his hands behind his back or comply with his commands. For these reasons, the complainant was in violation of California Penal Code Section 69. According to the witnesses’ statement, the complainant was accused of assaulting the witness when he punched the witness in the face. The witness exhibited injuries to his face that correlated with an assault. The two witnesses placed the complainant under Citizen’s Arrest for the assault they claimed the complainant perpetrated. For this reason, the complainant was in violation of California Penal Code Section 243(A). According to Deputy 7’s report, as well as the reports written by Deputies 1, 2, 4, 5, and 6, the complainant was described to physically resist and fight the deputies. In Deputy 6’s report, he reported that the complainant “attempted to punch Deputy 4.” In Deputy 4’s written report, he stated that the complainant “swung” his right elbow towards him in an attempt to hit Deputy 4 in the head. In Deputy 2’s written report, she reported that she observed the complainant “attempt to elbow strike Deputy 4 in the face.” Furthermore, after locating the complainant on a hillside, Deputy 4 stated that the complainant “began to fight with both Deputies 1 and 5” while they attempted to place handcuffs on the complainant. According to Deputy 1’s written report, he witnessed the complainant “resist and assault Deputy 5 by grabbing onto [Deputy 5’s] hands and pulling them away from him.” When Deputy 1 intervened and attempted to assist Deputy 5, Deputy 1 reported that the complainant “hit me in my chest area with a clenched fist, knocking me back...” Deputy 1 advised that the complainant continued to assault him and Deputy 5 when he “kept grabbing our hands and pushed them.” Deputy 1 advised that the complainant “grabbed Deputy 5’s hand” and tried to break free from his grasp. In Deputy 5’s written report, reported that the complainant repeatedly grabbed his hand and push he and Deputy 1 back, “attempting to push us down the hillside.” Deputy 5 reported that the complainant fought with him to avoid being handcuffed. For these acts against the deputies, the complainant was in violation of California Penal Code Sections 245(a)(4) and 243(b). A deputy flew in the Sheriff’s helicopter and assisted the deputies on the ground with locating the complainant as he hid in the thick brush. According to the helicopter deputy’s written report, upon locating the complainant, he observed the complainant “repeatedly punching a Sheriff’s canine on his face and body.” The complainant “kept punching him [the dog] with his fist and kicking him.” Per the complainant’s own recognizance, in his recorded verbal interview with Deputy 6, he confirmed that he willfully “punched the K9 at most three times to keep it from biting him.” Additionally, the complainant stated in his written statement that he punched the dog “to cease the beast’s constant attack on me by whatever means necessary to protect myself... the unconstrained attack animal found me irresistibly tasty.” For these acts against the Sheriff’s canine, the complainant was in violation of California Penal Code Section 600(A). For the allegation that Deputy 4 falsely charge the complainant with crimes he did not commit, and that Deputy 4 “arrested and falsely imprisoned” the complainant, the evidence showed that the alleged act or conduct did not occur. The complainant was properly arrested for the charges brought against him. The allegation that Deputy 4 “arrested and falsely imprisoned” the complainant was unfounded.

18. Criminal Conduct – Deputy 4 violated the law when he imprisonment the complainant, tampered with witnesses, falsified official reports, tampered with the complainant’s electronic device, assault and battery the complainant while under the color of authority, committed theft/grand theft, and committed attempted homicide.

Board Finding: Unfounded

Rationale: The complainant detailed that Deputy 4 violated the law when he imprisonment the complainant, tampered with witnesses, falsified official reports, tampered with the complainant’s electronic device, assault and battery the complainant while under the color of authority, committed theft/grand theft, and committed attempted homicide. The complainant contended that “Deputy 4 violated the law and should be arrested for false imprisonment, witness tampering, falsification of official reports, federal charges of tampering with electronic device, assault and battery on a person while under the color of authority, theft, grand theft, and attempted homicide.” The evidence showed that the alleged act or conduct did not occur. The allegations that Deputy 4 violated the law when he imprisonment the

complainant, tampered with witnesses, falsified official reports, tampered with the complainant's electronic device, assault and battery the complainant while under the color of authority, committed theft/grand theft, and committed attempted homicide is unfounded.

19. Excessive Force - Deputy 5 used excessive force when he arrested the complainant.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 5 used excessive force when he arrested him. In his written report, the complainant stated, "Officer [Deputy] 5 lost control over himself completely and began closed fist striking me in my face and head. In Deputy 5's written report, he advised, "I warned [the complainant] I would be using pressure points on him if he did not comply." When the complainant refused to comply, Deputy 5 applied pressure to the complainant's various pressure points in an attempt to submit him into complying. The complainant pulled away in retaliation and began to fight the deputies. In the BWC recording entitled, "2017-11-23-21-32-55-240ecb0903.mp4" at approximately the 28 minute and 17 second mark, the complainant was observed to resist the deputies and fought with them when they attempted to escort the complainant down the hillside. Deputy 5 applied pressure to the complainant's Mandibular Nerve as he attempted to gain control of the complainant and re-handcuff him. As he attempted to do so, the complainant was observed to forcefully pull away from Deputy 5 and grab hold of Deputy 5's hands. Additionally, deputies assisted Deputy 5 in gaining control of the complainant. In the BWC recording, the complainant was observed to push away at Deputies 1 and 5 as he attempted to avoid being handcuffed. At this time, Deputy 1 used his CED on the complainant to no avail. Deputy 5 unholstered his CED and presented it to the complainant and advised that he would deploy it if the complainant continued to be non-compliant. The complainant complied, and he was handcuffed. Deputy 5 advised that if had not used force, the complainant could have injured he and his partners. He further advised that the complainant was strong, was willing to fight, and was able to overpower the deputies' physical actions. According to SDSD P&P Section 2.49 entitled, "Use of Force," Employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing. According to SDSD P&P Section 2.50 entitled, "Use of Lethal/less Lethal Weapons," employees shall not use or handle lethal or less lethal weapons in a careless or imprudent manner. Employees shall use these weapons in accordance with law and established Departmental procedures. According to SDSD P&P Addendum F entitled, "Use of Force Guidelines, "...the force used shall only be that which is necessary and objectively reasonable to effect the arrest, prevent escape or overcome resistance. Deputies shall not lose their right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or overcome resistance (per 835(a) P.C.). 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 incident." The alleged act of "excessive force" did not occur and the finding was unfounded. Additionally, and in accordance with SDSD P&P, Deputy 5 documented his use of force in writing. The evidence indicated that Deputy 5 used force that was reasonable and necessary and in accordance with SDSD P&P.

20. False Report - Deputy 5 lied in his written report.

Board Finding: Unfounded

Rationale: The complainant stated that Deputy 5 lied in his written report. According to the complainant's written statement, Deputy 5 stated that he observed the complainant "reach over and strike Deputy 4 on the back." The complainant stated that that statement was "false testimonial" and that it did not occur. The complainant claimed that he "reached out and gently padded Officer [Deputy] 4's right shoulder. The complainant alleged that Deputy 5's statement "committed criminal deception, filed false report, bared false witness, and was a false accusation of criminal proportions..." There were a number of other instances in the complainant's written statement that he claimed false reporting against Deputy 5's written report. In the BWC recording entitled, "2017-11-23-21-32-55-240ecb0903.mp4" at approximately the 27 minute and 50 second mark, the complainant was observed to pat Deputy 5 on his left shoulder as he walked passed him. In his written report, Deputy 5 advised that the physical contact expressed by the complainant was not friendly or warranted, especially after already assaulting the deputies. The evidence shows that the allegation that Deputy 5 lied in his written report did not occur.

21. Excessive Force - Deputy 5 attempted to choke the complainant.

Board Finding: Unfounded

Rationale: The complainant declared that Deputy 5 attempted to choke him. The complainant stated that while on the hillside, "The officers attempted to choke me out, but I would not let them do so." In Deputy 5's written report, he advised that during the use of force on the hillside, in an attempt to stand the complainant upright, he stood behind the complainant and used his left hand "to cradle his head." He then used his right thumb to apply pressure under the complainant's right ear, on his Mandibular Nerve. In Deputy 4's written report, he detailed what force he

implemented on the complainant during the use of force. According to the SDSD Addendum F, the carotid restraint technique is a method of rendering a subject unconscious by restricting the flow of blood to the brain by compressing the carotid sheath on the side of the subject's neck. Deputy 4 did not note that he attempted to place the complainant in a carotid restraint in his report. Upon viewing the BWCs, Deputy 5, was not observed place his arm around the complainant's neck. The evidence showed that the alleged act or conduct did not occur.

22. Misconduct/Truthfulness – Deputy 7 lied in her written report.

Board Finding: Unfounded

Rationale: The complainant declared that Deputy 7 lied in her written report. In the complainant's written statement, he stated that Deputy 7' written report was "a recertification of incorrect facts." The complainant said that Deputy 7 reported that he evaded arrest. The complainant argued that he did not evade arrest, but that he "fled from assaultive officers." The complainant further advised that he "fled from his assault to the assumed safety of his security fence." Per his own recount of events, the complainant confirmed that he evaded the Sheriff's deputies. The allegation that Deputy 7 lied in her written report was untrue/unfounded. The evidence showed that the alleged act or conduct did not occur.

23. Misconduct Procedure - Deputy 3 allowed his canine to attack the complainant for an extended duration of time.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 3 allowed his Sheriff's canine to attack the complainant approximately 5-15 minutes. According to the complainant's written statement, he described the canine as "...an attack trained animal [who] was without a handler to halt the unrelenting assault upon my person..." The complainant alleged that he was "continuously assaulted by the dog without let up for a seemingly interminable hellish period." Deputy 3 was not present with the dog to cease his attack on the complainant. According to Deputy 3's written report, he had assisted in the search for the complainant who had evaded officers. Deputy 3 was accompanied by his canine partner who was "actively tracking" the complainant's scent. While searching for the complainant and according to his written statement, Deputy 3 noted that "the brush became increasingly thick" as he continued and was unable to maintain control of the dog's lead/leash. Deputy 3 decided to drop the lead to allow the dog to continue ahead of him. Allowing the dog to track, freed the deputy to navigate through the thick vegetation more safely and allowed the dog to search the path ahead of Deputy 3. Once ASTREA located the complainant, Deputy 3 attempted to summon the dog, but the helicopter was too loud, and the dog did not return to Deputy 3. Deputy 3 worked his way through "approximately forty feet of extremely thick brush" in order to make his way to his dog and the complainant. Upon reaching the dog and the complainant, the dog ran up to Deputy 3 and he took control of the dog's leash. In the Deputy 3's BWC, when he reached the complainant and the dog, the dog was not observed to currently bite the complainant. The dog greeted Deputy 3 who took possession of his leash. According to the SDSD K9 P&P Manuel 4.3, "Control- handlers must exercise good judgment and maintain control of their canine at all times, whether on duty or off." According to the SDSD K9 P&P Manuel 4.3, "Canines certified and approved for department use may be used under the following conditions: For the protection of the handler, other law enforcement officers and citizens, to locate, apprehend or control a felony suspect when it would be unsafe for the deputies to proceed into the area, and to locate, apprehend or control armed misdemeanor suspects." Though Deputy 3 released the dog's lead, given the situation and the circumstances, Deputy 3 maintained control of his dog to the best of his ability. The allegation that Deputy 3 allowed his K9 to attack the complainant for an extended duration of time was justified. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

24. Excessive Force - Deputy 1 used excessive force when he arrested the complainant.

Board Finding: Action Justified

Rationale: The complainant alleged Deputy 1 used excessive force when he arrested him. The complainant stated, Officer [Deputy] 1 "got pissed off that I would not stand up and he stood over me while I was lying on the ground face up he stated, "I'm tired of this" and drew his taser gun and point blank shot me in the chest while I was lying on the ground presenting no threat." The complainant described Deputy 1 as "out of control, utilizing over-aggressive assaultive tactics against a defenseless citizen." Deputy 1 tasered the complainant while they were on the hillside. The complainant alleged that Deputy 1 used excessive force when he arrested the complainant. In his written report, the complainant stated, "Officer [Deputy] 1 lost control over himself completely and began closed fist striking me in my face and head. According to Deputy 1's written report, he and other deputies were attempting to walk the complainant down a steep hillside when the complainant ceased complying with their orders and "sat down in anger." The deputies ordered the complainant to stand up numerous times. When the complainant refused to comply with their orders, escalating uses of force were used on the complainant. The complainant continued to resist and assault the deputies. In response to the complainant's actions and "fearing" the physical altercation would get "extremely dangerous" on the steep incline, Deputy 1 drew his CED and deployed one cartridge towards the complainant, striking

him. "The prongs made good contact" and the complainant was described to experienced full Neuromuscular Incapacitation. According to SDSD P&P Section 2.49 entitled, "Use of Force," Employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing. According to SDSD P&P Section 2.50 entitled, "Use of Lethal/less Lethal Weapons," employees shall not use or handle lethal or less lethal weapons in a careless or imprudent manner. Employees shall use these weapons in accordance with law and established Departmental procedures. According to SDSD P&P Addendum F entitled, "Use of Force Guidelines," It shall be the policy of this Department whenever any Deputy Sheriff, while in the performance of his/her official law enforcement duties, deems it necessary to utilize any degree of physical force, the force used shall only be that which is necessary and objectively reasonable to effect the arrest, prevent escape or overcome resistance. Deputies shall not lose their right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or overcome resistance (per 835(a) P.C.). 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 incident. The use of force and subsequent reporting must be in accordance with the procedures set forth in these guidelines (see Policy and Procedures Section 6.48). In accordance with SDSD P&P, Deputy 1 documented his use of force in writing. Additionally, Deputy 1 advised that he activated his BWC for evidence. Deputy 1 reported that he reviewed the BWC recording for accuracy for his report. The BWC recordings were viewed and correlated with the use of force actions that were documented in Deputy 1's written report. The evidence indicated that Deputy 1 used force that was reasonable and necessary and in accordance with SDSD P&P. The evidence showed that Deputy 1 did not used excessive force when he arrested the complainant. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

25. False Reporting - Deputy 1 lied in his written report.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 1 lied in his written report. The complainant alleged that Deputy 1 lied regarding his recount of events as illustrated in his written report and stated that the BWC would prove Deputy 1 "to be a biased prevaricator; another cop that corruptly conspires with other cops to create a continuous fictitious phony, fraudulent official report..." The complainant went on to state that "Officer [Deputy] 1's narrative of events was entirely false. Officer [Deputy] 1 is a shameless liar attempting to make up stories to save his neck from the noose that he himself has knotted by his beastly behavior of assaultive actions which were unwarranted and unlawful. Officer [Deputy] 1 states the essential opposite of everything that happened." The complainant referred to Deputy 1 as a "bold-faced liar and a consummate liar," and advised that Deputy 1's "fabricated report" is made up by Deputy 1's "fictional imagination." Deputy 1 advised that he activated his BWC for evidence and that he reviewed the BWC recording for accuracy for his report. The BWC recordings were viewed and corroborated with the use of force actions that were documented in Deputy 1's written report. The evidence showed that Deputy 1 did not lied in his written report

26. Excessive Force - Deputy 1 punched the complainant in the face.

Board Finding: Action Justified

Rationale: The complainant alleged Deputy 1 punched the complainant in the face. The complainant alleged that Deputy 1 punched him "because none of the other officer's aggressive assault tactics were working." Per Deputy 1's written report, he stated, "I tried pulling [the complainant's] arm behind his back, but he hit me in the chest area with a clenched fist, knocking me back and forcing my BWC to fall to the ground. Fearing for my safety, I pushed [the complainant] forward from behind and punched him on the right side of his face one time." While attempting to handcuff the complainant, he continued to resist and assault the deputies. Deputy 1 reported that he punched the complainant "three more times, but they had no effect" on the complainant. The BWC recordings were viewed and corroborated with the use of force actions that were documented in Deputy 1's written report. The allegation that Deputy 1 punched the complainant in the face did occur but was lawful, justified and proper.

27. Excessive Force - Deputy 1 deployed his CED on the complainant.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 deployed his CED on him. In the complainant's written statement, he reported that he never presented himself as a threat to any officers at any time. The complainant said he was already lying on the ground, flat on his back when Deputy 1 tasered him. Per Deputy 1's written report, he feared the physical altercation that the complainant and the deputies were in was getting extremely dangerous on such a steep hill. For this reason, Deputy 1 drew his CED and deployed his first cartridge striking the complainant. While attempting to handcuff the complainant, he again resisted and assaulted the deputies. Deputy 1 activated his CED and tasered the complainant, but it had no effect because the cables had snapped and tangled on the nearby bushes. As such,

Deputy 1 used his CED to do a “drive stun” for about two seconds on the complainant to assist Deputy 5 in gaining control over him. The complainant continued to not follow the deputies’ instruction and struggled with the deputies. Fearing the complainant would seriously injury Deputy 5 or fall down the hill, Deputy 1 deployed his second CED cartridge at the complainant. The prongs “made good contact” on the complainant again and full Neuromuscular Incapacitation was achieved again. Deputy 1 went on to explain that he not used that type of force on the complainant, that either he or the other deputies could have been seriously injured or killed. Deputy 1 explained that he was unable to use his other force options (i.e. Oleoresin Capsicum (OC) spray, baton, or pistol) because of the nature of the elements while on scene. The BWC recordings were viewed and correlated with the use of force actions that were documented in Deputy 1’s written report. The allegation that Deputy 1 deployed his CED at the complainant did occur and was lawful, justified and proper.

28. Excessive Force - Deputies 1, 4, and 5 applied pressure points on the complainant.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputies 1, 4, and 5 applied pressure points on the complainant. While the decedent was sitting/laying on the hillside, refusing to comply with deputies’ orders to stand and walk, he advised that deputies 1, 4, and 5 “were bending my fingers back, choking me, gouging me, bending my arms back....” Later, in his written statement, the complainant stated, “I was beat to a bloody mess.” Deputies 1, 4, and 5 submitted written reports that articulated their reasoning for using escalating methods of force on the complainant. When the complainant continually refused to comply with their orders, escalating uses of force were used on the complainant. The complainant continually retaliated by resisting and assaulting the deputies. In response to the complainant’s actions multiple methods of force were used to get the complainant to comply. According to SDSD P&P Section 2.49 entitled, “Use of Force,” Employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing. According to SDSD P&P Section 2.50 entitled, “Use of Lethal/less Lethal Weapons,” employees shall not use or handle lethal or less lethal weapons in a careless or imprudent manner. Employees shall use these weapons in accordance with law and established Departmental procedures. According to SDSD P&P Addendum F entitled, “Use of Force Guidelines,” It shall be the policy of this Department whenever any Deputy Sheriff, while in the performance of his/her official law enforcement duties, deems it necessary to utilize any degree of physical force, the force used shall only be that which is necessary and objectively reasonable to effect the arrest, prevent escape or overcome resistance. Deputies shall not lose their right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or overcome resistance (per 835(a) P.C.). 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 incident. The use of force and subsequent reporting must be in accordance with the procedures set forth in these guidelines (see Policy and Procedures Section 6.48). In accordance with SDSD P&P, Deputies 1, 4, and 5 documented their uses of force in writing. The deputies were equipped with BWC. The BWC recordings were viewed and correlated with their uses of force actions that were documented in their written report. The evidence indicated that Deputies 1, 4, and 5 uses force were reasonable and necessary and in accordance with SDSD P&P. The allegation that Deputies 1, 4, and 5 applied pressure points on the complainant did occur and was lawful, justified and proper.

29. Excessive Force - Deputy 2 deployed her CED on the complainant

Board Finding: Action Justified

Rationale: The complainant stated Deputy 2 deployed her CED at him. In the complainant’s letter, he reported that “Deputy 2 assaulted me with potentially lethal force, tasing me while I was posing no threat to her nor any other officer.” According to Deputy 2’s written report, she reported she observed the complainant refuse to comply with Deputy 4’s commands and resisted arrest. Additionally, she witnessed the complainant attempt to assault Deputy 4. She witnessed Deputy 4 deploy his CED. When his CED did not make contact, she deployed her CED at the complainant “in an attempt to gain control and effect an arrest.” Deputy 2’s CED also did not make contact with the complainant. Deputy 2 advised that it was necessary for her to use force in an attempt to gain compliance of the complainant. Based on the circumstances and as illustrated in her written report, she believed it was necessary for the safety and welfare of the public, herself, and her fellow deputies. At that time, she did not know if the complainant had any weapons that could have posed a threat or caused injury, or possibly death to herself or others. Additionally, the complainant posed an immediate threat to Deputy 4 and herself “as he was engaging in felonious criminal activity, was not searched, and was uncooperative.” The BWC recordings were viewed and corroborated with their uses of force actions that were documented in their written report. The evidence indicated that Deputy 2’s use force was reasonable and necessary and in accordance with SDSD P&P. The allegation that Deputy 2 deployed her CED at the complainant did occur and was lawful, justified and proper.

30. Excessive Force - Deputy 2 “assaulted” the complainant.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 assaulted him. In his written statement, the complainant advised that Deputy 2 “willing joined in the aggressive assault instead of trying to keep the peace. She failed to check her subordinate Officer [Deputy] 4’s reign of truculent aggressions.” Additionally, the complainant advised that, “Deputy 2 broke from duty and became a rogue cop, acting outside of the boundaries of the law and abetted Officer [Deputy] 4 in a criminal assault.” According to Deputy 2’s written report, she witnessed the complainant refused to comply with Deputy 4’s orders and evaded Deputy 4. Deputy 2 witnessed the complainant take “a fighting stance and attempted to strike Deputy 4 with his right elbow.” After witnessing an attempted aggravated assault on Deputy 4, Deputy 2 removed her CED and chased after the complainant. Deputy 2 observed Deputy 4 deploy his CED and noticed that the probes did not make contact, so she deployed her CED in an attempt to gain control of the complainant and effect an arrest. In her written report, Deputy 2 advised that it was necessary for her to use force in an attempt to gain compliance of the complainant. She believed it was necessary for the safety and welfare of the public, herself, and her fellow deputies. At the time that she used force on the complainant, it was unknown if the complainant had any kind of weapon that could have posed a threat or caused injury or death. For these reasons, Deputy 2 assisted Deputy 4 in his use of force. The BWC recordings were viewed and corroborated with their uses of force actions that were documented in their written report. The evidence indicated that Deputy 2’s use force was reasonable and necessary and in accordance with SDSD P&P. The allegation that Deputy 2 deployed her CED at the complainant did occur and was lawful, justified and proper.

31. Excessive Force - Deputy 2 deployed her CED on the complainant's dog.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 deployed her CED on his dog. As noted above, Deputy 2 assisted Deputy 4 in his use of force. During the use of force, while the complainant evaded the deputies, Deputy 2 noticed that the complainant’s dog was approaching Deputy 4. The dog had already bitten the complainant and a witness and had caused “significant injuries” to both of them. The dog barked as it approached Deputy 4 and Deputy 4 believed that he was going to be bitten by the dog. Deputy 2 deployed a cartridge from her CED at the dog to prevent the dog from attacking Deputy 4. One probe of the CED probe made contact with the dog. The dog yelped and scampered away. Due to the aggressive nature of the dog, neither Deputy 2 or Deputy 4 entered the backyard. Deputy 2 deployed her CED at the complainant’s dog for both her safety, as well as her partner’s safety. In the BWC recording entitled, “2017-11-23-21-08-45-97b19e6325.mp4, at the 12 minute, 23 second mark, Deputy 2 was observed to deploy her CED at the complainant’s dog. Prior to deploying her CED, the complainant’s dog was observed to aggressively approach Deputy 4, barking hostilely. The allegation that Deputy 2 deployed her CED on the complainant did occur but was lawful, justified and proper.

32. False Reporting - Deputy 8 lied in his written report.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 8 lied in his written report when he misquoted a witness. In his written statement, the complainant alleged that Deputy 8’s report was “another fabrication of facts, ugly lies, and a false report.” He further stated that Deputy 8’s “entire report is false and a gross manipulation of an official report.” The complainant alleged that Deputy 8 misquoted a witness; however, the complainant was not present when Deputy 8 interviewed the witness and therefore, would have no knowledge of what was said to Deputy 8. In Deputy 8’s written report, he interviewed a witness. That witnesses’ statement was recorded in Deputy 8’s report, which read, “[The complainant] told Brandon that he had pushed a deputy after the deputy attempted to take his cell phone away. [The complainant] also told a witness he was evading law enforcement,” among other allegations. Deputy 8 merely reported what was told to him in a statement. The allegation that Deputy 8 lied in his written report when he misquoted a witness is unfounded. The evidence showed that the alleged act or conduct did not occur.

33. Misconduct/Procedure - Unidentified deputies in Internal Affairs “ignored” the complainant’s complaints against Deputy 4.

Board Finding: Unfounded

Rationale: The complainant alleged that unidentified deputies in the SDSD Internal Affairs division “ignored” his complaints against Deputy 4. In the complainant’s written statement, he alleged that unidentified Internal Affairs deputies failed to investigate his complaint. According to a deputy of the SDSD Department of Inspectional Services, the complainant had filed a complaint with the SDSD Internal Affairs division. The complaint was closed, via correspondence, with no formal investigation performed, as the allegation was found not have been a policy or law violation. Nonetheless, the applicable content of SDSD Internal Affairs P&P Manuel Section 2.4 entitled, “Complaints,” reads in part as follows: The Internal Affairs Unit is responsible for the administration of all formal

complaints which includes: review the complaint for classification and assignment, review of the completed investigations, filing of completed investigations, and maintain an index of all complaints. Reasons for not immediately investigating a complaint may include: Pending criminal case which would conflict with the investigation, inmate grievance procedure not followed, frivolous complaint (per 832.5 PC) or no nexus to employment, and no policy or law violation. It shall be the policy of this Department not to investigate those complaints, of a minor nature, which are received 30 days or more after the date of the alleged incident. If a complaint of this nature is received in writing, it shall be the responsibility of Internal Affairs to respond to the complainant. (emphasis added) Additionally, the applicable content of SDCS Internal Affairs P&P Manual Section 2.5 entitled, "Investigations," reads in part as follows: The Internal Affairs Unit has the primary responsibility for the investigation of all complaints. The Internal Affairs Lieutenant will make the determination where the complaint will be investigated. The SDCS was contacted and an "Investigation Acknowledgment Letter" was requested. It was advised a complaint had not been filed by the complainant. If the complainant had filed a complaint, then he would have received the correspondence letter. The letter essentially means that a cursory investigation was initiated, and no policy or criminal law violation was not found upon receipt of the initial complaint. The allegation that that unidentified deputies in the SDCS Internal Affairs division "ignored" his complaints against Deputy 4 is untrue/unfounded. The evidence showed that the alleged act or conduct did not occur.

34. Misconduct/Procedure - Unidentified deputies in Internal Affairs denied the complainant access to case related evidence.

Board Finding: Action Justified

Rationale: The complainant alleged that unidentified deputies in the SDCS Internal Affairs division denied him access to case related evidence. In the complainant's written statement, he stated, "Internal Affairs has unreasonably denied me access to the BWC. I have repeatedly requested, demanded, and have placed a court motion for the BWC evidence. It is out right conspiratorial by the SDCS to deny me the BWC evidence." The applicable content of SDCS P&P Section 6.131 entitled, "Body Worn Camera," reads in part as follows: All audio, images and media associated with the BWC are the property of the San Diego County Sheriff's Department and will not be copied, released or disseminated in any form or manner outside the parameters of this policy without the express written release from the San Diego County Sheriff or his/her designee. Sheriff's Detectives assigned to conduct criminal investigations, creating a secondary copy of a BWC recording subsequent to an official investigation, are exempt from the above. Under no circumstances will any employee of the San Diego County Sheriff's Department make a personal copy of any recorded event. All digital evidence collected using the BWC is considered property of the San Diego County Sheriff's Department and is for official use only. Accessing, copying, forwarding or releasing any digital evidence for other than official law enforcement use, or contrary to this procedure, is strictly prohibited. Public release of digital evidence is prohibited unless approved by the Sheriff or his designee. Deputies will typically not allow citizens to review recordings; however, deputy discretion is allowed to replay the recording for citizens at the scene in order to mitigate possible minor complaints. Detectives are responsible for reviewing, tracking digital evidence associated with their assigned cases, and forwarding digital evidence to the District Attorney or City Attorney when appropriate. Digital evidence captured by BWC shall be treated as official investigative records and handled pursuant to existing Department policies and procedures. According to the above policy, it is the SDCS policy to not release BWC recordings to the public, with the exception of officer involved shootings. BWC recordings are generally not releasable to preserve the integrity of the investigation and for the privacy of those involved. The video evidence released is exempt under the California Public Records Act and law enforcement's decision to release certain portions of the video evidence does not otherwise waive that privilege. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

35. Misconduct/Procedure - The Sheriff's Department refused to supply the complainant with case related evidence.

Board Finding: Action Justified

Rationale: The complainant advised that the Sheriff's Department refused to supply him with case related evidence. The complainant advised that he requested a copy of the recordings from the incident, including deputies BWC, ASTREA recordings, radio call log, etc. but has been denied. The applicable content of SDCS P&P Section 2.37 entitled, "Dissemination of Information," reads as follows: Employees shall treat the official business of this Department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established Departmental procedures. The applicable content of SDCS P&P Section 3.1 entitled, "Release of Information Concerning Sheriff's Department Personnel," reads in part as follows: Personal information pertaining to Departmental personnel is considered to be confidential. All inquiries from outside the Sheriff's Department, concerning Sheriff's employees, shall be directed to the Sheriff's Personnel Division. The Personnel Division shall release information at its discretion and may request the inquiring party to mail his/her *request* on letterhead stationery. Additionally, the policy states, "...the Personnel Division shall consult with the Assistant Sheriff, Human Resource Services Bureau regarding the release of information. The complainant was not

a member of the media, but was a private person requesting the records for his personal review. Nonetheless, the following policy is relevant to his allegation: The applicable content of SDSD P&P Section 7.3 entitled, "Media Public Relations," reads in part as follows: Detective Unit supervisors are responsible for the dissemination of follow-up investigation information. Except as otherwise provided in this policy, no other member of the Department shall release any information pertaining to cases which are under investigation. Previously disseminated news releases by the Department may be reiterated by any department member. The Public Records Act and Government Code Section 6254(f) require that specific information be released to the public. The release of any information regarding an internal investigation of alleged misconduct by members of the Department or disciplinary action taken as a result of any such investigation shall be made only by the Sheriff's Internal Affairs Division or their designee. The following documents shall generally be made available for public examination: Activity Logs, Arrest Reports, and Crime/Incident Reports. The complainant was given a copy of all case related report; crime and incident reports. The allegation that the Sheriff's Department refused to supply the complainant with case related evidence is untrue/unfounded. The evidence indicated that the complainant was given all crime and incident reports. He was not given the video recordings per policy. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

36. Misconduct/Procedure - The District Attorney's Office denied the complainant access to case related evidence.

Board Finding: Summary Dismissal

Rationale: The complainant alleged that unidentified persons from the District Attorney's Office denied him access to case related evidence. "The District Attorney's Office has unreasonably denied me access to the BWC. I have repeatedly requested, demanded, and have placed a court motion for the BWC evidence. It is out right conspiratorial to deny me the BWC evidence. The Review Board lacks jurisdiction Per CLERB R&R 4.1: the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department; CLERB lacks authority over the DA's office.

37. Misconduct/Procedure - The Supreme Court denied the complainant access to case related evidence.

Board Finding: Summary Dismissal

Rationale: The complainant alleged that unidentified persons from the Supreme Court have denied him access to case related evidence. In his written statement the complainant stated, "The Supreme Court has unreasonably denied me access to the BWC. I have repeatedly requested, demanded, and have placed a court motion for the BWC evidence. It is out right conspiratorial to deny me the BWC evidence." As noted above, The Review Board lacks jurisdiction Per CLERB R&R 4.1: the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department; CLERB lacks authority over the Supreme Court.

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**18-029**

1. Misconduct/Procedure – The aggrieved was not given his magazine/periodicals on 02-17-18.

Board Finding: Action Justified

Rationale: The complainant alleged that the aggrieved had not received any of the magazines that she had ordered on his behalf. The complainant said she had ordered "Maxim and/or Spice" magazines. She suspected that unidentified deputies refused to give the aggrieved his mail because they were "bias and prejudice." Though the complainant alleged that the incident occurred on 02-14-18, during the course of the investigation, it was discovered that the aggrieved's mail was withheld on 02-17-18. According to records received from the SDSD, it was noted that an unidentified deputy completed a SDSD Contents Unacceptable Notice (J-320 form) while at the jail. On the form, the deputy identified the sender as "Inmatemags.com" and it was stated that the mail was "returned to sender" due to the mail containing "nudity, sexual activity." The applicable content of the SDSD Detention Services Policies and Procedures (DSB P&P) Section P.3 entitled, "Inmate Mail," states, "Any of the following will cause incoming U.S. mail to be rejected: (c.) U.S. mail depicting nudity, obscenities, suggestive images, or other offensive materials. II. Procedures for handling magazines, periodicals, and books: Magazines, periodicals, and new soft covered books delivered to the facility by publishers, bookstores, or book clubs via the U.S. Postal Service may be accepted. The subject matter of some magazines, periodicals and new soft covered books shall establish whether or not they are allowed in the detention facility housing units. (A.) The following items are not usually allowed inside the facility due to their construction or subject matter. 6. Inmates are prohibited from possessing or receiving materials that show frontal nudity of either gender as described herein. Prohibited materials include personal photographs, drawings, magazines and/or pictorials. Frontal nudity includes either the exposed female breast(s) and/or the genitalia of either

gender. III. Rejection/Appeal Process: (C.) In cases in which incoming mail is withheld (other than drugs/narcotics items), the housing deputy is to enter a mail rejected "MREJ" event type into the receiving inmate's JIMS history. The entry will include the name and address of origin and the specific reason the article was not deliverable. The evidence showed that the allegation that the aggrieved was not given his magazine/periodicals on 02-17-18 did occur but was lawful, justified and proper.

2. Misconduct/Procedure – The aggrieved did not receive his magazines and/or mail.

Board Finding: Summary Dismissal

Rationale: The complainant alleged that the aggrieved had not received mail that she had sent to him, nor had she received mail that she claimed was sent from him to her. She suspected that unidentified deputies refused to give the aggrieved his mail because they were "bias and prejudice." While investigating the allegations, it was discovered that the allegations regarding the aggrieved's mail were all incidents that occurred in 2015 and 2016. The issues with the aggrieved's mail were documented in Inmate Grievances, Grievance Responses, on Contents Unacceptable Notice, and in entries noted in the computerized jail management systems (History of Mail Rejected). All documented incidents were dated 09-06-15 and 05-18-16. The Review Board does not have jurisdiction because the complaint was not timely filed. The following CLERB rules apply: 4.4 Citizen Complaints: Jurisdiction. The Review Board shall have jurisdiction in respect to all citizen complaints arising out of incidents occurring on or after November 7, 1990; provided, however, that the Review Board shall not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint, except that if the person filing the complaint was incarcerated or physically or mentally incapacitated from filing a complaint following the incident giving rise to the complaint, the period of incarceration or incapacity shall not be counted in determining whether the one year period for filing the complaint has expired. CLERB lacks jurisdiction.

3. Discrimination/Other – Unidentified deputies did not "retrieve" the aggrieved's property because they were "biased and prejudiced."

Board Finding: Unfounded

Rationale: The complainant alleged that unidentified deputies refused to retrieve property from the aggrieved's property bag. The complainant described the unidentified deputies' actions as "heinous and hateful." Though the complainant alleged that the incident occurred on 02-14-18, during CLERB's investigation, it was discovered that the aggrieved's property was retrieved on 03-26-17 and on 04-12-17. In a telephonic interview with the complainant, she explained that prior to the close of this investigation, she was able to retrieve the aggrieved's property when he was released from jail. The evidence showed that the allegation that unidentified deputies did not "retrieve" the aggrieved's property because they were "biased and prejudiced" was unfounded.

4. Misconduct/Procedure – The aggrieved reported to the complainant that toilets at the detention facility did not work for three days or more.

Board Finding: Summary Dismissal

Rationale: The complainant advised, "I received a call from my son. He called me and told me the plumbing (toilets) haven't been working for 48 hours. Today (02-15-18) is the 3<sup>rd</sup> day." CLERB lacks jurisdiction over the maintenance of jail facilities. The allegation of the plumbing/toilets not working, does not describe any deputy misconduct and was referred to the Sheriff's Department for follow-up. The Review Board lacks jurisdiction as it cannot take any action in respect to complaints per CLERB Rules & Regulations 4.1 and 4.4. CLERB lacks authority over facility maintenance issues and jurisdiction over the incident giving rise to this complaint that occurred on or prior to 12-14-18.

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**18-033**

1. Misconduct/Procedure – PO 1 did not inform the complainant why he was arrested.

Board Finding: Unfounded

Rationale: The complainant alleged that PO 1 failed to advise him why he was being arrested. In the complainant's written statement, he advised, "I asked why [I was being taken to jail] and was told by PO 1 and his supervisor that they have ten days to file a charge. If not, then I would be released." In PO 1's written report, he stated, "The undersigned informed the offender he would be returned to custody for the violations of leaving the county, for using alcohol, and for possession of the folding knife. Additionally, PO 1 further advised that during the compliance check "the offender admitted to traveling [outside the county lines] on 12-09-17. The undersigned admonished the offender regarding his violation..." In the complainant's written statement, he did not refute two of the three violation charges against him; that he violated the terms of his probation when he consumed alcohol, or that he had traveled outside

of the county. The evidence shows that the allegation that PO 1 failed to advise him why he was being arrested did not occur.

2. False Reporting – Probation PO 1 lied in his Probation Report.

Board Finding: Unfounded

Rationale: The complainant alleged that PO 1 lied in his written report when he stated that officers “found a weapon (firearm, knife)” inside his vehicle. The complainant was arrested for the violation, went to jail, and ultimately went to court. The complainant attended his court hearing on 12-21-17, and advised that his lawyer requested pictures of the evidence. The complainant advised that no pictures were provided by the Probation Department because that evidence “did not exist.” The complainant stated that while at court, the lack of proof of evidence was argued and the allegations against the complainant were dismissed. According to PO 1’s written report, “A search of the offender’s vehicle was conducted, which revealed a folding knife located in the driver’s side door.” On an ‘Adult Field Service Search Report and Contraband Receipt,’ PO 1 detailed the items that were seized from the possession of or from the premises controlled by the complainant. On the receipt, PO 1 noted item #3 as a “folding knife found in the vehicle driver’s side door.” Along with the contraband receipt, PO 1 included a photo of a pocket knife. A copy of the photo was provided to CLERB. The black and white photo copy was of a partially unfolded ‘Gerber’ pocket knife with a black grip. Contrary to the complainant’s statement, court documents dated 12-21-17, revealed that the complainant admitted to the violations of conditions of his mandatory supervision. He waived his hearing and his mandatory supervision was summarily revoked; he was to serve his remaining term in custody. The complainant was remanded to custody without bail. The evidence showed that the allegation that PO 1 lied in his written report did not occur.

3. False Reporting – Probation PO 1 wrote a second report in which he did not note the complainant’s probation violations.

Board Finding: Unfounded

Rationale: The complainant alleged that PO 1 “wrote a new Probation Report removing these fictional items from the report.” In his written statement, the complainant alleged that PO 1 wrote a second report, in which he did not note the violation that the complainant possessed “a firearm, ammunition, or deadly weapon.” On 02-28-18, CLERB contacted the Probation Department and requested “Any and all investigative report(s) relating to the search at the home on 12-11-2017, to include evidence seized.” In response, the San Diego County Probation Department (SDCPD) supplied numerous reports, including one Mandatory Supervision Sentencing After Revocation Report. On 01-04-19, an email was sent to the SDCPD confirming that only one report was written, as the complainant had alleged that PO 1 wrote a second report in which he did not note the complainant’s probation violations. In an electronic mail correspondence from the Probation Department, it was confirmed that PO 1 only submitted one report. Evidence showed that PO 1 only submitted one report and the allegation was unfounded.

4. False Arrest – PO 1 arrested the complainant for a crime he did not commit.

Board Finding: Unfounded

Rationale: The complainant alleged that PO 1 arrested him for a crime he did not commit; that he was not in possession of a knife. On 12-11-17 a ‘Probation Compliance Visit’ was conducted at the complainant’s home. During the search, and according to PO 1’s written report, “A search of the offender’s vehicle was conducted, which revealed a folding knife located in the driver’s side door.” On an ‘Adult Field Service Search Report and Contraband Receipt,’ PO 1 detailed the items that were seized from the possession of or from the premises controlled by the complainant. On the receipt, PO 1 noted item #3 as a “folding knife found in the vehicle driver’s side door.” Along with the contraband receipt, PO 1 included a photo of a pocket knife. A copy of the photo was provided to CLERB. The black and white photo copy was of a partially unfolded ‘Gerber’ pocket knife with a black grip. As such, the complainant was arrested for violating the terms of his probation. According to the complainant, he alleged that the charge of possessing “a firearm, ammunition, or deadly weapon” was a false charge. Court documents confirmed that the complainant attended his court hearing on 12-21-17. Contrary to the complainant’s statement, court documents dated 12-21-17, revealed that the complainant admitted to the violations of conditions of his mandatory supervision. He waived his hearing and his mandatory supervision was summarily revoked; he was to serve his remaining term in custody. He was remanded to custody without bail. The evidence showed that the allegation that PO 1 arrested the complainant for a crime he did not commit did not occur.

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**18-039**

1. Misconduct/Procedure – Deputies 1 and 2 “provoked” an inmate to start a fight with the aggrieved.

Board Finding: Unfounded

Rationale: Per the complainant's written statement, she stated, unidentified deputies, later identified as Deputies 1-2, "provoked" another inmate to start a fight with the aggrieved. The complainant advised that she had witnesses, inmates who were housed with the aggrieved, inform her that deputies provoked inmates to start a fight or bullying the aggrieved. Neither the complainant nor her witnesses specify how deputies "provoked" the other inmate into fighting the aggrieved; however, the complainant stated, "I have speculation that he was set up by the deputies who I've heard are aggressive and like to bully and set up the inmates." According to jail surveillance video titled, 10-50-39-0.cx3," at the start of the video, two deputies were observed to enter the module and perform a security check. During the performance of their duties, the deputies were observed to walk through the common area, dayroom, bathroom, and sleeping area of the housing unit. The surveillance videos were without sound. The deputies were not observed to engage inmates in conversation or stay for a prolonged visit. According to an Incident Report, deputies had only become aware of the altercation/assault when the victim brought the assault to their attention. According to an Incident/Crime Report, the inmate contacted deputies and informed them that he needed to be moved from the dorm after an argument over a newspaper. Evidence indicated that the allegation that Deputies 1 and 2 "provoked" the victim to start a fight with the aggrieved was unfounded. The evidence shows that the alleged act or conduct did not occur.

2. Misconduct/Procedure – Deputies 1 and 2 segregated the aggrieved from other inmates "as punishment."

Board Finding: Action Justified

Rationale: Per the complainant's written statement, she alleged, the aggrieved was segregated from other inmates "as punishment." The complainant explained that she received a "disturbing call" from other inmates housed with the aggrieved. The inmates explained that the aggrieved was involved in an altercation with another inmate and "he [the aggrieved] was put in a 'hole.'" The complainant said she called the jail and an unidentified non-sworn, professional staff member informed her "that he [the aggrieved] was in a restricted area. [The aggrieved] was then put in a "hole," a restricted room, by himself and no one else is to be put in there with him as a punishment." The complainant was informed that the aggrieved was involved in a "fight." The complainant argued that the aggrieved was "defending himself from this violent inmate." According to an Incident Report (the aggrieved's Segregated Housing Order), after the incident, the aggrieved was transferred to Administrative Segregation (Ad-Seg), pending an investigation and a disciplinary hearing for jail rule violations and criminal act. The aggrieved was initially charged with violating Jail Rules and Regulations #103 – Threaten/Assault Staff/Inmate and #701 – Interfering with Jail Operations. The report detailed that the aggrieved was determined to be the suspect in the battery. At the conclusion of the investigation, the aggrieved was transferred back to his prior status and housing. Evidence indicated that the allegation that the aggrieved was segregated from other inmates "as punishment" did occur and was justified and proper.

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**18-043**

1. Death Investigation/Natural Death – While in the custody of the Sheriff's Department at the Vista Detention Facility, Stephen Clifford Maas was found lying unresponsive in his bed.

Board Finding: Action Justified

Rationale: On 03-21-18, 69-year-old Stephan Maas was arrested and booked on five counts of PC§ 288, Lewd Act upon a Child; he had no prior criminal history. Medical staff evaluated Maas who told them he had preexisting COPD (chronic obstructive pulmonary disease), lung cancer, and throat cancer. He was classified and housed in EOH (Enhanced Observation Housing) due to his charges, high bail, and first time in jail. On 03-22-18, at about 2:40 a.m., Inmate Maas was found unresponsive in his cell. Life-saving measures were administered and Maas was transported to Tri-City Medical Center where he was pronounced deceased. There were no visible signs of trauma and his death appeared to be of natural causes. An external autopsy was performed and the Medical Examiner determined the cause of death was Atherosclerotic Cardiovascular disease with the contributing factor of Lung Cancer and COPD (chronic obstructive pulmonary disease). The manner of death was natural. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

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**18-046**

1. Misconduct/Discourtesy – Deputy 1 was angry and disrespectful toward the complainant.

Board Finding: Not Sustained

Rationale: The complainant said that Deputy 1 angrily accused him of being disrespectful to his (deputy's) intelligence and ordered him to get out of his truck. Deputy 1 provided information during the course of CLERB's investigation that conflicted with that of the complainant. Sheriff's Policy 2.22, Courtesy requires that employees be courteous to the public, tactful in the performance of their duties, and that they must control their tempers, and exercise patience and discretion even in the face of extreme provocation. The Body Worn Camera (BWC) footage of this incident was partial and only recorded the ending of this incident; it did not support the allegation. As attitudes are subjective in nature and there was no evidence to support a violation of policy, there was insufficient evidence to prove or disprove the allegation.

2. Excessive Force – Deputy 1 “forcibly” removed the complainant from his vehicle, shoved him against a door jamb, and pulled his handcuffed arms up behind his back.

Board Finding: Action Justified

Rationale: The complainant said, “When I started to exit the vehicle Deputy 1 grabbed my arm and pulled me from my truck and forcibly shoved me against the door jam of the truck, and handcuffed me with my hands behind my back and painfully pulled my arms up my back behind me - all of this is happening in the road...” Deputy 1 provided information during the course of CLERB's investigation that conflicted with that of the complainant. Sheriff's Policy 2.49, Use of Force stipulates that employees shall not use more force in any situation than is reasonably necessary under the circumstances, be in accordance with law and established Departmental procedures, and that it must be reported in writing. There were no Use of Force reports associated with this incident. The actions described by both the complainant and the deputy, which were utilized by Deputy 1 in response to the complainant's non-compliance were within the Use of Force Guidelines which states that when verbalization proves ineffective, arm guidance or a firm grip may suffice to overcome resistance; and only that which results in injury must be documented. The evidence showed the guidance actions taken by Deputy 1 in response to the complainant's non-compliance were lawful, justified and proper.

3. Misconduct/Intimidation – Deputy 1 applied pressure to the handcuffed complainant and said, “Do you see how fast this can escalate.”

Board Finding: Action Justified

Rationale: The complainant said that “while causing him physical pain by shoving his handcuffed arms up in the air behind his back, Deputy 1 asked me if he “had not been professional enough”, and then taunted me by asking me “do you see how fast this can escalate?” to which I reply ‘yes sir.’” The definition of “intimidate” is to frighten or threaten someone, usually in order to persuade the person to do something he or she does not wish to do. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. The evidence showed the actions taken by Deputy 1 in response to the complainant's non-compliance were lawful, justified and proper.

4. Misconduct/Procedure – Deputy 1 denied the complainant's request for his shirt and shoes.

Board Finding: Action Justified

Rationale: The complainant said, “I asked Deputy 1 if I could put on my shoes and shirt before going to jail and he said no. I had just finished surfing before this encounter and my hair was still wet and I was only wearing my jeans.” Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. The evidence showed the actions taken by Deputy 1 were lawful, justified and proper.

5. Excessive Force – Deputy 1 forced the complainant over the hood of his truck with his arms behind him.

Board Finding: Action Justified

Rationale: The complainant said, “At this time another San Diego Sheriff arrives and stands on the sidewalk facing me and I am moved by Deputy 1 from the being shoved against the door jam to being forced over the hood of my truck with my arms behind me.” Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Sheriff's Policy 2.49, Use of Force stipulates that employees shall not use more force in any situation than is reasonably necessary under the circumstances, be in accordance with law and established Departmental procedures, and that it must be reported in writing. There were no Use of Force reports associated with this incident. The actions described by both the complainant and the deputy, which were utilized by Deputy 1 in response to the complainant's non-compliance were within the Use of Force Guidelines which states that when verbalization proves ineffective, arm guidance or a firm grip may suffice to overcome resistance; and only that which results in injury must be documented. The evidence showed the guidance actions taken by Deputy 1 in response to the complainant's non-compliance were lawful, justified and proper.

**18-069**

1. Misconduct/Discourtesy - A non-sworn Sheriff's employee laughed at the complainant.

Board Finding: Summary Dismissal

Rationale: On 04-28-18, the complainant attempted to visit the aggrieved who was incarcerated at the GBDF. While at the facility the complainant said she was "literally laughed at" by one of the visitation staff members. As CLERB has no authority over non-sworn personnel per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority, this allegation of misconduct will be referred to the Sheriff's Department.

2. Misconduct/Discourtesy – A non-sworn Sheriff's employee hung up on the complainant.

Board Finding: Summary Dismissal

Rationale: After the complainant's visit to the GBDF, she attempted to contact a supervisor by phone. According to the complainant, when she called GBDF and asked to speak with the booking supervisor, an employee hung up on her. As CLERB has no authority over non-sworn personnel per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority, this allegation of misconduct will be referred to the Sheriff's Department.

3. Misconduct/Discourtesy - A non-sworn Sheriff's employee did not provide the complainant with a response to her inquiry.

Board Finding: Summary Dismissal

Rationale: While at the GBDF to visit the aggrieved the complainant arrived late and visiting hours were over. The complainant said when she asked a Sheriff's employee if there was a hotel nearby, the employee replied, "You have a phone. GPS should be able to help you with that." As CLERB has no authority over non-sworn personnel per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority, this allegation of misconduct will be referred to the Sheriff's Department.

4. Misconduct/Procedure - A non-sworn Sheriff's employee did not provide information to the complainant about the mail room at GBDF.

Board Finding: Summary Dismissal

Rationale: When attempting to visit the aggrieved at the GBDF, the complainant spoke with a non-sworn Sheriff's employee. The complainant stated that the employee did not explain to her that the GBDF mail room was shut down and all mail was being forwarded to Las Colinas Detention and Reentry Facility and then sent back to GBDF. As CLERB has no authority over non-sworn personnel per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority, this allegation of misconduct will be referred to the Sheriff's Department.

5. Misconduct/Truthfulness – A non-sworn staff member's "lied" to the complainant.

Board Finding: Summary Dismissal

Rationale: The complainant stated that on 05-06-18, she went to the GBDF to visit the aggrieved. While attempting to schedule a visit, the complainant said she was instructed by a non-sworn Sheriff's employee to wait in the visit waiting room to see if anyone had canceled a visit, that way she could take their visit time in their absence. The complainant later learned that she was not allowed to take another's scheduled visit time; she alleged that she was lied to and was given misinformation. Additionally, she was informed that visits with inmates by appointment only. As CLERB has no authority over non-sworn personnel per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority, this allegation of misconduct will be referred to the Sheriff's Department.

6. Misconduct/Procedure – Unidentified Sheriff's deputies only allowed the aggrieved one call in three days and provided him with an incorrect pin number.

Board Finding: Not Sustained

Rationale: The complainant alleged the aggrieved was only allowed one call every three days, while in custody at the GBDF, and was not given the correct PIN number for the phone after requesting it from multiple deputies. Reports provided by the Sheriff's Department showed the aggrieved was booked into the San Diego Central Jail (SDCJ) on 04-25-18. He was moved twice on that day and his classification was changed from level four to level five. There were no entries referencing phone usage or dayroom access. On 04-26-18, the aggrieved was moved from SDCJ to GBDF and was given dayroom time at around 8 p.m. where he would have had access to a phone. On 04-27-18, there were no documentation showing whether the aggrieved had access to a phone that day. According to the

Sheriff's Department, sometimes GBDF is so busy that not all dayroom times are logged into the computer system. If an inmate, who is in Ad-Seg, had access to the dayroom, they would also have had access to phones. According to SDDS Patrol Procedures Manual Section P.2, "Collect calls and debit systems will be available for use on telephones. Debit time will be purchased by the inmates through the Sheriff's Commissary." There was no documentation in the policy and procedure manual that stated deputies would have knowledge of, or provide, pin numbers for phone usage to inmates. Therefore, since there was not enough evidence to prove that the aggrieved did or did not access to the dayroom or phones, on the days mentioned above, the allegation was not sustained.

7. Misconduct/Procedure – A non-sworn SDDS employee was unable to adequately address the complainant's questions.

Board Finding: Summary Dismissal

Rationale: While attempting to visit the aggrieved at the GBDF, the complainant stated she asked the booking clerk questions but "he did not have a single answer" except to verify that the aggrieved was at GBDF and in the system. She further stated, "He fumbled over his words and didn't know anything." As CLERB has no authority over non-sworn personnel per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority, this allegation of misconduct will be referred to the Sheriff's Department.

8. Misconduct/Truthfulness- Unidentified Sheriff's employees gave the complainant "false information."

Board Finding: Not Sustained

Rationale: After her attempt to visit the aggrieved at the GBDF, the complainant stated she called GBDF multiple times and was given false information when she asked for the Watch Commander's name or information. The complainant provided no further information with regards to who she spoke with. According to CLERB's liaison with the SDDS, the main phone line is typically answered by civilian/non-sworn staff. Based on documentation provided by the SDDS, Deputy 3 was identified as the deputy assigned to the position of Visit Deputy on the day of the allegation. Deputy 3 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Without further evidence it was not possible to confirm whether the allegation occurred, and the complaint was not sustained.

9. Misconduct/Procedure - Unidentified Sheriff's employees or deputies did not provide the aggrieved mail, including legal documents, for three weeks while he was housed at GBDF.

Board Finding: Not Sustained

Rationale: The complainant alleged that during the three weeks the aggrieved was housed at the GBDF he had not received any of her mail and it still had not been returned to her. Also, legal documents, sent by the aggrieved's attorney, did not reach the aggrieved. Information provided by the Sheriff's Department did not confirm any mail restrictions during the period the aggrieved was housed at GBDF. According to the Administrative Lieutenant from the Las Colinas Detention and Reentry Facility, where the county jail mail room was located; there were no known mail issues in April 2018. There was no evidence that showed the mail room was shut down for three weeks. According to a phone interview with the aggrieved, he stated he did not receive two books sent to him. He also stated the complainant sent him stamps and envelopes, which was not allowed in custody. The stamps and envelopes were not given to the complainant, nor were they returned to the sender. Documents showed that on 05-11-18, a letter was received from the complainant. The mailing was rejected due to it containing blank envelopes. The evidence showed that that particular mailing was rejected, due to policy violation, but there was no other evidence indicating that other mailings were rejected and/or not received by the aggrieved. Mail was rerouted through LCDRF; however, there was no indication the mail room was "shut down" for any period of time. Therefore, without further evidence the allegation was not sustained.

10. Misconduct/Discourtesy – A non-sworn staff member responded rudely to the complainant's request.

Board Finding: Summary Dismissal

Rationale: The complainant attempted to schedule a visit with the aggrieved and claimed to have waited for "over an hour." She claimed to have repeatedly asked for an update, but was ignored and was responded to "rudely" by a non-sworn staff member. In an email correspondence from CLERB's liaison with the SDDS, it was advised that that staff members in the visiting area consist of sworn and non-sworn staff. Typically, there is one deputy assigned as a Visit Deputy to provide security for the visitors and lets them into their visits. Deputy 3 was identified as the Visit Deputy on the day of the allegation. The allegation was not against Deputy 3; however, he was identified as a witness and provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. As CLERB has no authority over non-sworn personnel per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority, this allegation of misconduct will be referred to the Sheriff's Department.

11. Excessive Force - Deputy 1 grabbed the aggrieved's waist chain and "jerked him out of his seat" during a visit.

Board Finding: Not Sustained

Rationale: The complainant stated that on 05-06-18, she went to the GBDF to visit the aggrieved. During the visit, she requested that Deputy 1 loosen the aggrieved's handcuffs, as she claimed she could see his hands turn purple. The complainant further stated, "The deputy rolled his eyes, walked up and took the cuffs off one at a time and then cranked them tighter." The complainant spoke out and became extremely upset. In response, the deputy pulled on the chain that was attached to the aggrieved's waist and then locked the device on the wall behind him. The complainant said, "This caused him [the aggrieved] to jerk back out of his seat while he was seated at the phone. This was not only cruelty, but it was witnessed and uncalled for." Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. There was no available surveillance video documenting the interactions between Deputy 1 and the aggrieved during her visit. During a phone interview, the aggrieved advised that he was finishing a non-contact visit with the complainant when the incident occurred. He did not stand up right away as he was saying goodbye to the complainant. The deputy pulled on his waist chain and said it was time to go. The incident was witnessed by the complainant. The aggrieved said he sustained bruises on his waist from the incident; however, he did not mention sustaining any bruising or discoloration on his hands as a result of the chain being pulled. Evidence showed that the deputy did pull on the aggrieved's chain. There was a lack of evidence proving the aggrieved was "jerked" out of his seat as claimed by the complainant. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove the allegation.

12. Misconduct/Procedure - Deputy 1 refused to provide the complainant his name and badge number.

Board Finding: Not Sustained

Rationale: During a visit with the aggrieved at the GBDF, the complainant stated she addressed Deputy 1 by yelling at him, as she demanded his name and badge number. According to the complainant, Deputy 1 made eye contact with her, but ignored her. Deputy 1 ignored the complainant as he unhooked the aggrieved's waist chain and allowed the aggrieved to walk out of the visiting area. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. During a phone interview, the aggrieved stated that after the visit, he heard the complainant say something from behind the glass partition, but he could not clearly hear what she said. The incident occurred in the non-contact area and, as such, without using the phone that separated the glass partition in the visiting area, one could not hear what the person on the other side of the glass said. If the complainant asked for the deputy's name and badge number, it would be comprehensible that one was not able to hear what was said. There was no available surveillance video documenting the interactions between Deputy 1 and the aggrieved during her visit. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove the allegation.

13. Misconduct/Procedure – Non-sworn Visiting room staff members provided incorrect information to the complainant when she asked about "sending books" and the "protocol for a confidential marriage and notary's information."

Board Finding: Summary Dismissal

Rationale: The complainant stated that as she walked into the visiting waiting area at the GBDF, she stopped and asked a non-sworn staff member questions regarding "sending books, the protocol for a confidential marriage ceremony, and notary information." The complainant alleged that she was told incorrect information and was provided documents that were outdated; the document given to her regarding confidential marriage ceremonies was dated from 2014. As CLERB has no authority over non-sworn personnel per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority, this allegation of misconduct will be referred to the Sheriff's Department.

14. Misconduct/Procedure - A non-sworn Sheriff's employee refused to provide the complainant the name of the booking supervisor.

Board Finding: Summary Dismissal

Rationale: While at the GBDF, the complainant stated that on 05-09-18, when she spoke with a non-sworn Sheriff's employee that she requested the name of the booking supervisor. The non-sworn employee kept demanding that she provide him with the inmate's information and her last name. Since the booking clerk did not provide the information she was asking for, she hung up on him. As CLERB has no authority over non-sworn personnel per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority, this allegation of misconduct will be referred to the Sheriff's Department.

15. Misconduct/Truthfulness - A non-sworn Sheriff's employee "lied" to the complainant.

Board Finding: Summary Dismissal

Rationale: While at the GBDF, the complainant stated she was lied when she asked to speak with a certain sergeant. The complainant was advised that that particular sergeant “does not work at the facility and there was no chain of command in general on the premises to speak to.” As CLERB has no authority over non-sworn personnel per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority, this allegation of misconduct will be referred to the Sheriff’s Department.

16. Misconduct/Procedure - Unidentified deputies only allowed the complainant a 15-minute visit with the aggrieved as opposed to the 30 minutes she was told she would receive.

Board Finding: Not Sustained

Rationale: The complainant visited the aggrieved at the GBDF on 05-12-18. During the visit, the complainant alleged that the duration of the visit was “at maximum 15 minutes.” Documentation provided by the SDSO confirmed that the complainant visited the aggrieved 05-12-18. The report documented two times, 7:25 p.m. and 8:30 p.m., with regards to her visit. No details were provided to determine the duration of the visit. Video surveillance was not available of the visit. Deputies 2 and 4 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. In a telephonic interview, the aggrieved confirmed that his visit started as scheduled and continued for approximately 10-15 minutes. At that time, an unidentified deputy announced that visits would end in a few minutes. Moments later, the deputy returned and said time was up; visits were over and the aggrieved was escorted back to his cell. The unidentified deputy did not provide an explanation as to why the visit was cut short. The aggrieved claimed the visit was less than 30 minutes. There was no video provided of the actual visit. According to Title 15, inmates in a Type II facility, such as GBDF, are allowed no fewer than two visits totaling at least one hour per inmate each week. Section P.9.1G from the SDSO Detention Services Bureau Green Sheets, entitled “Social Visiting” stated “Inmates will be allowed two visits per week/one visit per day, at thirty minutes per visit.” The aggrieved had two visits scheduled during the week of 05-06-18 through 05-12-18. There were no citations documenting the duration of the visits. If second visit was less than 30 minutes and the first visit was more than 30 minutes, for a combined total of at least one hour, it would have been in compliance with Title 15. Evidence showed that the aggrieved had two visits scheduled during the week; however, without additional evidence, CLERB was unable to determine if those visits were in compliance with Title 15. Therefore, the allegation was Not Sustained.

17. Misconduct/Discourtesy – Deputy 2 had an “attitude” when speaking with the complainant.

Board Finding: Not Sustained

Rationale: While speaking with Deputy 2 at the GBDF, the complainant stated that “Deputy 2 had an attitude from the moment she approached me.” The complainant further explained, “She is not anything to me and I do not have to address her accordingly if I do not feel the need to do so. She apparently did not like that.” Deputy 2 and two other deputies provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. There was no available surveillance video documenting the interactions between Deputy 2 and the complainant. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove the allegation.

18. Misconduct/Truthfulness - Unidentified deputies called in a “fake code” emergency so they could excuse themselves from talking with the complainant.

Board Finding: Unfounded

Rationale: While speaking with Deputy 2 at the GBDF, the complainant alleged that unidentified deputies “called out some code and pretended that they had an emergency to attend to. The code they called was a fake code.” Deputy 2 and another deputy provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Documentation provided by the SDSO revealed an incident occurred on campus on 05-12-18, at 10:22pm. A facility wide protocol was enacted and all inmates in the involved housing were secured. The evidence showed that an incident did occur within the facility which interfered with the facilities usually activities and operations. As such, the allegation that a “fake code was called” was unfounded.

19. Misconduct/Procedure - Unidentified deputies improperly classified the aggrieved at GBDF.

Board Finding: Action Justified

Rationale: The complainant stated the aggrieved was misclassified upon his admission into Sheriff’s custody. The aggrieved was not classified as an Administrative Segregation (Ad-Seg) inmate while he was incarcerated in the state prison system. However, upon his admission into the SDSO, he was classified as Ad-Seg. According to the complainant, “based on a 114-D form from Donovan State Prison that was old and stated he removed himself off of

his yard due to a known enemy and his safety. Therefore, he should not have been placed in housing unit 5-A.” According to documentation from the SDSD, upon his admission into jail, a classification deputy interviewed the aggrieved and determined his proper housing assignment. According to the California Department of Corrections (CDC), the aggrieved was classified as Sensitive Needs Yard (SNY) and was housed in Ad-Seg while in prison. In order to ensure his safety and the safety of others, and in compliance with DSB P&P Section J.3, the aggrieved was housed in Ad-Seg and Protective Custody (PC). His Ad-Seg status was evaluated on a weekly basis while he was in the Sheriff’s custody. The aggrieved’s protected status would remain until his release from Sheriff’s custody. The evidence showed the aggrieved’s housing classification was justified, lawful and proper.

20. Misconduct/Discourtesy - Unidentified professional staff members disrespected the complainant.

Board Finding: Summary Dismissal

Rationale: On 05-12-18, during the complainant’s attempt at scheduling a visit with the aggrieved at the GBDF, the complainant advised that there were “seven employees ...who laughed at her, that were staring at her and the situation as opposed to working.” They were described as being disrespectful to the complainant. As CLERB has no authority over non-sworn personnel per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority, this allegation of misconduct will be referred to the Sheriff’s Department.

21. Misconduct/Discourtesy - Unidentified deputies disrespected and laughed at the complainant.

Board Finding: Not Sustained

Rationale: On 05-12-18, during the complainant’s attempt at scheduling a visit with the aggrieved at the GBDF, the complainant advised that there were unidentified deputies who laughed at and disrespected her, that were staring at her and the situation as opposed to working.” The complainant detailed how one unidentified deputy laughed at her when she asked to speak with a Watch Commander. Video surveillance from the GBDF Visiting Area was requested to confirm or either confirm or deny the allegations. According to CLERB’s liaison with the SDSD, it was advised that the only video surveillance in the visiting area was too far away from the window and did not capture the incident. Based on a video screen shot, provided by the SDSD, there was no way to identify a deputy from the video recording. Deputies 3, 4 and two other deputies provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Without further information to determine which deputy the complainant was referring to the allegation was not sustained.

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## **18-076**

1. Death Investigation/Suicide – On May 19, 2018, while in the custody of the Sheriff’s Department at the San Diego Central Jail, Jon Nelson hanged himself by the neck.

Board Finding: Action Justified

Rationale: This 52-year-old male was arrested on 05-16-18, and taken to jail where he was placed into a medical observation cell due to seizure activity from alcohol and heroin withdrawal. During the medical intake screening and subsequent interactions with deputies and/or medical personnel, Nelson never expressed suicidal intent or any type of self-harm. On 05-19-18, a deputy found the inmate hanged by the neck with a sheet tied to the shower head in his cell, cut him down, and began Cardiopulmonary Resuscitation (CPR). Nelson was transported to UCSD Medical Center where he was found to have an anoxic brain injury. On the evening of 05-24-18, care was withdrawn and Nelson’s death was pronounced. The cause of death was anoxic encephalopathy (brain damage) due to hanging and the manner of death was suicide. The evidence supported that Nelson was properly screened and classified upon his entry into the jail system and that safety checks were done every 60 minutes in accordance with Sheriff’s policies. There was no evidence to indicate that Nelson expressed any concerns about his mental or physical well-being with deputies, medical personnel, and/or other inmates. Upon discovery, sworn personnel expeditiously responded and immediately initiated life-saving measures. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff’s Department sworn personnel.

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## **18-079**

1. False Reporting – Deputy 1 “deliberately lied” on an arrest report.

Board Finding: Not Sustained

Rationale: The complainant stated Deputy 1 deliberately lied on the complainant's arrest report about several small children playing in the cul-de-sac on scooters and bikes that could have easily been struck and killed by the vehicle he was driving. The complainant further stated the deputy lied about him speeding, running red lights and running stop signs. According to the complainant, this was done in an attempt to aggravate the events surrounding the crime. The evidence showed that the complainant was involved in a high-speed pursuit in a residential area of San Diego where the speed limit was 25 miles per hour. Two deputies confirmed that the complainant failed to yield at stop signs. They also stated the complainant's rate of speed was far above the posted limit and could have posed a danger to other drivers and pedestrians. Upon entering the cul-de-sac there was at least one confirmed child present. Deputy 1 and another deputy provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Since two different deputies and one independent witness provided differing statements with regards to who was in the cul-de-sac there was not enough evidence to show whether multiple children were present, or in danger, from the complainant prior to coming to a stop in his vehicle. The statement from the independent witness interviewed on scene, and later by an investigator from the public defender's office, also differed in content. In a statement to the deputies the witness said he was scared for his son's safety and yelled to him to get out of the way. He then stood up and ran to pull his son out of harm's way. The witness confirmed he yelled to his son, but he was able to get back into the house on his own without the witness pulling him out of harm's way. There was no mention of further children in the street. Regardless of whether there was one child, or multiple children in the cul-de-sac, it was apparent, based on witness and deputy statements, that the complainant was driving at a high rate of speed in a residential neighborhood and ran more than one stop sign. His vehicle came to a stop, unattended, at the end of a cul-de-sac where at least one confirmed child was on a bicycle. Other than that statement, regarding "children" in the street, everything else in Deputy 1's report appeared accurate. Whether Deputy 1 was mistaken about seeing one versus multiple children, in the cul-de-sac, or whether he lied in his report cannot be determined by the evidence. A "10 News" article stated Deputy 1 had run-ins with internal affairs for inaccurate report writing and excessive force. Evidence is not clear whether Deputy 1 deliberately lied in his report and because of the history of Deputy 1's inaccurate report writing and conflicting statements provided by witnesses the allegation is not sustained.

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## **18-092**

1. Misconduct/Harassment – Deputy 3 made remarks against the complainant's family.

Board Finding: Not Sustained

Rationale: The complainant stated that while at a convenience store in Ramona, on an unidentified date, Deputy 3 made remarks against the complainant's family. He allegedly encouraged a patron of the store to not have any dealings with the complainant's family because "nothing good would become of it." Deputy 3 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Evidence showed that Deputy 3 did make a comment to the complainant. There was no evidence or witnesses provided by the complainant that could verify any comments made at that location. However, the wording of the comment and/or how it was perceived, was not a violation of any San Diego Sheriff's Department Policy or Procedure (SDSD P&P). Without further evidence, such as an independent witness or video footage, the allegation was not sustained.

2. Misconduct/Intimidation – Deputy 1 said to the complainant's son, "I beat the shit out of your father five years ago and put him in the hospital."

Board Finding: Not Sustained

Rationale: The complainant said Deputy 1 told her son, "I beat the shit out of your father five years ago and put him in the hospital," or words to that effect. The complainant said her husband was never "beaten up" by any Sheriff's deputy. She stated there was a man named "(redacted)" that was "beaten up" by a Sheriff's deputy and the Department was sued. According to an Arrest Report dated 06-21-18, the complainant's son and another juvenile were involved in a physical altercation in Ramona. The juvenile picked up the complainant's son by the legs and slammed his head and body onto the ground. In addition, the juvenile punched the complainant's son in the face which caused him to fall to the ground and lose consciousness. The complainant's son was transported to a hospital where he was treated for his injuries. An Arrest/Juvenile Contact Report dated 07-26-08, confirmed that a man named "(redacted)" was arrested on 07-26-08, at a bar in Ramona. During his arrest, force was used, and he was struck by a deputy's flashlight multiple times, prior to being handcuffed and arrested. There was no mention of Deputy 1 being on scene at that incident. No other incident was found involving Mr. (redacted) and Deputy 1. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. The complainant's son was interviewed by phone and he provided the following information: While at the hospital, Deputy 1 asked him how his father was doing. The complainant's son advised that the deputy then said something similar to, "The last time I talked to him I beat him up and put him in the hospital." The complainant described the

statement as if Deputy 1 was bragging about it. The complainant's son's girlfriend was also present during the interview. She stated that Deputy 1 talked with the complainant's son at the hospital by the ambulance entrance. No one else was present besides her, Deputy 1, and the complainant's son. Regarding the complainant's son's father, Deputy 1 said something similar to, "I haven't seen him in a while, since the last incident because of an outburst," and "...since the last time I put him in the hospital." The complainant's girlfriend had nothing further to add. Evidence confirmed that Deputy 1 did make comments about the complainant's husband, yet based on interviews with Deputy 1, the complainant's son, and his girlfriend, it was unclear as to the actual statement made by Deputy 1. The complainant's son claimed that Deputy 1 said he beat his father up. The complainant's son's girlfriend did not mention anything about 1 saying he beat up the complainant's husband. There was insufficient evidence to either prove or disprove the allegation that Deputy 1 said, "I beat the shit out of your father five years ago and put him in the hospital." Therefore, the allegation is not sustained.

3. Misconduct/Procedure – Deputies 4 and 5 did not take a witness statement from the complainant's husband.

Board Finding: Unfounded

Rationale: The complainant stated her husband tried to give a statement to two female deputies, (later identified as Deputies 4 and 5) on five separate occasions, but they refused to take it and said they were too busy during the incident on 06-21-18. According to a follow up report, the complainant's husband and the complainant's son's girlfriend made their way to the incident location. When they arrived, they found the complainant's son lying unconscious in the street. During a phone interview with the complainant's husband, dated 08-30-18, he provided the following information: He stated he tried to give his statement to two female deputies five times, but they kept telling him to wait. The complainant's husband told them he was a material witness and asked if he could at least point out the suspects who assaulted his son. The complainant stated that no deputy took his statement. Deputies 2 and 5 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. A review of the Body Worn Camera (BWC) footage confirmed that Deputy 5 was interviewing a witness when the complainant's husband approached her. A male deputy near Deputy 5 responded to the complainant's husband's comments. It appeared Deputy 5 then said something to the complainant's husband though it was unintelligible on the video. He walked away. Deputy 5 completed her witness interview and then went to interview another witness. There was no BWC showing any statements provided by the complainant's husband to Deputy 5. Deputy 4 can be seen on the (BWC) footage requesting a driver's license from the complainant's husband. He provided the driver's license to Deputy 4 and she wrote down information on a notepad she was holding. At that time, a blue Jeep approached the scene and the complainant's husband told the deputies that the occupants of the vehicle were friends of his and he walked toward the Jeep. After a few minutes, he returned to speak with Deputy 5 and she requested his phone number. The complainant's husband walked away from Deputy 5 again. He crossed the street and stated he was going home. He never returned to speak with Deputy 5. In the BWC, no deputy was seen making a statement that they were too busy to take the complainant's husband's statement. The complainant's husband was observed on the BWC footage making various comments about the assailants to Sheriff's deputies. According to the BWC footage, deputies responded to his comments, though a formal statement was not taken. Evidence showed that deputies responded to the complainant's husband's request to make a statement and Deputy 4 further responded by taking down his personal information. In the BWC, the complainant's husband was observed to make comments to the deputies but was not seen asking the deputies to take his statement. When he was in a position to provide a statement to Deputy 4, the complainant's husband walked away and said he was going home. Neither Deputies 4 nor 5 stated on video that they were too busy to take the complainant's husband's statement and no deputy was shown to refuse to take his statement. The evidence showed the allegation did not happen and therefore was unfounded.

4. False Reporting – Unidentified deputies misstated facts in a report.

Board Finding: Unfounded

Rationale: The complainant stated the report from the incident said a car hit her son, which according to video surveillance and witness statements, did not happen during the assault. Initial reports from Sheriff's Communication Center records stated that an individual was hit by a car. Other witnesses later confirmed there was a physical altercation and no vehicle involved. The Arrest Report dated 06-21-18, stated that a juvenile and the complainant's son were involved in a physical altercation in Ramona. There was no mention of a car hitting the complainant's son. According to records from the Sheriff's Communication Center, the call for service was initially dispatched as a vehicle versus pedestrian. The call was later confirmed to be a physical altercation with one person down in the roadway. There was no written report documented by the SDSD that stated otherwise; there was no evidence in any report that the complainant's son was hit by a car and therefore the allegation was unfounded.

5. Misconduct/Procedure – Deputy 1 and/or other unidentified deputies failed to provide the complainant's son with information from the Victim's Assistant Program or a copy of Marsy's Law.

Board Finding: Sustained

Rationale: The complainant alleged that neither her husband, nor her son were provided with any victim's assistance information or a copy of Marsy's Law by deputies. During a phone interview with the complainant's son, he confirmed after he was assaulted on 06-21-18, that he was never provided with information from the Victim's Assistant Program nor was he given a copy Marsy's Law by Deputy 1, when he was interviewed at the hospital. He was never provided with information from the Victim's Assistant Program by any SDDS deputy. The California Peace Officers Legal Sourcebook (CPOLS) Section 13 titled, "Criminal Law, Victim's Rights" states: "The provision requires that all victims of crime be given a list of crime victims' rights referred to as "Marsy's Rights. Every law enforcement agency investigating a criminal act and every agency prosecuting a criminal act shall at the time of initial contact with a crime victim, during follow-up investigation, or as soon thereafter as deemed appropriate by investigating officers or prosecuting attorneys, provide or make available to each victim of the criminal act without charge or cost a 'Marsy Rights' card." Deputy 1 provided information during the course of CLERB's investigation that supported the recommended finding. The evidence showed that the complainant's son was not given a copy of Marsy's law or information from the Victim's Assistant Program and therefore the allegation is sustained.

6. Misconduct/Procedure –An unidentified Sergeant failed to return the complainant's phone calls.

Board Finding: Unfounded

Rationale: On 06-22-18, the complainant alleged that she tried to follow up with Deputy 1's supervisor at the time of the incident. The complainant could not confirm the name of the deputy she spoke with, however, she left messages and the Sergeant never called her back. Records provided by the SDDS showed that Deputy 1 worked overtime during the date of the incident and he was under the supervision of a sergeant who was a Patrol Sergeant from the Ramona Substation. Deputy 1 normally worked out of Poway and was under a Supervising Sergeant. There was also a Detective Sergeant in Ramona at the time. All three sergeants mentioned above provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Since the complainant was unable to provide a name of the sergeant she left a message for, or any other details about the allegation, and the evidence could not confirm the allegation and therefore the allegation was unfounded.

7. Misconduct/Procedure – Deputy 2 failed to investigate threats against the complainant.

Board Finding: Action Justified

Rationale: On 06-28-18, the complainant spoke with Deputy 2 about a threat her son received from his assailant. The assailant allegedly said to her son, "Delete his mother on Facebook or that was a life he would take." Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. County Private Counsel Attorney provided the following legal analysis: "Whether a threat rises to criminal liability under PC 422 depends on context. While (the assailant's) message, on its face, could support finding a possible violation of PC 422, the passage of a full week [week's conversation] between Facebook message and the complainant's contact with Deputy 2 is a strong factor in support of his conclusion that the requirements of PC 422 have not been met. Other factors supporting the conclusion that PC 422 requirements are not met are (the assailant's age 17), the underlying backdrop of the Facebook "threat" arising from the adolescent's emotional response to the earlier fistfight paired with the belligerent attitude of the complainants in dealing with Deputy 2 all tend to make the entire situation seem like an extended emotional dispute between teenagers as opposed to a criminal violation. Thus, although a Facebook message can qualify for violation of PC 422, the determination that no violation existed here is legally supportable and appropriate." Evidence showed that based on the message, information provided by Deputy 2 and Counsel's legal analysis, the threat received was not a violation of law and therefore no investigation was conducted. The actions by Deputy 2 were lawful, justified and proper.

8. Misconduct/Discourtesy – Deputy 2 hung up while speaking with the complainant.

Board Finding: Action Justified

Rationale: On 06-28-18, the complainant spoke with Deputy 2, via a telephonic conversation. During the conversation, Deputy 2 attempted to inform the complainant why the Facebook message/threat did not arise to the level of terrorist threats; Deputy 2 he said the threat did not meet the criteria for a criminal threat. At some point during the telephonic conversation, the complainant alleged that Deputy 2 purposefully "hung up" on her, ending their conversation. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Based on the evidence Deputy 2's actions of terminating the call was justified, lawful and proper.

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**End of Report**

**NOTICE**

In accordance with Penal Code Section 832.7, this notification shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court or judge of California or the United States.