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Report of the Law Enforcement Involved Fatal Incident of  
SERGIO BALDEMAR ESCALERA VALDEZ on December 15<sup>th</sup>, 2021

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### **Privacy Statement**

This report includes redactions of the names and other identifying information of witnesses and Mr. VALDEZ's family members. Specific addresses are also not provided in this report, beyond those necessary to describe the location of significant events. The public interest in such information is limited as it is not necessary to gain an understanding of the incident. Thus, the interest in nondisclosure clearly outweighs any public interest in disclosure.

For reasons related to privacy, as well as the readability of this report, the witnesses will be indexed as follows:

- Witness (W-1) refers to the reporting party who had called 911
- Witness (W-2) refers to a co-worker of witness (W-1) who had spoken to VALDEZ
- Witnesses (W-3) through (W-4) refers to relatives of VALDEZ
- Witness (W-5) refers to a civilian who filmed the incident

The numbering sequence is not indicative of the order these witnesses made contact with Mr. VALDEZ, nor does it indicate any ranking or importance of one person over the others.

## EXECUTIVE SUMMARY

On December 15<sup>th</sup>, 2021, at approximately 2:25 PM<sup>1</sup>, the San Pablo Police Department responded to a 9-1-1 call regarding a person, later identified as Mr. Sergio BALDEMAR ESCALERA-VALDEZ (referred to in this memorandum as “VALDEZ”). Per dispatch, the 911 call came from the Evergreen Market in San Pablo. The caller (W-1) reported that he had seen a white or Hispanic male in the parking lot, holding a firearm. (W-1) further explained that the subject was manipulating the firearm’s magazine.

SPPD officers responded to the area. As officers approached the location, they learned that the subject was associated to a red pickup truck, described as a Toyota Tacoma. Based on the nature of the call, the responding officers attempted to meet at a location near the parking lot, in order to stage and generally prepare for their making contact with the subject. However, as officers approached the intended staging area, dispatch provided new information to the effect that the subject had driven “recklessly” out of the parking lot and had left.

Soon after receiving this update, the officers saw a red truck driving from the direction of the parking lot. This red truck was driving in an erratic manner, which was causing the truck to “fishtail” (swivel side-to-side in an uncontrolled manner). Based on the vehicle’s location, appearance, direction of travel, and manner of driving, the officers believed that this was the vehicle belonging to the subject in question.

Officers initiated a traffic stop on the red truck, which was being driven by the sole occupant (VALDEZ). While the police were pulling him over, VALDEZ was seen moving around in an unusual manner inside the truck.

Officers then ordered VALDEZ to show his hands. Initially, VALDEZ would not do so, but after a brief delay, he placed his hands out the driver’s side window. Officers noted that there appeared to be blood on VALDEZ’s hands. VALDEZ then exited the truck, and officers could see that he was holding what appeared to be a black semi-automatic pistol. VALDEZ was seen manipulating the pistol, as if he were preparing to use it. At this point, Officers Swaleh, Louis, Rios, and Ali discharged their weapons. VALDEZ was struck by the gunfire and fell to the ground.

After VALDEZ had fallen to the ground, the officers approached him in order to assist and render medical aid. Fire Department and AMR (paramedics) arrived and transported VALDEZ to the hospital, where he was ultimately pronounced dead.

Subsequent investigation revealed that VALDEZ had been extremely depressed, and even suicidal, leading up to this incident. A witness had spoken to VALDEZ shortly before the incident, and VALDEZ told this witness that he would end his life by having the police kill him.

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<sup>1</sup> All times listed in this report are approximations.

Initially, the California Department of Justice asserted jurisdiction, but ultimately declined jurisdiction. As a result, per the Contra Costa County Law Enforcement Involved Fatal Incident (LEIFI<sup>2</sup>) protocol, an investigative team from the Contra Costa County District Attorney's Office<sup>3</sup> (CCDAO), SPPD and CCCSO was formed. The LEIFI team took over the investigation, processed the scene of the incident (utilizing the Contra Costa Sheriff's Crime Lab<sup>4</sup>), and interviewed the shelter residents, shelter staff, fire and medical personal, and the involved law enforcement officers.

On December 16<sup>th</sup>, 2021, Dr. Josselson performed the autopsy on VALDEZ; this included sending biological samples taken from VALDEZ to NMS laboratory for examination. VALDEZ had suffered multiple gunshot wounds. Dr. Josselson concluded that the cause of death was a gunshot wound to the abdomen/chest. VALDEZ was determined to be positive for THC (marijuana), methamphetamine, and amphetamine. His blood alcohol level was .210%.

In applying the law and the California District Attorney's Uniform Crime Charging Standards to the present case, San Pablo Police Officers Swaleh, Louis, Rios, and Ali were justified in their use of lethal force. The officers acted with an actual and reasonable belief that deadly force was necessary to defend against an imminent threat of death or serious bodily injury. As such, no further action will be taken in this case.

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<sup>2</sup> The LEIFI, also referred to as the "Protocol" process, was established in 1982 by the law enforcement agencies in Contra Costa County. The current, 2014 version, can be found at <https://www.contracosta.ca.gov/DocumentCenter/View/66954/Protocol-Manual-Law-Enforcement-Involved-Fatal-Incidents-PDF?bidId=>

<sup>3</sup> Composed of a Deputy District Attorney and eight Senior Inspectors

<sup>4</sup> In accordance with the LEIFI process, the Contra Costa County Sheriff's Crime Lab is the agency designated to conduct crime scene processing and evidence collection at all LEIFI incidents.

## INTRODUCTION

This report is the Contra Costa County District Attorney's Office (CCDAO) investigation of the San Pablo Police Department's (SPPD) fatal officer-involved contact with Mr. Sergio VALDEZ on December 15<sup>th</sup>, 2021, in Richmond, California.

The CCDAO and every law enforcement agency in Contra Costa County have adopted the Law Enforcement Involved Fatal Incidents Protocol (LEIFI or Protocol)<sup>5</sup> to investigate incidents when officers or civilians are shot, killed, or die during an encounter with law enforcement.

Under the Protocol, the CCDAO investigates all officer involved fatal incidents in Contra Costa County for the purpose of making an independent determination of criminal liability. The sole purpose of the District Attorney investigation is to determine if there is proof beyond a reasonable doubt that a law enforcement official or civilian committed a crime in connection with the fatality.

Pursuant to the Protocol, immediately after a fatal officer-involved incident the involved law enforcement agency is required to notify the appropriate district attorney personnel. Once notified, trained and experienced members of the CCDAO respond to the scene to begin the criminal investigation. In addition, criminal investigators from the law enforcement agency (or agencies) involved in the incident and from the jurisdiction where the incident occurred, if different, respond to the scene as well. It is important to note that although the investigations happen simultaneously, each agency is conducting its own independent investigation.

As part of the criminal investigation, law enforcement officers and civilians who witnessed the incident may be interviewed, evidence is collected at the scene and may be submitted to the county crime lab for testing and analysis, in addition to any other relevant investigative work necessary to complete the investigation. The Contra Costa County Sheriff's Office Crime Lab responds to every incident and is responsible for evidence collection of all officer-involved shootings.

During the course of the criminal investigation, an officer or deputy has the right to be represented by an attorney. They may voluntarily choose to provide a statement, physical evidence, or other relevant information during the criminal and administrative investigations. Under the law, neither an officer nor civilian can be compelled to give a statement as part of a criminal investigation. However, an officer may be compelled to provide a statement during the law enforcement agency administrative investigation only. (See, Public Safety Officers Procedural Bill of Rights Act, Government Code sections 3300 et seq.) In accordance with the

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<sup>5</sup> Contra Costa County was one of the first counties in the country to adopt a fatal incident protocol between the District Attorney and the law enforcement agencies within the county. The complete LEIFI Protocol document can be located on the Contra Costa County District Attorney's Office website.

law, the CCCDAO does not participate in compelled administrative investigation interviews and does not review them as part of the independent criminal investigation. There are very narrow circumstances where an exception to this rule is allowed.

Independent of the CCCDAO and in accordance with the Protocol, the Coroner's Division in the Contra Costa County Sheriff's Office (CCCSO) conducts a Coroner's Inquest following most deaths that involve law enforcement personnel or law enforcement operations or activities within Contra Costa County.

The Inquests are open to the public, are conducted by a private attorney hired by the Coroner's Division and are held in front of a jury of citizens randomly selected from the Contra Costa County Superior Court jury pool. During the Inquest, the hearing officer questions witnesses, and additional evidence may be presented. The role of the jury is to decide whether the death was by (1) natural causes, (2) suicide, (3) accident, or (4) at the hands of another person other than by accident (i.e., homicide). The jury's decision has no legal bearing on the civil or criminal investigations or liability of any person(s) involved in the incident.

In the present case, the Coroner's Inquest occurred on July 29<sup>th</sup>, 2022. The jury returned a verdict of "death caused by suicide."

## INVESTIGATION

### Overview

On December 15<sup>th</sup>, 2021, the Contra Costa County District Attorney's Office received a call from San Pablo Police Department regarding an officer involved fatal incident had occurred in North Richmond. Inspectors with the District Attorney's Office responded to the scene of the shooting. After a preliminary review of the scene was conducted, the entire investigative team, including investigators from the San Pablo Police Department (SPPD) and Contra Costa County Sheriff's Office (CCCSO) conducted a full briefing at the SPPD headquarters.

Prior to the briefing, agents with the California Department of Justice (CAL-DOJ) advised that they would be asserting jurisdiction, based on the determination that the object used by VALDEZ was not a firearm. In this capacity, CAL-DOJ agents did participate in some of the early investigative steps. However, the CAL-DOJ later concluded that the case did not fall within its jurisdiction, because the weapon recovered was a BB-gun. Because a BB-gun is capable of causing serious injury, VALDEZ did not meet CAL-DOJ's definition of an "unarmed person" (Government Code section 12525.3). As a result, CAL-DOJ declined to take the investigative lead, and the investigation was ultimately conducted pursuant to the LEIFI protocol.

The briefing was held to assign roles and responsibilities as well as create teams of investigators<sup>6</sup> with representatives from the CCCDAO, and the two involved agencies, SPPD and CCCSO. The CCCDAO investigative assignments were as follows:

- Senior Inspector Rick Rivera and CCCSO Detective Robert Durrer – interview the fire/medical personnel
- Senior Inspector David Mathers/CCCSO Detective Matt Ingersoll/SPPD Detective Josh Hearn – interview actor SPPD officers (i.e., those who had used force during the encounter with VALDEZ)
- Senior Inspector Mendez/CCCSO Detective Jay Mellen/SPPD Detective Josh Hearn – interview responding but not directly involved SPPD officers
- CCCSO Detective Jeff Jackson/SPPD Detective Anthony Biama – notify and interview family of VALDEZ
- CCCSO Detective Jeff Jackson/SPPD Detective Anthony Biama – interview (W-1) (reporting party who had called 911)
- CCCSO Detective Jeff Jackson/SPPD Detective Josh Hearn – interview (W-5) (civilian witness who had filmed the shooting)
- SPPD Detective Courtney Byrne – recover video from the parking lot of Evergreen Market

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<sup>6</sup> This process is defined in the LEIFI manual and is common practice; it establishes an investigative team with transparency by including several agencies within the team assigned to conduct the most significant interviews.



- Senior Inspector John Garcia/CCCSO Detective Matt Ingersoll – attend coroner’s autopsy

Each Senior inspector was accompanied by a SPPD detective and/or a CCCSO detective when performing the assigned investigative tasks. As the investigation progressed, assigned senior inspectors reported the results of their activity to the leadership team. Every SPPD officer directly involved in the incident was sequestered<sup>7</sup> following the incident. Each officer<sup>8</sup> was interviewed separately and accompanied by a legal representative during questioning by CCCDAO, SPPD, and CCCSO personnel.

Prior to interviewing the officers who were involved with VALDEZ, the investigators reviewed the body-worn camera (BWC) for the SPPD officers who were directly involved in the shooting. The involved officers did not view the footage from their body-worn cameras prior to being interviewed.

Once the scene was processed and all the interviews were completed, the next steps in the investigation were to await the formal autopsy results, the completion of the crime lab testing, and the Coroner’s Inquest hearing.

Overall, the CCCDAO investigation of the death of Mr. Sergio VALDEZ was comprehensive, thorough, objective, and independent. In all, nine (9) law enforcement employees (including one non-sworn civilian employee), five (5) firefighters/emergency medical personnel, two (2) family/relatives of VALDEZ, and three (3) civilian witnesses were interviewed; along with one scene being processed for evidence. This report represents hundreds of hours of investigation conducted by the CCCDAO, SPPD, CCCSO and the CCCSO Crime Lab.

### **Evidence Reviewed:**

The CCCDAO obtained and reviewed the following evidence and information regarding this incident:

- All police and investigative reports of this incident
- The crime scene located at the intersection of Market Avenue and Truman Street, Richmond, CA
- 911 calls to SPPD Dispatch
- CPD Dispatch and officer radio communications
- Body-worn camera footage or other camera footage depicting the incident
- Interviews of the responding officers
- Interview of the reporting party (and a co-worker of that person)

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<sup>7</sup> “Sequestration” is the process whereby the involved officers are physically separated and isolated immediately following a use of force incident and are ordered not to discuss the incident with anyone except their legal representative, prior to their formal interview by the LEIFI team.

<sup>8</sup> Further within this report, the term “officer” should be considered inclusive of the term “deputy”

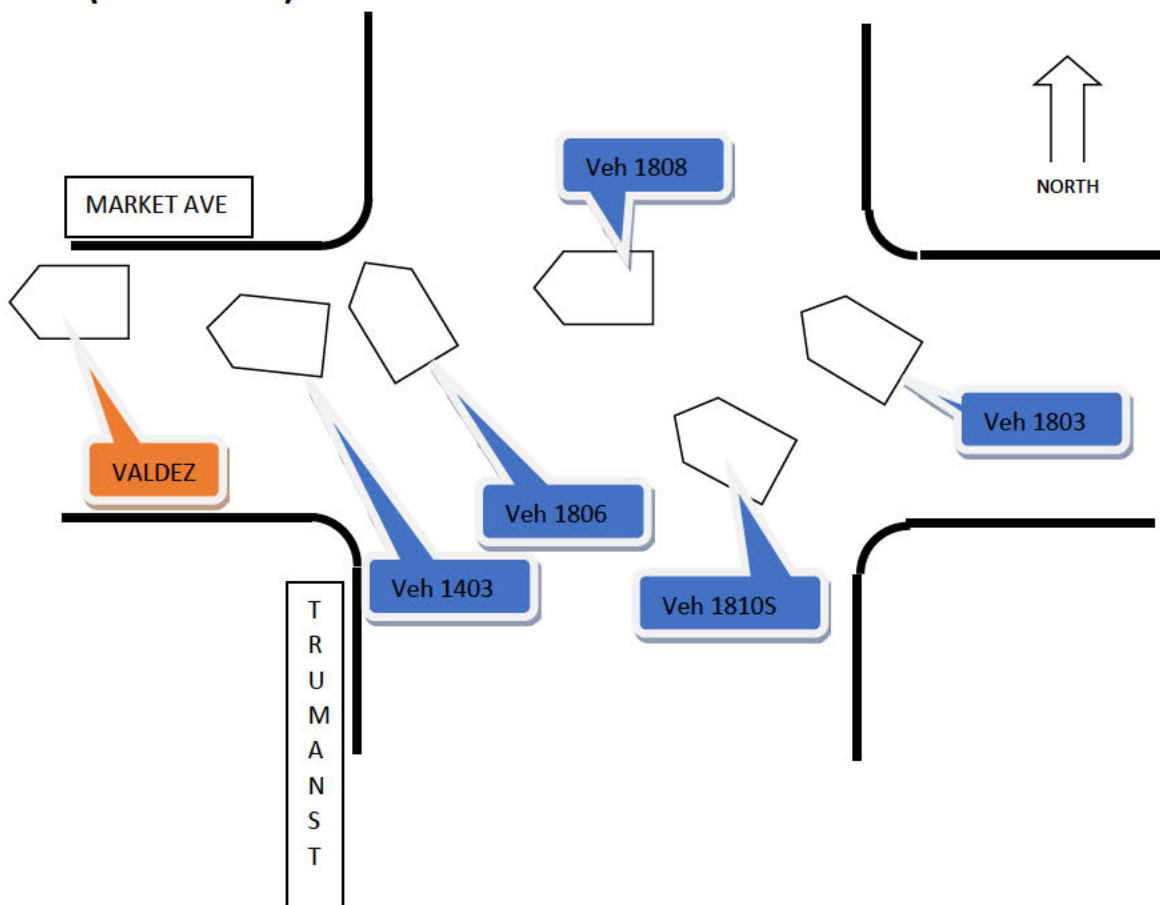
- Interview of a percipient witness who recorded the incident with a cell phone
- Interviews of VALDEZ's relatives
- Coroner's autopsy report for VALDEZ
- Transcripts of the Coroner's Inquest dated July 29<sup>th</sup>, 2022
- Laboratory report from VALDEZ' autopsy, the results of samples taken by the Coroner
- CCCSO Crime Lab reports from the incident scene

**Scene Description**

The intersection of Market Avenue and Truman Street is in unincorporated Richmond. Truman Street runs north/south, and Market Avenue runs east/west. As relevant to this factual summary, the scene diagram below shows the location of involved vehicles (not to scale):

**Diagram of scene, Market Ave/Truman St, Richmond, CA**

**(Not to scale)**



## **FACTUAL SUMMARY**

*What follows is a summary of the incident, and for clarity and simplicity, will step through the events in chronological order. Certain times will be stated as approximations or will be marked with an asterisk (\*) to identify the listed time as approximate, when no log, radio communications, or BWC is available to support defining a precise time. Select witnesses will be referred to by witness number. Phrases surrounded by double quotations are verbatim, with clarifying details called out with “[”, whereas, abbreviated non-verbatim quotes will be surrounded by single quotation marks.*

- 10:00 AM\* VALDEZ left his residence in San Pablo. At the time VALDEZ left, (W-4) noticed that VALDEZ was crying. VALDEZ told (W-4) that he (VALDEZ) planned to kill himself.<sup>9</sup>
- 2:27:52 PM A 911 caller reported a man holding a gun in his hand
- 2:28:10 PM Location update for reporting party
- 2:28:20 PM Reporting party advises that the subject is out in the parking lot and is standing next to a car
- 2:29:03 PM Reporting party describes the subject as white male adult, in his 40's, wearing a gray jacket and sunglasses. Subject is standing next to a red car.
- 2:30:00 PM Reporting party describes the gun as a black pistol and states that the subject was taking the magazine out and re-inserting it into the gun
- 2:32:57 PM Reporting party identifies the red car as a red Toyota Tacoma [truck] and states that the subject drove off “recklessly” in this vehicle
- 2:33:26 PM Reporting party advises that the truck has a rack and is heading either southbound on Rumrill or across the tracks
- 2:33:57 PM Officer Swaleh's dash-camera activates, showing his vehicle westbound on Market Avenue at the San Pablo border
- 2:34:26 PM Officer Swaleh stops in a line of traffic at the intersection of Market and 7<sup>th</sup>

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<sup>9</sup> Prior to the date of the incident, VALDEZ's family noticed that he had been depressed for several months. According to (W-3), VALDEZ was a heavy drinker, and in the past few months, while intoxicated, he had stated that he wanted to kill himself.

2:45:53 PM Officer Swaleh approaches Market and 4<sup>th</sup>, slows, and then stops. A police siren (likely Officer Swaleh's) can be heard in the background

2:35:05 PM Police following VALDEZ add his license plate to the call detail report

2:35:14 PM VALDEZ pulls the red truck over to the right, still in the roadway, on Market Avenue (westbound) west of Truman

2:35:21 PM Officer Swaleh commands VALDEZ to "let me see your hands"

2:35:35 PM Officer Swaleh asks other officers if VALDEZ is saying "no" in reply. Other officers continue to shout to VALDEZ, commanding him to show his hands

2:35:07 PM VALDEZ extends his hands out of the vehicle's driver's side

2:36:11 PM Officer broadcasts seeing what appears to be blood on VALDEZ's hands

2:36:18 PM VALDEZ begins to open the driver's door of the truck. An officer yells, "Keep your hands up"

2:36:31 PM VALDEZ steps out of the truck

2:36:32 PM VALDEZ's hands go to his waist, and he appears to clasp a pistol in his right hand, with his left hand on top of it

2:36:34 PM VALDEZ moves the pistol into a different position, so that it is now pointing in the direction of the officers

2:36:35 PM Officers fire, and VALDEZ falls to the ground

2:36:47 PM Officer broadcasts the location of the stop as Market and Truman

2:36:48 PM Officer broadcasts that shots were fired, and that one person is down

2:36:51 PM Officers approach where VALDEZ is now down on the ground

2:36:53 PM Officer calls for medical assistance "code 3" (emergency)

2:36:54 PM Officer Swaleh kicks the pistol away from where it had fallen, near VALDEZ's feet

2:36:59 PM Officers begin rendering aid to VALDEZ

2:37:45 PM Officer puts in call to invoke protocol

2:41:29 PM Fire Department personnel arrive on scene

2:41:58 PM Sheriff's Office is notified to also invoke protocol

## Evidence Recovery

The Contra Costa County Criminalistics Laboratory was assigned to assist with evidence collection. The Contra Costa County Criminalistics Laboratory collected multiple expended cartridge casings, including (3) three .223 REM casings, (3) three 40 S&W casings, and (4) four 9 mm Luger casings. In addition, Mr. VALDEZ's personal property and clothing were collected at the scene, as well as the suspected firearm VALDEZ was holding at the time of the shooting. An examination of the suspected firearm revealed the item to be a "Colt Defender bb pistol," which was collected from underneath the truck driven by VALDEZ.

### Photographs of VALDEZ's bb pistol:

The following photograph depicts the bb pistol which VALDEZ was holding and displaying at the time of the incident, as it appeared on the ground prior to being collected as evidence:





## **Interviews of Involved Police Officers and Deputy Sheriffs:**

There were eight (8) sworn law enforcement officers/deputies involved in this incident. Of that number, four (4) were considered “actors” under the Protocol’s guidelines.<sup>10</sup> There was also one civilian employee of San Pablo Police who was present and witnessed the events.

During the course of the criminal investigation, an officer has the right to be represented by an attorney. The officer may choose to provide a statement, physical evidence, and other relevant information. It’s important to note that neither an officer or civilian can be compelled to provide a statement or any other evidence in a criminal investigation. An officer can only be compelled to provide a statement or other relevant information during an internal administrative investigation by the officer’s employer<sup>11</sup>. In this investigation, all the involved officers provided voluntary statements to the CCCDAO, SPPD, and CCCSO investigators with their attorney present. Each police officer was interviewed separately from the others within hours of the incident and after being subject to sequestration.

## **Interviews of Actor Officers:**

### **Interview of Officer Swaleh:**

On 12/17/2021, Officer Swaleh was interviewed regarding this incident. At the time of the incident, he had been with San Pablo Police for over four years. Prior to that, he had served in the United States Army for four years. He confirmed that he had not spoken to anyone else (other than his counsel, who was present during the interview) about the incident, except to provide a “public safety” statement to law enforcement. (A “public safety” statement is given shortly after such an incident, to identify how many shots were fired by an officer, so that other personnel can determine if any bystanders were accidentally harmed as a result of the incident.) Prior to giving the statement, Officer Swaleh had not reviewed any body-camera footage of the incident. Officer Swaleh confirmed that he was giving this statement voluntarily, and he described the incident as follows:

On 12/15/2021, Officer Swaleh was assigned to work as a patrol officer. At about 2:00 PM, he was at the police station to attend a shift briefing. At about 2:25 PM, the briefing was interrupted by an incoming call for service (based on a 911 call). The reporting party had stated that a “white or Hispanic male” was in the parking lot of the Evergreen Market, and that this male had a firearm. Later, it was reported that the male was associated with a red Toyota Tacoma truck.

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<sup>10</sup> An “Actor” is a law enforcement employee whose conduct was actually or conceivably a factor in the fatality.

<sup>11</sup> The Public Safety Officers Procedural Bill of Rights Act, is codified in Government Code section 3300, et seq.

Officer Swaleh, along with several other officers, left the police station. Typically, the responding officers would meet a short distance from the location to coordinate and plan how to approach the situation. However, while the officers were on their way, it was reported that the subject had left the parking lot in the red truck and was driving “recklessly.” Officer Swaleh saw a red truck, generally consistent with that of the subject’s, traveling west on Market Avenue. (The timing, location, and distance were consistent with this truck having come from the Evergreen Market.) Officer Swaleh noted that this truck was driving in an erratic manner, including the rear tires losing traction and the truck “fishtailing.”

Officer Swaleh activated his emergency lights and pulled in behind the truck. The driver (VALDEZ) kept driving for a few blocks, during which time Officer Swaleh saw that VALDEZ was moving around inside, in an unusual manner.

When VALDEZ pulled over, Officer Swaleh also pulled over, as did other San Pablo Police officers. Officer Swaleh removed his SWAT-issued rifle because this weapon is more accurate than a pistol. Given the residential nature of the neighborhood, this weapon would provide a higher degree of safety, by reducing the likelihood of shots missing their target and accidentally hitting bystanders or residences. From a distance of 20-25 feet, Officer Swaleh shouted commands to VALDEZ to show his hands. Initially, VALDEZ replied, “No,” and shook his head in the negative.

VALDEZ then placed his hands outside through the driver’s window. On his hands was what appeared to be a large amount of blood. VALDEZ then pulled his hands back inside, and he began to exit the truck with his back towards the officers.

Officer Swaleh saw, based on VALDEZ’s movements, that it appeared as though VALDEZ was holding something in his hands. Specifically, these movements were consistent with someone manipulating a firearm by “racking the slide” (i.e., pulling the pistol’s slide to the rear and releasing it, thereby loading a cartridge into the firearm’s chamber). Officer Swaleh believed that VALDEZ was either loading a round into the gun’s chamber or correcting a misfeed or similar malfunction.

After having made these motions, VALDEZ turned towards the officer. Officer Swaleh could now clearly see that the object in VALDEZ’s hands was a pistol. VALDEZ was commanded to drop the pistol, but he did not do so. Instead, he brought the pistol up. Based on the manner in which VALDEZ did this, Officer Swaleh believed that he and the other officers were in imminent danger of being shot by VALDEZ.

Officer Swaleh fired two shots from his rifle and heard other officers fire as well. VALDEZ dropped to the ground, and the pistol fell to the ground near VALDEZ. The officers approached VALDEZ, and Officer Swaleh kicked the pistol away to keep it from being accessible. The officers handcuffed VALDEZ and began to render medical aid. Shortly after, emergency/fire personnel arrived and took over providing aid.



### **Interview of Officer Louis:**

On 12/17/2021, Officer Louis was interviewed regarding this incident. At the time of the incident, she had been with San Pablo Police for four years. Prior to that, she had served in the United States Marine Corps for four years, during which time she had served as a logistics specialist and firearms instructor. She confirmed that he had not spoken to anyone else (other than her counsel, who was present during the interview) about the incident, except to provide a “public safety” statement to law enforcement. Prior to giving the statement, Officer Louis had not reviewed any body-camera footage of the incident. Officer Louis confirmed that she was giving this statement voluntarily, and she described the incident as follows:

On 12/15/2021, Officer Louis was on duty and working as a patrol officer. She was at the station during the 2:00 PM shift briefing, when a call came in regarding a subject “manipulating a firearm in a parking lot.”

Officer Louis responded with other officers, and their initial plan was to meet at a staging area. However, that plan changed when it was reported that the subject had left the initial location (parking lot) in a red truck. Officer Louis and the other officers located the subject vehicle (being driven by VALDEZ) and conducted a “high risk” stop.

From her position, Officer Louis had a clear view of the left side of the truck. She noticed that VALDEZ was looking at the officers in his rear-view mirror, and that he was reaching around inside the truck cab. Officer Louis suspected that VALDEZ was “sizing up” the situation and potentially reaching for a weapon.

Ultimately, VALDEZ exited the truck. Officer Louis saw that he was holding a black pistol in his hands. She noted that VALDEZ was manipulating the weapon by apparently “racking a round” (i.e., manipulating the slide to load a round into the pistol’s chamber). She also saw that VALDEZ was in a “bladed” stance (i.e., similar to a boxer’s stance). Based on the circumstances, Officer Louis believed that VALDEZ was about to engage her or the other officers; she concluded that the only reason to “rack a round” was to be ready to shoot.

VALDEZ then began to raise his pistol. Officer Louis fired twice, believing that VALDEZ was about to shoot at her or the others. In doing so, she assessed her safety and that of the other officers, as well as the safety of bystanders. Once VALDEZ fell, the officer approached and began to render aid to him. Fire/medical teams arrived and took over for them.

### **Interview of Officer Ali:**

On 12/17/2021, Officer Ali was interviewed regarding this incident. She had been with San Pablo Police since 2021. Prior to that, she had been with the Stockton Police for two years. She confirmed that she had not spoken to anyone else (other than her counsel, who was present during the interview) about the incident, except to provide a “public safety” statement to law enforcement. Prior to giving the statement, Officer Ali had not reviewed any body-camera footage of the incident, but she had seen some news coverage of the incident. Officer

Ali confirmed that she was giving this statement voluntarily, and she described the incident as follows:

On 12/15/2021, Officer Ali had completed another, unrelated call for service. After this call, she was at the station, at which time she heard that officers were being dispatched for a call of a “man with a gun.” She and Officer Rios responded together, as he was her field training officer. They were alerted to the fact that the suspect had left the market parking lot in a red truck. Initially, the plan had been to meet to coordinate at a staging area; however, once the truck had left, they were unable to do so.

The officers saw what appeared to be the truck in front of her location. Another patrol car passed her with lights on. Initially, the red truck did not yield, but it did eventually pull over, and Officer Swaleh pulled in behind it. Officer Ali pulled in behind Officer Swaleh’s car. She then exited her vehicle and approached Officer Swaleh on his vehicle’s driver’s side. Commands were given to the driver (VALDEZ) to show his hands. Eventually he did show his hands, which appeared to have blood on them.

Later, she saw VALDEZ exit the truck, holding a pistol in both hands. Despite being commands to drop it, VALDEZ did not do so. Instead, VALDEZ moved the gun, at which time he appeared to be also moving in their direction. Officer Ali and other officers then fired weapons at him. Officer Ali believed that she and the other officers were in imminent danger. She believed, based on VALDEZ’s actions, that he was about to use the pistol.

The officers approached VALDEZ (who was now on the ground) and one of the officers kicked the pistol away from VALDEZ. Officer Ali began CPR. When fire/emergency personnel arrived, they relieved her.

#### **Interview of Officer Rios:**

On 12/17/2021, Officer Rios was interviewed regarding this incident. At the time of the incident, he had been with San Pablo Police for three years. Prior to that, he had been with the Sheriff’s Office for three years. He confirmed that he had not spoken to anyone else (other than his counsel, who was present during the interview) about the incident, except to provide a “public safety” statement to law enforcement. (A “public safety” statement is given shortly after such an incident, to identify how many shots were fired by an officer, so that other personnel can determine if any bystanders were accidentally harmed as a result of the incident.) Prior to giving the statement, Officer Rios had not reviewed any body-camera footage of the incident. Officer Rios confirmed that he was giving this statement voluntarily, and he described the incident as follows:

On 12/15/2021, Officer Rios was working the day shift and serving as a field training officer for Officer Ali. Officer Rios was present at the station when the call for service came in regarding a male subject with a firearm. Officers Rios and Ali responded from the station, with

Officer Ali driving the patrol car. As they approached the market where the call had come from, they learned through dispatch that the subject appeared to be manipulating the weapon's magazine, and that he was standing next to a red vehicle.

As they and other officers approached the market, they planned to meet at a staging area. Before arriving at the staging area, dispatch updated them that the suspect had left the parking lot and was driving a red Tacoma truck. Because of this update, the officers were not able to meet at a staging area to plan how to approach the situation.

Officers Rios and Ali drove past the intended staging area and proceeded westbound on Market, at which time Officer Rios saw a red Tacoma truck several cars ahead of them. This truck was swerving left and right in its lane. Officer Rios suspected that the driver (VALDEZ) was driving in this manner to pass other cars, in order to avoid the police.

Officer Rios saw Officer Swaleh pass them and take the lead position for the vehicle stop. Officer Rios directed Officer Ali to follow Officer Swaleh. Officer Rios saw Officer Swaleh initiate a traffic stop, after which VALDEZ continued to drive for several blocks before pulling over. Officer Rios approached the passenger side of Officer Swaleh's patrol car and used the passenger door as cover.

Officer Rios heard Officer Swaleh command VALDEZ to show his hands, to which VALDEZ replied "No." Eventually, VALDEZ showed his hands through the driver's window, and Officer Rios could see what appeared to be blood on them.

VALDEZ was then ordered to exit the vehicle. As VALDEZ did so, Officer Rios saw that VALDEZ turned his back away from the officers. VALDEZ then turned towards them and was holding a gun in his hands. VALDEZ was then ordered to drop the weapon but did not do so. VALDEZ had both hands on the gun, which was down and near his left side. VALDEZ began to raise the pistol up and towards his chest. At this point, Officer Rios fired 2-3 times, believing that VALDEZ was about to shoot the officers. Because of the rapidly evolving situation, there had been no viable opportunity to use other de-escalation strategies.

The officers approached VALDEZ, and one of the officers kicked the pistol away from VALDEZ, who was now on the ground. Officer Rios approached VALDEZ, and the officers began to render aid until fire/ambulance crews arrived and took over.

## **Interviews of Involved Police Officers and Deputy Sheriffs:**

### **Interview of Sergeant Blaisdell:**

Sgt. Blaisdell was assigned as the sergeant overseeing the swing shift on the day of the incident. When the call of a male subject with a gun came in over dispatch, he and other officers responded to the call. He initially planned to meet with other officers to formulate a plan. When Blaisdell arrived in the area, he saw a red Tacoma truck pull out of the driveway of the parking lot of the Evergreen Market.

Based on its appearance and location, he believed this was the truck referred to by the reporting party, and he put this information out to the other officers. Soon after, he heard Officer Swaleh report that he was behind the truck, which was driving erratically. Blaisdell caught up to Officer Swaleh and the truck, at which time the “high risk” stop was commenced. Blaisdell exited his patrol car with his rifle. He also had a less-lethal shotgun in the car, but due to his belief that the suspect was armed with a firearm, he did not believe it was appropriate to use a less-lethal firearm in response.

Blaisdell heard other officers give commands. He flanked away from the other cars, due to a lack of room for cover with the other officers. From his location, he could see the suspect (VALDEZ) exit the truck with a gun in his right hand. At this point, VALDEZ was holding the gun by his right thigh. The gun appeared to be a Ruger-style pistol.

Blaisdell ordered VALDEZ to drop the gun, but VALDEZ did not do so. Blaisdell saw VALDEZ raise the pistol. Blaisdell believed that VALDEZ’s actions indicated a present ability to shoot the officers. Blaisdell was about to shoot when he heard the other officers fire. When VALDEZ fell to the ground, the officers approached VALDEZ and rendered aid. VALDEZ was then transported to the hospital.

### **Interview of Officer Bermudez:**

Officer Bermudez has worked for the San Pablo Police Department since 2021, and he has been a sworn peace officer since 2018. He was on duty on the day of the incident, and he was at the station when the call of a male subject with a gun came in over dispatch. Bermudez responded to the call. While he was en route, he heard Officer Swaleh put out over the radio that he was conducting a vehicle stop. Officer Bermudez approached without lights and sirens, so as not to further agitate the suspect. When he arrived, he saw other officers were already on scene.

Officer Swaleh was commanding VALDEZ to exit the truck. From his vantage point, Officer Bermudez could not see VALDEZ’s hands. Officer Bermudez heard other officers yell to VALDEZ, ordering him to drop the weapon, soon after which shots were fired by the actor officers. From his vantage point, Officer Bermudez did not see the gun until it fell to the ground.

After VALDEZ fell, Officer Bermudez approached the truck to confirm no one else was inside. He then obtained a medical kit and gave it to other officers. He then put up crime scene tape.

#### **Interview of Deputy Cruz:**

Deputy Cruz is a Deputy Sheriff, and on the date of the incident, he was assigned as a “resident deputy” for the North Richmond area. On 12/15/2021, he was working a special detail, in which he was delivering gifts to low-income families in the area, during the holidays.

At about 2:25 PM, he and his partner, Deputy Cardona, had just finished making one delivery and were about to return to the Sheriff’s Bay Station. While on their way, Deputy Cruz saw the San Pablo Police patrol vehicles conducting a felony vehicle stop. He informed dispatch that he and his partner would be assisting San Pablo Police on this stop.

As Deputy Cruz exited his patrol car, he saw VALDEZ exit the truck. As VALDEZ turned towards the officer, Cruz saw that VALDEZ was holding what appeared to be a pistol in his right hand, down by his waistline. Soon after, Deputy Cruz heard about 5-7 gunshots and saw VALDEZ fall to the ground.

Deputy Cruz advised dispatch about the shots fired. He saw the San Pablo officers approach VALDEZ and provide medical aid. Deputy Cruz saw the pistol on the ground, where it had been kicked away by the officers. He took pictures of the scene, until he felt it was unnecessary, because the officers had body cameras. He then assisted in maintaining the crime scene by securing the crime scene tape and by helping with crowd control.

#### **Interview of Deputy Cardona:**

Deputy Cardona was partnered with Deputy Cruz on the date of the incident. When they saw the felony vehicle stop being conducted, they pulled in to assist. They drove their patrol car into a position to block the oncoming traffic, in order to provide the officers cover. Cardona heard 4-6 gunshots and saw VALDEZ fall to the ground. He also saw a black pistol fall to the ground. He then saw officers approach VALDEZ and begin to render aid. He and Deputy Cruz assisted by setting up a perimeter and providing crowd control.

#### **Interview of Civilian Employee Martinez:**

Martinez is a recent graduate of the police academy. She was a civilian employee of the San Pablo Police at the time of the incident but is now employed as a sworn officer. On the date of the incident, she was on a ride-along with Officer Bermudez. She witnessed the incident from the patrol car.

When they arrived at the scene of the stop, she heard the officers tell VALDEZ to exit the truck, but initially, he would not do so. She could see VALDEZ leaning over and moving around inside the truck. She heard the officers direct VALDEZ to show his hands. She then saw him do so and then bring his hands back inside. The officers directed him to put his hands back out so that they could see them. From inside the patrol car, she could not see VALDEZ's full body, and could not see whether he was holding anything in his hands.

Martinez saw VALDEZ exit the truck. She saw him then turn and lean over, appearing to re-enter into the truck, and then come back outside. The officers continued to give commands to VALDEZ, including to let them see his hands. She could not recall all the exact commands that were given. She then heard shots fired. At that point she did not know who was shooting, and she ducked down inside the patrol car. She then saw Officer Ali perform CPR on VALDEZ. She could also see a gun under VALDEZ's truck. From her recollection, that firearm had not been there prior to the shots being fired.

## **Interviews of Fire Department/American Medical Response:**

### **Fire Department Captain Woodards**

Fire Department Captain Woodards was part of the emergency response team that arrived in response to a call of a person with a gunshot wound. At the time he arrived, two officers were conducting CPR on VALDEZ. VALDEZ was on the ground, on his back. Woodards saw that VALDEZ had suffered multiple gunshot wounds. These wounds had been treated with quick-clotting gauze. Woodards and other members of the "Engine 62" team then took over CPR and other life-saving measures. The team placed a chest seal to one wound. Woodards saw a pistol underneath the red truck. Woodards also noted an odor of alcohol from VALDEZ. The team provided various life-saving methods to aid VALDEZ. AMR then transported VALDEZ.

### **Firefighter Faumui**

Firefighter Faumui was also part of the "Engine 62" team. He described the same set of events as Captain Woodards.

### **Engineer Marin**

Firefighter Marin was also part of the "Engine 62" team. He described the same set of events as Captain Woodards.

### **Paramedic Perry**

Paramedic Perry was partnered with Paramedic Loeser on 12/15/2021. They were dispatched at 2:38 PM for a call of a gunshot wound victim. They arrived at about 2:48 PM, after Fire Department personnel had already arrived. Perry saw VALDEZ on the ground, being treated by Fire Department personnel. Perry did not see the gun, but he was told that it was now under the truck. Perry saw 4-5 gunshot wounds on VALDEZ, in the area of his shoulder, right chest, abdomen, and right leg. VALDEZ was transported to Highlands Hospital. He could not recall noticing any odor of alcohol on VALDEZ.

### **Paramedic Loeser**

Loeser was partnered with Perry during this incident. Loeser is an EMT, and as such, he can provide certain treatments which may require a higher degree of skill, such as defibrillation, intubation, and the administration of medication. Loeser described the same set of events as Perry. He did see the black handgun under the red truck. He also did not recall noticing any odor of alcohol.

### **Interviews of Civilian Witnesses**

*(The numbering and order of the witnesses is purely random; nothing should be inferred as to importance.)*

#### **W-1 (reporting party)**

(W-1) was interviewed on December 15<sup>th</sup>, 2021, by Detectives Hearn and Jackson. (W-1) is an employee of a supermarket in San Pablo. On the day of the incident, (W-1) was at work. A female customer entered the store and alerted him to something going on outside. (W-1) went outside and saw the red truck, which was occupied by VALDEZ. VALDEZ was holding a firearm in his hands and was manipulating it by unloading and reloading the magazine into it. (W-1) was concerned for his safety and went back into the store, at which point he called 911.

#### **W-2 (reporting party's co-worker)**

(W-2) was interviewed on December 15<sup>th</sup>, 2021. He identified himself as being a co-worker of (W-1). On the date of the incident, at about 1:30 PM, he was taking cardboard boxes outside to a trash bin. He saw VALDEZ sitting in a red Toyota truck. As (W-2) was putting trash away, VALDEZ yelled to him and tried to give him money (\$20). (W-2) spoke to VALDEZ from outside the truck and asked what the money was for. VALDEZ said that it was from his heart.

VALDEZ gave (W-2) the money, and (W-2) thanked him for it. VALDEZ began to cry. (W-2) saw a bottle of whiskey inside the truck. (W-2) asked VALDEZ to talk to him and offered to help him out with whatever was the matter. VALDEZ said there was no way out and that he had a problem he could not solve, but he would not say what the problem was.

VALDEZ told him that VALDEZ was not going to be living “after today.” (W-2) told him not to say that, and he urged VALDEZ to pray and “sleep on it.” He urged VALDEZ not to commit suicide. VALDEZ replied that he would not kill himself but rather would “let the cops do it for me.” (W-1) came outside, at which point (W-2) told VALDEZ he had to go. (W-2) did not notice anything on VALDEZ’s hands, nor did he see any weapons inside the truck.

### **W-3 and W-4 (VALDEZ’s family):**

On December 15<sup>th</sup>, 2021, VALDEZ’s family was interviewed by the LEIFI team. The investigators met with (W-3) and (W-4); they briefly explained the circumstances surrounding VALDEZ’s death.

(W-3) was identified as the sister of VALDEZ. She informed the LEIFI team that VALDEZ lived at her residence, along with (W-3)’s son and the son’s girlfriend. (W-3) reported that VALDEZ had been depressed for several months, due to financial concerns. She further informed the LEIFI team that VALDEZ had been complaining about a pain in his arms over the past few weeks. (W-3) further advised that VALDEZ was a heavy drinker and that on more than one occasion, he had said that he wanted to kill himself. (W-3) was not aware of where VALDEZ had obtained the replica firearm that he had during the incident.

(W-4) was identified as the girlfriend of (W-3)’s son. She informed the LEIFI team that VALDEZ had left the apartment at approximately 10:00 AM on December 15<sup>th</sup>, 2021. At the time she observed his departure, VALDEZ was crying. He told (W-4) that he planned to kill himself. (W-4) reported that VALDEZ gave her a necklace that he was wearing, and he asked (W-4) to give it to (W-3)’s son.

### **W-5 (percipient witness to the shooting):**

(W-5) is a resident of Richmond and lives near the location where the incident occurred. On December 29<sup>th</sup>, 2021, Detective Hearn (SPPD) and Detective Jackson (CCCSO) interviewed (W-5) at his home. (W-5) stated that he was in his bedroom at the time of the incident, and at the time, he was watching television. While he was watching television, he received a notification on his Ring camera system, which connects to cameras in front of his house. Through this system, he saw a police vehicle.

He then walked out of his front door. He then saw four or five police cars. He heard multiple officers yelling for the suspect (VALDEZ) to get out of the car and to keep his hands up. (W-5) began recording the incident on his cell phone. As he did so, he heard more police vehicles respond. He saw the driver of the vehicle (VALDEZ) get out of the truck and begin to turn towards the police, at which point the officers began firing. (W-5) described seeing VALDEZ



make a “shoulder gesture” just before the officers began shooting. (W-5) did not hear what, if anything, VALDEZ said during the incident. (W-5) described VALDEZ as looking dazed. Because VALDEZ was wearing sunglasses, (W-5) did not notice what, if any, emotional facial expressions he may have made.

From his vantage point, (W-5) could only see VALDEZ’s chest and above, and he could not see VALDEZ’s hands or see whether VALDEZ was holding anything in them. (W-5) provided the video he had recorded on his cell phone. (W-5) did not observe anything which he felt was inappropriate on the part of the officers during the incident.

### Autopsy

On December 16<sup>th</sup>, 2021, around 1:00 pm, the Contra Costa County Coroner performed an autopsy on VALDEZ. In attendance, from the LEIFI team, were Detective Ingersoll, Inspector Garcia, Detective Hearn, and Crime Lab technicians. The autopsy was performed by Dr. Josselson, which included sending biological samples of VALDEZ’ tissues to NMS laboratory for examination.

Dr. Josselson, in his final report, identified a total of seven (7) gunshot wounds to VALDEZ, as follows (their numbering does not reflect the order in which they had occurred):

- **GSW #1:** fatal wound to chest area, which also penetrated the liver
- **GSW #2:** non-fatal wound to upper right arm
- **GSW #3:** non-fatal wound to upper right arm
- **GSW #4:** non-fatal, penetrating wound to right thigh
- **GSW #5:** superficial wound to abdominal wall
- **GSW #6:** non-fatal wound to upper right thigh
- **GSW #7:** non-fatal wound to right chest wall

Toxicological testing by NMS Laboratory was positive for methamphetamine, amphetamine, and THC (marijuana). It also revealed that VALDEZ’s blood alcohol level was .210 % (over twice the legal limit for driving under the influence).

## Legal Standards

The California District Attorneys Association's Uniform Crime Charging Standards Manual directs that criminal charges shall not be brought unless the prosecutor, based upon a complete investigation and thorough consideration of all the pertinent information readily available to him or her, believes there is evidence that proves beyond a reasonable doubt that the accused is guilty of the crime to be charged. Additionally, the charging standards direct that there must be legally sufficient admissible evidence to prove each element of the crime. The admissible evidence must be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after the fact finder has heard all the evidence and after considering the most plausible, reasonable, and foreseeable defenses that could be raised under the evidence.

The applicable California Penal Code Sections are as follows:

### **Pursuant to CALCRIM 220: [Reasonable Doubt Jury Instruction]**

The fact that a criminal charge has been filed against the defendant is not evidence that the charge is true. You must not be biased against the defendant just because he has been arrested, charged with a crime, or brought to trial.

A defendant in a criminal case is presumed innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt. [ ]

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

In deciding whether the People have proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the defendant guilty beyond a reasonable doubt, he is entitled to an acquittal, and you must find him not guilty.

**Section 187:** Murder is the unlawful killing of a human being or fetus with malice aforethought.

**Section 188:** Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a human being. It is implied when the killing resulted from an intentional act, the natural consequences of the act are dangerous to human life, and the act was deliberately done with knowledge of the danger to and with conscious disregard for human life.

**Section 192:** Manslaughter is the unlawful killing of a human being without malice.

**Section 196:** Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, under either of the following circumstances:

- (a) In obedience to any judgment of a competent court.
- (b) When the homicide results from a peace officer's use of force that is in compliance with Section 835a.

**Section 835a:** (a) The Legislature finds and declares all of the following:

(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.

(2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

(4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

(b) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

(c) (1) Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

A. To defend against an imminent threat of death or serious bodily injury to the officer or to another person.

B. To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

(2) A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

**Section 197:** Homicide is also justifiable when committed by any person in any of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,
2. When committed in defense of habitation, property, person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends or endeavors, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,
3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or
4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

**Section 199:** The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

**Pursuant to CALCRIM 505:**

A homicide is justifiable and not unlawful when committed by a person who:

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

**Pursuant to CALCRIM 507:**

A homicide by a peace officer is justifiable and not unlawful when:

1. The killing was committed while overcoming actual resistance to some legal process or while performing any other legal duty
2. The killing was necessary to accomplish one of those legal purposes; and
3. The officer had probable cause to believe that someone posed a threat of death or serious bodily harm, either to the officer or to others.

Probable cause exists to believe that someone poses a threat of death or serious bodily harm when facts known to the person would persuade someone of reasonable caution that the other person is going to cause death or serious bodily harm to another.

## Legal Analysis

### I. Introduction:

The legal issue to be decided by the CCCDAO is whether any involved law enforcement officers or civilians violated any criminal laws. The Contra Costa District Attorney's Office analyzes each fatal incident on the case specific facts and circumstances. The community, including the deceased, his family, and the involved officers deserve an independent factual and legal analysis. Whether someone is criminally liable depends on the facts of the case and whether those facts constitute a crime under the applicable laws.

### II. Analysis:

#### A. The Vehicular Stop and Attempted Detention of VALDEZ was Lawful:

Where a reasonable suspicion of criminal activity exists, the public rightfully expects a police officer to inquire into such circumstances "in the proper exercise of the officer's duties." (*People v. Wells* (2006) 38 Cal.4th 1078, 1083.). A temporary detention for questioning or investigation may be justified by circumstances falling short of the probable cause needed for an arrest. (*Terry v. Ohio* (1966) 392 U.S.1, 22.) To justify such a detention, an officer need only have a reasonable suspicion of criminal activity; more specifically, "the circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity. Not only must he subjectively entertain such a suspicion, but it must be objectively reasonable for him to do so: the facts must be such as would cause any reasonable police officer in a like position, drawing when appropriate on his training and experience, to suspect the same criminal activity and the same involvement by the person in question.'" (*People v. Loewen*, (1983) 35 Cal.3d 117, 123.)

In the present case, the involved officers had ample basis to detain VALDEZ based on the information provided by a 911 caller who reported that they saw a man with a gun remove the magazine of the firearm and then re-insert the magazine back into the gun. The reporting party stated that the armed man was standing near a red Toyota Tacoma [truck] and that the man drove off "recklessly" in this vehicle. Based on this information, officers had reasonable suspicion to conduct a traffic stop of VALDEZ whose vehicle and approximate location matched the description of the 911 caller.

**B. Officers Swaleh, Louis, Rios, and Ali Were Justified in Their Use of Lethal Force Due to an Actual and Reasonable Belief in the Need to Defend Themselves Against an Imminent Threat of Death or Serious Bodily Injury.**

Officers Swaleh, Louis, Rios, and Ali were justified in their use of deadly force during the attempted detention of VALDEZ.<sup>12</sup> Officers Swaleh, Louis, Rios, and Ali assisted in the traffic stop of VALDEZ after a civilian witness called 911 and reported that there was an armed individual standing near a vehicle that appeared to be removing and re-inserting the magazine of a semi-automatic firearm. The reporting party further described that the individual subsequently drove off in the vehicle in a reckless manner.

An officer responding to a call with this information would reasonably conclude they were responding to an armed and potentially dangerous encounter with an individual that may act out violently when contacted by police.

The officers encounter with VALDEZ became increasingly dangerous due to his behavior after the officers initiated the traffic stop. Prior to exiting his vehicle, officers ordered VALDEZ to show them his hands over 10 times, based on the report that he was armed with a gun. VALDEZ did not immediately comply, and when he did eventually show the officers his hands, he appeared to have blood on them. Under these circumstances, an officer could reasonably conclude that VALDEZ may have just committed a violent crime with a firearm and may continue to act out violently to avoid arrest or detention.

In addition, VALDEZ's failure to quickly follow commands was particularly alarming due to the extensive police presence during the traffic stop. At least four police officers had their firearms trained at VALDEZ when they issued their commands for him to show his hands and get out of the vehicle. In a reasonable officer's mind, an armed individual's failure to quickly follow commands would further increase the likelihood that the suspect may use deadly force.

Furthermore, VALDEZ's actions after he exited the vehicle greatly increased the likelihood that he intended to use deadly force. Once VALDEZ exited the vehicle, the officers were able to confirm he was holding what appeared to be a firearm. Although it was subsequently determined that VALDEZ's weapon was a bb pistol, at the time of the shooting the officers' reasonably believed VALDEZ was in possession of a real firearm. As stated previously, under Penal Code Section 835a(a)(4), "the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight."

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<sup>12</sup> The below listed legal analysis pertains to the collective group of officers Swaleh, Louis, Rios, and Ali. Although each officer recollection of the events deviated slightly, and were from different vantage points, on whole their observations were consistent with each other and the available video/audio footage of the incident. As such, the below listed legal analysis is applicable to all four officers as a group, as opposed to an individualized legal analysis of each officer.

Not only did the officers reasonably believe VALDEZ was armed with a gun, his manipulation of the weapon after he exited the vehicle further increased the likelihood, in a reasonable officer's mind, that he intended to shoot the officers. Multiple officers observed VALDEZ appear to slide the top portion of his weapon in a manner that is consistent with "racking" a semi-automatic firearm. An individual who wants to insert the first live round of ammunition, from the magazine, into the chamber of a semi-automatic firearm, would typically "rack" the firearm by sliding the top portion of the firearm with his or her off shooting hand. This "racking" gesture by VALDEZ was clearly depicted in available body worn camera footage. As such, a police officer observing this conduct would reasonably conclude that VALDEZ placed a live round into the chamber of a semi-automatic firearm because he intended to fire it at the officers.

Lastly, VALDEZ's actions moments before he was shot would indicate, to a reasonable police officer, that he intended to shoot the officers. Just before he was shot, VALDEZ began to slowly raise his weapon and rotate toward the police officers. It was at this critical junction that the police discharged their weapons and fatally shot VALDEZ.

Tragically, the LEIFI investigation revealed that VALDEZ was suicidally depressed and in a compromised state of mind. On the day of the incident, he told a witness that he would end his life by having the police kill him, and lab testing showed VALDEZ to be under the combined influence of methamphetamine, marijuana, and alcohol.

Based on the totality of the information discovered through the investigation, it appears that VALDEZ intended to, and did in fact, present himself as a person armed with a firearm, in order to compel a confrontation with the police, with the end goal of being killed by the police. His actions are entirely consistent with that plan, which is commonly referred to as, "suicide by cop," and this plan had the tragic effect of causing the officers to use deadly force in self-defense.

## **CONCLUSION:**

In applying the law and the California District Attorney's Uniform Crime Charging Standards to the present case, San Pablo Police Officers Swaleh, Louis, Rios, and Ali were justified in their use of lethal force. The officers acted with an actual and reasonable belief that deadly force was necessary to defend against an imminent threat of death or serious bodily injury. As such, no further action will be taken in this case.