



PUBLIC RELEASE MEMORANDUM

DATE: September 12, 2024

SUBJECT: Sergeant Robert Vaccari
San Bernardino County Sheriff's Department

Deputy Jake Adams
San Bernardino County Sheriff's Department

Sergeant Isaiah Kee
California Highway Patrol

Officer Bernardo Rubalcava
California Highway Patrol

Officer Michael Blackwood
California Highway Patrol

Involved Subject: Hector Javier Puga (Deceased)
Date of Birth January 17, 1989

Date of Incident: February 17, 2021

Incident location: Peach Avenue and Catalpa Street
Hesperia, CA

DA STAR #: 2022-18981

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Edward Hernandez

Report Number#: DR# 192101044 / H# 2021-024

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PREAMBLE

This was a fatal officer involved shooting by deputies from the San Bernardino County Sheriff's Department and California Highway Patrol (CHP). The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary is based on a thorough review of all the investigative reports, photographs, audio recordings, and video recordings submitted by the San Bernardino County Sheriff's Department, DR# 192101044 and H# 2021-024.

FACTUAL SUMMARY

On February 16, 2021, just before 5:50pm Salvador Pacheco was driving northbound on I-15 south of Roy Rogers Drive in Victorville, CA. Pacheco was driving in the #1 lane and observed through his passenger-side mirror a white Ford SUV making unsafe lane changes, following other vehicles too closely, and swerving around them. As the white Ford SUV continued northbound it made an unsafe lane change from the #3 lane to the #2 lane in front of another vehicle partially veering into the #1 lane next to Pacheco. Pacheco veered into the asphalt shoulder of the freeway to avoid a collision with the white Ford SUV, then re-entered the #1 lane of travel. Pacheco rolled down his front passenger side window to confront the driver of the white Ford SUV and observed that the driver's side window of the Ford was already down.

The driver of the white Ford SUV, later identified as Hector Javier Puga, yelled "Fucking punk!" and pointed a black 9mm pistol with his right hand at Pacheco. Puga fired one time at Pacheco and continued driving, exiting the I-15 at Roy Roger Drive. Pacheco followed Puga a short distance, taking a photo of the white Ford SUV with his cell phone. Pacheco eventually pulled over in a parking lot to call 9-1-1. Pacheco described Puga as a heavy set, bald, Hispanic male with a trimmed mustache and a goatee wearing a white shirt. Puga's vehicle was described as a white, older model, Ford Expedition with black rims and a "Funeral" sticker on the rear window. Victorville CHP officers took the report, and the next shift was briefed about the shooting.

On February 17, 2021, CHP Officers Michael Blackwood and Bernardo Rubalcava were partnered on patrol out of the Victorville CHP station and briefed about the shooting that occurred earlier in the evening. At approximately 1:45am while Officer Blackwood was driving a marked CHP patrol vehicle west on Bear Valley Road near the I-15 freeway in Hesperia, Officers Blackwood and Rubalcava observed a white Ford Expedition driving east that matched the description from the shooting reported earlier in the evening. Puga was driving the Ford Expedition. Officer Blackwood conducted a U-Turn and drove behind the Expedition. Before Officers Blackwood and Rubalcava could activate their lights to conduct a traffic stop Puga pulled his vehicle over on Bear Valley Road near Balsam Avenue. Officers Blackwood and Rubalcava stopped their patrol vehicle behind Puga's and initiated a high-risk traffic stop.

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Officers Blackwood and Rubalcava gave orders to Puga to exit the vehicle and walk towards officers. Puga did not comply with commands, instead he drove away from Officers Blackwood and Rubalcava who initiated a pursuit.

Officer Rubalcava communicated with dispatch while Officer Blackwood pursued Puga. Through CHP dispatch, Officer Rubalcava requested assistance from the San Bernardino County Sheriff's Department. San Bernardino County Sheriff's Department (SBCSD), Hesperia Station responded, however had difficulty locating the pursuit as communications were run first through CHP dispatch then through SBCSD dispatch causing a delay in communications. At approximately 1:57am Sergeant Robert Vaccari from SBCSD Hesperia Station was able to locate and join the pursuit at Peach Avenue and Main Street in the City of Hesperia, County of San Bernardino. Sergeant Kee from CHP had responded from Victorville CHP station and was approaching the pursuit.

Sergeant Kee requested SBCSD take over the pursuit since it was traveling through their jurisdiction. Sergeant Vaccari denied the request as he was unclear as to the circumstances leading up to the pursuit but assured mutual aid. At approximately 2:01am, Deputy Jake Adams from the Hesperia Station was staged at the 7-11 on the corner of Main Street and Maple Avenue in the City of Hesperia and joined the pursuit as it passed. At approximately 2:07am Sergeant Kee joined the pursuit on Main Street in Hesperia just east of the I-15 freeway.

The pursuit continued throughout the Cities of Hesperia and Victorville, mostly through residential streets at speeds that ranged between 50 to 90 miles per hour. Multiple attempts at spike strips were used throughout the pursuit and at approximately 2:30am, a spike strip was deployed at Peach Avenue and Main Street in Hesperia that was successful. Puga's front passenger-side tire became flat. However, Puga continued to drive and not yield to officers.

After the spike strip Puga's speeds ranged from 60 to 70 miles per hour. At approximately 2:38am Puga began to slow down to speeds of 30 miles per hour and below until his vehicle ultimately became disabled in a residential neighborhood on northbound Peach Avenue at Catalpa Street in the City of Hesperia. Officer Blackwood and Sergeant Kee stopped their patrol vehicles behind the Ford Expedition illuminating it with their spotlights. Officers Blackwood, Rubalcava and Sergeant Kee conducted a high-risk traffic stop, pointing their department issued firearms at Puga and ordering him out of the Ford Expedition with his hands up. Puga did not comply with those commands.

Deputy Adams and Sergeant Vaccari stopped their patrol vehicles behind the CHP patrol vehicles. Deputy Adams took cover at the driver's side door of the CHP vehicle directly behind the Ford Expedition and Sergeant Vaccari took cover at the passenger side door of that same vehicle. Sergeant Kee made multiple commands that Puga ignored. In an attempt to break the windows, Sergeant Kee fired four less-lethal beanbag

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rounds at the driver's side windows of the Expedition, but the shots were ineffective. A female, later identified as Christina Barrett, exited the Ford Expedition through the front passenger door.

Barrett was given commands by Sergeant Vaccari to walk backwards with her hands up. Barrett complied and was taken into custody by Deputy Adams. Puga remained in the vehicle and continued to defy commands to exit. Sergeant Kee requested Sergeant Vaccari call SBCSD SWAT for assistance. Sergeant Vaccari believed progress was being made and SWAT was not necessary at the time. Sergeant Kee continued to negotiate with Puga but Puga refused to exit the vehicle. At approximately 3:04am Sergeant Vaccari used glass breaking paint balls to break the rear window of Puga's Ford Expedition and then deployed approximately 3 oleoresin capsicum (OC) pepper balls into the Ford Expedition in an attempt to force Puga to exit. Puga did not exit the vehicle and Sergeant Kee continued to negotiate with Puga.

For approximately 30 minutes Sergeant Kee continued to negotiate with Puga while Sergeant Vaccari intermittently shot rounds of OC pepper balls into the Ford Expedition. During this time Puga would open and close the door of the Ford Expedition but would not exit. During the last volley of OC pepper balls Puga indicated that he was hit in the eye with the balls and Sergeant Kee negotiated medical aid in an attempt to get Puga to exit the vehicle. At approximately 3:45am Puga opened the door of the Ford Expedition and began to exit the vehicle.

Sergeant Kee and Officer Rubalcava moved from behind the open driver's side door of the first CHP patrol vehicle to the southwest dirt shoulder of Peach Avenue. Sergeant Kee utilized a Sig Sauer .223 caliber rifle and Officer Rubalcava carried his Smith and Wesson .40 caliber duty handgun. Officer Blackwood positioned himself behind the open front passenger door of the first CHP patrol vehicle and carried a Sig Sauer .223 caliber rifle. Puga did not have a shirt on when he exited the driver's side door of the Ford Expedition. As he exited, Puga had his hands above his head but was facing away from all officers, shielding the front of his waistband.

Sergeant Kee continued to give commands to Puga and attempted to negotiate but Puga did not comply. After several minutes Puga walked to the front of the Ford Expedition and pressed his torso against the front of the Expedition. Puga's arms were still above his head and his placement against the Ford Expedition continued to conceal the lower portion of his body including his waistband. Sergeant Kee continued to negotiate with Puga in an attempt to gain compliance from Puga, but Puga refused.

Sergeant Vaccari and Deputy Adams observed Puga exit and move to the front of the Ford Expedition. Sergeant Vaccari and Deputy Adams decided to move from behind the second CHP patrol vehicle to the southeast dirt shoulder of Peach Avenue east of Puga's Ford Expedition. At this time Sergeant Vaccari carried a 40 millimeter less-lethal launcher and Deputy Adams carried his duty weapon, a 9mm Glock 17. As Sergeant Vaccari and Deputy Adams reached the shoulder of Peach Avenue, Puga turned to his

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right, reached his hand down and drew a handgun with his right hand. Puga pointed the handgun at Sergeant Kee and Officer Rubalcava and fired one round at them. Sergeant Kee, Officer Rubalcava, and Officer Blackwood fired at Puga. Sergeant Vaccari fired one 40 millimeter less-lethal round and Deputy Adams fired his handgun at Puga.

Puga ran north on Peach Avenue from the Expedition and while doing so turned back toward his left pointing his firearm over his left shoulder with his right hand toward Sergeant Kee and Officer Rubalcava. Puga was struck by gunfire as he ran and fell face-down on the northwest corner of Peach Avenue and Catalpa Street. During the exchange Sergeant Kee fired 18 rounds from his rifle in a northeastern direction; Officer Rubalcava fired 13 rounds from his handgun in a northeastern direction; Officer Blackwood fired 20 rounds from his rifle in a northern direction; Sergeant Vaccari fired one 40 millimeter less-lethal round in a northern direction; and Deputy Adams fired 10 rounds from his handgun in a northwestern direction.

Sergeant Kee, Officers Rubalcava and Blackwood, Sergeant Vaccari and Deputy Adams all left their positions and walked northwest on Peach Avenue to approach Puga. Puga's hands were under his torso and his handgun was not visible. Puga was observed breathing, was given commands to show his hands and did not comply with commands. Sergeant Vaccari used his taser on Puga in an attempt to determine if he was conscious. Puga did not react to the taser. Sergeant Vaccari activated the probes again with no response from Puga. Officers then handcuffed Puga and rolled him over revealing Puga's handgun under his torso. The handgun Puga possessed, and shot was a 9mm handgun that was not marked with a make, model, or serial number. Medical aid had previously been staged by Sergeant Kee and was requested to enter the scene to treat Puga. Puga was pronounced deceased at the scene.

Immediately after the shooting occurred, Sheriff's dispatched received a call of shooting victims at 17994 Catalpa Street, in Hesperia, the residence on the northeast corner of Peach Avenue and Catalpa Street. Witness #3 called 9-1-1 and advised dispatch that her mother, Witness #2, her father, Witness #1, and her 14-year-old brother, Witness #4, were struck by gunfire. SBCSD Deputies and paramedics responded to the residence to provide medical aid.

Witness #2 and her son were airlifted to Loma Linda University Medical Center and Witness #1 was transported via ambulance to Desert Valley Hospital. Witness #2 received shrapnel wounds to her upper chest and face. Witness #4 received three gunshot wounds to his upper torso and abdomen injuring his liver and spleen. Witness #4 received surgery for his injuries at Loma Linda University Medical Center Childrens Hospital and treated in Intensive Care. Witness #1 received through and through gunshot wounds to both of his forearms.

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STATEMENTS BY POLICE OFFICERS

On March 3, 2021, at approximately 2:31 in the afternoon, **Sergeant Robert Vaccari** was interviewed by Detective Edward Hernandez and Detective Scott Abernathy.¹

On February 17, 2021, Sergeant Vaccari, from the San Bernardino County Sheriff's Department, was assigned to patrol at Hesperia Police Department. Sergeant Vaccari wore a San Bernardino County Sheriff's Department long sleeve "Class A" uniform and drove a marked patrol vehicle. On that date, at around one in the morning Sheriff's dispatch advised they had received a call that CHP was in pursuit of a possible shooting suspect from earlier in the evening driving a white SUV, with black wheels and a decal in the back window. The pursuit was in the City of Hesperia and Sergeant Vaccari advised that the Sheriff's department would assist with the pursuit. There was a significant delay relaying information between the CHP and Sheriff's deputies which lead to deputies from Hesperia station not locating the CHP officers and suspect vehicle quickly. Sergeant Vaccari was northbound north of Main Street when dispatch advised the pursuit was southbound on Peach Avenue. Sergeant Vaccari waited there, and the pursuit passed him. Sergeant Vaccari made a U-turn, initiated his lights and sirens, and began following the pursuit southbound on Peach Avenue towards Main Street.

Sergeant Vaccari was behind the only CHP unit in the pursuit and was the only Sheriff's Department unit in the pursuit. Sergeant Vaccari began "calling out" the pursuit to Sheriff's dispatch which cured the delay in updates to the Sheriff's department. CHP officers requested the Sheriff's Department take over primary position in the pursuit. Sergeant Vaccari agreed to assist CHP, however, did not believe he had enough information regarding the suspect vehicle, the circumstances surrounding the initial crime, the suspect, or CHP policies and procedures on trading pursuit, therefore he denied the request to take over the pursuit. During this time another Sheriff's Department unit joined the pursuit.

Sergeant Vaccari and the other unit followed the pursuit throughout the City of Hesperia between Peach Avenue and Bear Valley Road. Sergeant Vaccari requested the assistance of deputies from the neighboring stations of Victorville City and Victor Valley Station. Those deputies assisted in posting at various locations and deploying spike strips during the pursuit. The suspect was able to avoid spike strip attempts at Bear Valley Road approaching the I-15 freeway and entered the I-15 southbound at Bear Valley Road. Sergeant Vaccari made the decision to stay with the pursuit, even on the freeway so as not to abandon the CHP. The suspect vehicle eventually led the pursuit off of the freeway and eastbound on Main Street in Hesperia.

¹ Sergeant Vaccari reviewed audio and video recordings of the incident prior to being interviewed by Detective Hernandez and Detective Abernathy.

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The Sheriff's Department deployed more ineffective spike strips. A second CHP unit joined the pursuit and passed Sergeant Vaccari on Bear Valley Road. That unit took over the number two position in the pursuit from Sergeant Vaccari. The suspect turned off of Main Street onto Balsam and then eastbound on an unknown street. Sergeant Vaccari asked if CHP still needed assistance since there were two of their own units in the pursuit, however, there was no response from CHP, so Sergeant Vaccari stayed with the pursuit. Sergeant Vaccari also called off all additional Sheriff's department units except the unit directly behind him as he believed there were enough units involved in the pursuit and advised additional units to attempt spike strip deployments.

The suspect was driving serpentine down an unknown dirt road and it was broadcast over the radio that the suspect threw something out of the window. The pursuit continued and 40 King was providing air support. During the pursuit the weather was cold but clear and roadways were empty.

As the pursuit continued there was a successful spike strip deployment on Main Street. The suspect vehicle turned north on the Peach Avenue and slowed down significantly. Sergeant Vaccari was concerned with this behavior because during the pursuit the suspect kept driving down many of the same side streets. Sergeant Vaccari believed that the suspect was possibly looking for a particular person's house either for assistance or for hiding purposes.

As the suspect vehicle drove north on Main Street, Sergeant Vaccari saw sparks from the front wheel of the suspect vehicle. The suspect vehicle then came to a stop. Sergeant Vaccari observed the suspect vehicle in the middle of Peach Avenue south of Catalpa Street facing northbound. CHP stopped their first vehicle offset on the driver's side of the suspect vehicle and the second CHP vehicle was offset to the passenger side of the suspect vehicle a car's length from each other.

As Sergeant Vaccari exited his patrol vehicle, he observed two CHP officers and one CHP Sergeant. The CHP Sergeant began negotiating with the driver of the suspect vehicle to get out of the SUV and gave the driver commands. The CHP Sergeant was positioned behind the open driver's side door of the primary CHP unit along with one of the other CHP officers. The second CHP Officer was positioned at the open passenger side door of the same CHP patrol vehicle. During this negotiation the suspect told CHP officers that he wanted them to call his wife. Sergeant Vaccari could not see inside of the SUV therefore did not know if there were occupants other than the driver in the vehicle. The negotiation continued for 10-15 minutes. The CHP Sergeant then used a less-lethal beanbag gun and attempted to shoot the driver's side rear passenger window.

The CHP Sergeant fired 4 beanbag rounds that that were ineffective. After this occurred the passenger door of the SUV opened, and a female exited the SUV with her hands in the air. Deputy Adams, who was staged at the second CHP unit, gave the female instructions to back up towards him. The female complied and Deputy Adams placed

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the female into custody. Deputy Adams was able to obtain the suspect's name, Hector, from the female and that there were no other occupants in the SUV other than Hector. Meanwhile, Hector was attempting to start the SUV, but it would not start.

The CHP Sergeant asked Sergeant Vaccari if the Sheriff's Department had bite dogs and Sergeant Vaccari indicated they do not. The CHP Sergeant continued to give commands to Hector who did not comply. After another 15-20 minutes the CHP Sergeant asked Sergeant Vaccari if he could call SWAT. Sergeant Vaccari did not think SWAT was an appropriate call at this point as they had not done anything other than issue commands and shoot four ineffective beanbags to encourage Hector out of the vehicle. Sergeant Vaccari decided to utilize the OC pepper balls in the suspect vehicle to encourage the suspect out. Sergeant Vaccari first communicated with the CHP Sergeant of his plan and the CHP Sergeant agreed. Sergeant Vaccari made announcements to Hector that they wanted to end this peacefully and to step out of the vehicle. The suspect continued to tell officers and deputies to call his wife and gave a phone number. One of the CHP officers attempted to call the number, but there was no answer. Sergeant Vaccari used the pepper ball launcher to fire 3 glass breaker rounds at the back window of the suspect's SUV. The window shattered completely giving law enforcement full view inside the passenger compartment of the SUV.

Sergeant Vaccari switched from glass breaking rounds to OC pepper balls. Sergeant Vaccari asked the suspect if there is anything he could say or do to get the suspect to comply, before deploying OC pepper balls. The suspect did not comply, so Sergeant Vaccari stepped to the right, away from cover and shot two OC pepper balls into the suspect vehicle. Sergeant Vaccari specifically aimed for the windshield between the rearview mirror and the A Pillar on the driver's side because he believed that is where they would be most effective. Sergeant Vaccari would deploy several OC pepper balls into the vehicle and then see if the suspect would exit. CHP continued to negotiate. When the suspect would continue to not comply, Sergeant Vaccari would deploy 7-10 more rounds of OC pepper balls into the vehicle. The suspect would open his window or door to get air and even used an inhaler. This continued for approximately 30 minutes.

Several times the suspect stated he was going to exit the SUV and open the door but would ultimately close the door again. During his time in the vehicle the suspect was also smoking cigarettes and drinking beer. While negotiating with the CHP Sergeant the suspect indicated that he's a 25 to lifer. Sergeant Vaccari, in his experience had seen people who said this and just wanted to finish their cigarettes or beer before they go in because they will not have either for a long time but has also seen this as people not wanting to go back. Throughout the standoff deputies from various stations had blocked the roads from cross traffic. Sergeant Vaccari noted the slight rise in elevation in the road and made deputies continually move their roadblocks further away until he could not see them, so the deputies were not in the backdrop if a shooting was to occur. In addition, Sergeant Vaccari had heard medical being staged during the standoff. As Sergeant Vaccari was beginning to run low on OC pepper balls, the CHP Sergeant suggested using a shield to push their way up to the vehicle and pull the suspect out.

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Sergeant Vaccari had not exhausted all his attempts with the OC pepper balls and felt they had been making some progress.

On the next round of OC pepper balls, Sergeant Vaccari aimed between the driver's seat and front passenger seat specifically aiming for the suspect's back to motivate compliance from the suspect. Sergeant Vaccari did hit the suspect, and the suspect starting yelling that he was hit in the eye. The suspect asked for medical attention. The CHP Sergeant advised the suspect that medical was already in the area and they would get the suspect immediate attention if he came out. Approximately 10 to 15 minutes after this the suspect opened the driver's side door and sat facing outward.

The suspect had no shirt on, was drinking beer, and was using a shirt to wipe his face. The CHP Sergeant continued to negotiate with the suspect who was obviously bleeding from his face. At this point Sergeant Vaccari did not shoot any more OC pepper ball rounds at the suspect nor did he interject in the negotiations because Sergeant Vaccari felt that too many people interjecting would not have been a good tactic and they were making progress. After approximately 15 minutes, the suspect stepped fully out of the vehicle and faced away from officers and deputies. The CHP Sergeant ordered the suspect to turn around and walk back and the suspect did not comply. The suspect would not turn all the way around and face law enforcement nor comply with commands to get on his knees. The suspect then closed the door of the SUV. This led Sergeant Vaccari to believe that the suspect was going to comply. The suspect then moved quickly from the driver's side door to the front of the SUV and began yelling, "I heard a click. I heard a click." The CHP Sergeant yelled back there was no click. This change in circumstances concerned Sergeant Vaccari.

To Sergeant Vaccari, the suspect had moved to where the engine block of the SUV could provide cover if the suspect was armed; the suspect was mobile and could go in any direction; and officers and deputies still did not know if the suspect was driving around that area because he had someone there that would provide him assistance. The CHP Sergeant and one of the CHP officers began to move northwest towards the shoulder away from their patrol car as they were continuing to talk to the suspect. Sergeant Vaccari did not want the suspect to flee in an easterly direction, so Sergeant Vaccari changed his position and moved to contact Deputy Adams.

Sergeant Vaccari first advised the third CHP Officer, who remained at the passenger door of the patrol vehicle, that he was going to move around to the passenger side of the suspect's SUV. Then, Sergeant Vaccari and Deputy Adams briefly talked about what they could do to contain the suspect without using lethal force and using a less-lethal option. Sergeant Vaccari and Deputy Adams discussed using a taser since the suspect did not have a shirt on, but the suspect's position on the other side of the SUV precluded that option. Sergeant Vaccari chose the 40 millimeter because there was a greater distance between him and the suspect and it had a longer effective range. Deputy Adams would have lethal coverage.

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Sergeant Vaccari and Deputy Adams then moved to the passenger side of the suspect's SUV. Sergeant Vaccari could see that the CHP Sergeant and cover officer were already on the dirt shoulder approximately 15 to 20 feet away from their patrol car - one was carrying a handgun and the other was carrying an AR-15 rifle. Sergeant Vaccari was not concerned about crossfire with the CHP officers because they are at an approximate 90-degree angle from each other and not in each other's backdrop.

Sergeant Vaccari and Deputy Adams made it to the passenger side of the SUV and Sergeant Vaccari engaged with the 40 millimeter and ordered the suspect on the ground. Immediately the suspect drew a firearm and Sergeant Vaccari could hear gunfire. Sergeant Vaccari pulled the trigger of the 40 millimeter and did not believe it fired. Sergeant Vaccari continued looking down the sights of the 40 millimeter as the suspect ran in a northwest direction. The suspect was holding his gun in his right hand and trying to reach around his body to shoot. The suspect was pointing his firearm in the direction of the CHP officers.

Sergeant Vaccari observed that the suspect's movement was sluggish and the suspect appeared to have been struck by gunfire and then watched the suspect fall to the ground approximately 75 feet away. Sergeant Vaccari could see that the suspect was going down, therefore made the decision not to fire again and aired over the radio "shots fired." Sergeant Vaccari checked to see if Deputy Adams was OK and then Sergeant Vaccari and Deputy Adams approached the suspect who was still lying on the northwest dirt shoulder of the intersection.

As Sgt. Vaccari and Deputy Adams approached, Sergeant Vaccari could see that the suspect was breathing but the suspect was face down, with his arms underneath his chest and no firearm was visible. Sergeant Vaccari could not see any visible injuries on the suspect or blood at this point leading Sergeant Vaccari to believe that the suspect still had his firearm and could roll over and shoot at officers and deputies. Sergeant Vaccari decided to deploy his taser to gain compliance or determine the suspect's status. Sergeant Vaccari shot two darts at the suspect whose body tensed up, but the suspect did not comply with commands. Sergeant Vaccari arced the taser a second time and the suspect's body did not react in the same way as it did the first time.

Sergeant Vaccari then approached the suspect and pulled the suspect's right arm out from under the suspect, while one of the CHP officers grabbed the suspect's left arm. They handcuffed the suspect while Deputy Adams provided lethal coverage. The suspect was rolled over and Sergeant Vaccari's attention is then diverted by screams behind him.

Sergeant Vaccari left the suspect with Deputy Adams and the CHP officers and approached the house on the northeast corner of Peach Avenue and Catalpa Street. Sergeant Vaccari saw a deputy already at the house and rendering aid to civilians at that location. There was a gentleman on the porch with a bandage on his arm, a female on the bench outside of the door, and a 14-year-old boy who appeared to have been

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shot. Sergeant Vaccari called for medical aid which arrived immediately and triaged the family.

During the course of the negotiations Sergeant Vaccari had never considered evacuating the neighborhood because there had been no indication that there were civilians in the area. Sergeant Vaccari saw no movement from any of the residences, no interior or exterior lights being turned on or any other movements. Sergeant Vaccari's backdrop was the incline of the road and the dirt berm on the corner.

On March 2, 2021, at approximately 4:14 in the afternoon, **Deputy Jake Adams** was interviewed by Detectives Robert Ripley and Adrian Bustamante.²

On February 17, 2021, Deputy Jake Adams, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Hesperia Police Station. Deputy Adams was wearing a San Bernardino County Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. On that date, at approximately 1:40 in the morning, Deputy Adams was on patrol in the City of Hesperia in the area of Main Street and Maple Avenue when a request for assistance was broadcast over the radio from CHP. CHP was in pursuit of a vehicle that had been involved in a shooting and the pursuit had exited the freeway in the City of Hesperia on Bear Valley Road. Deputy Adams drove towards Bear Valley Road in an attempt to locate the pursuit. The pursuit was traveling throughout Hesperia at high rates of speed. Deputy Adams paralleled the pursuit as it went through the city. The suspect entered the I-15 freeway on the north end of Hesperia traveling south and exited on Main Street. Deputy Adams had positioned his patrol vehicle on the driveway apron of the 7-11 on the corner of Main Street and Maple Avenue and waited. Deputy Adams then observed the suspect vehicle, a white Ford Expedition, speed past him followed by two CHP units and two Sheriff's Department units. Deputy Adams followed the pursuit and shortly after the Sheriff's unit in front of him was hit by one of the spike strips that were deployed taking that unit out of the pursuit.

Deputy Adams was in the pursuit behind his Sergeant, Sergeant Vaccari who had taken over calling the pursuit over the radio. The suspect did not stop for a single stop sign or traffic signal and was driving on residential streets where speeds should have been much slower than the suspect was driving. At some point Sergeant Vaccari told deputies that if they were not the unit directly behind the Sergeant that they were to fall out of the pursuit. Deputy Adams could see the "S1" on the unit in front of him, so Deputy Adams stayed with the pursuit. As the pursuit reached a larger, main thoroughfare, Deputy Adams could see clearly who was currently involved in the pursuit: the suspect vehicle, two CHP patrol vehicles, Sgt. Vaccari's patrol unit, and Deputy Adams. There was another failed spike strip deployment.

² Deputy Adams reviewed audio and video recordings of the incident prior to being interviewed by Detective Ripley and Detective Bustamante.

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The pursuit had been proceeding for approximately one hour when the suspect was making his way back to the east side of Hesperia and traveling down Peach Avenue when a deputy broadcasted they were going to attempt another spike strip deployment. As the pursuit turned west onto Main Street the spike strip was deployed and successfully hit the front-passenger side tire of the suspect vehicle, rendering it flat. The pursuit continued and made its way back to Peach Avenue and Sergeant Vaccari broadcasted that the suspect's tire blew off and he was down to the rim. Deputy Adams could see sparks flying as the suspect vehicle slowed down to approximately 5 miles per hour. Deputy Adams believed they were getting ready to stop and observed brake lights. The suspect vehicle came to a stop as well as all of the CHP officers and Sheriff's personnel. The suspect's Ford Expedition stopped in the center of Peach Avenue facing north just south of the intersection with Catalpa Street. The first CHP patrol vehicle was behind the suspect's vehicle and offset to the west (left), the secondary CHP vehicle was almost directly behind the suspect vehicle. Sergeant Vaccari pulled up behind the CHP unit in the center of the street and Deputy Adams pulled up to the west (left) of Sergeant Vaccari. All officers and deputies exited their vehicles to conduct a high-risk traffic stop.

The CHP Sergeant and one CHP officer were behind the open driver's side door of the CHP vehicle that was to the west (left) of the suspect's vehicle. The third CHP officer was behind the open passenger side door of that same CHP vehicle. Deputy Adams stood behind the open driver's side door of the remaining CHP vehicle that was directly behind the suspect's vehicle. Since CHP was still the primary agency on the pursuit, the CHP officers were giving the commands, telling the suspect to step out of the vehicle, show his hands, but the driver did not comply.

Deputy Adams could see movement inside of the vehicle, but the windows were tinted so he could only see a body moving. Approximately 3 to 4 minutes into the stop the passenger door of the suspect vehicle opened and a female stepped out. Deputy Adams knew that Sergeant Vaccari was on the passenger side of one of the CHP units giving commands to the female to walk backwards towards him. So, Deputy Adams left his position, went around the other CHP unit to assist Sergeant Vaccari, handcuffed the female, and walked her back to the Sheriff's patrol vehicle. There Deputy Adams asked the name of the suspect and she said he was Hector. Deputy Adams asked if Hector had a gun in the vehicle and the female did not know, she also indicated there was no one else in the vehicle. The female was left in the patrol vehicle and Deputy Adams relayed this information to Sergeant Vaccari and the CHP Sergeant who started using the suspect's name when giving commands and negotiating.

The CHP Sergeant asked Sergeant Vaccari if the Sheriff's Department had a K-9 available or SWAT. Deputy Adams heard Sergeant Vaccari reply there was no K-9 available but did not hear a reply to a request for SWAT. Hector still ignored the commands from the CHP Sergeant and the CHP Sergeant attempted to break the driver's side window by using less-lethal beanbag rounds on the suspect vehicle. The rounds were ineffective. CHP was still negotiating with Hector when Hector said that he

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wanted officers to call his wife. One of the CHP officers asked for a phone number and it appeared to Deputy Adams that the officer dialed the phone. The officer advised Hector that no one answered. Sergeant Vaccari then told Hector to come out of the vehicle, when Hector did not, Sergeant Vaccari broke the vehicle's back window using glass breaking rounds and then shot numerous pepper ball rounds into the suspect vehicle. Hector would cough and open the driver's side door a little, but the passenger door was still open and the back window was shattered so there was airflow for Hector. Over the next 30 to 45 minutes Sergeant Vaccari continued to give commands to Hector, Hector would ignore the commands, and Sergeant Vaccari would shoot several rounds of pepper balls into Hector's vehicle. Deputy Adams maintained his position behind one of the CHP vehicles where he could see Hector.

At one point, Hector reached across and closed the passenger door of his vehicle. In one of the final rounds of pepper balls that were shot through the vehicle Hector said that he had been hit in the eye and wanted medical attention. The CHP Sergeant told Hector that medical aid had been staged and Hector would receive medical attention if he exited the vehicle. At this time Hector was screaming and yelling, and saying he would come out of the vehicle. Finally, Hector did step out of the vehicle.

Hector stepped out of the vehicle facing away from officers and deputies and moved his arms from over his head to his waist, and back up. CHP Officers continued to give commands to walk back towards officers and get on the ground, but Hector would not comply. The driver's side door of Hector's vehicle was open, and Hector faced the door away from officers. After two or three minutes Hector quickly moved from the side of his vehicle to the front of his vehicle, toward the driver's side headlight facing his vehicle. Deputy Adams did not have a direct line of sight. Deputy Adams could see Hector only through the windshield of Hector's vehicle from shoulder level up and Hector was fidgeting, twisting his body and moving his arms around. Deputy Adams was concerned because Hector was no longer in a controlled environment, he was out of the vehicle, in a residential area. Sergeant Vaccari asked Deputy Adams if they should move to the side of Hector's vehicle and Deputy Adams agreed.

Deputy Adams knew moving positions would remove his cover, but he believed that there were too many risks with Hector in the position that he was in. Before Deputy Adams and Sergeant Vaccari moved, they discussed less-lethal options and Sergeant Vaccari using the 40 millimeter. Deputy Adams already had his duty weapon drawn so Deputy Adams provided lethal cover. Deputy Adams and Sergeant Vaccari moved to the east of Hector's vehicle. As they reached the midpoint of the vehicle, Deputy Adams saw Hector jerk his hand down as if grabbing something from his waistband or pocket and then up. Deputy Adams saw a black handgun in Hector's right hand. Deputy Adams yelled to get on the ground and simultaneously heard gunshots.

Deputy Adams ducked, stepped over the curb line to the east of the vehicles and saw the suspect run northbound on Peach Avenue across the intersection of Catalpa Street. As Hector was running north across the street Deputy Adams could see that Hector was

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still turning and pointing a gun in his direction. Deputy Adams fired at Hector from the dirt shoulder of the east curb line. Deputy Adams fired at least two or three rounds as he believed that Hector was trying to kill him and his partners. Deputy Adams also wanted to keep Hector from running into nearby houses endangering civilians. Deputy Adams saw Hector continue to run, so Deputy Adams fired approximately 4 more rounds toward Hector. Deputy Adams saw his backdrop as an upward sloping hill on the northwest corner. Hector kept twisting and turning back towards officers and deputies as he was running and used his right hand to fire backwards towards Deputy Adams when Deputy Adams fired his final three rounds. Deputy Adams stopped firing when Hector fell to the ground.

Deputy Adams did a safety check of Hector's vehicle. The vehicle was clear, so Deputy Adams and Sergeant Vaccari walked northbound on the east side of Peach Ave approaching the area where Hector was lying on the ground. Deputy Adams could see Hector face down on the ground but could not see Hector's hands and began to give Hector commands to show his hands.

Deputy Adams gave Hector multiple commands to show his hands with no response. Deputy Adams could see Hector breathing but was not sure if it was a trap to turn and shoot at officers or if he was injured. Sergeant Vaccari decided to deploy his taser. Sergeant Vaccari deployed the taser and received no response from Hector. Sergeant Vaccari activated the taser again with no response. Deputy Adams maintained lethal coverage on Hector while Sergeant Vaccari and a CHP officer took Hector's arms out from under him, handcuffed him, and rolled him over. Upon rolling him over, it was apparent to Deputy Adams that Hector was dead; his eyes were rolled back in his head, there was no rise and fall of his chest with breathing. Hector's gun was underneath his body. Hector was pat down for any additional weapons and there were none. Sergeant Vaccari asked for medical aid to come into the scene and then they went to the house on the northeast corner first because someone had been screaming that they were shot. CHP officer got a camera and all officers and deputies checked on each other before going back to their units and being transported back to the station.

On February 22, 2021, at approximately 12:25 in the afternoon, **Officer Bernardo Rubalcava** was interviewed by Detective Edward Hernandez and Detective Adrian Bustamante.³

On February 16, 2021, Officer Bernardo Rubalcava, from the CHP, was assigned to patrol at the Victorville Station. Officer Rubalcava was partnered with Officer Michael Blackwood and was wearing a California Highway Patrol blue cold weather utility uniform. Officer Rubalcava's shift began at 10pm and shift briefing was given by CHP Sergeant Kee. During briefing Sergeant Kee discussed a freeway shooting from the

³ Officer Rubalcava reviewed audio and video recordings of the incident prior to being interviewed by Detective Hernandez and Detective Bustamante.

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previous shift with a suspect at large. The suspect vehicle was a white Ford Expedition with 22-inch black rims and a "Funeral" sticker on the back window.

At approximately 1:30 in the morning on February 17, 2021, Officer Rubalcava and Officer Blackwood were westbound on Bear Valley Road in the City of Hesperia approaching the entrance to I-15 freeway when Officer Rubalcava observed the Ford Expedition that was discussed in briefing. Officer Rubalcava observed the Expedition exit the southbound I-15 freeway and turn west onto Bear Valley Road. Officer Rubalcava pointed this out to Officer Blackwood who made a U-turn and positioned their patrol vehicle behind the Expedition. Before Officer Blackwood could turn on their overhead lights and sirens the Expedition yielded and pulled over to the curb on the right near Mariposa Road. Officer Blackwood turned on their overhead lights and both officers exited the patrol vehicle with their weapons drawn.

Using the PA system Officer Rubalcava told the driver to exit his vehicle with his hands up. Officer Rubalcava could see that there were two occupants in the Expedition. The occupants of the Expedition did not comply with commands to exit the vehicle and the Expedition fled the scene at a high rate of speed. Officers Blackwood and Rubalcava followed in pursuit. Officers requested air support for the pursuit and Sergeant Kee requested the assistance of San Bernardino County Sheriffs. Sergeant Kee eventually asked the Sheriff's Department to take over the pursuit, but the request was denied and Sheriff's advised they were there for assistance.

The pursuit lasted for approximately one hour. Throughout the pursuit Officer Rubalcava was broadcasting the pursuit over the radio for his unit. The suspect was running red lights and stop signs and driving erratically. Officer Rubalcava was concerned for officer safety and safety of the public. The suspect threw items out of his Ford Expedition during the pursuit, but Officer Rubalcava could not identify the items. There were approximately five spike strip deployments. When the suspect was avoiding spike strips, it appeared to Officer Rubalcava that the suspect was veering his vehicle toward the deputy that was deploying the strip. The final and successful spike strip deployment was on Mariposa Road and Bear Valley Road. The pursuit ended on Peach Avenue and Catalpa Street in the City of Hesperia.

Peach Avenue and Catalpa Street is a four-way intersection in a residential neighborhood. The suspect's Expedition became disabled and came to a stop facing northbound on Peach Avenue in the center of the street. Officer Blackwood positioned his vehicle facing north in the southbound lane of Peach to the left and rear of the suspect's Expedition. Sergeant Kee arrived next and positioned his patrol unit in the northbound lane of Peach offset to the right of the suspect's Expedition. The two sheriff's patrol vehicles stopped somewhere behind Sergeant Kee's vehicle. Officer Rubalcava exited his vehicle, drew his service weapon, and began giving commands over the PA for the suspect to exit the vehicle. Sergeant Kee came over to their patrol vehicle with his department issued AR-15 rifle and stood at the open driver's side door

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with Officer Blackwood. The suspect would not comply with commands but began communicating with Sergeant Kee.

The suspect told Sergeant Kee that he wanted to speak with Sergeant Kee and did not want the other officer next to Sergeant Kee. Sergeant Kee told Officer Blackwood to switch locations with Officer Rubalcava. Officer Rubalcava moved and stood next to Sergeant Kee behind the open driver's side door of his patrol vehicle and Officer Blackwood took cover behind the open passenger side door of their patrol vehicle. Officer Blackwood was armed with the AR-15 rifle from their patrol vehicle. Sergeant Kee continued to try to negotiate and de-escalate the situation.

Sergeant Kee attempted to break the driver's side rear passenger window with the less-lethal beanbag rounds so officers could see inside of the vehicle. The attempt failed to break the window. At this point a female exited the passenger side of the suspect's Expedition and surrendered. The female walked backwards with her hands up towards the San Bernardino County Sheriff's Deputy who took her into custody. The female gave the suspect's name which was relayed to Sergeant Kee. The name was Hector.

Sergeant Kee continued to negotiate with the suspect by using the suspect's name. Hector asked if officers could call Hector's wife and provided Sergeant Kee with a phone number. Officer Rubalcava called the number, but no one answered. Hector then asked Sergeant Kee if Officers could call Hector's mother and Sergeant Kee refused and told Hector he needed to exit the vehicle. Hector refused to exit and said he just wanted to call his wife and smoke one more cigarette. Sergeant Kee told Hector he could smoke a cigarette. Hector continued to smoke multiple cigarettes and drink beers discarding the cans out his window. Sergeant Kee and the Sergeant from the San Bernardino County Sheriff's Department planned for the Sergeant from the Sheriff's Department to shatter the rear window of the suspect's Ford Expedition and then deploy pepper balls into the suspect's vehicle.

The Sheriff's Sergeant stood at the rear of the CHP patrol vehicle and offset to the right and shot the pepper balls into the suspect's Expedition. The pepper balls appeared to make it difficult for Hector to breathe. Hector was coughing and would lower his window or open his door to get air. Sergeant Kee was still negotiating with Hector during this time as well. After about an hour of negotiations Hector exited the vehicle.

Hector exited slowly over several minutes. Hector opened the driver's side door and sat with the door open for a time before fully stepping out. Hector had no shirt on and baggy pants. When Hector fully exited the vehicle Hector had his back turned to officers and Officers could not see Hector's waistband. Hector had his hands up and Sergeant Kee was giving commands to walk backwards towards officers. This lasted several minutes before Hector ran to the front of the Expedition with his waistband pressed against the Expedition and his hands up. Hector was telling Sergeant Kee to come up alone and arrest Hector. This made Officer Rubalcava uneasy and he believed Hector was trying to ambush Sergeant Kee.

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Sergeant Kee asked Officer Rubalcava to go with him and arrest Hector and told Officer Rubalcava to get his cuffs out. Officer Rubalcava and Sergeant Kee moved together towards the dirt shoulder to see if they could get a better visual on Hector and his waistband. Officer Rubalcava was following Sergeant Kee's lead. Sergeant Kee continued giving Hector commands to show his waistband and to come away from the vehicle, but Hector refused. As Officer Rubalcava and Sergeant Kee were moving to the dirt shoulder the San Bernardino County Sheriff's Sergeant and Deputy were moving around the other side of the Ford Explorer.

Sergeant Kee kept giving commands to step away from the vehicle and Hector would not comply. Hector turned to his right and reached down to his waistband, pulled out a black pistol and shot twice at Sergeant Kee and Officer Rubalcava. Officer Rubalcava could hear the shots and saw the muzzle flash from Hector's firearm. Officer Rubalcava and Sergeant Kee returned fire; Officer Rubalcava shot between 3 to 5 rounds. Officer Rubalcava could not see his backdrop because it was dark and lighting behind Hector was poor in the distance. Officer Rubalcava and Sergeant Kee moved back behind the driver's side door of their patrol vehicle. Once Officer Rubalcava and Sergeant Kee moved Hector began running northbound on Peach Avenue toward the northwest corner.

As Hector ran northwest toward the corner Officer Rubalcava continued to hear gunfire and believed that Hector was still shooting at him. Officer Rubalcava could see Hector running, twisting his body back as he was running away and pointing his firearm at officers over his shoulder. Officer Rubalcava feared Hector would keep shooting at officers and was potentially running to a nearby residence where he could take hostages. Officer Rubalcava shot another three to five rounds at Hector. This time there was an elevated dirt shoulder of Peach Avenue and Catalpa Street as the backdrop. After Officer Rubalcava shot the second time Hector fell to the ground on the northwest corner. Officer Blackwood, the Sheriff's Sergeant and Deputy approached Hector. Officer Rubalcava stayed back and checked on Sergeant Kee to ensure he was not hit by gunfire then joined Officer Blackwood and the Sheriff's personnel.

Hector was lying face down and appeared to be breathing. Hector was given commands to show his hands but did not comply, so Sheriff's Deputies deployed a taser. The taser caused Hector to tense up, however Hector still did not show his hands so the taser was re-activated. Officer Rubalcava took Hector's left arm and one of the Sheriff's deputies took Hector's right arm and they pulled Hector's hands out from under him. Officer Rubalcava handcuffed Hector and turned him over.

Hector's firearm was located under Hector and medical aid that had previously been staged was called in to provide aid to Hector. Hector was pronounced deceased and medical aid was rendered to civilians on the northeast corner of Catalpa Street and Peach Avenue. An adult male, adult female and a juvenile male had been hit with stray bullets.

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Officer Rubalcava began taking scene photos and gave an officer safety statement to Sgt. Kee and Sgt. Osegueda.

On February 22, 2021, at around 3:48 in the afternoon, **Officer Michael Blackwood** was interviewed by Detective Adrian Bustamante and Detective Scott Abernathy.⁴

On February 16, 2021, Officer Michael Blackwood, from the California Highway Patrol, was assigned to patrol at the Victorville Station. Officer Blackwood was partnered with Officer Bernardo Rubalcava and was wearing a CHP cold weather uniform. Officer Blackwood's shift began at 10:00 at night with briefing. Officer Tovar from the previous shift came into briefing and advised of a freeway shooting that occurred during that shift. The suspect in that shooting had fled and the victim had described the vehicle as a white Ford Expedition with black rims and a "funeral" sticker in the back window. Officers were advised to be on the lookout.

Officer Blackwood drove the patrol vehicle that night and was partnered with Officer Rubalcava. At approximately 1:45 in the morning on February 17, 2021, Officer Blackwood was driving west on Bear Valley Road approaching the southbound I-15 freeway onramp when he and Officer Rubalcava observed a white Expedition with black rims exiting the southbound I-15 and turning east onto Bear Valley Road. Officer Rubalcava pointed out the vehicle, Officer Blackwood made a U-turn and positioned their patrol vehicle behind the Expedition. It was then that Officer Blackwood observed the "funeral" sticker on the rear window of the Expedition. The Expedition yielded and pulled over to the right curb before Officer Blackwood initiated a traffic stop.

Officer Blackwood stopped behind the Expedition, turned on his patrol vehicle's overhead lights, informed dispatch and their Sergeant, Sergeant Kee, that they had located the vehicle. Officer Rubalcava used the Patrol vehicle's PA system to give commands to the driver.

The driver rolled down his window, put his hand out of the window, waved, and then drove away, quickly, eastbound on Bear Valley Road. Officer Blackwood pursued the Expedition through the City of Hesperia. The driver ran every stop sign and red light he crossed. The Officers communicated with their dispatch and Sergeant Kee who attempted to locate and provide back up. Sergeant Kee requested air support and for the San Bernardino County Sheriff's Department to take over the pursuit since it was in their city. That request was denied, but support was provided by the Sheriff's Department.

Throughout the pursuit Officer Blackwood could see various different units behind him, sometimes three to four sheriff's units. Approximately twenty minutes into the pursuit,

⁴ Officer Blackwood reviewed audio and video recordings of the incident prior to being interviewed by Detective Bustamante and Detective Abernathy.

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Sergeant Kee joined. Officer Rubalcava was able to see two occupants in the Expedition. The driver traveled at speeds between 50 and 80 miles per hour and traveled many of the same streets over and over again. It appeared to Officer Blackwood that they were traveling in a large rectangle throughout the city and that the suspect knew the area. The driver threw what appeared to be baggies out of the window several times throughout the pursuit. At Bear Valley Road and Mariposa Road, the Sheriff's Department set up spike strips. The strips appeared successful and flattened the Expedition's front passenger side tire.

The suspect continued to drive and entered the southbound I-15 freeway at Bear Valley Road and exited on Main Street. The suspect traveled east on Main Street and into the same areas they were previously driving. The pursuit continued for another 20 to 30 minutes before the Expedition's tire began to break apart. The suspect continued to drive on the tire's rim for another 15 minutes until he stopped at Peach Avenue and Catalpa Street. The pursuit lasted approximately one hour.

The suspect's Ford Expedition was facing north on Peach Avenue just at the intersection with Catalpa Street. Officer Blackwood positioned his patrol vehicle behind and offset to the west (left) of the Expedition. Sergeant Kee positioned his patrol vehicle behind Officer Blackwood's offset to the right of the Expedition and the two Sheriff's patrol units were behind the CHP units offset from Sergeant Kee's. All law enforcement officers exited their vehicles and had their guns drawn. Officer Rubalcava gave commands to roll down the windows using the PA system and the suspect did not comply. The windows of the Expedition were tinted so officers could not see inside very well. The suspect rolled down his window, told officers he's on the phone trying to call his wife, and rolled the window back up. Officer Rubalcava continued giving commands until the suspect rolled his window down again and Sergeant Kee, who was now with Officer Blackwood at the driver's side door of their patrol vehicle, began to talk to the suspect.

Sergeant Kee built a rapport with the suspect and the suspect only communicated with Sergeant Kee. The suspect asked Sergeant Kee to call the suspect's wife. Sergeant Kee obtained the number, officers tried to call but no one answered. The suspect demanded to talk to his wife and to his mother. Sergeant Kee told the suspect they tried that already and no one was answering and attempted to get the suspect to exit the vehicle. The suspect then stated that he only wanted the Sergeant to arrest him and he did not want Officer Blackwood next to Sergeant Kee. Sergeant Kee told Officer Blackwood and Officer Rubalcava to switch places. Officer Rubalcava moved to the driver's side door of the unit next to Sergeant Kee and Officer Blackwood moved behind the front passenger side door of the patrol car. The suspect rolled his window up and Sergeant Kee continued giving commands. Officer Blackwood advised Sergeant Kee that there was a less-lethal in their patrol unit and asked if Sergeant Kee wanted to use it. Sergeant Kee agreed and attempted to break the front driver's side window with the beanbag rounds. The shots did not work and bounced off the window. Once that was

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attempted the female passenger exited the Expedition and moved to the right shoulder of the road.

The Sheriff's deputies gave the female passenger commands to turn around with her hands up and walk back towards them. The female complied and was taken into custody. The suspect took his shirt off and threw it out the window stating he did not have any weapons and that he will come out peacefully but wanted to smoke a cigarette first. Sergeant Kee told the suspect he could smoke his cigarette. The suspect rolled his window up and down a few more times, smoked cigarettes and drank beer for approximately 20 to 30 minutes. During this time the suspect was communicating with Sergeant Kee. The suspect continued to say that he wanted to speak with his wife, and that this was his third strike. Sergeant Kee told the suspect they just wanted to end things peacefully and to exit the vehicle. After some time, the Sergeant from the Sheriff's Department approached Sergeant Kee to let Sergeant Kee know he had glass breaker rounds and a pepper ball gun. Sergeant Kee told the Sergeant from the Sheriff's Department to deploy it.

The Sergeant from the Sheriff's Department used glass breaker rounds to shatter the back window of the suspects Ford Expedition and then deployed pepper ball rounds into the vehicle. Officer Blackwood could tell the pepper balls were affecting the suspect because the suspect was coughing. The suspect was agitated and asked Sergeant Kee why they did that? Sergeant Kee advised it was because the suspect was not living up to his end of the deal. More pepper ball rounds were deployed into the vehicle without effect. This continued for approximately 15 to 20 minutes. The Sergeant from the Sheriff's Department told Sergeant Kee that he had not hit the suspect with the pepper balls and Sergeant Kee told him to do it.

The Sergeant from the Sheriff's Department deployed more pepper ball rounds directly at the suspect and one hit the suspect. The suspect began screaming that he was hit in the eye and covered his face. Sergeant Kee continued to talk to the suspect and the suspect cracked the driver's side door open and sat with the door cracked for approximately 5 to 10 minutes open before fully opening it. The suspect did not get out of the Expedition, but just sat in the driver's seat hunched over grabbing his eye. Sergeant Kee continued to talk with the suspect attempting to coax the suspect out of the vehicle. During the standoff, Officer Blackwood had not changed his position and did not see any bystanders or any of the residents exit their houses or in the background.

The suspect stepped out of the vehicle with his left leg but faced the open driver's side door with his hands above his head. The suspect reached down to pull up his pants and Officer Blackwood commanded the suspect to show his hands and put his hands in the air. The suspect complied but was still facing the open driver's side door and not facing officers. The suspect stood like this for approximately 5 to 10 minutes and ignored commands.

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The suspect closed the door, moved to the front of the Ford Expedition facing officers with his lower body against the Expedition. Officer Blackwood and the other officers could not see the suspect from the waist down. Sergeant Kee continued to give the suspect commands to show his hands. The suspect dropped his hands and put them back up approximately three times and was in front of the Expedition for approximately 10 minutes. Officer Blackwood heard the Sheriff's personnel discuss less-lethal options. The suspect continued to talk with Sergeant Kee and was not looking at Officer Blackwood or Sheriff's personnel. Sheriff's personnel moved to the right side of the Ford Expedition and Officer Blackwood could see Sergeant Kee and Officer Rubalcava move toward the left of the Expedition. Officer Blackwood could hear a change in Sergeant Kee's voice.

Sergeant Kee told the suspect "Don't do that, don't do that. Let me see your hands." Officer Blackwood saw a black handgun in the suspect's right hand. The suspect pointed the gun at Officer Rubalcava and Sergeant Kee and Officer Blackwood began to shoot. Officer Blackwood heard other gunshots as well. Officer Blackwood saw the suspect crunch down a little bit and then observed the suspect run northwest away from officers. Officer Blackwood did not see a gun on the ground and observed the suspect's hands at his chest as he was running. It appeared to Officer Blackwood that the suspect still had his gun and was still engaging officers as he was running. Officer Blackwood fired approximately 10 rounds until the suspect stumbled and looked like he was going to fall. Officer Blackwood stopped firing until he realized the suspect was continuing to run and had not dropped his gun. Officer Blackwood fired another 10 rounds until the suspect fell to the ground on the shoulder of the northwest corner of the intersection.

Officer Blackwood, the Sergeant, and Deputy from the Sheriff's Department approached the suspect who was lying face down on his stomach with his hands tucked under his body. Officer Blackwood did not see a gun and believed the suspect still had his gun. The Sheriff's Sergeant gave commands to the suspect to show his hands, but the suspect was not complying.

Officer Blackwood could see that the suspect was still breathing and making small movements but was not responding to commands. The Sheriff's Sergeant then utilized a taser to attempt to gain compliance. The Sergeant deployed his taser, the suspect tensed and relaxed but did not comply with commands to show his hands. The taser darts were reactivated and there was still no compliance from the suspect. Officers then grabbed the suspect's arms and Officer Rubalcava handcuffed and rolled over the suspect. The suspect's firearm fell out of his hands to the ground and medical aid was called to the scene. Officer Blackwood then heard screams to the east of him that sounds like people saying, "you shot him, you don't know what you're doing." Officer Blackwood initially believed the people screaming knew the suspect since the suspect drove through the same areas during the pursuit, however he observed medical aid responding to the northeast corner of the intersection and learned three people were shot.

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On February 22, 2021, at approximately 9:18 in the morning, **Sergeant Isaiah Kee** was interviewed by Detective Scott Abernathy and Detective Edward Hernandez.⁵

On February 16, 2021, Sergeant Isaiah Kee, from the California Highway Patrol, was assigned to patrol out of the Victorville Station. On that date, Sergeant Kee was wearing a CHP cold weather uniform and driving a marked CHP patrol unit. At approximately 5:52 in the evening CHP officers responded to a shooting that had occurred on the northbound I-15 freeway between Palmdale Road and Roy Rodgers Drive in the City of Victorville. Sergeant Kee responded to the area where CHP Officers Tovar and Rodriguez were speaking with the victim.

Sergeant Kee contacted Officers and observed a black Honda Civic that had a bullet hole in the passenger side door above the handle. The hole penetrated through the door and into the front passenger seat. The victim told CHP officers and Sergeant Kee that he was driving in the Number 1 lane of the northbound I-15 when a white Ford Expedition with 22-inch black rims and a sticker with the word "Funeral" on the rear window was in the Number 2 lane next to him and ran the victim off the road. The victim swerved into the center divider to avoid being hit, rolled down his passenger side window and the driver of the Ford Expedition was driving with his left hand and had a gun in his right. The driver of the Expedition yelled "You fucking punk," and fired one shot into the victim's vehicle. The victim hit his brakes and then began to follow the Expedition. Once the victim was able to get a cell phone picture of the Expedition, the victim pulled over and called law enforcement. After taking the statement Sergeant Kee assisted with further investigation but no suspect was located.

At approximately 10:00 in the evening the graveyard shift began. That shift was comprised of two officers in one unit, Officer Michael Blackwood and Officer Bernardo Rubalcava. Sergeant Kee discussed what occurred during the previous shift including the shooting incident and that the suspect was at large. Based on the fact that a shooting had occurred Sergeant Kee advised officers not to approach the vehicle and conduct a felony traffic stop.

On February 17, 2021, at approximately 1:45 in the morning, Sergeant Kee received a notification from dispatch that Officer Blackwood and Officer Rubalcava had stopped the Ford Expedition from the earlier freeway shooting. Sergeant Kee immediately left the station to back the officers and by the time Sergeant Kee was in his patrol unit a pursuit had started. Sergeant Kee immediately requested air support and requested the San Bernardino County Sheriff's Department to take over the pursuit. Sergeant Kee was attempting to catch up to the pursuit and heard dispatch advise that a Sheriff's Department Unit was able to catch up to his officers before he could. The Sheriff's Department advised they would not take over the pursuit but would assist.

⁵ Sergeant Kee reviewed audio and video recordings of the incident prior to being interviewed by Detective Abernathy and Detective Hernandez.

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At approximately 2:07 in the morning, Sergeant Kee was able to locate and catch up to the pursuit heading eastbound on Main Street away from the I-15 freeway in the City of Hesperia. Sergeant Kee took over the secondary position in the pursuit when he joined. At this point the suspect vehicle's tire had been successfully flattened with a spike strip.

Sergeant Kee observed debris coming off the front-passenger side tire of the Ford Expedition and sparks flying. At approximately 2:39 in the morning the Ford Expedition slowly stopped on Peach Avenue just south of Catalpa Street in the City of Hesperia. The driver of the Expedition was attempting to start the Expedition and it would not start.

Officer Blackwood and Officer Rubalcava had positioned their patrol vehicle behind and to the west (left), on the driver's side of the Expedition and Sergeant Kee positioned his patrol vehicle behind and to the right of the Expedition. Sergeant Kee exited his vehicle, retrieved his AR-15 and ran to the open driver's side door of Officer Blackwood's patrol vehicle and started giving commands to the suspect.

Sergeant Kee ordered the suspect out of the vehicle, to throw his keys out, but the driver refused. Sergeant Kee was advised by his officers that they observed two people in the Expedition. Air support had just reached them at this time and had illuminated the area with its spotlight. With this additional lighting Sergeant Kee did not see any individuals outside or surrounding the area.

Officer Blackwood was positioned behind the driver's side door of the patrol unit with Sergeant Kee and Officer Rubalcava was positioned behind the open front passenger door of the same patrol unit. The Sheriff's Sergeant and Deputy that were assisting in the pursuit positioned themselves at Sergeant Kee's vehicle. The Sheriff's Sergeant was behind the open driver's side door of Sergeant Kee's patrol vehicle and the Deputy was behind the open front passenger side door of the same patrol vehicle. Sergeant Kee continued to give commands and the suspect continued to refuse to comply.

Officer Blackwood advised Sergeant Kee that there was a less-lethal option in their patrol unit and Sergeant Kee took the tool. Sergeant Kee loaded the less-lethal shotgun with five beanbag rounds, gave commands to exit the vehicle to the suspect, then fired at the driver's side rear window of the Expedition in an attempt to break the window. The beanbag rounds were not effective. The Sheriff's Sergeant then advised someone was exiting the vehicle.

The Sheriff's Sergeant gave commands to keep their hands up and to walk back and the Deputy took the individual and handcuffed them. The Sheriff's Sergeant told Sergeant Kee that the female passenger that exited the Expedition did not know if the suspect was armed or not, but his name was Hector. Sergeant Kee began to give the suspect commands using his name, Hector. Hector would respond by rolling down his window to respond then roll his window back up. Hector then told Sergeant Kee that he did not like Officer Blackwood standing next to Sergeant Kee. Sergeant Kee had Officer

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Blackwood and Officer Rubalcava switch positions. Hector told Sergeant Kee he just wanted to smoke one more cigarette before he came out and Sergeant Kee told Hector, "OK." Hector threw beer cans out of the window as he was smoking his cigarette.

After a few minutes passed, Sergeant Kee would tell Hector his time was up, and Hector would ask for a bit more time, then smoke another cigarette. Hector asked to deal with Sergeant Kee specifically and to have Sergeant Kee be the person to handcuff Hector. After approximately 15 to 20 minutes of this the air support had to refuel and left. After air support left, Sergeant Kee did not see any additional lighting from the surrounding neighborhood to indicate there were any bystanders.

Hector had thrown out multiple beer cans at this point and started throwing clothing out of his vehicle. Sergeant Kee asked the Sheriff's Sergeant if SWAT was available to assist because Sergeant Kee did not believe that Hector was going to come out of the vehicle. The Sheriff's Sergeant advised he did not believe SWAT would respond to a suspect sitting in a vehicle, but advised he had other less-lethal options that included a glass breaker and pepper ball rounds. Sergeant Kee agreed to these options.

Sergeant Kee gave Hector one more chance to exit the vehicle and Hector refused indicating he was going to go back to prison for life. Sergeant Kee gave the go-ahead to the Sheriff's Sergeant who used three glass breaker rounds to break the rear window of Hector's Expedition. The Sheriff's Sergeant asked Hector if there was anything they could say or do to get him to exit and Hector refused. The Sheriff's Sergeant deployed multiple pepper ball rounds into the Expedition. Hector coughed and rolled down his window, used an inhaler and threw that out the window. Hector asked Sergeant Kee to call Hector's wife. Sergeant Kee agreed to call Hector's wife.

Hector yelled the number out to officers and Officer Rubalcava called the number, but no one answered. Hector rolled his window back up and the Sheriff's Sergeant tried another round of pepper balls to encourage Hector to comply. Hector would roll his window down to relieve the air and then roll it back up. The cycle continued for 30 to 40 minutes. Sergeant Kee requested dispatch to stage medical in the event this did not have a peaceful ending. The Sheriff's Sergeant advised Sergeant Kee that he was running out of pepper balls. Sergeant Kee did not want to approach the vehicle because that is what occurred in the last shooting he had been in, so Sergeant Kee was attempting to wait Hector out. The Sheriff's Sergeant fired a final grouping of pepper balls into the Expedition and one of them struck Hector in the eye.

Hector began to yell that they hit him. Sergeant Kee negotiated with Hector to come out to get medical attention. Hector told Sergeant Kee he only wanted Sergeant Kee to handcuff him. Hector opened his car door and slid out of the seat, so he did not face officers. Sergeant Kee encouraged Hector and gave him commands to keep his hands up and close the door. Hector told Sergeant Kee he thought Sergeant Kee was supposed to come cuff him. Sergeant Kee replied that Hector needed to turn around so they could see his front first. Hector asked if officers could turn the spotlight off and

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Sergeant Kee refused the request. Sergeant Kee continued to make commands to Hector and Hector failed to comply. It appeared to Sergeant Kee that Hector was going to comply and kneel down, but Hector ran to the front of the Expedition. Hector said that he heard a "click," and thought officers were trying to shoot him. Sergeant Kee told Hector no one was trying to shoot him.

Sergeant Kee could not see Hector's waistband and decided to move from behind the driver's side door of his patrol vehicle to get a better view. Sergeant Kee told Officer Rubalcava they cannot let Hector get back into the Expedition, so they should start moving toward the light pole on the southwest corner of the intersection to begin an approach. Sergeant Kee had his AR-15 and Officer Rubalcava had his .40 caliber handgun and Sergeant Kee gave commands to Hector to keep his hands up. Hector turned toward Sergeant Kee and Officer Rubalcava slightly and just as Sergeant Kee observed Hector's firearm in his waistband, Hector grabbed the firearm with his right hand. Sergeant Kee shot approximately five to six rounds at Hector. Sergeant Kee saw Hector flinch but still draw his firearm and saw two muzzle flashes from Hector's firearm.

Sergeant Kee and Officer Rubalcava moved back to the cover of their patrol vehicle. Officer Rubalcava positioned himself in the door jamb and Sergeant Kee went prone. Hector ran north up Peach Ave towards the northwest corner and pointed his gun back at officers as he was running. Sergeant Kee fired two or three more shots. Sergeant Kee was fearful that Hector may be running to a residence and would endanger the residents inside and Hector also appeared to be shooting at Sergeant Kee and Officer Rubalcava threatening their lives.

Hector fell to the ground. All five law enforcement officers approached Hector while the Sheriff's Sergeant gave Hector commands to show his hands. Hector was lying face down with his hands underneath him and did not comply with orders. The Sheriff's Sergeant decided to utilize his taser to gain compliance. After the first taser deployment Hector did not comply. The Sheriff's Sergeant reactivated the taser for a second attempt at compliance with no response. Officers then handcuffed Hector and turn him over. Hector's firearm was underneath his body. Officer Blackwood broadcast over the radio "shots fired." Sergeant Kee broadcast "11-99 Shots fired." Sergeant Kee also advised dispatch the suspect was down, in custody, and requested medical aid. Sergeant Kee then heard people yelling in the distance.

Sergeant Kee heard people yelling, "You shot him. You shot him." Sergeant Kee initially believed that it was the suspect's family. Sergeant Kee was advised by additional responding deputies that several people were hit by gunfire. Sergeant Kee never saw any bystanders or anyone in the surrounding areas during the standoff. Medical aid arrived quickly, and Sergeant Kee was advised two adults and one juvenile were hit.

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STATEMENTS BY CIVILIAN WITNESSES

On February 17, 2021, at around 9:05 in the morning, **Witness #1** was interviewed by Detective Edward Hernandez and San Bernardino County District Attorney Senior Investigator Dave Steele.

On February 17, 2021, Witness #1 lived with his wife, Witness #2, his daughter, Witness #3, and his son, Witness #4 at ***** Catalpa Street in the City of Hesperia. At an unknown time early in the morning, the family was asleep in their rooms. Witness #1 could hear sirens and vehicles traveling at high rates of speed past his residence. Witness #1 could see the red and blue lights from the law enforcement vehicles reflecting through the windows. At approximately 2:40 in the morning Witness #1 heard the sirens and vehicles return and he looked out of his bedroom window which faced north and observed two San Bernardino County Sheriff's Department patrol units stopped at the intersection of Peach Avenue and Birch Street with their overhead emergency lights activated. Witness #1 and Witness #2 went to their front door, which faced south toward Catalpa Street, opened it, and observed a white sports utility vehicle (SUV) stopped in front of a California Highway Patrol Vehicle. The white SUV was missing its front passenger side wheel. Witness #1 and Witness #2 brought the children from their bedrooms to the living room as a precaution.

Witness #1 and Witness #2 stood at their open front door behind a metal security door watching the traffic stop. Witness #1 observed one of the officers shoot pepper balls into the white SUV but did not know if it was a CHP officer or Sheriff's deputy that shot because the officer was obstructed from his view by the SUV and patrol vehicles. Witness #1 could also hear what sounded like the white SUV's engine attempting to turn over. Witness #1 recorded two videos on his cell phone which he provided to law enforcement.

Witness #1 and his family did not continuously watch the traffic stop. Witness #1 closed the front door after several minutes because it was cold outside. The stop lasted for approximately 50 minutes. When Witness #1 opened the front door again the driver of the SUV had exited and stood on the street next to the SUV. Witness #1 heard an officer yelling, "Just keep your hands up, we don't want to shoot you, just walk backwards towards us." The driver of the SUV complained about being shot in the eye. Officers told the driver they would get him medical attention and there was an ambulance standing by. The driver of the SUV told law enforcement he did not have a weapon, then said, "I heard a click," and ran to the front of his SUV and faced south toward the officers.

Witness #1 observed the driver of the SUV with his hands in the air and told his wife that officers were going to arrest the driver. Witness #2 came to the front door behind Witness #1, and Witness #4 stood behind Witness #2 and to her right. After approximately four minutes, Witness #1 observed two CHP officers walking side by side north on the dirt should west of the SUV with their guns pointed at the driver. An officer

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continuously advised the driver to keep his hands up, but the driver turned to the left and the two CHP officers shot several rounds. Witness #1 saw a spark on his closed security door and realized gun fire hit their front door and house.

Witness #1 pushed Witness #2 and Witness #4 away from the front door and they fell into the hallway and living room. Witness #2 yelled that she had been shot and Witness #1 attempted to yell out his front door for help. Witness #1 did not receive a response because officers had pursued the driver who had fled north. Eventually, Witness #1 saw two Sheriff's Deputies and was able to obtain their assistance. Deputies had Witness #2 and Witness #4 sit on in the front yard to assess their injuries and it was at that time that Witness #1 noticed blood on his clothes. Witness #1 took his jacket off and realized he had wounds on both of his forearms.

Paramedics arrived within minutes to attend to Witness #1, Witness #4, and Witness #2. Witness #1 could see two gunshot wounds to Witness #4's chest area and estimated three to four bullets struck the security door.

On February 19, 2021, Witness #1 spoke with Detective Hernandez again and advised that there was an additional shrapnel wound on his right leg.

On February 17, 2021, at around 11:45 in the morning, **Witness #2** was interviewed by Detective Adrian Bustamante.

On February 17, 2021, at approximately 2:00 in the morning Witness #2 was asleep in her bedroom next to her husband Witness #1 at their residence located at 17994 Catalpa Street in the City of Hesperia. The couple were woken up by sirens outside of their residence. Witness #1 went into the kitchen and Witness #2 followed to make herself some coffee. Witness #2 looked outside of her kitchen window that faced the front of the residence and observed San Bernardino County Sheriff's Deputies and California Highway Patrol officers at the intersection of Peach Avenue and Catalpa Street. It appeared that the officers were in a standoff with a subject in a white SUV.

Witness #2 observed Sheriff's Department personnel fire pepper balls at the white SUV. Witness #2 believed the situation was escalating and felt that her family could be in danger, so she woke up her children, Witness #3 and Witness #4, and brought them out of their bedrooms since their bedrooms were in the front of the house. Witness #2 could hear a helicopter over the residence and the family watched the standoff from behind a closed screen door that faced the front of their residence. Witness #2 believed they watched for about 20 minutes. Witness #2 did not know what officers were telling the driver of the SUV but knew they were giving him commands.

Witness #2 believed the driver of the SUV wanted to force officers to shoot him as he did not appear to have an intention to surrender or make any attempts to surrender. Witness #2 believed her family was safe behind the screen door but told her children to back up for their safety. At the same time that Witness #2 told her children to back up,

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Witness #2 was struck by gunfire and her nose began to bleed. Witness #2 also felt pain near her right shoulder. Witness #4 told Witness #2 he was shot, and Witness #1 yelled to the officers for help. Within minutes San Bernardino County Sheriff's Department deputies climbed over their front gate to check on her family. Witness #2 believed they were helpful and nice and what happened was not law enforcement's fault, they were just doing their job.

Emergency Medical personnel responded to the house to treat the family and she was airlifted and treated at Loma Linda University Medical Center.

On February 17, 2021, at around 12:26 in the afternoon, Witness #4 was interviewed by Detective Adrian Bustamante.

Witness #4 remembered being asleep in his bedroom when he was woken up by his mother, Witness #2, because law enforcement was outside at the intersection of Peach Avenue and Catalpa Street. Witness #4 saw officers behind a white SUV and the officers shouting toward the driver of the SUV to show his hands. The driver of the SUV did not cooperate. Witness #4 believed there were approximately 3 to 5 officers outside including CHP officers. Witness #4 heard CHP officers giving the driver commands through the PA system to exit the SUV with his hands up, but the driver refused to exit. Witness #4 believed that he watched the standoff for approximately one hour from behind the closed screen door at the front of the house.

Witness #4 observed a female passenger exit the white SUV and walk towards officers. Witness #4 saw the driver reach over and close the opened passenger door. The officers shot pepper balls at the driver while he was inside the SUV but did not remember how many pepper balls, only that they made the driver cough. Eventually the driver exited the SUV from the front driver's seat and walked toward the front bumper of the SUV. Witness #4 heard officers give the driver commands to show his hands. The driver then ran north from the SUV and officers fired their weapons at the driver and Witness #4 saw flashes of light from their weapons. Witness #4 was hit in the torso, looked down and his shirt was full of blood. Witness #4 looked at his mom and her nose was bleeding. Two unknown officers came to help his family.

Witness #4 remembers getting medical treatment inside the ambulance at his house and then being airlifted to Loma Linda University Medical Center.

On February 17, 2021, at around 10:11 in the morning, **Witness #3** was interviewed by Detective Edward Hernandez and San Bernardino County District Attorney Senior Investigator David Steele.

Witness #3 lived with her parents Witness #2 and Witness #1 and brother Witness #4 in Hesperia. On February 17, 2021, at approximately 2:50 in the morning Witness #2 woke up Witness #3. There was a traffic stop at the intersection of Peach Avenue and Catalpa Street and Witness #2 did not want Witness #3 to get shot. Witness #3 watched

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from her bedroom window and observed a white Expedition in the intersection with two black and white California Highway Patrol police vehicles behind the Expedition with their emergency lights on. Witness #3 also observed two CHP officer wearing dark uniforms. Witness #3 could hear the officers telling the driver of the Expedition to exit his vehicle with his hands up and the driver did not comply.

Witness #3 then watched from the front door and observed an unidentified police officer shoot over 20 pepper balls into the Expedition from behind a CHP patrol vehicle. Witness #3 knew they were pepper balls because Witness #1 said they were pepper balls since they made the driver cough. After the pepper balls were shot the driver of the Expedition opened his door, vomited, and complained that the pepper balls burned his eyes and that he was struck in the eye. Witness #3 did not watch the traffic stop continuously but walked throughout the house going from her bedroom to the living room to the kitchen. Approximately 20 minutes later Witness #3 looked out the kitchen window and saw the driver of the Expedition standing outside of the vehicle next to the open driver's side door.

Witness #3 heard officers telling the driver to keep his hands up because they could not see his waistband. Witness #3 heard the driver reply that he had nothing and to just come over here. Officers asked the driver to walk back to them, but he would not. The driver then yelled that he heard a click noise and ran to the front of the Expedition and faced officers. Witness #3 heard one of the officers negotiating with the driver to step away from the Expedition, but the driver would not, only promising that he did not have a gun. Witness #3 observed two officers walk north along the driver's side of the Expedition and then saw the driver lower his right hand toward the front of his waist and raise a black handgun. Witness #3 saw the driver shoot at the officers who were on the southwest corner of the intersection and saw the muzzle flash from the driver's gun.

After the driver shot, the officers shot back and that is when bullets struck the Botten residence. The driver ran north on Peach Avenue as the officers continued to shoot at him. Witness #3 observed the driver fall to the ground just north of the intersection.

Witness #3 heard her father and mother yell they were shot and saw blood on the entryway floor. Witness #3 observed blood on her mother's face and neck and called 9-1-1 on her cell phone. Witness #3 saw at least three gunshot wounds on her brother's chest. Witness #3 went into her bedroom in the southwest corner of the house and saw a bullet hole in her bedroom window. Witness #1 yelled to officers that they had been shot and needed aid. Two Sheriff's deputies came to the residences and had her mother and brother sit on a bench outside the residence until paramedics arrived. Witness #4 was transported first because his wounds were more serious, the second ambulance transported Witness #2, then the third took Witness #1 Witness #3 stayed at the residence to take care of the dogs and her rabbit.

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On March 1, 2021, at around 10:21 in the morning, Witness #5 was interviewed by Detective Adrian Bustamante.

On February 17, 2021, Witness #5 lived in the City of Hesperia with her husband Witness #6, her daughter Witness #7 and her son Witness #8. In the early morning hours police sirens near her residence woke Witness #5 up. Witness #6 was also woken up by the sirens and told Witness #5 a police chase had passed by. Approximately 25 minutes later Witness #5 and Witness #6 observed a police standoff in the middle of the intersection of Peach Avenue and Catalpa Street. Witness #5 observed California Highway Patrol Officers as well as San Bernardino County Sheriff's personnel behind a white SUV. Witness #5 could see a Hispanic male in the driver's seat of the SUV and a female in the front passenger seat.

Witness #5 and Witness #6 watched the standoff from inside their bedroom through the window. Witness #5 observed the female exit the passenger's side door of the SUV and walk back towards law enforcement. Witness #5 heard officers tell the driver he needed to put his hands up and the driver did not comply. Witness #5 estimated that the driver stayed inside of the SUV for approximately one hour after the female passenger exited the vehicle. During that hour, Witness #5 observed officers fire what she believed were non-lethal pepper balls inside the SUV and one struck the driver. Witness #5 heard the driver ask for medical attention because one of the pepper balls hit him in his face. The officers told the driver they would give him medical aid once he surrendered. The driver refused to surrender.

Witness #5 observed the interior of the SUV become smokey after the pepper balls were shot into the SUV and the driver would cough and open the windows. Witness #5 heard the driver ask officers to call his wife. Most of the dialogue between the driver and officers was not audible to Witness #5. After an hour the driver exited the SUV and stood in front of the bumper facing the SUV. Witness #5 could hear officers yelling at the driver to put his hands up because they could not see his hands. It appeared that the driver noticed officers moving to the west and the movement startled the driver because she heard the driver yell something and simultaneously run in a northwestern direction toward the dirt berm in front of her fence line. When he ran, she believed the driver was hit by gunfire because he appeared to have winced while running. The driver continued running until he fell face down on the dirt berm with his arms underneath his body. Witness #5 never saw the driver with a gun.

Witness #5 did not know how many officers there were but observed them approach the driver on the ground and check on him, but he appeared dead.

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On March 11, 2021, at around 5:00 in the evening, Witness #7 was interviewed by Detective Robert Ripley.

Witness #7 lived with her parents Witness #6 and Witness #5 and her brother Witness #8 on Peach Avenue in the City of Hesperia. On February 17, 2021, at approximately 2:40 in the morning Witness #7 was woken up by police sirens, a helicopter and an officer speaking on a PA system. The officer was ordering a driver to exit the vehicle. Witness #7 got out of bed and went to her parents' room on the northeast corner of the residence.

Witness #8 joined and the family watched the incident through the open window of her parent's bedroom. Approximately five police cars were stopped south of the white vehicle that was stopped facing north on Peach Avenue south of Catalpa and one of the white vehicle's tires was flat. The police cars had their headlights and emergency lights activated which illuminated the intersection and the vehicle.

An officer was giving commands on the PA system for the driver to exit the vehicle but the driver would not exit. A female passenger wearing a red sweatshirt was in the front passenger seat exited the vehicle with her hands in the air and followed law enforcement orders.

The driver, a bald heavyset Hispanic male with multiple tattoos covering his upper body remained in the vehicle and refused to get out. The driver attempted to start the car multiple times, but it would not start. There was an officer in dark clothing that was closest to the white vehicle that spoke to the driver.

The driver asked the officer to call his wife and yelled a phone number. The driver and the officer spoke for about 30 minutes. The driver was ordered to exit the vehicle multiple times and he refused. During the standoff the driver threw multiple items out of the vehicle.

Approximately 15 minutes after the female passenger exited an officer shot what she believed were pepper balls into the white car because the inside of the car filled with a cloud. The officer fired approximately 10 pepper balls every five minutes. After each time the driver was ordered out of the vehicle and the driver refused. On the third time the driver leaned out of the driver's window and spat, on the fourth time the driver yelled he was shot in the eye and wanted medical attention. The officers told the driver he would receive medical attention when he exited the vehicle.

At approximately 3:40 in the morning the driver opened the driver's door and hung his feet out eventually exiting and standing up between the open door and vehicle facing away from officers. Officers ordered the driver to turn around, but the driver turned away and after several seconds ran toward the front of the white car. The driver stood close to the hood and faced towards the officers acting erratically and moving his hands around. An officer ordered the driver to come back and put his hands up and repeated the order

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several times for approximately two minutes. Officers took a step forward and the driver said they needed to back up.

Two officers in brown uniforms approached the driver on the east side of his vehicle with weapons drawn and pointed at the driver. The driver looked at those officers and started running north on Peach Avenue for approximately five feet before heading in a northwest direction toward their house.

Witness #7 heard approximately 15 to 20 gunshots. Witness #7 and her family hid below the open window and did not see who fired. The driver fell to the ground and appeared to land on his stomach. Three or four officers approached the driver from the south, rolled him on his stomach, and handcuffed him.

Witness #7 recorded the last few minutes of the incident with her cell phone and provided the recording to detectives.

On March 1, 2021, at around 10:20 in the morning, Witness #6 was interviewed by Detective Edward Hernandez.

Witness #6 lived in Hesperia with his wife Witness #5 his son Witness #8, and his daughter Witness #7. On February 17, 2021, at approximately 2:00 in the morning Witness #6 woke up to sirens and sounds of vehicles traveling at high rates of speed past his residence. At approximately 2:40 in the morning Witness #6 heard the sirens and vehicles return to his neighborhood. Witness #6 looked out his bedroom window, which faced east towards Peach Avenue, and saw police vehicles stopped behind a white SUV at the intersection of Peach Avenue and Catalpa Street. The patrol vehicles had their emergency overhead lights activated. Witness #6 went to his den to look from that window and believed that the patrol vehicles were San Bernardino County Sheriff's patrol vehicles, but they were blocked by Witness #6's vehicles in his driveway.

Witness #6 heard an officer yelling at the driver of the SUV to exit the vehicle, but the driver did not comply. Witness #6 did not know which officer gave the commands, but the same officer gave the commands throughout the entire stop. Approximately 10 minutes later a passenger exited the SUV from the front passenger side door. The passenger was in a red hooded sweatshirt and walked back from the SUV toward officers and was arrested by the officers. The driver of the SUV would not comply and remained inside of the SUV.

An unidentified officer shot what Witness #6 believed to be pepper balls into the SUV. Witness #6 observed powder float inside the SUV and heard the driver coughing. Witness #6 did not know how many pepper balls were shot into the SUV, but it lasted for approximately 30 minutes. Witness #6 heard the driver ask law enforcement to call his wife. Witness #6 believed that the officer that negotiated with the driver showed concern for the driver and called him by his first name. Witness #6 heard the driver say he was struck in the eye with a pepper ball. The officer told the driver to exit the SUV

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and he would get medical attention, but the driver would not exit the SUV but threw clothing and cans of beer out the window.

Approximately 30 minutes later the driver exited the SUV, put his hands in the air, and turned his back towards officers as he stepped out. The driver did not show the front of his body to officers. Officers gave orders to the driver to walk backwards towards them, but the driver refused. Approximately five minutes later the driver closed the door of the SUV and ran to the front of the SUV and faced the officers. The officers yelled at the driver to show his hands and he would not. The driver said he heard a click noise.

Witness #6 observed two deputies walk north along the passenger side of the SUV. Witness #6 looked down for a second and when he looked up, he saw the driver with his hand extended towards the officers on the southwest corner of Peach Avenue and Catalpa Street. Witness #6 observed a puff of smoke from the driver's extended hand and officers returned fire. Witness #6 went back into his bedroom.

When Witness #6 reached his bedroom window, he observed the driver lying face down on the ground on the northwest corner of Peach Avenue and Catalpa Street. The officers and deputies were walking toward the driver and one deputy pointed a taser at the driver. A deputy and an officer walked up to the driver and put his hands behind his back, handcuffed him, and rolled him over. Shortly after that one of the deputies went quickly over to the northeast corner of Peach Avenue and Catalpa Street.

On February 17, 2021, at approximately 12:45 in the afternoon, Witness #9 was interviewed by Detective Robert Ripley.

On February 17, 2021, at approximately 2:40 in the morning, Witness #9 was asleep in her bedroom which is located on the southeast corner of her residence. Witness #9 woke up to sirens and a low flying helicopter and looked out of her window. Witness #9 observed an unknown officer speaking on a PA system ordering the driver to exit his vehicle. Witness #9 believed that a subject exited the rear passenger door and ran east on Catalpa Street, but no officers pursued the subject.

Approximately 15 minutes into the incident an unknown officer shot pepper spray into the stopped vehicle. Witness #9 believed it was pepper spray because smoke filled the vehicle's interior. After the pepper balls were shot into the vehicle a female passenger exited the vehicle with her hands raised and followed orders to walk backward towards police cars. The female was taken into custody by law enforcement.

An officer stood behind a patrol vehicle on the driver's side of the vehicle and the driver, and the officer spoke for 30 minutes. The officer called the driver "Hector" and offered to call his wife, but the driver remained in the vehicle. Witness #9 believed the driver taunted officers by opening the door and throwing items out then closing the door several times throughout the incident.

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Halfway through the incident the driver opened his door and ran to the front of the vehicle and faced south towards the officers. The driver was “acting crazy” and refused to follow orders. Witness #9 estimated that the driver remained at the front of the vehicle for approximately 30 minutes while officers negotiated with him. The driver suddenly ran north on Peach Avenue for approximately five feet before running in a northeast direction toward the dirt shoulder of Peach Avenue.

Witness #9 heard 25 to 30 gunshots and the driver fell to the ground landing on his stomach. An unknown number of officers approached the driver, rolled him onto his stomach and handcuffed him. Medical aid arrived within a minute to treat the driver.

INCIDENT VIDEO AND AUDIO

BELT RECORDINGS. All belt recordings submitted were reviewed in their entirety.

Sergeant Robert Vaccari

Sergeant Robert Vaccari had his belt recorder activated throughout the pursuit and the lethal force encounter. The recording is approximately one hour and fifty-four minutes long.

Deputy Jake Adams

Deputy Jake Adams had his belt recorder activated throughout the pursuit and the lethal force encounter. The recording is approximately one hour and 16 minutes long. The recording is consistent with his interview.

MOBILE VIDEO AUDIO RECORDING SYSTEM (MVARs) RECORDINGS. Two sets of MVARs video recordings from the CHP patrol units were submitted and reviewed in their entirety. The pursuit and lethal force encounter were captured on both recordings.

The recordings from Officer Blackwood’s patrol unit totals approximately 2 hours and 47 minutes long. The recordings from Sergeant Kee’s patrol unit totals approximately 2 hours and 5 minutes long.

WEAPON

A loaded black semi-automatic handgun was located at the scene near Puga’s body. The handgun was not marked with a make or model but resembled a polymer P80 9mm handgun. The handgun was underneath Puga’s body until he was handcuffed and rolled over.

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The handgun had a 17 round magazine that was partially inserted into the well. The magazine was loaded with 13 9mm rounds and an unfired 9mm round was in the chamber. A 9mm fired cartridge casing (FCC) was located on the dirt shoulder of Peach Avenue and Catalpa Street near Puga's body.

DECEDENT

AUTOPSY. Dr. Timothy Jong, Forensic Pathologist for the Coroner Division of The San Bernardino County Sheriff's Department, conducted the autopsy of Hector Puga on March 5, 2021. Dr. Jong determined the cause of death was a gunshot wound to the back.

Number One - Gunshot Wound of the Mid Left Back⁶:

Located on the mid left back, centered 17 – 1/8 inches from the top of the head and 9 inches left of posterior midline. After perforating the skin and soft tissue, the projectile perforated the left ribcage at the posterolateral 6th left rib and 5th posterolateral left intercostal space, the lower and upper lobes of the left lung, anterior 1st left rib at the sternal junction, and terminated in the soft tissues of the upper left chest. The direction of the projectile traveled was back to front, left to right, and upward. There was no exit wound and a deformed yellow metal jacketed projectile was recovered.

Number Two – Gunshot Wound of the Left Lower Back:

A gunshot entrance wound is on the left lower back, centered 30 inches from the top of the head and 5 -1/2 inches left of posterior midline. After perforating the skin and soft tissue, the projectile perforated the left ilium, large bowel, and terminated in the abdominal fat pad. The direction that the projectile traveled was back to front, left to right, and upward. There was no exit wound, and a deformed yellow meal jacketed projectile was recovered.

Number Three – Gunshot Wound of the Right Buttock:

A gunshot entrance wound is on the right buttock, centered 34 – 1/2 inches from the top of the head and 4 -1/2 inches right of posterior midline. After perforating the skin, the projectile perforated the soft tissues of the right buttock and terminated in the soft tissue below the skin of the right back. The direction of the projectile traveled was left to right and upward with no discernable front/back direction. There was no exit wound and a minimally deformed yellow metal jacketed oxidized projectile was recovered.

⁶ The numbering of the gunshot wounds is for reference only and not meant to indicate the order in which the gunshot wounds occurred.

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Number Four – Tangential Gunshot Wound of the Anterolateral Left Thigh:

A tangential gunshot wound is on the anterolateral left thigh, centered 35 -1/2 inches from the top of the head and 8 inches left of the anterior midline.

Number Five – Gunshot Wound of the Anterior Left Thigh:

A gunshot entrance wound is on the anterior left thigh, centered 44 – 1/4 inches from the top of the head and 1/2 inch left of anterior midline. After perforating the skin, the projectile penetrated and terminated in the soft tissues of the anterior left thigh. The direction the projectile traveled was front to back, slightly left to right, and upward. There was no exit wound, and a minimally deformed yellow metal jacketed projectile was recovered.

Number Six – Gunshot Wound of the Posterior Left Thigh:

A gunshot entrance wound is on the posterior left thigh, centered 43 – 1/2 inches from the top of the head and 2 inches left of posterior midline. After perforating the skin, the projectile perforated the soft tissue of the posterior left thigh and terminated in the soft tissue of the anterior left thigh/pelvis. There is no exit wound, and a deformed yellow metal jacketed projectile was recovered.

Number Seven – Gunshot Wound of the Lateral Left Knee:

A gunshot entrance wound is on the lateral left knee, centered 52 inches from the top of the head and 1 – 3/4 inches left of anterior midline. After perforating the skin, the projectile penetrated the soft tissue of the anterolateral left thigh. The direction of the projectile traveled was back to front, left to right, and upward. A gunshot exit wound is on the anterior left thigh, centered 45 – 5/8 inches from the top of the head and 1/2 inch left of the anterior midline.

Number Eight – Gunshot Wounds of the Anterior Right Lower Leg #1:

An entrance gunshot wound is on the anterior right lower leg, centered 62 inches from the top of the head and 1/2 inch right of anterior midline. After perforating the skin, the projectile perforated the soft tissue of the anterior right lower leg. The direction of the projectile traveled was slightly front to back, right to left, and upward. A gunshot exit wound is on the anterior right lower leg, centered 57 – 3/4 inches from the top of the head and 1/2 inch left of anterior midline.

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Number Nine – Gunshot Wound of the Anterior Right Lower Leg #2:

A gunshot entrance wound is on the anterior right lower leg, centered 65 3/4 inches from the top of the head and 1 -1/4 inches right of anterior midline. After perforating the skin, the projectile perforated the soft tissue of the anterior and posterior right lower leg and right tibia and fibula. The direction the projectile traveled was front to back, right to left, and upward. A gunshot exit wound is on the posteromedial right lower leg, centered 63 inches from the top of the head and 1 inch left of posterior midline.

Number Ten – Gunshot Wound of the Right Foot:

An entrance gunshot wound is on the medial surface of the 5th toe of the right foot centered 69 inches from the top of the head and 1 – 1/2 inches right of the anterior midline. After perforating the skin, the projectile perforated the soft tissue of the right foot. The direction the projectile traveled was front to back, right to left, and upward. A gunshot exit wound is on the anterior right foot near the junction of the 4th and 5th web space, centered 67 – 3/4 inches from the top of the head and 3/4 inch right of anterior midline.

TOXICOLOGY. Femoral blood and urine sample were collected from Hector Puga on March 5, 2021.

Toxicology results for the femoral blood sample were listed positive as follows:

- Ethanol – 114 mg/dL
- Blood Alcohol Concentration (BAC) – 0.114 g/100mL
- Amphetamine – 86 ng/mL
- Methamphetamine – 1900 ng/mL

CRIMINAL HISTORY.

2008, 459 of the Penal Code, Burglary. Los Angeles County case number LB 8LG0168902, a misdemeanor.

2011, 594(a)(2) of the Penal Code, Vandalism and 243(e)(1) of the Penal Code, Battery on a Spouse. Los Angeles County case number LB 0LG0014201, a misdemeanor.

2011, 14601.1(a) of the Vehicle Code, Driving on a Suspended License. Los Angeles County case number LB 1LT0894201, a misdemeanor.

2011, 23152(b) of the Vehicle Code, Driving Under the Influence with Blood Alcohol .08 Percent or Higher and 14601.1(a) of the Vehicle Code, Driving on a Suspended License. Los Angeles County case number LB 1LT0134501, a misdemeanor.

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2011, 243(e)(1) of the Penal Code, Battery on a Spouse, 166(c)(1) of the Penal Code, Violation of a Protective Order, 148(a)(1) of the Penal Code, Obstructing a Public Officer. Los Angeles County case number LB 1LG0215201.

2014, 23247(e) of the Vehicle Code, Driving Without Interlock Device. Los Angeles County case number COM4CP0329901, a misdemeanor.

2015, 14601.2(a) of the Vehicle Code, Driving with a Suspended License (DUI). Los Angeles County case number LAM4MP0710201, a misdemeanor.

2015, 14601.2(a) of the Vehicle Code, Driving with a Suspended License (DUI). Los Angeles County case number LC 4BF0428301, a misdemeanor.

2015, 273.5(f)(2) of the Penal Code, Inflicting Injury on a Spouse with Priors, 69 of the Penal Code, Obstructing/Resisting an Executive Officer. Los Angeles County case number LACBA43482801, a felony

2019, 594(a) of the Penal Code, Vandalism, a felony; 23152(a) of the Vehicle Code, Driving Under the Influence of Alcohol, a misdemeanor. Los Angeles County case number LACBA47454501.

DE-ESCALATION

The incident under review began when Puga's vehicle was recognized by CHP Officers Blackwood and Rubalcava as matching the description of a vehicle involved in a freeway shooting just hours earlier. The vehicle initially yielded to CHP officers, but Puga refused commands to exit the vehicle and began an approximate one-hour pursuit throughout the City of Hesperia. During the pursuit multiple attempts to stop the vehicle using spike strips were made. One final attempt was successful and Puga's vehicle was disabled at the intersection of Peach Avenue and Catalpa Street in Hesperia.

Officers Blackwood, Rubalcava and Sergeant Kee ordered Puga out of his vehicle multiple times, but Puga refused. Sergeant Kee retrieved the less-lethal beanbag shotgun that was in Officer Blackwood's patrol unit and used that in an effort to break the windows of Puga's vehicle. These rounds were not successful in breaking the windows but were successful in coaxing the passenger of Puga's vehicle out and peacefully into the custody of law enforcement. The passenger provided Puga's name to law enforcement and Sergeant Kee used that to communicate with Puga.

Sergeant Kee began negotiating with Puga, calling him by name, which Puga responded to. Sergeant Kee used this throughout the standoff to build a rapport with Puga in an effort to end the standoff peacefully and take Puga into custody without further incident. Puga responded verbally, but still refused commands. Puga asked Sergeant Kee for one last cigarette and beer before surrendering. Showing progress in negotiations and de-

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escalation Sergeant Kee allowed time for Puga to smoke and drink. Puga did not comply after his cigarette and drink and negotiations continued. Sheriff's Sergeant Vaccari used glass breaking rounds to break the back window of Puga's vehicle so law enforcement could deploy further less-lethal means. Sergeant Vaccari thought that that negotiation progress had been made, but they had not utilized all means necessary to coax Puga out of his vehicle peacefully.

With the back window shattered, Sergeant Vaccari was able to utilize OC pepper ball rounds. Sergeant Vaccari would deploy a battery of the pepper balls into the cabin of Puga's vehicle, when Puga would not exit, Sergeant Kee would continue to negotiate for Puga to exit the vehicle with his hands up. When Puga would still not respond, the cycle would begin again. After approximately 30 minutes of these attempts Puga indicated to Sergeant Kee that he was a 25 to lifer now. Sergeant Vaccari was running low on pepper balls and was concerned about Puga's statement and how Puga may escalate the situation. Sergeant Vaccari decided to use his less-lethal pepper balls in a different manner to prevent the standoff from escalating. Sergeant Vaccari deployed more pepper balls into Puga's vehicle, however, this time aimed for the space between the driver's seat and passenger's seat in an effort to strike Puga in his back. Sergeant Vaccari believed this would entice Puga to exit his vehicle and surrender.

Puga was struck with a pepper ball but in the face. Puga requested medical attention. Sergeant Kee told Puga that medical aid had been staged and he would receive immediate treatment if Puga exited the vehicle. Puga began to exit the vehicle partially complying with commands. Puga first partially exited the vehicle by only stepping halfway out of the vehicle. Puga then stepped fully out of the vehicle but faced away from officers and deputies. During the time Puga was exiting, Sergeant Kee was giving Puga commands to keep his hands up, to turn around so officers could see his waistband, and to get on the ground. Puga did not comply and requested that Sergeant Kee be the one that comes up and takes Puga into custody. After approximately 10-15 minutes Puga quickly moved to the front of his vehicle still not showing the front of his waistband to officers.

Sergeant Kee continued giving verbal commands to Puga. Sergeant Kee and Officer Rubalcava changed their position from behind the cover of their patrol car out and toward the shoulder of the road to get a better visual of Puga's waistband. Sergeant Vaccari discussed less-lethal coverage with Deputy Adams and determined that the best option was the 40 millimeter.

Sergeant Vaccari, armed with the less-lethal 40 millimeter, and Deputy Adams moved from behind the cover of the patrol vehicles to the right (east) of Puga's vehicle. Sergeant Vaccari and Deputy Adams were concerned that now Puga was mobile and could run in any direction to any of the surrounding residences either meeting with a potential co-conspirator and becoming more dangerous or endangering the citizens who lived there. The situation dramatically changed; Puga drew a firearm and fired at officers and then ran towards residences. Officers felt they had no option but to fire their weapons at Puga.

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From the time Puga's vehicle became disabled to the time the lethal force encounter occurred was approximately one hour. During that time period extensive efforts were made to de-escalate the situation. Law Enforcement took time to communicate with Puga, attempting to call family. Law Enforcement showed a willingness to wait if that would help achieve a peaceful resolution. Law Enforcement used all less-lethal options at their disposal to attempt a peaceful surrender.

APPLICABLE LEGAL PRINCIPLES

A peace officer may use objectively reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a(b).)⁷ Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal C. §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal C. §835a(d).)

An arrestee has a duty to refrain from using force or any weapon to resist arrest, if he knows or should know that he is being arrested. (Penal C. §834a.) This duty remains even if the arrest is determined to have been unlawful. (*People v. Coffey* (1967) 67 Cal.2d 204, 221.) In the interest of orderly resolution of disputes between citizens and the government, a *detainee* also has a duty to refrain from using force to resist detention or search. (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 332-333.) An arrestee or detainee may be kept in an officer's presence by physical restraint, threat of force, or assertion of the officer's authority. (*In re Gregory S.* (1980) 112 Cal. App. 3d 764, 778, *citing, In re Tony C.* (1978) 21 Cal.3d 888, 895.) The force used by the officer to effectuate the arrest or detention can be justified if it satisfies the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

An officer-involved shooting may be justified as a matter of self-defense, which is codified in Penal Code at §§196 and 197. Both of these code sections are pertinent to the analysis of the conduct involved in this review and are discussed below.

PENAL CODE SECTION 196. Police officers may use deadly force in the course of their duties, under circumstances not available to members of the general public. Penal Code §196 states that homicide by a public officer is justifiable when it results from a use of force that "is in compliance with Section 835a." Section 835a specifies a **police officer is justified in using deadly force** when he reasonably believes based upon the totality of the circumstances, that it is necessary:

⁷ All references to code sections here pertain to the California Penal Code.

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- (1) to defend against an imminent threat of death or serious bodily injury to the officer or another, or
- (2) to apprehend a fleeing felon who threatened or caused death or serious bodily injury, if the officer also reasonably believes that the fleeing felon would cause further death or serious bodily injury unless immediately apprehended,

(Penal C. §835a(c)(1).) Discharge of a firearm is “deadly force.” (Penal C. §835a(e)(1).) The “ [t]otality of the circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal C. §835a(e)(3).) A peace officer need not retreat or desist from efforts to arrest a resistant arrestee. (Penal C. §834a(d).) A peace officer is neither deemed the aggressor in this instance, nor does he lose the right of self-defense by the use of objectively reasonable force to effect the arrest, prevent escape or overcome resistance. (*Id.*)

While the appearance of these principals was new to section 835a in 2020,⁸ the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend “has committed a crime involving the infliction or threatened infliction of serious physical harm” to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code § 196 are also satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.) There is also a vast body of caselaw that has demonstrated *how* to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra*.) As such, our pre-2020 state caselaw, developed upon the former iteration of section 196, is still instructive.

There are two new factors in section 835a that did not appear in the section previously, nor did they develop in caselaw pertaining to use of deadly force. First, a peace officer must make reasonable efforts to identify themselves as a peace officer and warn that deadly force may be used, prior to using deadly force to affect arrest. (Penal C. §835a(c)(1).) This requirement will not apply if an officer has objectively reasonable grounds to believe that the person to be arrested is aware of those facts. (Penal C. §835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal C. §835a(c)(2).)

⁸ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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While the codified standards for use of deadly force in the course of arrest are set forth at subsections (b) through (d) of Section 835a, the legislature also included findings and declarations at subsection (a). These findings and declarations lend guidance to our analysis, but are distinct from the binding standards that succeed them within the section. In sum, the findings are as follows:

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness and consistency with agency policies;⁹
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands, and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal C. §835a(a).)

PENAL CODE SECTION 197. California law permits *all persons* to use deadly force to protect themselves from the imminent threat of death or great bodily injury. Penal Code

⁹ Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a (a)(3).

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§197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

The pertinent criminal jury instruction to this section is CALCRIM 505 (“Justifiable Homicide: Self-Defense or Defense of Another”). The instruction, rooted in caselaw, states that a person acts in lawful self-defense or defense of another if:

- (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury;
- (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
- (3) he used no more force than was reasonably necessary to defend against that danger.

(CALCRIM 505.) The showing required under section 197 is principally equivalent to the showing required under section 835a(c)(1), as stated *supra*.

IMMINENCE. “Imminence is a critical component” of self-defense. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) A person may resort to the use of deadly force in self-defense, or in defense of another, where there is a reasonable need to protect oneself or someone else from an apparent, *imminent* threat of death or great bodily injury. “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) The primary inquiry is whether action was instantly required to avoid death or great bodily injury. (*Humphrey, supra*, 13 Cal.4th at 1088.) What a person knows and his actual awareness of the risks posed against him are relevant to determine if a reasonable person would believe in the need to defend. (*Id.* at 1083.) In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. (*Scott v. Henrich, supra*, 39 F. 3d at 915.)

Imminence more recently defined in the context of use of force to effect an arrest, is similar:

A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

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(Penal C. §835a(e)(2).)

REASONABLENESS. Self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) The United States Supreme Court has held that an officer’s right to use force in the course of an arrest, stop or seizure, deadly or otherwise, must be analyzed under the Fourth Amendment’s “reasonableness” standard. (*Graham v. Connor, supra*, 490 U.S. at 395.)

The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on scene, rather than with the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

(*Id.* at 396-397, citations omitted.)

The “reasonableness” test requires an analysis of “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” (*Id.* at 397, citations omitted.) What constitutes “reasonable” self-defense or defense of others is controlled by the circumstances. A person’s right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.) If the person’s beliefs were reasonable, the danger does not need to have actually existed. (CALCRIM 505.) Yet, a person may use no more force than is reasonably necessary to defend against the danger they face. (CALCRIM 505.)

When deciding whether a person’s beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) It was previously held that in the context of an officer-involved incident, this standard does not morph into a “reasonable police officer” standard. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.)¹⁰ To be clear, the officer’s conduct should be evaluated as “the conduct of a reasonable person functioning as a police officer in a stressful situation.” (*Id.*)

The *Graham* court plainly stated that digestion of the “totality of the circumstances” is fact-driven and considered on a case-by-case basis. (*Graham v. Connor, supra*, 490 U.S. at 396.) As such, “reasonableness” cannot be precisely defined nor can the test be

¹⁰ The legislative findings included in Penal C. section 835a(a)(4) suggest to the contrary that “the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation”. As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.

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mechanically applied. (*Id.*) Still, *Graham* does grant the following factors to be considered in the “reasonableness” calculus: the severity of the crime committed, whether the threat posed is immediate, whether the person seized is actively resisting arrest or attempting to flee to evade arrest. (*Id.*)

Whether the suspect posed an immediate threat to the safety of the officer or others has been touted as the “most important” *Graham* factor. (*Mattos v. Agarano* (9th Cir. 2011) 661 F.3d 433, 441-442.) The threatened use of a gun or knife, for example, is the sort of immediate threat contemplated by the United States Supreme Court, that justifies an officer’s use of deadly force. (*Reynolds v. County of San Diego* (9th Cir. 1994) 858 F.Supp. 1064, 1071-72 “an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.”) Again, the specified factors of *Graham* were not meant to be exclusive; other factors are taken into consideration when “necessary to account for the totality of the circumstances in a given case.” (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.)

The use of force policies and training of an involved officer’s agency *may* also be considered as a factor to determine whether the officer acted reasonably. (Sen. Bill No. 230 (2019-2020 Reg. Sess) §1. See fn. 3, *infra.*)

When undertaking this analysis, courts do not engage in *Monday Morning Quarterbacking*, and nor shall we. Our state appellate court explains,

under *Graham* we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.

(*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Baldrige v. City of Santa Rosa* (9th Cir. 1999) 1999 U.S. Dist. LEXIS 1414 *1, 27-28.)

The Supreme Court’s definition of reasonableness is, therefore, “comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present.” (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.) In close-cases therefore, the Supreme Court will surround the police with a fairly wide “zone of protection” when the aggrieved conduct pertains to on-the-spot choices made in dangerous situations. (*Id.* at 343-344.) One court explained that the deference given to police officers (versus a private citizen) as follows:

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unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.'

(*Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1109, citing *Graham v. Connor*, [*supra*] 490 U.S. 386, 396.)

NON-LETHAL FORCE. This does not suggest that anything *less than* deadly force requires no justification. "[A]ll force—lethal and non-lethal—must be justified by the need for the specific level of force employed." (*Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 825, citing *Graham [v. Connor]* (1989) 490 U.S. [386], 395.) The *Graham* balancing test, as described *supra*, is used to evaluate the reasonableness of lethal and non-lethal force, alike. (*Deorle v. Rutherford* (9th Cir. 2001) 272 F.3d 1272, 1282-83.)

Use of a taser or a shotgun-fired bean bag has been categorized as intermediate non-lethal force. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825[taser]; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80 [bean bag].) This designation exists despite the fact that such force is *capable* of being used in a manner causing death. (*Id.*) To be deemed "lethal force" the instrumentality must be force that "creates a substantial risk of death or serious bodily injury." (*Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689, 693.); use of a taser or shotgun-fired bean bag both fall short of this definition. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80.) Similarly, the use of a trained police dog does not qualify as "deadly force" as it too has fallen short of the lethal force definition set forth in *Smith*. (*Thompson v. County of Los Angeles* (2006) 142 Cal.App.4th 154, 165-169.)

Beyond the traditional *Graham* factors, and particularly in the use of non-lethal force, the failure of officers to give a warning and the subject's mental infirmity can also be considered when assessing the totality of the circumstances. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 831; *Deorle v. Rutherford*, *supra*, 270 F.3d at 1283-84.)

Failure to pass-muster under *Graham* can deem the use of non-lethal force as "excessive" and therefore violate the Fourth Amendment. (*Id.*) On the other hand, active resistance could justify multiple applications of non-lethal force to gain compliance and would not be deemed "excessive" nor violate the Fourth Amendment. (*Sanders v. City of Fresno* (9th Cir. 2008) 551 F.Supp.2d 1149, 1182 [not excessive to use physical force and tase an unarmed but actively resisting subject with 14 taser cycles where such was needed to gain physical control of him].)

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ANALYSIS

Pacheco first called 9-1-1 on February 16, 2022, to report a shooting that occurred on the freeway. CHP Officers investigated the shooting and obtained a description of the shooter and of the vehicle the shooter was driving. In the investigation law enforcement located a bullet hole in Pacheco's car consistent with his description of events. Sergeant Kee responded to that call for service and briefed the next shift, which included Officer Blackwood and Officer Rubalcava regarding the incident with the suspect and vehicle remaining at large.

In this case, Sergeant Kee, Officer Blackwood, Officer Rubalcava, Sergeant Vaccari, and Deputy Adams each had an honest and objectively reasonable believe that Puga posed an imminent risk of serious bodily injury or death. Each law enforcement officer was aware to some degree that the vehicle that they were pursuing matched the description of an armed suspect at large. Puga led law enforcement on a high-speed pursuit throughout city streets for approximately one hour followed by a one-hour standoff. At the end of the standoff Puga acted evasive, specifically hiding the front of his waistband. Puga pulled a firearm and pointed and fired it at law enforcement.

Sergeant Kee was personally aware of the initial investigation into the freeway shooting and briefed his next shift. Sergeant Kee was able to join into the pursuit approximately 20 minutes after it had started. One fully marked CHP patrol unit with overhead lights and sirens as well as one fully marked San Bernardino County Sheriff's patrol unit with overhead lights and sirens were following Puga as he sped through the streets of Hesperia. At the termination of the pursuit Sergeant Kee, who was wearing a fully marked CHP uniform clearly identifying him as a law enforcement officer, tried to communicate with Puga who refused to follow orders. Sergeant Kee's initial communication began with orders to Puga but evolved into negotiations. During the approximately one hour of attempts small steps toward peaceful resolution were made and Puga eventually opened the door to his vehicle to exit. However, when Puga opened the door, he did not fully comply with orders and would not reveal the front side of his waistband, continually maneuvering to hide it from law enforcement.

Sergeant Kee noticed the distinct and continual efforts of Puga to not show his waistband and as Puga changed his position from the door of the SUV to the front of the SUV Sergeant Kee changed his position to get a better view as well. Sergeant Kee continued to give commands to Puga which Puga continued to ignore. When Puga turned, Sergeant Kee observed the firearm in Puga's waistband as Puga simultaneously reached down for the firearm. Sergeant Kee had an honest and objectively reasonable belief that Puga was going to draw the firearm and start shooting. Sergeant Kee feared for the lives of his partners and himself and fired multiple shots. Puga was able to draw his firearm and fire towards Sergeant Kee and Officer Rubalcava. Sergeant Kee shot two more shots at Puga before retreating behind cover. Puga ran away from law enforcement towards houses. While Puga was running he was turning back at officers crossing his right hand over his left shoulder pointing the firearm at officers. Sergeant

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Kee was prone on the ground near the cover of his vehicle and shot at Puga again. Sergeant Kee believed Puga was still an imminent threat to himself and other officers as it appeared Puga was firing back at them. Sergeant Kee also believed that residents may be in danger since it appeared Puga was running towards residences with a firearm. Sergeant Kee had an honest and objectively reasonable belief that Puga was an imminent threat to the lives of his partners, himself, and the residents when he fired.

Officers Blackwood and Rubalcava had received the briefing from Sergeant Kee at the beginning of his shift regarding a freeway shooting and to be on the look out for the involved vehicle. When Officer Blackwood and Officer Rubalcava observed Puga's vehicle during their shift they knew it was possible that the driver was armed with a firearm. Puga led them on a one-hour pursuit where Puga clearly gave no indication of complying with officers. Once Puga's vehicle became disabled, Puga engaged officers in an approximate one-hour standoff where Puga continually refused to comply with law enforcement commands. When Puga finally exited his vehicle Officer Blackwood saw that Puga was making a concerted effort to obstruct his front waistband from law enforcement view.

Officer Blackwood observed Puga throughout the pursuit and throughout the standoff. Officer Blackwood observed Puga exit his SUV never showing the front of his waistband to law enforcement. When Puga moved to the front of the SUV Officer Blackwood had still never seen the front of Puga's waistband and could now only see Puga from the chest up. Puga was continuing to move around, and not follow commands. When Puga dropped his hands and brought them back up, Officer Blackwood observed a black handgun in Puga's right hand pointed towards Sergeant Kee and Officer Rubalcava. Officer Blackwood, in fear for the lives of his partners fired at Puga and continued to fire as Puga began to run. Officer Blackwood stopped firing when Puga stumbled. Officer Blackwood knew that Puga had a firearm and did not see it surrendered or dropped on the ground. Puga recovered and continued to run towards residences. Fearful that Puga would go to the residences and take hostages, shoot at residents, or continue to shoot at officers, Officer Blackwood continued to shoot until Puga fell to the ground. Officer Blackwood had an honest and objectively reasonable belief that Puga posed an imminent danger to his partners and local residents. Officer Blackwood feared for their lives and fired from his rifle as a result.

Like Officer Blackwood, Officer Rubalcava had been through a briefing, an approximate one-hour pursuit, and an approximate one-hour standoff where he observed Puga's continual defiance of law enforcement commands. Puga's defiance continued through his exit of the vehicle when Officer Rubalcava and other officers could not see the front of his waistband as Puga refused to turn and face officers. Puga then ran to the front of his SUV further concealing his waistband from law enforcement view. Officer Rubalcava observed Puga turn toward him and Sergeant Kee and simultaneously reach down with his right hand and grab a gun. Puga's hand came right back up with the firearm, pointed it at Officer Rubalcava and Sergeant Kee firing two shots. Officer Rubalcava heard the shots and observed the muzzle flash from Puga's firearm. Officer Rubalcava returned

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fire, firing three to five shots at Puga before moving position and seeking cover behind the door of the CHP patrol vehicle. Once behind cover Officer Rubalcava observed Puga running away. As Puga was running, Officer Rubalcava observed Puga turning to the left and pointing his firearm towards Sergeant Kee and himself. Officer Rubalcava believed there was an imminent threat of being shot at again and was in fear for his life and shot another three to five rounds at Puga. Puga then fell to the ground. Officer Rubalcava had an honest and objectively reasonable belief that Puga posed an imminent danger to himself and his partners. Officer Rubalcava feared for his life when he fired his weapon.

Sergeant Vaccari, like the CHP officers, had been a part of the approximate one-hour pursuit and one-hour standoff with Puga, observing Puga's refusal to comply with law enforcement. Although Sergeant Vaccari had not been fully briefed about the freeway shooting which led to the initial traffic stop, Sergeant Vaccari was aware that the pursuit was initiated because Puga was suspected of being involved in a shooting. Sergeant Vaccari, like Sergeant Kee, had actively engaged in the de-escalation techniques throughout the standoff, deploying the less-lethal options of OC pepper balls into Puga's SUV. After approximately 30 minutes of deploying OC pepper balls and making very little progress Sergeant Kee suggests moving officers closer to the suspect with a ballistic shield. Before putting law enforcement closer to Puga who had shown very little compliance over an hour and a half and may have a firearm, Sergeant Vaccari aimed the less-lethal OC pepper balls between the driver's seat and front passenger seat with the intent of striking Puga in the back and motivating compliance. This attempt was successful as the round hits Puga and medical attention appeared to be the motivating factor in Puga exiting the vehicle.

As Puga exited, Sergeant Vaccari observed that Sergeant Kee was making some progress in negotiating Puga out of the SUV and other officers had lethal coverage. However, Puga moved from the open SUV door to the front of the SUV. Sergeant Vaccari was concerned that Puga now had multiple avenues to escape. Sergeant Vaccari decided to continue with less-lethal options utilizing the 40 millimeter, while Deputy Adams provided lethal coverage and moves positions to the passenger side of Puga's vehicle to cut off a possible escape route. As Sergeant Vaccari and Deputy Adams reached the side of Puga's SUV Sergeant Vaccari heard Sergeant Kee yell "put your hands" up. Sergeant Vaccari then saw Puga pull up a firearm, and Sergeant Vaccari shot the 40 millimeter.

Like Sergeant Vaccari, Deputy Adams was engaged in the majority of the one-hour pursuit, all of the one-hour standoff, and was aware that Puga was involved in a freeway shooting the previous night. Deputy Adams observed the continual refusal to comply with law enforcement. As Puga exited his SUV, Puga continued to face away from law enforcement and Deputy Adams could not see Puga's waistband. As Puga would fidget and continually bring his hands down Deputy Adams believed that Puga was delaying and was not in full compliance with law enforcement commands. Puga then made the quick movement to the front of the SUV and Deputy Adams no longer had a direct line

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of sight and could only see Puga through the windshield of the SUV. Puga continued to be non-compliant and moved his arms and body around. Deputy Adams, fearful that Puga was now mobile and a threat to residents, moved positions along with Sergeant Vaccari to the passenger side of Puga's SUV.

Just as Deputy Adams and Sergeant Vaccari reach their position Deputy Adams saw Puga jerk his right hand down and up, pointing a firearm at Deputy Adams. Deputy Adams ducked, stepped to the side, reacquired his line of sight and observed Puga running north but still pointing his firearm towards Deputy Adams. Believing that Puga was trying to kill him and Sergeant Vaccari, Deputy Adams fired two to three rounds at Puga. Deputy Adams moved closer to cover as Puga continued to run away from law enforcement. Deputy Adams continued to see Puga twisting his body to point his firearm back at law enforcement as he ran north. Deputy Adams shot at Puga again fearful that Puga was going to kill him, Sergeant Vaccari, or the CHP Officers. Puga continued to run pointing his firearm backwards towards law enforcement. Deputy Adams shot three final rounds at Puga before Puga fell to the ground. Deputy Adams was in fear for his life, the life of Sergeant Vaccari, and the lives of the CHP Officers on scene. Deputy Adams had an honest and objectively reasonable belief that Puga posed an imminent threat to himself, Sergeant Vaccari, and the CHP officers on scene.

Throughout the entire incident, Puga was uncooperative and refused to comply with law enforcement's orders. When Puga did comply and exited the vehicle, his compliance was minimal as he refused to turn around to allow law enforcement a full view of his waistband and continued to move his arms around, not keeping them above his head. Puga then moved to the front of his SUV, concealing his waistband, and refusing to comply with Sergeant Kee's commands. Instead Puga dropped his hands and drew a firearm from his waistband pointing and firing at officers. Sergeant Kee, Officer Blackwood, Officer Rubalcava, Sergeant Vaccari, and Deputy Adams each had an honest and objectively reasonable belief that Puga posed an imminent threat of serious bodily injury or death. Puga had drawn a firearm on officers and shot at them. Given those circumstances, the only reasonable conclusion for Sergeant Kee, Officer Blackwood, Officer Rubalcava, Sergeant Vaccari, and Deputy Adams to reach was that Puga intended to cause serious bodily injury or death to one of them. Therefore, the decision by Sergeant Kee, Officer Blackwood, Officer Rubalcava, and Deputy Adams to use deadly force was justified.

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CONCLUSION

Based on the facts presented in the reports and the applicable law, Sergeant Kee's use of lethal force was a proper exercise of Sergeant Kee's right of self-defense and others and therefore his actions were legally justified.

Based on the facts presented in the reports and the applicable law, Officer Blackwood's use of lethal force was a proper exercise of Officer Blackwood's right of defense of others and therefore his actions were legally justified.

Based on the facts presented in the reports and the applicable law, Officer Rubalcava's use of lethal force was a proper exercise of Officer Rubalcava's right of self-defense and defense of others and therefore his actions were legally justified.

Based on the facts presented in the reports and the applicable law, Deputy Adam's use of lethal force was a proper exercise of Deputy Adam's right of self-defense and defense of others and therefore his actions were legally justified.

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