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10 **IN ARBITRATION PROCEEDINGS**

11 **RE JARRETT TONN**

12 VALLEJO POLICE OFFICERS'  
13 ASSOCIATION,

14 Appellant,

15 vs.

16 CITY OF VALLEJO,

17 Respondent.

18 Re: Termination of JARRETT TONN,  
19 Grievant.

20 Case No.: LDF 20-1413

21 GRIEVANT'S CLOSING BRIEF

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## I. STIPULATED ISSUE

Grievant Jarrett Tonn submits this closing brief presenting the facts and law supporting his appeal from termination as a Detective for Respondent, City of Vallejo and the Vallejo Police Department.

The issue in this disciplinary appeal is as follows:

Was there just cause for the termination of Detective Jarrett Tonn from the Vallejo Police Department? If not, what is the appropriate remedy? (JX<sup>1</sup> 1.)

## II. STIPULATED STATEMENT OF FACTS & PROCEDURAL HISTORY

On June 1, 2020, Detective Jarrett Tonn, [REDACTED] [REDACTED] and [REDACTED] [REDACTED] were called into work to supplement Vallejo Police Department staffing due to a high level of civic unrest and looting in the City of Vallejo. All three were members of the SWAT Team and Crime Reduction Team and rode in an unmarked pickup truck. On June 1, 2020, they were all activated in their SWAT Team capacity to assist with the apprehension of looters and other criminals, and were all wearing their SWAT Team uniforms and equipment. [REDACTED] [REDACTED] was driving, [REDACTED] [REDACTED] was in the front passenger seat and Det. Tonn was in the rear seat.

On June 2, 2020, at approximately 12:36 am, [REDACTED] [REDACTED] broadcast that looting was occurring at the Walgreens on Broadway and Redwood Street in Vallejo. [REDACTED] [REDACTED] drove to [REDACTED] [REDACTED] location and there was a brief conversation, lasting only a few seconds, wherein [REDACTED] [REDACTED] ordered [REDACTED] [REDACTED] to drive through the south entrance of the Walgreens while he drove into the northwest entrance.

As [REDACTED] [REDACTED] drove into the Walgreens parking lot, he broadcast words to the effect that the looters were all wearing black and it looked like they were armed; possibly armed. In response, [REDACTED] [REDACTED] turned on his emergency lights as he approached the Walgreens and people began to flee.

As people began to flee, [REDACTED] [REDACTED] stopped the truck and he and [REDACTED] [REDACTED] began to exit the vehicle. At this time, the detectives encountered Mr. Sean Monterrosa in the parking lot. As they were exiting their vehicle, Det. Tonn perceived Mr. Monterrosa grabbing an object in his

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<sup>1</sup> Joint Exhibit

1 waistband that Det. Tonn believed to be a firearm. Perceiving a threat of death or serious bodily  
2 injury to himself and his partners, Det. Tonn fired five rounds in quick succession with his duty  
3 rifle through the front windshield. One round struck Mr. Monterrosa, resulting in his death. It was  
4 subsequently determined that Mr. Monterrosa had a hammer in his waistband and was not armed  
5 with a firearm.

6 The OIR Group subsequently conducted an administrative investigation into the officer-  
7 involved shooting, which was completed in June 2021. Det. Tonn was placed on Administrative  
8 Leave on June 17, 2021. On December 1, 2021, the City of Vallejo served Det. Tonn with a Notice  
9 of Intent to Discipline for Termination for various policy violations, including use of deadly force.  
10 On April 20, 2022, Det. Tonn participated in a Skelly meeting with the City's designated Skelly  
11 Officer, Marc Fox. On May 10, 2022, Mr. Fox issued his Skelly findings and decision wherein he  
12 determined that Det. Tonn did not violate the Vallejo Police Department's Use of Force Policy  
13 and recommended retention of Det. Tonn's employment and corrective action for poor  
14 performance, consistent with the discipline received by the other employees involved in the  
15 incident.

16 On October 3, 2022, the City of Vallejo served Det. Tonn with a Notice of Discipline for  
17 Termination. On October 4, 2022, Det. Tonn's Notice of Appeal and Request for Arbitration was  
18 filed with the City of Vallejo. (JX 1.)

### 19 III. STANDARD OF REVIEW

#### 20 A. BURDEN AND QUANTUM OF PROOF

21 Detective Tonn was a public and permanent employee at all times relevant to this case.  
22 As an employee of the City of Vallejo and the Vallejo Police Department, he maintained a vested  
23 property interest in his employment. Detective Tonn was entitled to a pre-disciplinary hearing  
24 and a post-discipline due process administrative appeal. He was further entitled to a post-  
25 discipline administrative appeal hearing which must be consistent with his constitutional right to  
26 procedural due process. (Govt. Code § 3304(b); See *Runyan v. Ellis* (1996) 40 Cal.App.4th 961,  
27 966.)

28 Since this post-discipline due process administrative appeal is Detective Tonn's first

1 opportunity for a trial-type hearing, it is axiomatic that Respondent City of Vallejo bears the  
2 burden of proof and has the burden of going forward with the evidence. (*Parker v. City of Fountain*  
3 *Valley*, (1981) 127 Cal.App.3d 99, 103; *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th  
4 155, 175-176; *Townsel v. San Diego Metropolitan Transit Development Bd.* (1998) 65  
5 Cal.App.4th 940, 949; *Los Angeles Police Protective League v. City of Los Angeles* (2002) 102  
6 Cal.App.4th 85; *Layton v. Pomona*, 60 Cal.App.3d 58, 64 (1976).) Respondent bears the burden  
7 not only of establishing that the cause for discipline was sustained, but also that the cause is  
8 sufficient to justify the penalty imposed. (*Department of Parks and Recreation v. State Personnel*  
9 *Board* (1991) 233 Cal.App.3d 813, 827; *IBEW v. City of Gridley* (1983) 34 Cal.3d 191, 208.)

10 Disciplinary appeals for Vallejo Police Department employees are governed by Section  
11 30(J) of the Labor Agreement between the City of Vallejo and the Vallejo Police Officers'  
12 Association. (CX<sup>2</sup> 22.) Pursuant to Subdivision 5: "The arbitrator's jurisdiction shall be to  
13 determine if the disciplinary action taken is for "just cause" and may reverse, modify, or uphold  
14 the disciplinary action. The decision of the arbitrator shall be final and binding." (*Id.* at p. 39.)

15 B. THE CLEAR AND CONVINCING EVIDENCE STANDARD SHOULD APPLY

16 Ordinarily, Respondent's burden of proof is by a preponderance of the evidence. (Evid.  
17 Code § 115.) "Preponderance of the evidence" means a judgment the evidence has more  
18 convincing force than that opposed to it. (*People v. McCaughan* (1957) 49 Cal.2d 409; *Glage v.*  
19 *Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.). However, as Respondent alleges  
20 Detective Tonn committed misconduct involving an unjustified and unreasonable use of deadly  
21 force, which constitutes a criminal offense and significantly stigmatizes an employee's reputation,  
22 the higher burden of proof of "clear and convincing evidence" should apply instead of  
23 "preponderance of the evidence." (*See Elkouri & Elkouri, How Arbitration Works*, pgs. 15-27 (8th  
24 Ed. 2016).) As noted by Elkouri & Elkouri:

25 "When the employee's alleged offense would constitute a serious breach of law or would  
26 be viewed as moral turpitude sufficient to damage an employee's reputation, most arbitrators  
27 require a higher quantum of proof, typically expressed as 'clear and convincing evidence'." (*Id.*

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28 <sup>2</sup> City Exhibit



1 [quoting Gershenfeld, "Discipline and Discharge," *The Common Law of the Workplace: The*  
2 *Views of the Arbitrators*, 192 (St. Antoine, ed. BNA Books 2d ed. 2005)].)

3 Quoting *Kroeger Co.*, 25 L.A. 906, 908 (Smith, 1955), Elkouri & Elkouri further states:

4 "[I]t seems reasonable and proper to hold that alleged misconduct of a kind which carries  
5 the stigma of general social disapproval should be clearly and convincingly established by the  
6 evidence. Reasonable doubts raised by proof should be resolved in favor of the accused." (*Id.*)

7 "Generally, three factors are considered in determining the standard of proof necessary,  
8 though none alone seems to be determinative. Specifically, arbitrators consider whether the  
9 employee's conduct constituted criminal behavior, whether it involved moral turpitude or social  
10 stigma, and whether the sanction imposed was discharge or some lesser discipline." (*Id.* at 15-28)  
11 Length of employment has also been used as a factor in deciding the appropriate burden of proof.  
12 In *Milwaukee Bd. Of Sch. Dirs.*, 110 LA 566 (Winton, 1998), the arbitrator applied the clear and  
13 convincing standard based on consideration of the employee's positive fifteen year employment  
14 history.

15 "Recent cases demonstrate...a tendency by arbitrators to use a heightened standard when  
16 charges of a serious nature that may result in termination are involved. For example, arbitrators  
17 have applied the clear and convincing standard in cases involving falsification, workplace  
18 violence, dishonesty, theft, or other conduct that would arguably be subject to criminal prosecution  
19 or termed as an act of moral turpitude." (Brand & Biren, *Discipline and Discharge in Arbitration*,  
20 p. 432 (2<sup>nd</sup> Ed. 2008).) Based upon the weight of authority, and recent trends in discipline  
21 arbitration decisions, "clear and convincing" appears to be the favored standard applied by  
22 arbitrators in discipline cases involving alleged unlawful conduct. The "clear and convincing  
23 evidence" standard requires that the evidence be "sufficiently strong to command the unhesitating  
24 assent of every reasonable mind." (*In re Angelia P.* (1981) 28 Cal.3d 908, 919; *Roberts v. Ford*  
25 *Aerospace & Comm. Corp.* (1990) 224 Cal.3d 793, 804.)

26 Detective Tonn was a 15-year veteran police officer with no disciplinary history. After  
27 seven years as an officer with the [REDACTED], he honorably served the City of Vallejo and the  
28

1 Vallejo Police Department for eight years prior to his termination. (AT<sup>3</sup> p. 369:5-15.) Detective  
2 Tonn is ultimately accused of using deadly force that was not objectively reasonable, in violation  
3 of several Vallejo Police Department Lexipol Policies, including: Policy #300.4 De-Escalation,  
4 Policy #300.5 Use of Force, Policy #300.6 Deadly Force Application, and Policy #321.5.6  
5 Efficiency. (CX 14, p. 1.) Clearly, the alleged misconduct – the application of deadly force that is  
6 unjustified because it is not objectively reasonable – is significantly stigmatizing sufficient to  
7 damage Detective Tonn’s reputation, and impairs his ability to obtain future employment.

8 Furthermore, the “clear and convincing evidence” burden of proof is the correct standard  
9 to apply in cases such as proceedings to revoke a professional license. (*Furman v. State Bar of*  
10 *Cal.* (1938) 12 Cal. 2d 212; *Realty Projects, Inc. v. Smith* (2d Dist. 1973) 32 Cal. App. 3d 204;  
11 *Small v. Smith* (2d Dist. 1971) 16 Cal. App. 3d 450). If Detective Tonn’s termination for  
12 allegations related to unreasonable deadly force are sustained following this appeal, he will face  
13 disqualification as a peace officer and revocation of his peace officer certificate. The California  
14 Legislature recently passed Senate Bill 2, which was enacted September 30, 2021 and went into  
15 effect on January 1, 2023. Senate Bill 2 created a peace officer licensing scheme in California for  
16 the certification and decertification of peace officers.

17 Under newly enacted Government Code section 13510.8(a)(1), “[A] certified peace officer  
18 shall have their certification revoked if the person is ineligible to hold office as a peace officer  
19 pursuant to Section 1029 of the Government Code.” Section (a)(2) goes on to state that peace  
20 officer certification may be suspended or revoked following termination for cause or otherwise  
21 engaging in any “serious misconduct” as described in Section 13510.8(b). Serious misconduct  
22 sufficient to warrant decertification specifically includes “Physical abuse, including, but not  
23 limited to, the excessive or unreasonable use of force.” (Gov’t Code § 13510.8(b)(3).)

24 Pursuant to Government Code section 1029(a)(9), disqualification from being a peace  
25 officer in California is required when:

26 Any person who, following exhaustion of all available appeals, has  
27 been convicted of or adjudicated through an administrative, military,  
28 or civil judicial process requiring *not less than clear and convincing*

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<sup>3</sup> Arbitration Transcript

evidence, including a hearing that meets the requirements of the administrative adjudication provisions of the Administrative Procedure Act...as having committed...any offense described in...Chapter 7 (commencing with Section 142) of Title 7 of Part 1 of the Penal Code...

Chapter 7 of the California Penal Code includes Section 149, known as “Assault Under Color Authority,” states as follows:

Every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in a county jail not exceeding one year, or pursuant to subdivision (h) of the Section 1170, or by both that fine and imprisonment.

California Penal Code section 1170(h)(1) states that “a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.” Unreasonable use of force under color of authority is, by definition, without lawful necessity, and can constitute a crime punishable by up to three years imprisonment. An unreasonable use of deadly force can also constitute the crime of involuntary manslaughter pursuant to Penal Code section 192(b), which in a use of deadly force context is “the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.” The proscribed punishment for involuntary manslaughter is two, three, or four years. (Pen. Code § 193(b).) As Detective Tonn’s alleged misconduct if sustained after appeal would subject him to license decertification, and could arguably subject him to criminal prosecution, Respondent should be held to the heightened “clear and convincing evidence” standard in this appeal.

C. THE PENALTY IS REVIEWED DE NOVO

The hearing officer has broad discretion in determining the appropriate level of discipline, if any. The hearing officer is not to give a presumption of correctness, or required to find an abuse of discretion before altering the punishment. (*California Teachers Association v. State of California* (1999) 20 Cal.4th 327.) The courts have consistently held that at an administrative appeal hearing, “the appointing authority has the burden of proof to justify the employee’s suspension or demotion.” (*Layton v. Merit System Commission* (1976) 60 Cal.App.3d 58, 66.) In

1 *Steen v. City of Los Angeles* (1948) 31 Cal.2d 542, 547, our Supreme Court described the  
2 apportionment of burden on the employers as follows: “in the discharge proceeding before the  
3 board, the appointing power is analogous to what in a civil action would be the plaintiff, and the  
4 employee the defendant.”

5 Consistent with traditional just cause analysis, the courts have consistently held the Public  
6 Safety Officers Procedural Bill of Rights Act (“POBR”) requires *de novo* review of all aspects of  
7 discipline. In *Caloca v. County of San Diego* (2002) 102 Cal.App.4th 433, the court held:

8 At a minimum an administrative appeal requires independent fact  
9 finding in a de novo proceeding. An independent decision maker  
10 who must make factual findings subject to judicial review cannot  
11 simply rely on the determination of the individual or agency which  
12 has initiated punitive action against a peace officer; rather, the  
13 independent fact finding implicit in the concept of an administrative  
14 appeal requires at a minimum that the hearing be treated as a de novo  
15 proceeding at which no facts are taken as established and the  
16 proponent of any given fact bears the burden of establishing it.

17 Thus, Respondent bears the burden of justifying Detective Tonn’s termination and the  
18 hearing officer must exercise his independent judgement to determine the appropriate penalty.

#### 19 IV. APPLICABLE LAW

##### 20 A. The “Objectively Reasonable” Officer Standard

21 The Fourth Amendment to the United States Constitution guarantees citizen the right “to  
22 be secure in their persons...against unreasonable...seizures” of their person. The United States  
23 Supreme Court in the seminal case *Graham v. Conner* (1989) 490 U.S. 386, established the  
24 applicable standard by which all peace officer uses of force are analyzed. In *Graham*, the Court  
25 held that “all claims that law enforcement officers have used excessive force – deadly or not – in  
26 the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed  
27 under the Fourth Amendment and its ‘reasonableness’ standard, rather than under a ‘substantive  
28 due process’ approach.” (*Graham* at p. 395.) The use of deadly force constitutes a “seizure” of a  
person within the meaning of the Fourth Amendment. The Supreme Court explained the  
“reasonableness” standard as follows:

Determining whether the force used to effect a particular seizure is “reasonable”

1 under the Fourth Amendment requires a careful balancing of “the nature and quality  
2 of the intrusion on the individual’s Fourth Amendment interests against the  
3 countervailing governmental interests at stake...Because the test of reasonableness  
4 under the Fourth Amendment is not capable of precise definition or mechanical  
5 application, however, its proper application requires careful attention to the facts  
6 and circumstances of each particular case, including the severity of the crime at  
7 issue, whether the suspect poses an immediate threat to the safety of the officers or  
8 others, and whether he is actively resisting arrest or attempting to evade arrest by  
9 flight.

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

16 As in other Fourth Amendment contexts, however, the “reasonableness” inquiry in  
17 an excessive force case is an objective one: the question is whether the officers’  
18 actions are “objectively reasonable” in light of the facts and circumstances  
19 confronting them, without regard to their underlying intent or motivation. An  
20 officer’s evil intentions will not make a Fourth Amendment violation out of an  
21 objectively reasonable use of force; nor will an officer’s good intentions make an  
22 objectively unreasonable use of force constitutional.

23 The Fourth Amendment inquiry is one of “objective reasonableness” under the  
24 circumstances...” (*Id.* at pp. 396-399, internal citations omitted; UX C-4, C-5.)  
(Emphasis added.)

25 Reasonable force is a legal term for how much and what kind of force a peace officer may  
26 use under the circumstances. Pursuant to *Graham*, determining the objective reasonableness for  
27 a use of force must be fact specific, based on the totality of the circumstances confronting the  
28 officer at the time force was used. Pursuant to Penal Code section 196(b), “Homicide is justifiable  
when committed by peace officers...[w]hen the homicide results from a peace officer’s use of  
force that is in compliance with Section 825a.” Penal Code section 835a, as amended in 2019 by  
Assembly Bill No. 392, states as follows:

(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

1 deadly force only when necessary in defense of human life. In determining whether  
2 deadly force is necessary, officers shall evaluate each situation in light of the  
3 particular circumstances of each case, and shall use other available resources and  
4 techniques if reasonably safe and feasible to an objectively reasonable officer.

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

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

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

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

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

27 (A) *To defend against an imminent threat of death or serious bodily injury to the*  
28 *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.*

(d) *A peace officer who makes or attempts to make an arrest need not retreat or*  
*desist from their efforts by reason of the resistance or threatened resistance of the*  
*person being arrested. A peace officer shall not be deemed an aggressor or lose*  
*the right to self-defense by the use of objectively reasonable force in compliance*  
*with subdivisions (b) and (c) to effect the arrest or to prevent escape or to overcome*

1 *resistance*. For the purposes of this subdivision, “retreat” does not mean tactical  
2 repositioning or other deescalation tactics.

3 (e) For purposes of this section, the following definitions shall apply:

4 (1) “Deadly force” means any use of force that creates a substantial risk of causing  
5 death or serious bodily injury, including, but not limited to, the discharge of a  
6 firearm.

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

14 (3) “Totality of the circumstances” means all facts known to the peace officer at the  
15 time, including the conduct of the officer and the subject leading up to the use of  
16 deadly force.

17 (Pen. Code § 835a; UX<sup>4</sup> C-2.) (Emphasis added.)

18 Despite the 2019 amendments to 835a, California law retained, without limitation, the  
19 *Graham* standard of objective reasonableness. (See Pen. Code § 835a(a)(4).) Following the  
20 passage of AB 392, the 5<sup>th</sup> District Court of Appeal in *Koussaya v. City of Stockton* (2020) 54  
21 Cal.App.5<sup>th</sup> 909, analyzed the “new” law related to civil claims of unreasonable use of deadly  
22 force by Stockton Police Department officers following the infamous Bank of the West armed  
23 robbery and kidnapping in 2014. (UX C-6, C-7.) Regarding the 2019 amendments to 835a, the  
24 Court noted, “Relevant portions of this amended section are declaratory of preexisting case law,”  
25 and went on to state:

26 Our Supreme Court has long recognized that peace officers have a duty to act  
27 reasonably when using deadly force” and that [t]he reasonableness of an officer’s  
28 conduct is determined in light of the totality of the circumstances, including the  
tactical conduct and decisions leading up to the use of deadly force...

However, although an officer’s preshooting conduct must be considered as part of  
the totality of circumstances surrounding the use of force, [t]he “reasonableness”  
of a particular use of force must be judged from the perspective of a reasonable  
officer on the scene, rather than with the 20/20 vision of hindsight...The standard  
for evaluating the unreasonable use of force reflects deference to the split-second  
decisions of an officer and recognizes that, unlike private citizens, officer may use  
deadly force. An officer may use reasonable force to make an arrest, prevent

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<sup>4</sup> Union Exhibit

1 *escape or overcome resistance, and need not desist in the face of resistance.* Unlike  
2 private citizens, police officers act under color of law to protect the public interest.  
3 They are charged with acting affirmatively and using force as part of their duties,  
4 because the right to make an arrest or investigatory stop necessarily carries with it  
5 the right to use some degree of physical coercion or threat thereof to effect it.

6 *We must never allow the theoretical, sanitized world of our imagination to replace*  
7 *the dangerous and complex world that policemen face every day. What constitutes*  
8 *reasonable action may seem quite different to someone facing a possible assailant*  
9 *than to someone analyzing the question at leisure.*

10 We finally note that *[a]s long as an officer's conduct falls within the range of*  
11 *conduct that is "reasonable" under the circumstances, there is no requirement that*  
12 *he or she choose the "most reasonable" action or the conduct that is the least likely*  
13 *to cause harm and at the same time the most likely to result in the successful*  
14 *apprehension of a violent suspect...*

15 Generally, a police officer's use of deadly force against a suspect will be considered  
16 reasonable where the officer has probable cause to believe that the suspect poses a  
17 significant threat of death or serious physical injury to the officer or others. Thus,  
18 an officer may reasonably use deadly force when he or she confronts an armed  
19 suspect in close proximity whose actions indicate an intent to attack. (*Id.* at pp. 934-  
20 937, internal citations omitted; UX C-6, C-7.) (Emphasis added.)

21 It must also be noted that peace officers maintain a state and federal Constitutional right  
22 of self-defense. "Central to the rights guaranteed by the Second Amendment is 'the inherent right  
23 of self-defense'." (*United States v. Torres* (9th Cir. 2019), citing *District of Columbia v. Heller*,  
24 554 U.S. 570.) Article 1, Section 1 of the California Constitution declares:

25 All people are by nature free and independent and have inalienable rights. Among  
26 these are *enjoying and defending life* and liberty, acquiring, possessing, and  
27 protecting property, and *pursuing and obtaining safety*, happiness, and privacy.  
28 (Emphasis added.)

#### 29 B. Vallejo Police Department Lexipol<sup>5</sup> Policies

30 Respondent sustained several Department policies against Detective Tonn related to his  
31 use of deadly force, which are contained in Policy 300 of the Vallejo Police Department Policy  
32 Manual, entitled "Use of Force." (CX 14, p.1; UX D, updated April 2, 2020.) Grievant contests  
33 these sustained allegations.

34 <sup>5</sup> Lexipol is a company created in 2003 to develop state-specific "comprehensive, continuously updated policies for  
35 public safety agencies," and are the preeminent provider of police department policies throughout the United States.  
([www.lexipol.com](http://www.lexipol.com))



1           1.    Policy #300.4 De-Escalation

2           Respondent's "De-Escalation" Policy, states, in relevant part:

3           It is the policy of this Department that when all of the known circumstances indicate  
4           that it is reasonably sage, prudent and feasible to do so, an officer(s) shall attempt  
5           to slow down, reduce the intensity or stabilize the situation through de-escalation  
6           so that more time, options and/or resources may become immediately available for  
7           incident resolution.

8           De-escalation tactics and techniques are those actions undertaken by an officer(s)  
9           to avoid physical confrontations and to increase the likelihood of voluntary  
10          compliance or cooperation.

11          Officers are expected to use de-escalation techniques before using force whenever  
12          practical, following department required training, unless force is immediately  
13          necessary to protect an individual, stop dangerous behavior, protect or prevent  
14          damage to property or stop a crime in progress in an effort to reduce or eliminate  
15          the need for varying levels of force.

16          De-escalation tactics and techniques include, but are not limited to the following:

- 17          ...  
18          (a) Communicating with the suspect  
19          (b) Gathering information about the incident  
20          (c) Verifying information provided by dispatch  
21          (d) Assessing risks  
22          (e) Gathering resources (both personnel and equipment)  
23          (f) Using crisis intervention techniques  
24          (g) Communicating and coordinating with other responding officers

25          ...  
26          A member is not expected to engage in force de-escalation measures that could  
27          jeopardize the safety of the community or of any employee. Where circumstances  
28          and time reasonably permit, an officer shall take those reasonable and prudent  
actions which operate to mitigate the immediacy of the threat thereby giving the  
officer time to call additional officers, utilize other tactics or request specialty  
assistance such as crisis negotiators.

(UX D-3, D-4.)

2.    Policy #300.5 Use of Force

Respondent's specific use of force policy adopts, and in no way constricts, the standards  
set forth by *Graham* and its progeny, as well as Penal Code section 835a. Policy #300.5 states:

Officers shall use only that amount of force that reasonably appears necessary given  
the facts and totality of the circumstances known to or perceived by the officer at  
the time of the event to accomplish a legitimate law enforcement purpose (Penal  
Code § 835a).

1 The reasonableness of force will be judged from the perspective of a reasonable  
2 officer on the scene at the time of the incident. Any evaluation of reasonableness  
3 must allow for the fact that officers are often forced to make split-second decisions  
4 about the amount of force that reasonably appears necessary in a particular  
situation, with limited information and in circumstances that are tense, uncertain,  
and rapidly evolving.

5 Given that no policy can realistically predict every possible situation an officer  
6 might encounter, officers are entrusted to use well-reasoned discretion in  
determining the appropriate use of force in each incident.

7 It is also recognized that circumstances may arise in which officers reasonably  
8 believe that it would be impractical or ineffective to use any of the tools, weapons,  
9 or methods provided by the Department. Officers may find it more effective or  
reasonable to improvise their response to rapidly unfolding conditions that they are  
10 confronting. In such circumstances, the use of any improvised device or method  
must nonetheless be objectively reasonable and utilized only to the degree that  
reasonably appears necessary to accomplish a legitimate law enforcement purpose.

11 While the ultimate objective of every law enforcement encounter is to avoid or  
12 minimize injury, nothing in this policy requires an officer to retreat or be exposed  
to possible physical injury before applying reasonable force. (UX D-4.)

13 Policy #300.5.1, entitled Use of Force to Effect an Arrest, contains the exact verbiage of  
14 Sections 835a(b) and 835a(d) regarding the use of objectively reasonable force to effect an arrest  
15 or to overcome resistance, no duty to retreat, and the right of self-defense. (UX D-5.) Policy  
16 #300.5.2 includes the standard “*Graham* factors”, as well as factors articulated in Section 835a,  
17 that are considered when determining whether a use of force was objectively reasonable. Of  
18 particular relevance here, are as follows:

- 19 (a) The apparent immediacy and severity of the threat to officers or others (Penal  
20 Code § 835a).
- 21 (b) The conduct of the individual being confronted, as reasonably perceived by  
the officer at the time.
- 22 (c) The conduct of the involved officer (Penal Code § 835a).
- 23 (h) Proximity of weapons or dangerous improvised devices.
- 24 (j) The availability of other reasonable and feasible options and their possible  
effectiveness (Penal Code § 835a).
- 25 (k) Seriousness of the suspected offense or reason for contact with the individual.
- 26 (l) Training and experience of the officer.
- 27 (m) Potential for injury to officers, suspects, and others.
- 28 (n) Whether the person appears to be resisting, attempting to evade arrest by  
flight, or is attacking the officer
- (p) The apparent need for immediate control of the subject or a prompt resolution  
of the situation.
- (s) Any other exigent circumstances.

(UX D-5, D-6.)

3. Policy #300.6 Deadly Force Applications

Respondent's Policy #300.6 adopts, almost verbatim, the language and intent of Section 835a, and states, in relevant part:

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force. The use of deadly force is only justified in the following circumstances (Penal Code § 835a):

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.

...  
An "imminent" threat of death or serious bodily injury exists 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 officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

4. Policy #321.5.6 Efficiency

Policy #321.5.6 articulates five grounds constituting employee misconduct in violation of this policy. Although Respondent's Notice of Discipline is unclear as to which specific subdivision(s) apply here (CX 14, p.1), Grievant assumes Respondent alleges a violation of subdivision (b), which applies to:

Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse. (UX H-5.)

**V. GRIEVANT'S STATEMENT OF FACTS**

Following the murder of George Floyd on May 25, 2020 by Officer Derek Chauvin in Minneapolis, Minnesota, the United States was reeling from the tragedy. While peaceful protests were commonplace, many chose to riot, loot, and commit widespread violence. The Bay Area was hit particularly hard by the violence, which included individuals traveling from city to city throughout the Bar Area with the sole purpose of looting and committing violence. Sean

Monterrosa was one of these individuals. The violence was unprecedented, particularly in the City of Vallejo in the days leading up to, and including, June 2, 2020. Every witness in this arbitration testified that they had never experienced anything like it despite their combined years of law enforcement experience. It is against this backdrop of unprecedented violence and chaos that the unfortunate officer-involved shooting involving Detective Tonn and Sean Monterrosa occurred on June 2, 2020 at approximately 12:36 a.m. In addition to the Stipulated Statement of Facts above, Grievant submits the following statements and testimony to provide the complete facts and totality of the circumstances that Detective Tonn faced and perceived on July 1<sup>st</sup> and 2<sup>nd</sup> of 2020.

A. Detective Jarrett Tonn

Detective Tonn was formally questioned regarding this incident three times. He provided a voluntary statement to homicide investigators on June 2, 2020 approximately nine hours after the shooting. On March 18, 2021, Detective Tonn provided a compelled statement<sup>6</sup> in the course of the administrative investigation conducted by the OIR Group. Finally, Detective Tonn testified at his administrative appeal hearing on March 21, 2023.

1. Voluntary Statement

Detective Tonn provided a voluntary statement to Detective Keving Rose and Solano County District Attorney Investigator Mason Mineni on June 2, 2020 at 9:33 a.m. Detective Tonn was not working on Monday, June 1, 2020, but was on standby in his capacity as a Crime Reduction Team (“CRT”) detective and SWAT team member. (CX 6, p. 2:13-27) Based on the attempted takeover of the Vallejo Police Department Saturday, May 29, 2020, Detective was advised to be on standby and received a call around 8:00 p.m. on June 1<sup>st</sup> to immediately respond to the Department. (*Id.*, p. 8:4-10.) After obtaining his equipment, Detective Tonn responded to the command post in the Best Buy parking lot in Vallejo, along with various officers from multiple counties, for a briefing by Emergency Services Unit (“ESU”) Commander and SWAT Lieutenant

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<sup>6</sup> The Public Safety Officer Procedural Bill of Rights Act (Gov’t Code §§ 330 et seq.), requires that “If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.” (Gov’t Code § 3303(h).) Detective Tonn was advised of his Constitutional rights and compelled to answer questions pursuant to *Lybarger v. City of Los Angeles* (1985) 40 Cal.3d. (CX 11 at pp. 3:18-4:11.)

1 Robert Knight. (CX 6 p. 2:38-44.) In his capacity as a SWAT member, Detective Tonn reported  
2 directly to Sgt. Jacks and Lt. Knight. (CX 6 p. 3:15-21.) The directive that night from Lt. Knight  
3 was to respond to any in-progress looting, especially at gun stores. (CX 6 p. 2:44-45.)

4 As a CRT detective, one of Detective Tonn's duties was intelligence gathering, and he was  
5 tasked with monitoring social media and new outlets for evidence of unlawful riots and looting  
6 that was occurring nationwide and potentially in Vallejo. (CX 6 p. 7:12-26) During his intelligence  
7 gathering, Detective Tonn learned there was well-coordinated suspects, including Antifa, planning  
8 violent attacks on law enforcement, and that they were planning to focus their efforts on Vallejo.  
9 (*Id.* at lines 26-33.) In the days leading up to June 1, as well as on June 1, Detective Tonn  
10 participated in Department briefings regarding targeting attacks on gun stores to arm themselves.  
11 (CX 6 p. 3:1-7, p. 7: 33-45.) He also participated in briefings regarding evacuation strategies  
12 should another attack on the Police Department occur. (CX 6 p. 8:10-21.) As he drove into Vallejo  
13 that evening in route to the command post, Detective Tonn saw a caravan of ten cars in tandem  
14 that appeared to be an organized group of looters pull into a near-by shopping center. (*Id.* at lines  
15 31-39.) He was also monitoring radio traffic and his mobile computer, which were reporting  
16 constant criminal activity, including burglaries and robberies. (*Id.* at lines 42-45.) He heard three  
17 to five vehicle pursuits as well as a shooting at a dispensary. (CX 6 p. 9:1-3.)

18 In his 15 years in law enforcement, Detective Tonn had never witnessed such "pervasive  
19 criminal activity sweeping through [Vallejo]" and was concerned about his safety and the safety  
20 of his partners. (*Id.* at lines 23-31, p. 10:4-6.) Detective Tonn went on to explain that he was "on  
21 edge" and "fearful" that something bad was going to happen because armed, dangerous felons  
22 were shooting at people. (CX 6 pp. 9:43-10:5.) Detective Tonn further explained that "these aren't  
23 people...that you can let your guard around if you want to survive – if you want to live", so his  
24 "safety concern [was] as high as it can get." (CX 6 p. 10:10-14.)

25 Detectives Tonn, [REDACTED] and [REDACTED] all deployed together in [REDACTED] [REDACTED]  
26 unmarked Ford F-150 quad cab pick-up truck, which was equipped with forward-facing red and  
27 blue lights and siren. [REDACTED] [REDACTED] was driving, [REDACTED] [REDACTED] was in the front  
28 passenger seat, and Detective Tonn was in the rear seat on the driver side. (CX 6 pp. 4:26-5:18.)

1 Detective Tonn was armed with his department-issued Glock 17, 9-millimeter, sidearm and Colt  
2 M4 Commando rifle. (CX 6 pp. 5:31-6:16.) Shortly after the briefing while patrolling the city  
3 westbound on Redwood near North Camino Alto, the detectives heard [REDACTED] [REDACTED] state over  
4 the radio that he was observing a burglary in progress at the Walgreens Pharmacy drive-through.  
5 (CX 6 p. 10:17-21.) The detectives were only seconds from [REDACTED] [REDACTED] location. (*Id.*) The  
6 officers pulled up next to [REDACTED] [REDACTED] on the east side of Redwood at Broadway facing  
7 westbound and rolled their window down to talk to him. (*Id.* at lines 22-26.) [REDACTED] [REDACTED]  
8 pointed out the burglary in progress, and Detective Tonn looked across the street and observed  
9 someone smashing the drive-through window. (*Id.* at lines 29-32.) [REDACTED] [REDACTED] then quickly  
10 tells the detectives, "I'll go this way," pointing to the north entrance on Broadway north of the  
11 pharmacy, and follows up with, "You guys take that side," pointing to the south entrance off  
12 Redwood, to block in the looters. (CX 6 pp. 10:42-11:2.) The detectives' plan, based on their  
13 experience working together, was to hold everyone at gunpoint. (CX 6 p. 19:12-22.)

14 [REDACTED] [REDACTED] and the detectives proceeded to enter the Walgreens parking lot pursuant  
15 to [REDACTED] [REDACTED] directive, and within seconds of contacting the looters [REDACTED] [REDACTED]  
16 broadcast on the radio, "It looks like they're armed." (CX 6 p. 11:2-9.) Detective Tonn understood  
17 this advisement to mean that the subjects were armed with firearms. (*Id.* at lines 11-21.) In order  
18 to get a better view of the subjects after hearing [REDACTED] [REDACTED] "armed" advisement, Detective  
19 Tonn moved into the center of the middle for a better view. (*Id.* at lines 21-25.) As they proceeded  
20 through the parking lot, [REDACTED] [REDACTED] activated the truck's red and blue lights and began to  
21 slow to a stop. (*Id.* at lines 25-27.) Detective Tonn described these few seconds as "fast and slow-  
22 mo at the same time...like, you're seeing a still frame of a movie...but everything else is just  
23 happening, like, so fast that I don't know." (*Id.* at lines 27-32.)

24 Detective Tonn then saw a subject in a black hoodie run from the drive-through area  
25 towards a black car, leading Detective Tonn to believe that he is going to get into the car and lead  
26 them on a pursuit because that was commonplace that night. (*Id.* at lines 33-42.) Detective Tonn  
27 had his rifle in hand, prepared to exit the vehicle, when suddenly the subject turned from his  
28 westbound direction of travel to the getaway car and began moving in a southbound direction on

1 their truck. (*Id.* at lines 42-45, p. 16:26-36.) The subject, with his hands in his stomach/waistband  
2 area, turned towards their vehicle, got down into what “looked like a kneeling shooting position.”  
3 (CX 6 p. 12:1-29.) Detective Tonn recognized the placement of the subject’s hands as  
4 “immediately recognizable” as consistent with someone trying to conceal a firearm and prevent it  
5 from falling out of his waistband. (*Id.*) Detective Tonn then perceived the subject to grab a  
6 brownish item in his waistband that looked like the handle of a pistol. (*Id.* at lines 33-37.)

7 When questioned during the second part of his voluntary statement regarding the suspected  
8 firearm, Detective Tonn reiterated that he recognized the wood handle at that time, and that it was  
9 dark colored like the handle or grip of a pistol. (CX 6 p. 2:66-73.) The size looked like the grip of  
10 a pistol, the location was where firearms are kept, and he no indication the object was anything  
11 other than a firearm. (*Id.* at lines 77-79.)

12 Detective immediately believed, “100%”, they were going to get into a shootout with the  
13 subject. (CX 6 pp. 12:24-13:1.) He was scared for himself, but more for his partners who were  
14 exiting the vehicle and may not have seen the imminent threat to their safety. (CX 6 p. 13:5-13.)  
15 He believed the subject was going to shoot at them to aid in his co-conspirators’ escape. (*Id.* at  
16 lines 23-24.) Based on [REDACTED] [REDACTED] advisement, combined with his observations, training  
17 and experience, Detective Tonn believed the subject was going to shoot at them and possibly kill  
18 them, and acted instinctually. (*Id.* at lines 13-22, p. 18:7-11.) Detective Tonn could see the  
19 subject clearly through the front windshield, and without hesitation rapidly fired five or six rounds  
20 with this rifle through the windshield at the subject. (CX 6 p. 13:24-29.) At the time he fired,  
21 Detective Tonn believed the subject to be approximately 15 feet away, but after exiting the vehicle  
22 determined the distance to be closer to 20-30 feet. (CX 6 p. 15:38-43.) He estimated three to four  
23 seconds from the time the truck pulled up to the shooting. (CX 6 p. 17:36-40.) In the second part  
24 of his voluntary statement, Detective Tonn stated that at the time did not feel like he had another  
25 option. (CX 6 p. 3:121-123.) “Everything he did at that time and still in my mind I go that was the  
26 actions of someone who is gonna...attack us and – and try to kill us...everything that he did could  
27 only have meant one thing.” (*Id.* at lines 129-134.)

28 Detective explained that he has extensive firearm and shooting training, including shooting

1 into and out of vehicles. Due to the lamination on a windshield, Detective Tonn stated that a bullet  
2 trajectory can be affected by the glass, and to ensure officer safety and accurate rounds you must  
3 fire several rounds in quick succession. (CX 6 p. 13:29-38, p. 20:9-10.) Detective Tonn saw the  
4 subject go down, as trying to “find [his] words” to articulate he saw a gun, made a statement he  
5 recalled as “Did you see the gun or he pointed the gun?” (CX 6 p. 14:1-7.) In the second part of  
6 Detective Tonn’s voluntary statement, he elaborated on his statements, stating:

7 This is not something anyone wants to do. Honesty this is not something anyone  
8 wants to do given our climate. This is not anything...that I want to do at all  
9 especially with what’s going on, um, and so, I think, you freak out. Like, I just used  
10 deadly force. I saw what I saw. I know he had a gun. I know I – what I saw. And  
11 I’m trying to convey that or ask that and I’m also – and I’m not being articulate  
12 after a shooting. I’m not getting a nuance. I was trying to also convey to them he  
13 had a firearm...I’m just trying to get the point across he’s got a gun and that’s kind  
14 of what came out. But, you know, I was certain of what I saw...and so I was trying  
15 to convey that and warn them...that’s how it came out to try to convey to them this  
16 is what happened. And that to me was the best way to sum it up in – in the heat of  
17 the moment he tried to pull a gun out on us, you know, pointed a gun at us. (CX 6  
18 p. 3:91-119.)

15 The detectives developed a tactical plan to approach the subject, and when searching for  
16 the gun Detective Tonn discovered a hatchet or hammer with the handle sticking out of his  
17 clothing. (*Id.* at lines 9-20.) Detective Tonn made a variety of statements indicative of his  
18 frustration and anger that the subject “did everything consistent that [he’s] seen with someone  
19 who’s about to shoot [him].” (CX 6 p. 15:15-25.) Life-saving efforts were made by various  
20 individuals on scene, but the subject, later identified as Sean Monterrosa, succumbed to his  
21 injuries. (CX 6 pp. 14:30-15:10.)

## 22 2. Compelled Administrative Statement

23 Detective Tonn received his order to respond to Vallejo around 6:00 p.m. on June 1, 2020  
24 and responded from Sacramento County. (CX 11 p. 12:8-10.) Upon reaching Vallejo he was able  
25 to hear the radio traffic, which he described as “usual and very busy, chaotic radio traffic.” (*Id.* at  
26 lines 10-13.) He had “never heard anything like it.” (*Id.* at lines 13-14.) With the level of criminal  
27 activity, Detective Tonn was “aware that something different was happening” in Vallejo that day  
28 and it “felt very tense going into it.” (CX 11 p. 13:6-15.) He described what he recalled at 28



1 vehicle pursuits, foot pursuits, shots fired, robberies and roving packs of looters driving  
2 throughout the city. (*Id.* at lines 6-23.)

3 After obtaining their equipment from the CRT office, they responded to the command post  
4 in the Best Buy parking lot and received a SWAT briefing from Lt. Knight. (CX 11 pp. 13:24-  
5 14:13, p. 17:3-12.) They were at the command post for approximately 30 minutes, ten minutes of  
6 which was comprised of the briefing. (CX 11 p. 15:16-25.) At the briefing, to avoid the chaos of  
7 attempting to respond to every call, SWAT members were given a hierarchy of responses to calls  
8 for service, with the highest priority being looting at gun stores and shootings, followed by general  
9 property crimes. (CX 11 pp. 19:3-20:12.) Essentially, the order given to the SWAT team was to  
10 enforce looting activity.

11 Shortly after deploying into the field from the command post briefing, [REDACTED] [REDACTED]  
12 broadcast an emergency “Code 33” to clear the air of radio traffic, and advised regarding looters  
13 at the Walgreens on Redwood. (CX 11 p. 23:10-19.) As they were approximately two blocks from  
14 [REDACTED] [REDACTED] location, the detectives responded to the emergency call immediately. (CX 11  
15 p. 24:1-6.) The detectives pulled up alongside [REDACTED] [REDACTED] who was watching the Walgreens  
16 while parked just east of the railroad tracks at the intersection of Redwood and Broadway. (*Id.* at  
17 lines 12-17.) [REDACTED] [REDACTED] who was seated in the front passenger seat, rolled down his  
18 window to speak with [REDACTED] [REDACTED] (*Id.* at lines 17-21.) [REDACTED] [REDACTED] pointed to the  
19 Walgreens and said, “They’re over there.” (*Id.* at lines 22-23.) He then directed the detectives,  
20 “you go that way” while pointing to the west entrance to the parking lot, then stated, “I’ll go that  
21 way,” pointing to the north entrance. (CX 11 p. 25:2-7.)

22 [REDACTED] [REDACTED] then immediately drove away. (*Id.* at lines 7-11.) The detectives were not  
23 going to leave [REDACTED] [REDACTED] to respond to Walgreens alone, and responded to the Walgreens to  
24 provide assistance. (CX 11 p. 28:16-25, p. 42:18-25.) When [REDACTED] [REDACTED] suddenly drove off  
25 to the Walgreens, there were no other options but to also respond and assist. (CX 11 p. 44:1-11.)  
26 Despite the lack of an explicit plan, based on his training and experience with felony crimes in  
27 progress, Detective Tonn understood their plan was to try to effect an arrest or stop the crime in  
28 progress. (CX 11 p. 26:19-25.)

1           Because [REDACTED] [REDACTED] had a shorter route to his destination point that the detectives to  
2 theirs, [REDACTED] [REDACTED] was driving quickly so as to not leave [REDACTED] [REDACTED] at the scene  
3 alone. (*Id.* at lines 12-24.) Approximately three seconds after entering the parking lot, Detective  
4 Tonn heard [REDACTED] [REDACTED] broadcast, “The guy in the black is armed.” (CX 11 p. 26:2-6, p.  
5 32:10-18.) Believing they would be quickly exiting the truck upon arrival, Detective Tonn  
6 attempted to open the rear passenger door, but it would not open, so he slid to the middle of the  
7 backseat so he could see between Detectives Waggoner and [REDACTED] through the windshield. (CX  
8 11 pp. 32:19-33:15.) Within seconds of [REDACTED] [REDACTED] “armed” advisement, the officer-  
9 involved shooting occurred. (CX 11 p. 33:2-5, 16-18.) Within those few seconds between the  
10 advisement and the shooting, there was no time to change their plan. (CX 11 p. 34:15-23.)  
11 Detective Tonn believed that if their enforcement action did not turn into a pursuit, they would  
12 conduct a felony stop.” (CX 11 pp. 39:8-40:16.)

13           Immediately upon hearing [REDACTED] [REDACTED] advisement, Detective Tonn “keyed in on  
14 [Monterrosa] immediately.” (CX 11 p. 35:18-20; p. 49:22-23.) At the time, he did not hear [REDACTED]  
15 [REDACTED] further broadcast of “possibly armed.” (CX 11 p. 49:16-22.) Detective Tonn only saw  
16 one person in black, running, that he believed to be the armed person [REDACTED] [REDACTED] had referred  
17 to. (CX 11 p. 49:23-25.) Detective Tonn saw Monterrosa run to the open back door of a vehicle  
18 and get partially inside the vehicle, leading Detective Tonn to believe he was getting into the  
19 vehicle. (CX 11 pp. 50:6-51:5, p. 51:17-20.) Detective Tonn also perceived Monterrosa to be  
20 running in a specific, unnatural way that it seemed like he had a firearm on him and was holding  
21 it to prevent it from falling out of his waistband. (*Id.* at lines 15-25.) Detective Tonn was convinced  
22 Monterrosa had a gun. (CX 11 p. 51:6-9.)

23           Suddenly, Monterrosa stopped and turned toward the detectives’ truck. (*Id.* at lines 9-12.)  
24 Detective Tonn never observed actions by Monterrosa consistent with surrendering. (CX 11 p.  
25 56:9-21.) His training and experience with fleeing subjects, coupled with Monterrosa’s decision  
26 to suddenly turn to face the officers, immediately led Detective Tonn to “100 percent” believe  
27 Monterrosa was going to shoot at them so his friends could escape. (CX 11 pp. 53:16-54:10.)  
28 Upon seeing Monterrosa grab an object in his waistband area resembling the butt of a gun,

1 consistent with [REDACTED] [REDACTED] broadcast, and believing his partners were unaware of the  
2 imminent danger of being shot, Detective Tonn fired five rapid shots through the windshield. (CX  
3 11 p. 57:15-24, pp. 59:9-60:14.)

4 Detective Tonn discussed his extensive shooting training, in particular from in and outside  
5 of a vehicle. He advised that bullets can be unpredictable and inaccurate when shot through glass  
6 (CX 11 pp. 62:16-63:3.) However, it is important to be effective when facing a subject about to  
7 shoot at you, so it is not the time to fire once then reassess. (CX 11 p. 63:3-8.) As such, and  
8 consistent with his training, Detective Tonn fired multiple rounds in quick succession to ensure  
9 accuracy while shooting through the windshield. (CX 11 pp. 63:8-64:20.) Detective Tonn  
10 approximated that he fired the five rounds within half of a second. (CX 11 p. 67:5-8.)

11 Detective Tonn made two statements immediately following the shooting, which were  
12 captured on his BWC. The statements were, "What did he point at us?" and "He pointed a gun at  
13 us." (CX 17.) When asked about those statements during his compelled interview, he stated:

14 You know, it's – it's one of those things where you're trying to really convey what  
15 happened, again, not knowing what they saw, you know, not even knowing if they  
16 saw this threat, I mean, which is part of the – the immediacy of it or part of my fear  
17 but I'm just trying to grasp for words to say, "This guy's got a gun." And, you  
18 know, he – grabbed the object in his waistband, that I saw, that I thought was a gun,  
19 you know, he didn't point. And I know I said "he pointed" but "point" and "draw,"  
20 like I'm just – I'm trying to convey like he's going for a gun and those are the words  
21 that my brain picked at that point, honestly.

22 And then the asking the question like, I just did the most, you know, serious thing  
23 you're ever going to do in this job, you know, you're – you want – you want some  
24 validation, you want to know – like you are trying to make sense of everything and  
25 so, you know, I think, I asked [REDACTED] [REDACTED] something to the effect, "Did you  
26 see that or what was that?" Or something. And then it's like I almost catch myself  
27 like, "No, he had a gun." Like he has a – like just say he had a gun. Tell them what's  
28 going on. Let them know what's going on...I want them to know he has a gun...

29 And then, you know, in this specific case, he did have something, you know, close  
30 to a gun and it wasn't a gun but there was no way for me to know that at the time  
31 and so, I think, you know, your brain is just trying to wrap your head around what  
32 happened and you want some validation. (CX 11 pp. 68:8-71:7.)

33 Detective Tonn went on to dispute the investigator's efforts to establish that Tonn was  
34 uncertain regarding whether Monterrosa had a gun, stating:

1 I perceived what I thought was a gun. Is there, in some sense, afterwards, a level of  
2 uncertainty? I don't know if it's fair to say if there was or there wasn't a level of  
3 uncertainty, you know I – I had in my head almost a mathematical equation of like  
4 one plus one plus one – okay, we're at gun. We're at gun and you have to treat it as  
5 gun. Right? If you don't treat it as a gun right now, given all the evidence,  
6 someone's going to get shot. Is it fair for me to say I had no uncertainty? I did have,  
I mean, obviously, I asked the question. Not that I didn't perceive it as a gun but  
like you want to know, like was it a gun. The evidence was there to act on it as a  
gun. Of course there's some uncertainty...The evidence to me was "gun." (CX 11  
pp. 72:16-73:10.)

7 After discovering that Monterrosa was in possession of a large framing hammer, and not  
8 a gun, Detective made several statements out of frustration with Monterrosa and his actions, which  
9 included the phrase, "Fucking stupid." (CX 11 pp. 75:20-76:17.) He explained that in that  
10 moment, with his "emotions all over the place," he was calling Monterrosa stupid for acting in a  
11 manner consistent with preparing to shoot a firearm at them when he was in fact unarmed. (CX  
12 11 pp. 76:11-77:25.) Detective Tonn believed the shooting was justified, but also was expressing  
13 his frustration and confusion because it did not have to happen – Monterrosa did not need to make  
14 the decisions he made that night that led to the shooting. (CX 11 pp. 77:3-79:19.)

15 Detective Tonn was also asked about the impact his prior officer-involved shooting  
16 experiences impacted this shooting. He stated that in the debrief following an officer-involved  
17 shooting where an officer was hurt, he determined a mistake he possibly made was waiting to  
18 shoot and putting himself at risk because he was worried about recently being involved in another  
19 shooting (CX 11 pp. 86:12-87:2.) Detective Tonn went on to state, however, that he has learned  
20 that you have to deal with each situation as it's happening rather than worrying about the  
21 perception of being involved in multiple shootings. (CX 11 pp. 87:3-88:16)

22 Detective Tonn activated his body-worn camera ("BWC") a few seconds after the  
23 shooting, and attributed not activating it sooner to processing too much information in a short  
24 period of time. (CX 11 p. 45:10-15; p. 46:20-22.) He did not activate it during the meeting with  
25 [REDACTED] [REDACTED] because he did not believe they were going to be taking enforcement action  
26 immediately, but conducting surveillance. (CX 11 p. 47:6-17.) Expecting surveillance operations,  
27 only to be "yanked into enforcement mode," caused Detective Tonn to fail to activate his BWC  
28 until after realizing he was involved in the shooting. (CX 11 p. 48:5-9.)

1           3.    Arbitration Testimony

2           Detective Tonn testified at his administrative appeal (arbitration) hearing on March 21,  
3 2023. His testimony was consistent with his two previous statements, but he was also provided  
4 with the opportunity to provide additional insight regarding his training, perceptions before and  
5 during the June 2, 2020 officer-involved shooting, and to respond to the sustained administrative  
6 findings by the OIR Group and ex-Police Chief Shawny Williams.

7           Detective Tonn joined the CRT in 2016 and the SWAT team in 2018, both of which were  
8 specialty positions he maintained until his termination on October 3, 2022. (AT p. 371:12-17.) In  
9 fact, in late 2020 after the Monterrosa shooting and up until being placed on administrative leave  
10 based on the investigation findings, Detective Tonn was the Vallejo Police Department's SWAT  
11 team leader. (AT p. 375:10-19; p. 376:14-17; p. 376:23-25.) In that role, Detective Tonn was  
12 responsible for overseeing all training, directing tactical movement during operations, carrying  
13 out the tactical plan of the SWAT commander, and directly supervising approximately 18 SWAT  
14 operators when deployed into the field. (*Id.*) Additionally, in July 2020, Detective Tonn was made  
15 the permanent acting CRT sergeant when the designated sergeant was unavailable, and would be  
16 the direct field supervisor of the entire CRT unit. (AT pp. 375:20-376:1.)

17           CRT, which is part of the investigation division of the Department, conducted covert  
18 surveillance to apprehend wanted and violent persons and obtain additional evidence for ongoing  
19 investigations. (AT p. 373:1-5.) CRT detectives required extensive formal training courses in  
20 investigations as well as ongoing training with a variety of public safety agencies. (AT pp. 371:24-  
21 372:12.) The role of SWAT team members is to respond to critical incidents that are generally  
22 static in nature to provide better resources and equipment to assist patrol officers. (AT p. 374:4-  
23 17.) Detective Tonn's SWAT training began in 2011 while he was an officer for the Galt Police  
24 Department, and included extensive mandatory training by the FBI in addition to training twice  
25 monthly with the Elk Grove SWAT team. (AT p. 373:9-25.) Detective explained the primary  
26 difference between CRT and SWAT is that CRT is a covert investigative unit whereas SWAT is  
27 an overt reactive unit. (AT pp. 374:22-375:4.)

28           At arbitration, Detective Tonn provided additional insight regarding the level of unrest in

1 Vallejo and the attacks on the Police Department. Rioters attempted to break into the  
2 Department's lower-level dispatch center, after which SWAT team snipers were deployed to the  
3 roof to provide cover and detect potential threats. (AT p. 378:8-15.) Bricks were thrown through  
4 Department windows, arrests were made in the back parking lot, distraction devices like tear gas  
5 and flash bangs were used, and the Department was required to place concrete "K-rails" at the  
6 intersections surrounding the Department to block vehicle access. (AT pp. 378:16-379:7.) As a  
7 SWAT team member, Detective Tonn received contact email updates and advisements to remain  
8 on standby. (*Id.* at lines 8-15.) Command staff was concerned with the potential that the  
9 Department would be overrun and emails were sent to staff regarding plans if the Department was  
10 breached. (AT pp. 379:18-380:10.)

11 On the evening of June 1, 2020, Detective Tonn and his partners were deployed in their  
12 capacity as SWAT team members. (AT p. 383:18-22.) Later, at the command post, Detective Tonn  
13 spoke with incident commander Captain Potts and SWAT commander Lt. Knight. (AT pp. 24-  
14 388:3.) Then Chief Williams was also present. (*Id.*) Lt. Knight conducted the SWAT briefing, and  
15 directed SWAT resources to respond to assist patrol officers at looting calls and take enforcement  
16 action against any looters. (AT p. 389:1-15.) Detective Tonn was not directed to act in his  
17 investigative capacity as a CRT member, and Lt. Knight did not direct the SWAT team members  
18 to engage in intelligence gathering and surveillance. (AT pp. 389:16-390:8.)

19 Prior to the early morning hours of June 2, 2020, Detective Tonn had never worked with  
20 [REDACTED] [REDACTED] (AT pp. 391:21-392:10.) [REDACTED] [REDACTED] was the highest-ranking captain at the  
21 Department and second in the overall command structure. (*Id.*) Upon meeting with [REDACTED] [REDACTED]  
22 prior to responding to Walgreens, none of the detectives said anything to [REDACTED] [REDACTED] while he  
23 directed them on the tactical approach. (AT pp. 395:12-396:7, pp. 401:20-402:2.) Detective Tonn  
24 understood [REDACTED] [REDACTED] directions to constitute a lawful, direct order from a superior officer.  
25 (AT pp. 403:23-404:11.) Detective Tonn approximated the interaction to last ten seconds before  
26 [REDACTED] [REDACTED] suddenly drove off. (AT p. 396:10-12.) His understanding of [REDACTED] [REDACTED]  
27 orders was that they would be triangulating their positions in contain and contact the looters by  
28 conducting a high-risk stop. (*Id.* at lines 16-21.) Despite their lack of conversation and plan

1 articulation, high-risk stops are “second nature,” assumed in high-risk encounters, and thus do not  
2 require much communication as it is expected an officer knows what to do in those situations. (AT  
3 pp. 402:3-403:22.) He considered [REDACTED] [REDACTED] order constituted a plan. (AT p. 404:12-15.)  
4 Detective Tonn has extensive experience with high-risk stops and approximated conducting 100  
5 to 150 in his career. (AT pp. 397:4-398:9.)

6 The purpose of a high-risk stop is to maintain a safe distance from the suspects and utilize  
7 available cover to assess and respond to the situation. (AT pp. 396:22-397:3.) While high-risk  
8 stops are not trained as a de-escalation tool, they utilize the concepts of de-escalation by waiting  
9 by their vehicle in a position of cover and using time to provide verbal commands to gain voluntary  
10 compliance. (AT p. 398:10-22.) Detective Tonn explained de-escalation training, which is a tool  
11 officers are trained to utilize primarily for persons in crisis, not crimes in progress. (AT p. 399:1-  
12 6.) While some concepts may merge, like time, distance and cover, has never received de-  
13 escalation training regarding crimes in progress as the training focuses on two-way  
14 communication with persons in crisis. (AT pp. 399:7-400:15.) Prior to June 2020, Detective Tonn  
15 never received training on the Vallejo Police Department’s de-escalation policy, which was  
16 enacted in February 2020. (AT pp. 400:20-401:19.)

17 Upon hearing [REDACTED] [REDACTED] advise a subject was “armed,” which in the context of law  
18 enforcement only refers to a firearm, Detective Tonn’s priority was to identify the armed subject  
19 because he was the primary threat to their safety. (AT pp. 410:23-412:15.) Detective Tonn did not  
20 have any conversation with his partners after hearing [REDACTED] [REDACTED] advisement because he  
21 was focused on identifying the armed subject. (AT p. 413:18-24.) Detective Tonn explained that  
22 they did not alter their course or choose a different tactic after hearing the advisement for three  
23 reasons: (1) there was not time; (2) Detective Tonn was not driving and thus not in control of the  
24 vehicle; and (3) [REDACTED] [REDACTED] was already in the lot and they were thus obligated to provide  
25 cover and not leave him behind by himself, especially with an armed subject. (AT pp. 414:5-  
26 415:6.) Detective Tonn characterized leaving Captain behind as neglect of duty, and emotionally  
27 explained:

28 I mean, it would have been bad enough if we changed plans on just what the initial

1       looting was, completely unacceptable dereliction of duty, unacceptable to now  
2       leave [REDACTED] [REDACTED] after he just said someone's got a gun...I get emotional  
3       because I would rather be killed than leave someone behind. You don't do that.  
4       And it upsets me for so many reasons that we can get into later, but I heard the  
5       argument. Especially now, not in spite of that there is an armed person, especially  
6       because there's an armed person, you do not deviate. You stay with him. I'm going  
7       to take a bullet for him or any other person I work with.

8       And to suggest that somehow now that there's an armed broadcast, especially  
9       because there's an armed broadcast I should put my car in reverse or abort or  
10      confuse the situation, is – would have been a dereliction of duty and that you could  
11      have fired me for. You want to fire me, fire me if I leave [REDACTED] [REDACTED] after he  
12      says that there's an armed individual and then I leave. You don't leave. And on top  
13      of that, there was no time for any discussion or anything else.

14      And I'm sorry for getting upset. It's just that is at the heart of this whole report, that  
15      you leave someone who just said I see someone with a gun, but you want now these  
16      other officers to turn around. I cannot fathom that thought process. That thought  
17      process blows my mind that you would even – how dare someone suggest that we  
18      leave this captain when he just said he saw someone with a gun. So, no, there was  
19      no time. It was not a scenario where that would happen. It was not appropriate.  
20      There was no time. And it would have been the wrong thing to do. (AT pp. 415:7-  
21      416:19.)

22      After hearing [REDACTED] [REDACTED] broadcast, Detective Tonn almost immediately saw who  
23      he believed to be the armed individual, dressed in black, running towards a vehicle in a manner  
24      indicative of someone holding a firearm in their waistband. (AT pp. 417:3-418:8.) Despite having  
25      every opportunity to flee in the get-away car, Monterrosa abruptly turned from the vehicle toward  
26      officers, which surprised Detective Tonn. (AT pp. 419:4-420:18.) Detective Tonn saw Monterrosa  
27      abruptly spin away from the vehicle towards officers, then saw an object protruding from his  
28      waistband that looked exactly like the butt of a firearm. He then saw Monterrosa grab the object  
29      and take a half-kneeling position while facing their truck. (AT p. 421:1-6.) Detective Tonn  
30      described the object as dark, elongated, about three to four inches long. At that distance, in  
31      combination with all his other observations, his only conclusion was that Monterrosa possessed a  
32      handgun. (AT p. 421:7-18.) Detective Tonn was convinced Monterrosa intended to fire at them.  
33      (AT p. 421:19-24.)

34      Detective Tonn perceived Monterrosa's actions as inconsistent with surrendering to law  
35      enforcement. (AT p. 422:1-3.) At no point did Monterrosa put his hands up, which based on 15  
36      years of law enforcement experience, is the unconditional sign of surrender. (*Id.* at lines 5-11.)



1 Monterrosa did the opposite of surrendering, which was to place his hands at his waist, which is  
2 well-known to indicate to law enforcement that someone is reaching for a firearm. (*Id.* at lines 12-  
3 18.) Further, Monterrosa in fact grabbed an object in his waistband in the same manner someone  
4 would when grabbing a firearm. (AT pp. 422:25-423:8.) In that moment, Detective Tonn believed  
5 Monterrosa posed an immediate threat to him and his partners. (AT p. 423:10-13.) Knowing there  
6 was that threat, he knew his only choice was to react to the threat and fire his duty rifle at  
7 Monterrosa. (AT p. 423:14-23.) He perceived the threat as so imminent, he had no time to alert  
8 his partners to the gun and taking action was the option to save himself and his partners. (AT pp.  
9 424:10-425:6.) Yelling “gun” rather than taking action to save lives would have been inconsistent  
10 with his training. (*Id.*) Detective Tonn approximated less than five seconds passed between the  
11 time he heard [REDACTED] broadcast to firing his rifle. (AT pp. 423:24-424:3.)

12 Firing his rifle through the windshield was consistent with his training. On April 5, 2019,  
13 Detective Tonn fired a five round “burst” in quick succession – less than two seconds – in order  
14 to ensure success while still using reasonable force. (AT pp. 425:7-426:14.) In Detective Tonn’s  
15 view, one shot would have been unreasonable as would thirty. (*Id.*) His intent was to fire sufficient  
16 rounds to defeat the glass and ensure stopping the threat Monterrosa posed while maintaining his  
17 target. (AT p. 426:2-17.) He was not counting his rounds as he fired. (*Id.*) Detective Tonn has  
18 received extensive training shooting through windshields. He trained on this tactic as a member  
19 of the Elk Grove SWAT team, during a 40-hour pistol course with the Sacramento County  
20 Sheriff’s Office, as well as with the Vallejo Police Department. (AT pp. 426:24-427:15.)  
21 Specifically with Vallejo, he participated in two separate trainings in his SWAT capacity, one of  
22 which was on April 5, 2019, and was extensive. (AT p. 429:1-430:14; UX Y.) Detective Tonn  
23 successfully completed that training. (AT p. 430:15-431:7; UX Y-5-6.) The main points of that  
24 training included firing sufficient rounds to defeat the glass, bullet trajectory through glass,  
25 attempting to shoot through the same hole to defeat trajectory, and firing a reasonable number of  
26 rounds in quick succession to defeat the glass while maintaining target acquisition before  
27 assessing the threat further. (AT pp. 431:10-432:5.)

28 Regarding his statement immediately following the shooting – “What did he point at us?”

1 – Detective Tonn explained that he was in shock and disbelief about what happened because  
2 Monterrosa’s actions were so unexpected. (AT pp. 433:12-435:10.) He is unsure why his “brain  
3 picked those words,” but he had “no doubt whatsoever” that Monterrosa was an imminent threat  
4 and intended to shoot them. (AT pp. 435:17-436:19.) Regarding his next statement following the  
5 shooting – “He pointed a gun at us.” – Detective Tonn explained that he was “snapping out of  
6 what just happened” and knew what just happened and wanted to warn his partners about what he  
7 saw because he was unsure if there was still a threat. (AT pp. 437:4-438:7.) Regarding his  
8 statement after discovering the framing hammer on Monterrosa and not a gun, Detective Tonn  
9 stated:

10 You know, I was feeling a thousand different emotions at one. One of the emotions  
11 was to discover that someone acted so much like they had a firearm and it was a  
12 hammer, I just – I was just dumbfounded. Why would you do you what you did.  
13 Why would you do that. And I was upset. I was upset I just shot someone I was so  
14 certain had a gun only to find out it was something that just looked like a gun. I just  
15 – you don’t want to shoot anybody...I don’t want to shoot anybody. I don’t want  
16 to hurt someone. I don’t want to kill someone that doesn’t have a gun. And I was  
17 just feeling the weight of all that come down on me. And I still to this day don’t  
18 know why he did what he did. I just – I was just upset is the – is a gross  
19 understatement, but I was just upset. (AT pp. 438:14-439:18.)

20 Regarding his statement to [REDACTED] [REDACTED] – “I don’t fucking need this.” – Detective Tonn  
21 stated:

22 You know, we all knew why we were out there. We were all out there in the wake  
23 of George Floyd. We were there because of a police brutality incident. And all these  
24 what maybe started as peaceful protests that have now developed into riots and  
25 looting were all because of that type of officer, you know, excessive force in that  
26 case, and now for me to have just shot someone who only had a hammer in the  
27 middle of a nationwide and statewide and Bay Area protest over that, I just knew,  
28 like, my life would never be the same.

And I don’t - I don’t mean to sound like I did not care about shooting someone, but  
I’m being honest in the moment, I just knew, like, this is bad. This is bad. This is  
going to cause more of what we are out here trying to stop. I’m going to be in the  
news. Like, I’ve been doing this long enough to know that this is going to be a high-  
profile incident, and in that things are never going to be the same.

And, again, I can’t imagine what it’s like to lose a son. I can’t imagine that. I’m not  
trying to minimize their loss, I’m really not, but that’s what I was feeling. And it  
has been. (AT pp. 439:19-441:1.)

At the conclusion of Detective Tonn’s testimony, this arbitrator asked him several relevant

1 questions regarding his BWC activation. Detective Tonn clarified that his BWC was on, as it  
2 constantly records with a two-minute buffer, and it did in fact video record the time of the shooting  
3 but lacked the audio until he activated the BWC after the shooting. However, due to Detective  
4 Tonn's position in the truck and the angle of the BWC, the BWC could not capture Detective  
5 Tonn's view through the windshield that would have captured Monterrosa's actions prior to the  
6 shooting. (AT pp. 466:10-468:11.)

7 B. Corroborating Evidence

8 1. [REDACTED]

9 [REDACTED] [REDACTED] who had 14 years of law enforcement experience at the time of the  
10 shooting (CX 3, p. 1), also provided a voluntary statement to homicide investigators the morning  
11 following the shooting, in addition to a compelled administrative interview and arbitration  
12 testimony. During his voluntary and compelled statements, [REDACTED] [REDACTED] reiterated the same  
13 observations and concerns as Detective Tonn regarding the "heightened sense of alert from  
14 everybody" due to the unprecedented and increasing violence and chaos in Vallejo. (CX 3 p. 5:17-  
15 27, p. 15:12-37; CX 9, pp. 11:3-25, pp. 13:19-14:9, p. 35:1-9; AT pp. 105:13-106:19.) [REDACTED]

16 [REDACTED] also attended the SWAT briefing in the Best Buy parking lot, and testified that in addition  
17 to SWAT members, Lt. Knight, Captain Potts, and Chief Shawny Williams were present. (AT  
18 85:1-7.) Lt. Knight led the briefing and directed the SWAT team to prioritize protecting the Police  
19 Department from additional attacks, protecting high value targets like gun stores and pharmacies,  
20 and assisting patrol in enforcement and apprehension of criminals. (AT pp. 85:12-86:1.)

21 [REDACTED] [REDACTED] also provided corroborating statements regarding their meeting with  
22 [REDACTED] [REDACTED] before entering the Walgreens parking lot. (CX 3, p. 6:3-13; CX 9, p. 14:25-  
23 16:25.) [REDACTED] [REDACTED] quickly directed them on the tactical approach – he stated he was going to  
24 go right and told them to approach from the other entrance, then took off. (CX 9, p. 16:15-25, p.  
25 17:5-8, p. 25:13-18; AX p. 88:10-25.) He expected they would be making arrests. (CX 9 pp. 25:24-  
26 25:4.) [REDACTED] [REDACTED] approximated their meeting with [REDACTED] [REDACTED] lasted less than ten  
27 seconds. (CX 9 p. 17:1-2; AT p. 89:1-2.) [REDACTED] [REDACTED] perceived [REDACTED] [REDACTED] directions  
28 as an order. (AT p. 107:22-25.)

1 He approximated it took them less than five seconds to travel less than 100 feet to the  
2 Walgreens parking lot. (CX 9 p. 17:23.) After they entered the parking lot, approximately less  
3 than 100 feet from the Pharmacy drive-through, [REDACTED] [REDACTED] heard [REDACTED] [REDACTED] advise  
4 that the subjects were armed. (CX 9 p. 17:23-18:8; AT p. 90:3-7.) [REDACTED] [REDACTED] believed  
5 [REDACTED] [REDACTED] was referencing firearms and was concerned for their safety based on that  
6 advisement, especially considering how dynamic the entire night was. (CX 9 p. 18:9-21, p. 28:4-  
7 16.) At that moment in time, according to [REDACTED] [REDACTED] they were already committed to their  
8 enforcement plan and there was no time to change their plan. (CX 9 p. 18:22-19:5.) When  
9 questioned further about being “committed” to their plan, [REDACTED] [REDACTED] explained:

10 I don’t think that that would have been feasible and by the time we were actually  
11 able to process, just based on my experience, by the time we were actually able to  
12 process that a) that they’re armed, we’re already moving. By the time that’s actually  
13 done processing, we would have been on top of them. In addition to that...that  
14 would have left us to communicate on the radio with – with [REDACTED] [REDACTED] this  
15 is a change of plan and had he not heard that he would have committed to that by  
16 himself and then he would have been in a, you know, he would have tried to be  
taking enforcement action by himself without any cover. Based on...us moving and  
the proximity, and [REDACTED] [REDACTED] position, and...him moving, I don’t think that  
that was possible or safe at the moment to fully abort the mission. (CX 9 pp. 28:17-  
29:13.)

17 At arbitration, [REDACTED] [REDACTED] further explained why at the time they heard [REDACTED]  
18 [REDACTED] broadcast they could not alter their plan and there was no time to do so:

19 I don’t think that would have been appropriate, and I don’t think it would have been  
20 safe. And I don’t think it would have been in the best interest of...what we had  
21 already planned, because that would have left [REDACTED] [REDACTED] exposed without  
22 cover. He was a solo unit. We were also in a position there in the parking lot where  
23 there weren’t any places to take cover or bail out or turn. We were confined to our  
car. And...it was not feasible and not safe to abort or abandon the mission at that  
point. (AT p. 117:3-23.)

24 As the detectives drove through the parking lot, [REDACTED] [REDACTED] believed the plan was  
25 to conduct a felony (“high-risk”) stop. (AT p. 92:20-23, p. 108:3-18.) Under the circumstances,  
26 more communication with [REDACTED] [REDACTED] regarding the plan was not necessary as high-risk stops  
27 are routine police work, especially in Vallejo. (AT 104:4-20.) Moreover, the entire department  
28 was engaged in high-risk stops under the same circumstances throughout that night, including

1 earlier at the same Walgreens. (AT p. 109:11-17, p. 124:11-25.)

2 [REDACTED] [REDACTED] saw Monterrosa walking to a black Altima, but after [REDACTED] [REDACTED]  
3 activated their red and blue lights, the Altima started to take off and Monterrosa hustled up to car.  
4 (CX 3 p. 9:34-43.) [REDACTED] [REDACTED] believed Monterrosa threw something into the open rear  
5 door or was trying to get into the backseat. (*Id.* at lines 43-44.) The Altima took off a little bit and  
6 left Monterrosa behind by a few feet, after which Monterrosa ran back up to the car before the car  
7 took off. (CX 3 pp. 9:44-10:2; AT pp. 90:22-91:3.) This took place within two to three seconds of  
8 the detectives pulling up to the drive-through area. (CX 3 p. 10:2-3.) [REDACTED] [REDACTED] then saw  
9 Monterrosa rotate to his left to face their truck and took a kneeling position on his right knee. (*Id.*  
10 at lines 9-13.) [REDACTED] [REDACTED] saw Monterrosa holding a dark item in his right hand, concealed  
11 up against his mid-section towards his waist, holding it like someone would hold a gun. (*Id.* at  
12 lines 17-37; CX 9 pp. 47:7-48:9; AT pp. 91:20-92:8, p. 93:2-13.) [REDACTED] [REDACTED] perceived  
13 Monterrosa's position as a shooting position, believed the object was a gun, and when Monterrosa  
14 spun around he was "fully expecting [they] were gonna start taking rounds.". (CX 3 p. 10:45, p.  
15 13:32-33, 41-42; interview part 2, at p. 3:7-26; AT p. 118:19-24, p. 119:7-9.) [REDACTED] [REDACTED]  
16 did not believe there was any chance for Officer Tonn to take any other action. (CX 3, interview  
17 part 2, p. 14:4-6.; CX 9, pp. 49:22-50:8.) According to [REDACTED] [REDACTED] Monterrosa posed an  
18 imminent threat and had the present ability, opportunity, and apparent intent to kill him or his  
19 partners. (AT p. 119:18-25.)

20 On the initial approach to the Walgreens, [REDACTED] [REDACTED] had armed himself with a flash  
21 bang to potentially use upon exiting the vehicle. However, after hearing [REDACTED] [REDACTED]  
22 advisement and seeing Monterrosa's actions, he transitioned to his firearm. (CX 3 p. 11:7-10; CX  
23 9 p. 37:5, p. 54:17-22.) [REDACTED] [REDACTED] saw the imminent threat posed by Monterrosa while he  
24 was still in the car, but could not transition to his firearm until he was out of the truck. (AT p.  
25 121:9-12.) He described the decision-making process of transitioning to his firearm as occurring  
26 almost simultaneously, and within three seconds. (CX 9 p. 38:1-7; AT p. 120:8-20.) [REDACTED]  
27 [REDACTED] decided to transition to his firearm when he observed Detective Tonn shooting and saw  
28 the threat Monterrosa posed, which he described as a contemporaneous event. (CX 9 p. 38:7-14.)

1 If he had already had his gun out, [REDACTED] [REDACTED] would have also fired at Monterrosa from  
2 inside the vehicle because deadly force was the only option. (AT p. 121:13-25.)

3 [REDACTED] [REDACTED] did not activate his BWC until after he exited the truck. (CX 3, interview  
4 part 2, pp. 1:43-2:5; CX 9 p. 64:16-20.) [REDACTED] [REDACTED] stated during his compelled interview  
5 that he felt “pressed” into taking action by [REDACTED] [REDACTED] and due to how quickly and  
6 unexpectedly the events unfolded in the Walgreens parking lot he failed to activate it immediately.  
7 (CX 9 p. 66:4-25.) For his failure to allegedly improperly activate his BWC, and for sustained  
8 policy violations related to their tactics, [REDACTED] [REDACTED] received the lowest level of discipline,  
9 a letter of reprimand. (AT pp. 123:15-10.)

10 2. [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED] who had 6 ½ years of law enforcement experience at the time of the  
12 shooting (CX 4, p. 1), also provided a voluntary statement to homicide investigators the morning  
13 following the shooting, in addition to a compelled administrative interview and arbitration  
14 testimony. During his voluntary and compelled statements, [REDACTED] [REDACTED] reiterated the same  
15 observations and concerns as Detective Tonn regarding the criminal activity and chaos in Vallejo,  
16 as well as the Department’s high state of alert. (CX 4 p. 2:53-63, pp. 8:328-367, p. 10:408-411,  
17 p.11:464-484, p. 12:528-532; CX 10 pp. 6:17-7:4, p. 11:2-12; AT pp. 50:22-53:12.) Due to the  
18 attack on the Police Department on May 31<sup>st</sup>, [REDACTED] [REDACTED] and the other SWAT team  
19 members were ordered to prioritize protecting the Department and staff should it come under  
20 attack again. (CX 11 pp. 7:17-8:1, p. 9:1-11.) Other than protecting the Department, SWAT  
21 officers were directed to assist patrol and enforcement of looting of businesses. (CX 11 p. 10:1-6;  
22 AT p. 50:8-21.)

23 After several hours in the field, [REDACTED] [REDACTED] heard [REDACTED] [REDACTED] request priority  
24 traffic and for units to respond to his location to assist with looting enforcement. (CX 4 p. 13:547-  
25 563; CX 10 p. 16:15-19, p. 17:10-15.) After [REDACTED] [REDACTED] pulled up alongside [REDACTED]  
26 [REDACTED] [REDACTED] told them something to the effect of, “Hey I’m gonna north around there.  
27 You guys go around.” (CX 4 p. 14:592-616; CX 10 p. 20:3-25.) The interaction with [REDACTED]  
28 [REDACTED] last approximately 10-15 seconds. (CX 10 p. 20:15-17; AT p. 57:1-21.) [REDACTED]

1 [REDACTED] understanding, despite the brief interaction, was that they would enter the parking lot,  
2 turn on their lights and sirens, and apprehend the looters. (CX 10 p. 21:19-21, p. 22:13-20; AT pp.  
3 69:22-70:5.) Their tactical plan was routine enforcement and common practice that night  
4 throughout Vallejo. (AT p. 70:6-71:13.) Further, [REDACTED] [REDACTED] perceived [REDACTED] [REDACTED]  
5 directions as an order. (AT p. 71:22-24.)

6 As [REDACTED] [REDACTED] was driving through the Walgreens parking and approaching the  
7 looters, he heard [REDACTED] [REDACTED] advise, in an elevated manner, "Hey, they're armed, they're  
8 armed, they're all armed," or something to that effect. (CX 4 p. 15:649-667; CX 10 p. 24:11-17.)  
9 Hearing that advisement heightened [REDACTED] [REDACTED] officer safety and awareness, and he  
10 turned on his truck's lights and sirens. (CX p. 10:18-20, p. 26:6-10.) At that moment, there was  
11 no time or opportunity to wait for additional units or change their plan because they were  
12 committed to the situation. (CX 10 p. 25:12-25.) There was no reason to change their plan, it was  
13 not feasible, and it would have left [REDACTED] [REDACTED] by himself which is a significant officer safety  
14 issue. (AT pp. 72:1-73:5) Further, as a CRT member, [REDACTED] [REDACTED] commonly targets armed  
15 suspects, and stated that "90% of the people we go after are typically armed or known to be  
16 armed." (CX 4 pp. 20:883-21:902.)

17 As the looters were attempting to flee, [REDACTED] [REDACTED] saw Monterrosa, who was the  
18 last one to run from the pharmacy window area, holding his waistband as he ran to a vehicle. (CX  
19 4 p. 17:729-733.) As Monterrosa was running and holding his waistband, [REDACTED] [REDACTED]  
20 could see something protruding from his waistband that he thought was a revolver handle or pistol  
21 magazine. (CX 4 p. 17:737-745; CX 10 p. 51:14-18; AT 35:9-14, p. 36:2-4.) In [REDACTED]  
22 [REDACTED] training and experience, Monterrosa was holding his hands in a manner consistent with  
23 carrying or retrieving a firearm. (CX 4 p. 21:904-909.) [REDACTED] [REDACTED] believed Monterrosa  
24 was in possession of a firearm with a high-capacity magazine. (CX 10 p. 53:8-11; AT p. 67:8-13.)  
25 In order to maintain their distance from a potentially armed subject, [REDACTED] [REDACTED] slowed  
26 his vehicle down. (AT p. 36:8-12.) Believing that Monterrosa was going to flee in the vehicle,  
27 [REDACTED] [REDACTED] was surprised when Monterrosa quickly spun around and faced the them. (CX  
28 4 p. 19:842-854.) Immediately prior to Detective Tonn firing his rifle, [REDACTED] [REDACTED] could

1 see Monterrosa facing them with his hands towards his waistband area. (CX 4 p. 21:933-939; CX  
2 10 pp. 55:23-56:4.) [REDACTED] [REDACTED] remembers Detective Tonn stating “watch out” just before  
3 firing. (CX 10 p. 56:5-16; AT 37:11-14.) [REDACTED] [REDACTED] had never had anyone turn around  
4 like that so quick in an aggressive manner, and he thought he was going to be shot. (CX 4 pp.  
5 21:945-22:948, p. 24:1071-1073, p. 25:1095-1099; AT 67:14-22.) According to [REDACTED]  
6 [REDACTED] Monterrosa posed an immediate threat and had the present ability, opportunity, and  
7 apparent intent to cause death or serious bodily injury to him and his partners. (AT pp. 68:15-  
8 69:14.)

9 [REDACTED] [REDACTED] was questioned regarding his training shooting through windshields in  
10 his compelled interview. [REDACTED] [REDACTED] explained that they are permitted to shoot through  
11 windshields and that the first round can deflect up or down depending on whether shots are fired  
12 out of or into a windshield, but the deflection is minimal. (CX 10 p. 61:10-18.) He further  
13 explained that although bullet trajectory can be affected when shooting through a windshield, that  
14 would not prevent him from assessing an immediate threat if his life or his partners’ safety is in  
15 immediate jeopardy. (CX 10 p. 61:19-24.)

16 [REDACTED] [REDACTED] further explained at arbitration that when perceiving an imminent  
17 deadly threat, he has not been trained to fire one round then reassess the situation. He has been  
18 trained to fire enough times to stop the threat. (AT p. 77:3-15.) Had [REDACTED] [REDACTED] been in  
19 Detective Tonn’s position as lethal cover, he would have discharged his firearm several times until  
20 there was no longer a threat. (AT p. 77:16-21.)

21 [REDACTED] [REDACTED] like Detectives Tonn and [REDACTED] did not activate his BWC until a  
22 few seconds after the shooting. (CX 10 p. 37:5-25.) Due to how quickly the events unfolded, and  
23 his primary focus being on potential armed threats due to [REDACTED] [REDACTED] advisement, [REDACTED]  
24 [REDACTED] failed to activate his BWC earlier. (CX 10 p. 39:1-15.) [REDACTED] [REDACTED] activated his  
25 BWC when he felt it was safe to do so. (*Id.*)

### 26 3. Captain Jason Potts

27 Jason Potts was a Captain with the Vallejo Police Department and the ESU Commander  
28



1 who oversaw the SWAT team and incident commander on June 1-2, 2020<sup>7</sup>. (AT p. 302:17-19, p.  
2 305:5-15.) He is now the Public Safety Director (“Chief”) for the City of Las Vegas, Department  
3 of Public Safety. (AT p. 302:20-25.) Captain Potts corroborated the unprecedented violence and  
4 looting activities discussed by Detective Tonn and his partners, and stated “it was something  
5 unlike [he] hadn’t seen in his career” and did not think anyone had seen anything like it before.  
6 (AT pp. 306:10-309:23.) Captain Potts also testified regarding the various attacks on the Police  
7 Department, requiring deployment of SWAT officers to the Department rooftop. (AT pp. 310:9-  
8 312:6.)

9 Captain Potts began his shift on June 1, 2020 at 8:00 a.m., and further testified that Chief  
10 Williams also worked that entire day and he kept Chief Williams apprised of the criminal activity  
11 throughout Vallejo the Department’s plan to address that activity. (AT p. 312:14-313:19.) Chief  
12 Williams was also present at the command post the evening of June 1<sup>st</sup> and attended the SWAT  
13 team. (AT p. 314:10-21.) Captain Potts’ intent for the SWAT briefing, delivered by Lt. Knight,  
14 “was to arrest looters, period. Arrest looters and keep our city safe.” (AT pp. 314:25-315:3.) Chief  
15 Williams was aware of that mission. (*Id.* at lines 4-6.) Captain Potts further characterized the  
16 mission as “maximum enforcement” and to that end high-risk stops were conducted by officers  
17 throughout the night to “kip a lid on violent, riotous behavior.” (AT pp. 315:10-316:19.) Chief  
18 Williams was aware of high-risk stops occurring throughout Vallejo that night as Captain Potts  
19 was next to him at the command post listening to the same radio traffic. (AT pp. 316:20-317:10.)  
20 At no point that evening did Chief Williams object to officers engaging in maximum enforcement  
21 or the use of high-risk stops. (AT p. 317:11-15.)

22 Several months after Chief Williams received the OIR Group’s report regarding Detective  
23 Tonn’s officer-involved shooting, he asked Captain Potts to review and opine on the report. (AT  
24 pp. 317:16-318:5.) Captain Potts took issue with two main points of the OIR Group’s findings,  
25 and addressed those issues with Chief Williams. (AT p. 318:6-7.) The first issue Captain Potts had  
26 with the report was their findings regarding de-escalation. Captain Potts testified:

27  
28  

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<sup>7</sup> Chief Potts will be referred to as “Captain” to reflect his position with Vallejo PD at the time of the incident.

1 So I told him it was, first off, poorly written. It talked about de-escalation for the  
2 sake of de-escalation. And so, in my mind, when we talk about de-escalation, it's  
3 stabilizing a scene. A lot of times folks say it's a rapport building or slowing things  
4 down, and sometimes you can't. There's shifting priorities, and there's dynamic  
5 needs. And so those things don't always occur in policing. And so I talked about  
6 the fact that this emphasis on de-escalation was just unrealistic and far-fetched and  
7 not a one-size-fits-all proposition in policing. We can't do de-escalation in every  
8 situation. (AT p. 318:12-24.)

9 The second issue Captain Potts had with the OIR Group report was their failure to address  
10 Detective Tonn's perception of Monterrosa's present ability, opportunity, and apparent intent.  
11 Captain Potts explained:

12 So, when we talked about the ability, opportunity, and intent, I told our chief that,  
13 you know, the subject had the ability, had the opportunity, and had the intent if our  
14 officer believed he was armed with a firearm. And we talked about that quite  
15 frequently. (AT pp. 318:25-319:10.)

16 Chief Williams did not give Captain Potts much feedback regarding his opinions, but just  
17 looked at him and listened. (AT p. 319:11-16.) During their frequent conversations regarding  
18 Monterrosa's present ability, opportunity, and apparent intent to cause death or serious bodily to  
19 the detectives, Chief Williams was "hung up on the fact that the subject didn't have a firearm."  
20 (AT p. 319:17-22.) They discussed at length about what happens if he did have a firearm, how  
21 "we can't think of these things in a vacuum in a 20/20 hindsight," *Graham v. Conner*, and the  
22 officer's mindset and what he believed at the time. (AT pp. 319:22-320:10.)

#### 23 4. Lieutenant Robert Knight

24 In June 2020, Lt. Knight was a 21-year veteran of the Vallejo Police Department and the  
25 professional standards lieutenant that oversaw internal affairs, as well as the SWAT commander.  
26 (AT 323:4-22, p. 329:11-14.) As the SWAT commander, his duties entailed command and control  
27 of the SWAT team, regulation of training, administration and approval of operations plans, and  
28 day-to-day tasks of the team. (AT p. 324:1-5.) In his capacity as the SWAT commander, he  
directly reported to ESU commander Captain Jason Potts. (AT p. 324:6-18.) In his capacity as the  
professional standards lieutenant, Lt. Knight would regularly interface, and report to, Chief  
Williams. (AT pp. 325:18-327:14.)

Lt. Knight also testified regarding the extent of civil unrest and attacks on the Police

1 Department following the death of George Floyd, and the required “all hands-on deck” approach  
2 by the Department to combat the criminal activity and chaos. (AT pp. 331:13-333:4.) The  
3 Department was, however, limited in the number of arrests they could make due to the  
4 “overwhelming outnumberedness [they] were encountering.” (AT p. 333:5-19.) On the evening on  
5 June 1, 2020, Lt. Knight received a phone call from Captain Potts to discuss how the environment  
6 had changed and the focus was not on the Department, but mobile criminal acts of looting, so they  
7 needed to mobilize the SWAT team for additional manpower to address the looting. (AT p. 334:1-  
8 15.) Lt. Knight and Captain Potts developed an operation plan to assign groups of officers to  
9 specific city sectors to observe looting and other criminal acts and conduct appropriate  
10 enforcement action and make arrest. This operation plan was conveyed to SWAT team members  
11 during the briefing and the command post on the evening of June 1, 2020. (AT pp. 335:11-337:2.)  
12 Lt. Knight’s expectation and directive as a commanding officer was that if officers observed  
13 looting activity, arrests would be made. (AT p. 337:3-20.) Chief Williams was present for Lt.  
14 Knight’s briefing. (AT pp. 337:21-338:3.)

15 As the division commander for professional standards, Lt. Knight was responsible for  
16 initiating the administrative investigation of Detective Tonn’s officer-involved shooting. (AT p.  
17 338:4-17.) Lt. Knight and internal affairs Sgt. Ramrakha responded to the scene, participated in  
18 all case briefings, conducted a walk-through of the scene, observed the criminal investigation  
19 interviews, provided input and guidance to the criminal investigators, and began their parallel  
20 administrative investigation. (AT p. 339:4-21.) On or about June 4, 2020, Chief Williams advised  
21 Lt. Knight and Captain Potts that after discussions with the city manager it was decided the  
22 Department would contract the administrative investigation out to the OIR Group. (AT p. 340:3-  
23 20.) Chief Williams told Lt. Knight the decision to use OIR was “political”. (AT p. 341:4-10.) Lt.  
24 Knight advised Chief Williams he believed that was a “really bad idea” due the vast amount of  
25 information they lacked since they were not involved in the critical investigation that occurred  
26 over the past two days. OIR Group was not formally brought in to investigate the case until quite  
27 some time later. (AT pp. 340:21-341:16.) Lt. Knight then served in an internal affairs liaison-role  
28 with OIR Group. (AT p. 341:17-20.) In that role, Lt. Knight would have routine phone calls with

OIR Group, provide them with necessary documents and evidence for their investigation, draft interview notices, and participate in countless conversations regarding case decisions, policies and strategies. (AT p. 342:1-21.)

Lt. Knight also spoke with Mr. Connelly from the OIR Group regarding his disagreements with their investigative methods, including their violations of Department policy. Policy #306.6(b)(1) specifically cautions investigators about duplicative questioning, and states that following an officer-involved shooting voluntary statement: “If a further interview of the officer is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement.” (UX F-7.) Despite expressing his concerns, Mr. Connelly was intent on conducting full interviews with duplicative questioning. (AT pp. 343:346:1) Lt. Knight also recalled lengthy conversations with Mr. Connelly regarding what appeared to be a lack of understanding of the timing of events leading up to the shooting. Based on their conversations, it was clear to Lt. Knight that Mr. Connelly misunderstood certain timeframes to be longer than they actually were due to his reliance on inaccurate dispatch audio and dispatch reports. (AT pp. 346:5-348:22.) Ultimately, when Lt. Knight read the OIR report he was shocked that the details regarding the timing of events was omitted because timing is critical to analyzing whether a use of force is reasonable. (AT pp. 347:23-348:5, pp. 348:23-349:3.)

Lt. Knight also took issue with the OIR Group’s failure to include his comments regarding the tactics used by Detectives Tonn, [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. According to Lt. Knight, their tactics that evening were consistent with their mission and their enforcement tactic was completely appropriate and standard practice, despite the fact a fatal encounter occurred. (AT pp. 350:4-354:12.) Under the circumstances, Lt. Knight would not have expected the detectives to “push back” on [REDACTED] [REDACTED] plan. (AT pp. 354:13-355:17.)

Lt. Knight has extensive internal affairs investigation experience and has authored, conservatively, upwards of 50 reports and reviewed and approved well over one hundred. (AT pp. 355:20-356:13.) Despite his experience and position as the professional standards division commander, Lt. Knight was for unknown reasons precluded from the review and approval process

1 of the OIR Group report. (AT pp. 357:13-359:18.) Lt. Knight expressed a variety of unmet  
2 expectations regarding the OIR Group report, most importantly the following: (1) OIR Group's  
3 reliance on compelled statements taken a significant time later rather than their contemporaneous  
4 voluntary statements; (2) lack of reliance on a firearms and tactics expert; (3) utilizing opinion  
5 rather than actual factual analysis; and (4) analysis of the video footage and timing of the sequence  
6 (AT pp. 360:19-636:4.) In his training and experience, internal investigators should be fact finders  
7 and refrain from rendering opinions. (Id.) Here, "OIR Group conducted their investigation, they  
8 gave their opinion and cited it as analysis and fact, and then they made their own findings. And I  
9 believe...it created this environment of a catastrophically bad administrative investigation. I don't  
10 say that lightly." (AT pp. 363:24-364:3.)

11 Lt. Knight also expected Detective Tonn's investigation to go before the Department's  
12 Critical Incident Review Board ("CIRB") pursuant to Department Policy 301, which it never was.  
13 (AT p. 365:14-20; UX E.) The CIRB is important because it allows commanding officers,  
14 members of the training department, professional standards, and subject matter experts to  
15 thoroughly review an incident to determine whether it comports with Department policy and/or  
16 whether the Department needs to revise policy or training. (AT pp. 364:6-365:4.) Policy 301.1  
17 states:

18 This policy establishes a process for the Vallejo Police department to review the  
19 use of force by its employees.

20 This review process *shall* be in addition to any other review or investigation that  
21 may be conducted by any outside or multi-agency entity having jurisdiction over  
the investigation or evaluation of the use of deadly force. (UX E-2.) (Emphasis  
added.)

22 Policy 301.4 states: "The Critical Incident Review Board *will* be convened when the use  
23 of force by a member results in very serious injury or death to another." (UX E-2.) (Emphasis  
24 added.) Despite the unambiguous policy mandate, Chief Williams, in violation of this policy,  
25 refused to convene the CIRB to evaluate Detective Tonn's officer-involved shooting. (AT pp.  
26 365:19-366:12.) Detective Tonn's case is the only critical incident Lt. Knight is aware of that did  
27 not go to the CIRB. (AT pp. 366:13-367:6.)  
28

1           5.   Sgt. Shane Bower

2           On June 2, 2020, Sgt. Bower was a 20-year veteran of the Vallejo Police Department and  
3 a sergeant for the traffic division, as well the commander of the hostage negotiation team, a  
4 firearms instructor, rangemaster, and member of peer support. (AT p. 251:4-24, p. 253:11-12.) As  
5 of Detective Tonn’s arbitration, he had been promoted to lieutenant<sup>8</sup>, professional standards  
6 division commander, and SWAT commander. (AT pp. 249:20-250:1.) He is still the Department  
7 rangemaster. (AT p. 251:1-2.) Sgt. Bower has extensive firearms training and experience, both as  
8 a firearms instructor for the Department since 2010 and a firearms and tactics instructor for the  
9 United States Army for 17 years. (AT pp. 252:21-253:8.) Sgt. Bower provides firearms training  
10 for the Department. (AT p. 255:15-20.) Based upon his extensive firearms expertise, Sgt. Bower  
11 has been called upon to testify and render opinions as a subject matter expert regarding firearms  
12 and tactics, typically involving use of force scenarios, as was qualified at arbitration to do so. (AT  
13 pp. 262:1-263:12.)

14           Sgt. Bower testified regarding high-risk stop techniques and tactics, and stated:

15           Well, it’s supposed to “work to the advantage of the arresting officers...responding  
16 to the arrest or threat. If you have the advantage of distance and time, you can  
17 usually formulate a better plan or at least have time to communicate how you go  
18 about doing that...Time and distance comes into play with a lot of things as it  
19 pertains to us, but it’s only fair that I mention, we don’t always have that luxury of  
time and distance when encountering subjects, whether it’s a deadly force scenario  
or not. (AT pp.264:15-265:7.)

20           Sgt. Bower further testified that high-risk stops are consistent with the principles of de-  
21 escalation, as they utilize time and distance to gain a tactical advantage over the suspect and  
22 provide the suspect with more time to decide to surrender. (AT p. 265:8-17.) Additionally, “if at  
23 that point in time they decide to present a deadly threat and the officers have to respond to that,  
24 that distance, time, and position that they are in should and typically does provide the advantage  
25 to the officers to neutralize that threat.” (*Id.* at lines 18-22.) Due to the high level of crime in  
26 Vallejo, Department officers are extremely experienced in high-risk stops and they are routine for  
27

28           <sup>8</sup> Lt. Bower will be referred to as Sergeant to reflect his rank at the time of the incident and administrative  
interview.

1 Vallejo Police Department officers. (AT p. 265:23-266:25.) CRT members have significantly  
2 more experience conducting high-risk stops than patrol officers. (AT p. 267:3-10.)

3 Discussing Section 835a's language regarding "present ability, opportunity, and apparent  
4 intent," Sgt. Bower testified:

5 It means that the officer's perception is that that person, quite literally, has the  
6 ability to use deadly force or is a deadly threat to them or others. They have the  
7 ability to carry that out, and the officer has to formulate a plan and react to that...It  
8 has to be looked at from the officer's perception at the time. To look at it in  
9 hindsight is a disservice to what that officer is experiencing at the time and leaves  
10 out relevant facts...we only look at it in hindsight, but you have to take in the factor  
of what was occurring at the time. You can't just look at it and parse out individual  
actions because you're not taking all relevant factors into account. You can't  
recreate the stress of the event in hindsight, analyzing it through video, interviews,  
or reading a report. (AT pp. 268:5-269:10.)

11 Sgt. Bower further states the fact that a subject is later determined to be unarmed does not  
12 change the analysis as it relates to present ability, opportunity, and apparent intent. (AT 269:11-  
13 16.) When analyzing the use of deadly force, you must take into account all the facts leading up  
14 to and during the event that the officer perceives at the time, rather than with the luxury of  
15 hindsight. (*Id.* at lines 18-25.)

16 Sgt. Bower also discussed "human factors" and the psychology involved in a deadly force  
17 encounter, both his personal experiences in law enforcement and the military as well as through  
18 training with Force Science<sup>9</sup>. (AT pp. 270:10-271:23.) He specifically discussed how following  
19 an officer-involved shooting, officers will often make statements and react in ways that may seem  
20 strange or nonsensical. Sgt. Bower stated:

21 Well...the officer has just been put into an extremely stressful situation. They have  
22 a wide range of emotions. What they say, what they do, or how they react can be a  
23 wide variety of things. They may say something and not even recall that they said  
24 it. Some people may even have the inability to formulate words or coherent  
25 sentences. Some of them are still processing – really probably all of them are still  
26 processing the events in their mind while they are trying to formulate thoughts and  
verbalize what they want to say, although it may not necessarily be coming out  
coherently or in the manner in which they intended it to come out. And there's the  
other side of that too, where people can communicate clearly.

27  
28 <sup>9</sup> Force Science is an internationally recognized training organization that employs a scientific approach to provide  
training regarding human factors, time and distance, and other psychological, physiological, and perceptual nuances  
of deadly force encounters. (AT p. 271:1-23; UX C11-19; [www.forcescience.com](http://www.forcescience.com).)

1 I mean, and I can tell you from experience, you can – you can experience a wide  
2 range of these emotions, physical and psychological responses regardless of how  
3 many of these events you’ve been in. Whether it’s your first, your second, your  
4 third, you may experience some of these what would be considered negative or odd  
reactions after you’ve already experienced these events before and had a more  
coherent reaction. (AT p. 272:5-273:8.)

5 In simple terms, Sgt. Bower explained these reactions as stress-related responses by an  
6 officer who just perceived that their life or the lives of others were threatened, and are experiencing  
7 “sensory overload.” (AT p. 273:12-16.) “The amount of stress there is above and beyond what  
8 most human beings encounter in their lifetime.” (*Id.* at lines 17-18.)

9 Sgt. Bower also testified regarding the Department training he provides regarding shooting  
10 through windshields, which involves shooting at a target between 20 and 35 yards from inside a  
11 vehicle. (AT p. 276:4-6.) He explained that “typically shooting through a windshield from the  
12 interior of the vehicle will create a slight deviation upward of the projectile,” but if “you can fire  
13 rounds through the same hole, you reduce any deviation of that bullet...finding its target.” (AT p.  
14 275:17-22.) He went on to explain that the deviation is “very minimal.” (*Id.* at lines 23-24.) He  
15 does not train officers to fire a specified number of rounds, but to “fire until the threat is neutralized  
16 or they no longer perceive the threat.” (AT p. 277:6-7.) There are exceptions (i.e., snipers), but  
17 not in scenarios involving handguns or rifles. (*Id.* at lines 8-20.)

18 In most deadly force encounters using a firearm, officers are going to be rapidly  
19 firing their weapon. We do not train an officer in those types of encounters to only  
20 shoot one round unless they clearly see that the threat has ended. But typically it is  
21 more. And even the physical response in most officer-involved shootings is that the  
officer fires a volley of rounds. (AT p. 279:14-21.)

22 Sgt. Bower was interviewed by the OIR Group during Detective Tonn’s administrative  
23 investigation as a subject matter expert to render an analysis regarding the use of force and was  
24 questioned regarding training and the tactics utilized on June 2, 2020. (AT p. 281:1-23.) The OIR  
25 Group failed to provide Sgt. Bower with any reports, videos, or other evidence related to the  
26 shooting prior to his interview, then discounted and disregarded his statements as limited in value  
27 based in part on his lack of knowledge of the facts. (AT p. 282:8-11; CX 7 p. 14.) He did, however,  
28 review the OIR report prior to his arbitration testimony. (AT p. 282:13-23.) Based upon his review



of the report and BWC evidence, Sgt. Bower rendered the following expert opinions:

- (1) [REDACTED] [REDACTED] plan constituted a “directive” from one of the highest-ranking members of the department. (AT p. 284:4-16)
- (2) The “highly trained detective and SWAT operators are the people that are specifically trained and expected to respond to these types of events.” (*Id.* at lines 17-19.)
- (3) He would not expect the detectives to “push back” against [REDACTED] [REDACTED] plan, which was not “unethical, immoral, or illegal or outside of policy” as they were responding to a crime, which is what they are expected to do. (AT pp. 284:20-285:7.)
- (4) Sgt. Bower would have gone along with [REDACTED] [REDACTED] plan had he also been in the truck and would not have challenged the directive. (AT pp. 285:21-286:1.)
- (5) Based on his training and experience, the “plan was to go in and prevent the further looting and destruction of a business...to take two avenues of approach, presumably to prevent escape, and then effect an arrest on any or all of the subjects that are engaging in the criminal activity.” (AT p. 286:2-10.)
- (6) [REDACTED] [REDACTED] plan was not a “poor plan from the standpoint of approaching a crime in progress from more than one avenue.” (AT p. 286:11-23.)
- (7) In an ideal scenario it is always preferable to have more resources, but they did not have that luxury in that short period of time and “used the best tools and people that were available to them at the time to go in and carry out this plan.” (AT p. 287:3-18.)
- (8) A felony, or high-risk, stop was an appropriate response to prevent the crime. (AT p. 289:6-18.)
- (9) Upon hearing [REDACTED] [REDACTED] advisement that individuals were armed, he would not expect the detectives to retreat under the circumstances, because you cannot leave an officer there in close proximity to a threat. (AT pp. 291:12-292:12.)
- (10) He would not expect the [REDACTED] [REDACTED] and [REDACTED] to also fire their weapons, at the same time as Detective Tonn, under the circumstances because they all had their own assigned responsibilities. [REDACTED] [REDACTED] was driving, [REDACTED] [REDACTED] was armed with a flash bang, and Detective Tonn was the one designated as lethal cover. The distribution of separate responsibilities was consistent with law enforcement training. (AT pp. 293:9-295:9.)
- (11) The fact that [REDACTED] [REDACTED] and [REDACTED] did not draw and fire their service weapons when Detective Tonn did is not indicative of a lack of an imminent deadly threat. (AT p. 295:10-20.)
- (12) The manner Detective Tonn discharged his rifle through the windshield was consistent with Vallejo Police Department training and policy as it pertained to shooting through a windshield or addressing a threat. (AT p. 296:7-18, p. 297:13-16.)

1 (13) The fact that Monterrosa was shot in the back of the head is of little concern  
2 because the shot placement is consistent with normal reactions that a suspect  
3 may take when being fired upon (i.e., turning away) and that fact does not take  
4 away from the perceived threat and reaction to that threat. (AT p. 297:4-12.)

5 6. The Skelly Decision

6 On December 10, 2021, City of Vallejo Director of Human Resources Mark Love  
7 contracted with an outside consultant, Mark Fox, to act as the *Skelly* Officer to review the propriety  
8 of Detective Tonn's proposed termination from employment. (CX 13, p. 1.) As stated in Mr. Fox's  
9 report, "The function of the *Skelly* Officer is to provide an objective review of the proposed  
10 discipline and the employee's response. The *Skelly* Officer makes a recommendation as to whether  
11 the disciplinary action should be sustained, modified in some specific way, or revoked." (*Id.*)  
12 Detective Tonn's *Skelly* hearing was held on April 20, 2022, and lasted nearly three hours. (*Id.* at  
13 p. 10.) Detective Tonn's statements and arguments of counsel during the *Skelly* hearing will not  
14 be reiterated here, but can be found on pages 11-12 of the *Skelly* report and are consistent with his  
15 statements and arbitration testimony. The following is a summary of Mr. Fox's findings:

- 16 (1) Policy #300.4 De-Escalation – Not sustained. Mr. Fox determined that the  
17 "lack of planning" is "more a reflection of Officer Tonn's poor performance  
18 and not a failure to engage in de-escalation." (*Id.* at p. 17-18.)
- 19 (2) Policy #300.5 Use of Force and 300.6 Deadly Force Applications – Not  
20 sustained. Mr. Fox believed that Detective Tonn's fear was heavily influenced  
21 by a "generalized" rather than specific fear, however, he could not sustain the  
22 alleged policy violations by a preponderance of the evidence due to a variety  
23 of "conflicts and information (*Id.* at p. 18.), which are as follows:
- 24 a. Chief Williams' June 3, 2020 email synopsis of the incident which  
25 stated, in relevant part, that Monterrosa appeared to be armed and the  
26 detectives perceived a deadly threat. For Mr. Fox, this was a "tacit  
27 message that the police officers acted within policy and because of an  
28 immediate deadly threat." (*Id.*; UXC-10.)
  - b. Officer Tonn's 2020 performance evaluation, signed by Chief  
Williams on March 17, 2021, where no concerns were expressed  
regarding Detective Tonn's actions during the critical incident on June  
2, 2020. (*Id.*; UX L.)
  - c. Detective Tonn was not placed on administrative leave until June 14,  
2021, which from a professional human resources management  
experience, begs the question that if his conduct was potentially so  
egregious it would lead to dismissal, why would the Department wait  
one year before placing him on leave? It also struck Mr. Fox, based on

the same reasoning, that despite Detective Tonn's administrative interview occurring on March 18, 2021, he was not placed on leave until June 2021. (*Id.* at p. 19.)

- d. OIR's finding that [REDACTED] BWC contradicted Detective Tonn's statement that he had a clear backdrop lacked any proof and were, "at best, theoretical and should not – rather, cannot – be used as a theory does not demonstrate proof. (*Id.*)
- e. OIR's conclusion that because Monterrosa was shot in the back of the head the threat had dissipated and Detective Tonn's use of force was unnecessary, failed to reach the requisite level of proof. Mr. Fox articulated that a lay person would think it reasonable to anticipate a person would make some bodily movement if a firearm was shot toward them, which is one alternative and plausible scenario. (*Id.*)
- f. Footnote 5 in the Notice of Intent to Discipline which claims Detective Tonn stated he did not receive extensive training regarding shooting through windshields is inaccurate based on Detective Tonn's voluntary and compelled interview transcripts. (*Id.* at pp. 20-21; CX 12 at p. 3.)
- g. OIR's findings that Detective Tonn was in error because Monterrosa ultimately did not have a gun is in contradiction to the required analysis under Penal Code section 835a and the Department's Use of Force Policy. (*Id.* at p. 21.)

(3) Policy #321.5.6 Efficiency – Sustained as to subdivision (b), Poor Performance and not sustained as to the remaining subdivisions. Mr. Fox considered the lack of a planning with [REDACTED] to constitute neglect of duty and poor performance, but only sustained poor performance because that was the finding by Chief Williams. Mr. Fox did note that Chief Williams' "statement of 'if you believed that anyone in the parking lot was armed, you should have insisted on careful planning, including de-escalation' belies the timing of this incident' because [REDACTED] advisement was mere seconds from when the truck entered the parking lot and Detective Tonn fired his weapon. (*Id.* at p. 22.) Mr. Fox noted that for this violation, Detective Tonn should receive corrective action should be the same or similar to the corrective action levied against the other detectives. (*Id.* at pp. 22-23.)

(4) Policy #423.4 Portable Audio/Video Recorders Member Responsibilities and 423.5 Portable Audio/Video Recorders – Not sustained as to 423.4 because nothing in the Notice of Proposed Discipline's summary of facts or analysis explains how the policy was violated. Sustained as to 423.5 for failing to timely activate his BWC. (*Id.* at p. 23.) Mr. Fox noted that for this violation, Detective Tonn "should receive corrective action which is the same or substantial [sic] similar to that received by other employees<sup>10</sup>.

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<sup>10</sup> [REDACTED] left the Department prior to the issuance of findings and thus did not receive corrective action. [REDACTED] received a letter of reprimand for poor performance (321.5.6(b)) for their alleged planning failure and failure to timely activate his BWC (423.5).

## VI. ARGUMENT

“No employee shall be disciplined or discharged except for just cause” is the basic, foundational tenant of disciplinary labor arbitrations. (*Just Cause: The Seven Tests*, p. 3, Koven & Smith, 3rd Ed., 2006.) The “Just Cause” seven-test analysis has been widely applied for over 50 years and a “no” answer to one or more of the tests “means that just cause either has not been satisfied or at least was seriously weakened in that some arbitrary, capricious, or discriminatory element was present.” (*Id.* at 27) The seven tests ask whether there was notice, reasonable rule or order, a fair investigation, proof of misconduct, equal treatment, and a penalty reasonably related to the employee’s proven offense and the record of the employee’s service with the employer. (*Id.* at 27-28) “Just cause is essentially a standard of reasonableness and fairness. It requires that the penalty imposed must fit the seriousness of the offense and must take into consideration the total circumstances, both those in aggravation and those in mitigation.” (*Just Cause: The Seven Tests*, p. 465-66, n.71, Koven & Smith, 3<sup>rd</sup>. Ed., 2006; *Fulton Seafood Indus., Inc.*, 74 LA 620, 622 (Volz, 1980).)

### A. RESPONDENT LACKED JUST CAUSE TO TERMINATE DETECTIVE TONN

#### 1. Monterrosa Posed an Imminent Threat

Penal Code section 835a and Vallejo Police Department Policy 300.5, which are based upon the Supreme Court’s decision in *Graham v. Conner*, require that the reasonableness of a peace officer’s use of force must be analyzed based on the totality of the circumstances known or perceived by officer at the time force was used. Law and policy also require that the reasonableness of force must be judged from the perspective of a reasonable officer on the scene facing the same or similar circumstances, and must allow for the fact that officers are often forced to make split-second decisions about the amount of force that appears reasonably necessary in situations that are tense, uncertain, and rapidly evolving. Officers are not required to retreat in the face of resistance and may use deadly force to protect himself or others from what he reasonably believes to be an imminent threat of death or serious bodily injury. Numerous factors, required under Section 835a and Department policy, are used to determine the reasonableness of an officer’s use of force. The relevant factors here are discussed below.

1 a. The apparent immediacy and severity of the threat to officers or others<sup>11</sup>.

2 The OIR Group's analysis completely ignored the totality of the circumstances and  
3 corroborating evidence, and instead focused solely on officer tactics leading up the use of force to  
4 minimize this factor to weigh against the reasonableness of Detective Tonn's perceptions<sup>12</sup>. They  
5 determined that by closing the distance, the detectives increased their risk and decreased their  
6 tactical options, resulting in a misinterpretation of Monterrosa's actions. (CX 7 p. 45.) OIR  
7 rendered this conclusion by omitting the following critical facts from their analysis that in fact  
8 clearly establish Monterrosa posed an imminent deadly threat to the detectives.

- 9 (1) Merely seconds before detectives made contact with the looters, Detective Tonn heard  
10 [REDACTED] [REDACTED] advise that the subject in black, later identified as Monterrosa, was  
11 armed, which Detective Tonn reasonably interpreted to mean the subject was in  
possession of a firearm.
- 12 (2) Detective Tonn expected Monterrosa to flee in a get-away car, but he suddenly stopped,  
13 spun toward the approaching detectives, and got down into a kneeling shooting  
position;
- 14 (3) As Monterrosa spun to face the detectives, he was holding what Detective Tonn  
15 perceived to be a firearm, in his waistband area where criminals are known to conceal  
firearms;
- 16 (4) The manner in which Monterrosa held and concealed the object against his body was  
17 consistent with someone holding the handle of a firearm;
- 18 (5) Detective Tonn perceived Monterrosa to be retrieving the suspected firearm from his  
19 waistband as he spun around and began taking a kneeling shooting position.
- 20 (6) Monterrosa's actions were inconsistent with someone surrendering.
- 21 (7) Detective Tonn believed "100%" they were about to get in a shootout and was  
22 concerned for his life and the lives of his partners.

25 <sup>11</sup> Note: While the following subheading regarding use of force factors may appear out of sequence, they are not.  
26 Grievant has lettered the factors to mirror the same lettering used in the OIR report, and omitted factors irrelevant to  
the analysis.

27 <sup>12</sup> References to OIR Group are intended to be read synonymously with Chief Williams' findings in the Notice of  
Discipline and his arbitration testimony. Chief Williams was unable to articulate any independent opinions at  
28 arbitration regarding the use of force analysis and deferred every question to OIR's opinions and findings as he  
solely relied upon them to terminate Detective Tonn. As such, all references to OIR's opinions are also in rebuttal to  
Chief Williams' findings synopsis in the Notice of Discipline.

1 Detective Tonn's perceptions were corroborated by his partners. In fact, following the  
2 shooting, [REDACTED] [REDACTED] stated to Detective Tonn, "I thought he was armed too, dude," while  
3 making a gun gesture with his hand. (CX 17 at 11:32.) [REDACTED] [REDACTED] also saw Monterrosa  
4 attempt to escape, only to spin around to face their truck and take a kneeling position on his right  
5 knee consistent with a shooting position. He saw Monterrosa holding a dark item in his right  
6 hand, concealed up against his mid-section towards his waist, holding it like someone would hold  
7 a gun. In that moment, [REDACTED] [REDACTED] believed they were going to start "taking rounds" from  
8 Monterrosa. Monterrosa. Based on his observations, [REDACTED] [REDACTED] believed Monterrosa  
9 possessed the ability, opportunity, and apparent intent to kill them.

10 [REDACTED] [REDACTED] saw Monterrosa holding his waistband as he ran to the get-away car,  
11 and could also see something protruding from his waistband that he thought was a revolver handle  
12 or high-capacity pistol magazine. In his training and experience, Monterrosa was holding his  
13 hands in a manner consistent with carrying or retrieving a firearm. [REDACTED] [REDACTED] was also  
14 surprised when Monterrosa quickly spun around and faced them. When Monterrosa spun around  
15 and faced them, [REDACTED] [REDACTED] could see that his hands towards his waistband area. [REDACTED]  
16 [REDACTED] had never had anyone turn around like that so quickly in an aggressive manner, and he  
17 thought he was going to be shot. Had he been assigned as lethal cover, or otherwise able to retrieve  
18 his firearm, he also would have shot at Monterrosa. [REDACTED] [REDACTED] believed Monterrosa  
19 posed an immediate threat and had the present ability, opportunity, and apparent intent to cause  
20 death or serious bodily injury to him and his partners.

21 OIR also completely failed to account for the timing of events. This incident – from  
22 [REDACTED] [REDACTED] advisement to the detectives' perceptions that Monterrosa posed an imminent  
23 threat – unfolded in mere seconds. Detective Tonn and his partners were attempting to enforce  
24 looting activity pursuant to their directive by incident commander Captain Potts and SWAT  
25 commander Lt. Knight. The detectives were doing their job – enforcing the law – while  
26 Monterrosa was forcing what reasonably appeared to be an exigent circumstance involving an  
27 imminent threat of death or serious bodily injury. Their training and experience convinced all  
28 three detectives that Monterrosa was not surrendering but preparing to shoot them. While their

tactical decisions leading up the use of force can be considered, their tactics leading up to the use of force in no way changes the apparent immediacy and severity of the threat Monterrosa posed. In addition, the attempted high-risk stop is standard law enforcement procedure and was used throughout that night by other officers.

b. The conduct of the individual being confronted, as reasonably perceived by the officer at the time.

Monterrosa's conduct as he was confronted by detectives is outlined under the previous section, and as such will not be reiterated here. The OIR Group however, again, ignored critical facts and the detectives' perceptions, while placing undue weight on the detectives' tactics to tip the scale against the reasonableness of their perceptions. According to OIR, "the indicia of threat should have been heeded as a reason not to approach without a plan" and their "reckless approach was the most significant factor in increasing the threat level they faced." (CX 7 p. 46.) OIR inappropriately discounted their observations regarding Monterrosa's "aggressive posture" and "shooting stance" based upon a pure hindsight determination that Monterrosa was unarmed and theoretically surrendering. As such, according to OIR, their perceptions were "objectively incorrect". (*Id.*) Basing the analysis on a hindsight determination is specifically forbidden by law and policy. Again, the detectives were enforcing looting activity as ordered by incident commander Captain Potts, SWAT commander Lt. Knight, and [REDACTED] [REDACTED]. In fact, Chief Williams testified at arbitration that his expectation is that officers would conduct enforcement should they observe criminal activity. (AT p. 172:18-25.)

OIR also inappropriately placed weight on the fact that Monterrosa was shot in the back of the head, and according to OIR this fact means the threat had significantly dissipated. (CX 7 p. 46.) As aptly noted by *Skelly* Officer Mark Fox and Sgt. Bower, a plausible explanation is that in the less than two seconds it took for Detective Tonn to fire his rifle, Monterrosa's head turned away from the gunfire. Again, OIR reached their conclusion by ignoring the real-life timing of this event in order to reach their conclusion.

OIR also opined that due to Detective Tonn's manner of firing through the windshield, he limited his ability to perceive that the threat had dissipated. (*Id.*) As stated by Sgt. Bower,

1 Detective Tonn acted precisely according to his training regarding shooting through a windshield  
2 and fired a short burst of rounds he believed would be sufficient to stop an imminent deadly threat.  
3 As stated by all three detectives, based on Monterrosa's conduct, Detective Tonn had no other  
4 option but to respond to the perceived imminent deadly threat with deadly force. Detective Tonn  
5 made a split-second decision, consistent with his training, to save his life and lives of his partners.

6 Contrary to OIR's opinion, Detective Tonn's post-shooting statements do not demonstrate  
7 uncertainty about his perception that Monterrosa posed an imminent threat. (CX 7 p. 47.) OIR  
8 clearly lacks law enforcement training in human factors and the psychological and physiological  
9 effects of individuals under extreme stress. In fact, OIR completely ignored such factors in their  
10 analysis. As Sgt. Bower testified, individuals who have just experienced a deadly force encounter  
11 are subjected to a significant amount of stress that can impact their ability to formulate coherent  
12 sentences as they are processing the event. Detective Tonn testified to this precise experience as  
13 he attempted to understand what just happened. His statements are not indicative of uncertainty,  
14 but of someone reacting to and attempting to process a situation involving the use of deadly force.  
15 It is very easy to second-guess the actions of another while from the luxury of your desk and the  
16 benefit of hindsight. It is another matter entirely to personally experience a stressful event as  
17 significant as believing your life is in imminent peril and using deadly force to prevent that threat.  
18 This is the crux of *Graham v. Conner's* hindsight analysis prohibition, and flies in the face of  
19 known human responses under stress.

20 OIR completely misquoted Detective Tonn and the intent of his statement regarding the  
21 effect of his prior officer-involved shootings. (CX 7 p. 47.) Detective Tonn did not state that he  
22 learned from a prior shooting that one should not hesitate when faced with a potential deadly  
23 threat. This is a gross mischaracterization of his statement and an example of yet another effort by  
24 OIR to distort and ignore the facts to fit their agenda. Detective Tonn stated that in the debrief of  
25 that shooting he realized his hesitation to shoot when he saw the threat nearly caused him to be  
26 shot. He hesitated during that shooting out of concern for being involved in another shooting. He  
27 went on the state that what he learned from his prior shooting was to avoid allowing the perception  
28 of being involved in another shooting to cloud his judgement and that he must face each situation



1 based on the facts and circumstances confronting him at that time and act accordingly. Detective  
2 Tonn's realization was responsible, appropriate, and consistent with law and policy. In clear  
3 contradiction to his interview transcript, Detective Tonn never stated that he resolved to shoot  
4 quicker as OIR falsely asserts.

5 OIR also unreasonably relied on the fact that neither [REDACTED] [REDACTED] or [REDACTED]  
6 unholstered their firearms to shoot as evidence that the threat was not actually imminent. (CX 7  
7 p. 48.) Again, OIR's conclusions on this point ignore the facts and a fundamental understanding  
8 of police practices. Detective Tonn was designated lethal cover. [REDACTED] [REDACTED] was driving  
9 the vehicle, rendering his ability to draw his firearm nearly impossible. [REDACTED] [REDACTED] was  
10 armed with a flash bang to use as a distraction device, which requires two hands. [REDACTED]  
11 [REDACTED] and [REDACTED] were not in a position to readily draw their firearms, especially in the  
12 seconds they had to react to the threat. Detective Tonn was already prepared with his rifle as  
13 lethal cover and that was his designated responsibility. As such, Detective Tonn had the ability  
14 to take action in a split-second, unlike his partners. Consistent with OIR's practice of ignoring  
15 the significance of the timing of events, there was no time for [REDACTED] [REDACTED] and [REDACTED] to  
16 respond to the imminent threat. As they both stated several times throughout this investigation,  
17 they had already begun processing the intention to draw their firearms to engage the deadly threat  
18 and did so as soon as they were able upon exiting the vehicle. The "best explication for the  
19 disconnect between the response of Detective Tonn and his partners" is not the "incautious way  
20 [they] chose to advance on a potentially armed suspect." (CX 7 p. 48.) Their different responses  
21 are based upon their differing roles and abilities within their vehicle and the split-second nature  
22 of the need to respond to a deadly threat.

23 OIR's claim that the "overestimation of the threat level shared by Detective Tonn and the  
24 two detectives stemmed primarily from the way in which they decided to approach an individual  
25 whom they believed to be armed" is also without merit. (CX 7 p. 48.) OIR's opinion that they  
26 overestimated the threat level is based upon the hindsight determination that Monterrosa was  
27 unarmed. The imminent deadly threat they perceived did not stem from their tactical approach,  
28 but from Monterrosa's specific actions consistent with someone retrieving a firearm to shoot them.

1 The detectives did not abandon principles of time, distance, and cover. Their intention was to  
2 conduct a high-risk stop with the specific goal of utilizing time, distance, and cover, which is  
3 consistent with their extensive training and experience conducting such stops.

4 The analysis of a use of force is required by law and policy to give deference to officers in  
5 such situations and prohibits the hindsight analysis employed by OIR.

6 c. The conduct of the involved officer.

7 OIR relies on an alleged failure to utilize de-escalation techniques to conclude that  
8 Detective Tonn “increased the likelihood that this incident would result in the use of deadly force.  
9 (CX 7 p. 49.) While the principles of de-escalation can be applied under various circumstances,  
10 this was not a de-escalation situation pursuant to Department training and policy. This was not a  
11 response to a person experiencing a mental health crisis. The intent of the detectives was to  
12 approach the looters at the Walgreens Pharmacy and conduct a high-risk stop. As discussed by  
13 every witness, including Chief Williams, high-risk felony stops do indeed utilize the time,  
14 distance, and cover principles of de-escalation. Unfortunately, Monterrosa’s conduct made  
15 possible de-escalation efforts during a high-risk stop unfeasible. Moreover, as discussed  
16 throughout this brief, high-risk stops are routine practices for Vallejo officers that do not require  
17 extensive planning. High-risk stops were a tactic utilized by officers throughout the city that night,  
18 and there no reason for the detectives to believe that their planned tactic was unsound. While  
19 additional planning and resources may have been beneficial, the same outcome may have also  
20 occurred. Monterrosa’s actions prevented the detectives from the ability to use time, distance,  
21 and cover by his conduct that evidenced an imminent deadly threat requiring an immediate  
22 response to neutralize that threat. The circumstances and time simply did not reasonably permit  
23 the detectives to mitigate the immediacy of the threat.

24 d. Proximity of weapons or dangerous improvised devices.

25 OIR concluded that Monterrosa possessed a hammer which did not present an imminent  
26 threat to the officers at the time deadly force was used. (CX 7 p. 49.) Obviously, OIR has applied  
27 an inappropriate hindsight analysis to this factor in contradiction to law and policy. Use of force  
28 analysis is based on the officer’s perceptions at the time force was used. Monterrosa’s possession

1 of only a hammer is irrelevant and evidences a misunderstanding of proper use of force analysis.  
2 Every detective perceived what they firmly believed to be a firearm, and that is the appropriate  
3 focus of the inquiry.

4 e. The availability of other reasonable and feasible options and their possible  
5 effectiveness.

6 According to OIR, “the extremely rushed, unplanned, and aggressive nature of the VPD  
7 response to activity in the Walgreens parking lot is critical in evaluating whether other reasonable  
8 and feasible options existed.” (CX 7 p. 50.) Detective Tonn and his partners were called into work  
9 to act in their SWAT capacity to assist patrol with enforcement of looting activity. They were not  
10 acting in their CRT role to conduct covert surveillance and gather intelligence. Due to the  
11 unprecedented violence and looting throughout Vallejo, patrol required additional and highly-  
12 training officers to enforce the law and keep the citizens and businesses of Vallejo safe. As  
13 Captain Potts, Lt. Knight, Sgt. Bower, and even Chief Williams testified, the expectation was that  
14 the SWAT officers would enforce the law and make arrests. That is their job, their ethical  
15 responsibility, and as Lt. Knight testified it would constitute neglect of duty to do otherwise.

16 OIR ignored their explicit mission that night, as well as the fact that law enforcement  
17 throughout Vallejo that night was operating in the same manner. While Lt. Knight and Captain  
18 Potts developed an operational plan to divide the city into sectors to maintain greater organization  
19 of resources, the city was in chaos and officers, including commanding officers, were engaging  
20 suspects via high-risk stops throughout the city. Commanding officers were aware of these tactics,  
21 including Chief Williams. Despite his unbelievable testimony otherwise, Chief Williams was  
22 well-aware of Lt. Knight’s directives to the SWAT team and the enforcement activities occurring  
23 throughout the city. By all credible accounts, Chief Williams was in fact at the command post  
24 and present during the briefing, as well as listening to radio traffic and receiving updates from  
25 Captain Potts. Chief Williams’ apparent memory lapses regarding his knowledge of his  
26 employees’ enforcement actions that night are concerning and implausible. Every witness, except  
27 Chief Williams, had a clear recollection of the chaotic events of the night due to the unprecedented  
28 nature of criminal activity. He was either dishonest in his arbitration testimony or incompetent in

1 his role as the Chief of Police during an unprecedented night like June 1, 2020. Chief Williams  
2 was aware of the tactics and dynamic situations occurring throughout the city, and as the head of  
3 the agency it was his obligation to order alternative directives if he believed those tactics were  
4 unsafe or unsound. His efforts to distance himself from any knowledge or involvement in the  
5 Department's operations that night evidence dishonesty, incompetence, and a complete lack of  
6 acceptance of responsibility in his role as the Chief of Police. If Chief Williams wanted his  
7 officers to deviate from standard enforcement practices, he should have issued such a directive.

8 OIR's focus on [REDACTED] [REDACTED] "plan," or lack thereof, is misplaced. (CX 7 p. 51.)  
9 Considering the extensive experience of the three detectives and [REDACTED] [REDACTED] they all  
10 understood the plan. The plan, despite being conveyed in five to fifteen seconds, was a routine  
11 plan to conduct a high-risk stop to arrest looters. High-risk stops are second nature to Vallejo  
12 officers and extensive communication is unnecessary. Command staff has ordered enforcement  
13 of looting activity, and high-risk stops were a routine method of enforcement. In hindsight, more  
14 planning can be beneficial, but that is with the luxury of hindsight. Here, there were four highly-  
15 trained, experienced officers responding to the crime in progress. Waiting for additional units  
16 with unknown time estimates for arrival could also provide the suspects with the opportunity to  
17 continue their criminal activity unabated, and likely allow them to escape to continue their  
18 criminal activity. As Lt. Knight testified, they acted consistent with their training, mission, and  
19 expectations that night. Despite the tragic outcome, which is the focus of OIR's hindsight  
20 analysis, the plan worked. Had the same tactic been employed but not resulted in a deadly use of  
21 force, their "plan" and tactical approach would never have been the subject of an internal affairs  
22 investigation.

23 Further, once [REDACTED] [REDACTED] advised them regarding the armed subjects, it was not  
24 feasible to take another course of action. There was no time and would have been unsafe to  
25 attempt to retreat. Retreating, or "repositioning" as Chief Williams stated, would have left [REDACTED]  
26 [REDACTED] alone with no cover; all credible witnesses stated it would have been unacceptable to leave  
27 [REDACTED] [REDACTED] at such severe risk. Further, OIR again ignored the timing details and the few  
28 seconds they had before they were faced with a deadly threat. There was no time to alter their

1 approach after hearing [REDACTED] [REDACTED] advisement, and ignoring this crucial detail is a fatal flaw  
2 to OIR's analysis. Officers are affirmatively obligated to put themselves in harm's way as that is  
3 their sworn duty and was their mission that night.

4 f. Seriousness of the suspected offense or reason for contact with the individual.

5 OIR's conclusion on this factor is simply offensive to the citizens of Vallejo and the chaos  
6 they endured on June 1, 2020. OIR stated, "While possibly engaging in a commercial burglary is  
7 a felony, there was no evidence that the potential criminal conduct at issue created significant  
8 safety issues for Vallejo's public." (CX 7 p. 55.) While the reason for the initial contact was  
9 commercial burglary, the seriousness of the suspected offense at the time force was used was an  
10 assault with a deadly weapon (firearm) on an officer. OIR's efforts to minimize this factor by  
11 characterizing the seriousness of the suspected offense as merely a commercial burglary,  
12 evidences their intent to minimize Monterrosa's culpability and infer that enforcement action was  
13 not necessary. The validity of OIR's analysis is significantly undermined by their complete failure  
14 to address Monterrosa's actions at the time Detective Tonn used deadly force. Monterrosa was  
15 not "possibly engaging in criminal activity," and was in fact participating in a felony crime and a  
16 potential assault on officers. Moreover, it was their obligation to respond to the call and attempt  
17 to conduct enforcement of criminal activity.

18 g. Potential for injury to officer, suspects, and others

19 OIR notes that "Detective Tonn believed, though incorrectly, that at the time of the  
20 shooting that Mr. Monterrosa presented a high potential for injury to him and his partner  
21 detectives." (CX 7 p. 55.) The fact that Detective Tonn's belief was incorrect is irrelevant. At the  
22 time, every detective believed the potential for injury to them was great.

23 h. Whether the person appears to be resisting, attempting to evade arrest by flight, or is  
24 attacking the officer.

25 Once again and unsurprisingly, OIR misstates the detectives' statements in an attempt to  
26 diminish their credibility and blames their tactical approach as the cause for their incorrect  
27 perceptions. The detectives, contrary to OIR's assertion, did not provide inconsistent perceptions.  
28 (CX 7 p. 56.) Each detective perceived Monterrosa to appear to be holding a firearm in his

1 waistband area while attempting to escape, before suddenly spinning around and taking a kneeling  
2 shooting position while holding what appeared to be a firearm. In fact, the handle of the hammer  
3 closely resembled the handle of a firearm in color, material, shape, and size. The belief that the  
4 hammer was a firearm was reasonable. The slight differences in their perception of the object all  
5 amounted to the same conclusion – Monterrosa had a gun and he was preparing to shoot it at them.  
6 The hindsight determination that they were wrong, upon which OIR relies on extensively, is  
7 irrelevant and contrary to a use of force analysis.

- 8 i. The apparent need for immediate control of the subject or a prompt resolution of the  
9 situation.

10 OIR, yet again, mischaracterizes the situation the officers faced at the time deadly force  
11 was used. OIR states, “Other than preventing a potential burglary in progress, there was no  
12 apparent need for immediate control of the subject.” (CX 7 p. 57.) The need for immediate control  
13 of the subject and prompt resolution of the situation was the imminent deadly threat Monterrosa  
14 posed, not the crime of burglary. While the initial response was to enforce looting activity  
15 pursuant to their orders, that was not the reason for Detective Tonn’s use of deadly force. OIR’s  
16 misguided approach to the analysis unsuccessfully attempts to confuse the issue, is incorrect, and  
17 undermines the credibility of their analysis.

- 18 j. Whether the conduct of the individual being confronted no longer reasonably appears  
19 to pose an imminent threat to the officer or others.

20 OIR focuses their conclusion, again, on the wrong point in time relevant to this analysis.  
21 (CX 7 p. 57.) At the time Detective Tonn discharged his rifle, he perceived Monterrosa to pose an  
22 imminent threat of death or serious bodily injury to him and his partners. His manner of  
23 discharging his rifle was consistent with Department training. The fact the Monterrosa was struck  
24 in the back of the head is not evidence that the threat had dissipated, but more likely that he turned  
25 his head within the less than two seconds it took for Detective Tonn to fire. It is not possible to  
26 react to a threat, perceive the threat is gone, and stop firing all within two seconds. Detective  
27 Tonn, consistent with his training, fired several rounds in quick succession to neutralize the threat  
28 then reassess. OIR’s hindsight analysis ignores standard law enforcement training, tactics, in

1 addition to law and policy regarding the use of deadly force.

2 OIR improperly analyzed every factor articulated by Section 835a and Department policy  
3 necessary to meet their burden of proof that Detective Tonn used objectively unreasonable force.  
4 The factors balance clearly in favor of Detective Tonn's perception that Monterrosa posed an  
5 imminent deadly threat to him and his partners. Even assuming his tactical approach was unsound,  
6 the corroborating accounts of the detectives on scene in the same place clearly establish that  
7 Monterrosa's conduct posed an imminent threat that had to be instantly confronted and addressed.

8 B. DETECTIVE TONN PERCEIVED A SPECIFIC AND IMMINENT THREAT, NOT A  
9 GENERALIZED FEAR OR FEAR OF FUTURE HARM

10 The totality of circumstances leading to Detective Tonn discharging his rifle was based on  
11 the facts articulated at length above, not a mere subjective fear of future harm. Detective Tonn  
12 discussed that everyone was "on edge" and that he felt like something bad might happen that night.  
13 That constitutes a general fear. However, being "on edge" or on "high alert" due to the  
14 unprecedented violence and chaos, was not why he discharged his rifle. Officers are specifically  
15 trained to conduct threat assessments and be aware of potential dangers. Detective Tonn's  
16 decision was based on specific and articulable facts that he faced at the moment he made the  
17 decision to shoot.

18 Penal Code section 835a(e)(2) defines "imminent threat" as "not merely a fear of future  
19 harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one  
20 that, from appearances, must be instantly confronted and addressed." This standard is based upon  
21 *People v. Aris* (1989) 215 Cal.App.3d 1179, 1187, which is distinguishable from this case. Aris  
22 was a battered wife who suffered severe and regular beatings by her husband. The beatings were  
23 so bad, she was convinced one day he would kill her. Four days after such a beating, Aris shot  
24 and killed her husband in his sleep. She was convicted of second-degree murder and sentenced  
25 to 15 years to life. Part of her appeal addressed the jury instruction, containing the language  
26 articulated in Section 835a(e)(2). The fear of future harm in *Aris* – fearing that at some point in  
27 the future you may be killed – is a far cry from the imminent threat all three detectives perceived  
28 on June 2, 2020. There is no authority, or law enforcement training or practices, that requires an

officer to see the barrel of a gun before using deadly force to stop an imminent threat. Grabbing a firearm in a waistband to retrieve it, while evidencing an intent to utilize that firearm, is a threat that must be instantly confronted and addressed. The totality of the circumstances here, indicate a threat that must be instantly confronted and addressed before the suspect has an opportunity to retrieve their firearm and engage with law enforcement.

C. OIR GROUP AND CHIEF WILLIAMS LACK CREDIBILITY AND THEIR FINDINGS SHOULD BE OVERTURNED

As discussed at length above, OIR's analysis ignored and misstated critical evidence relevant to a use of force analysis. OIR completely discounted officer perceptions based on the hindsight determinations that Monterrosa did not have a firearm and was shot in the back of the head. Their analysis implicitly and improperly starts from the premise that Monterrosa was unarmed, then works backwards to find the use of force unreasonable. Lt. Knight, with his extensive experience in professional standards, internal affairs investigations, and use of force analysis, recognized this flaw in their analysis as well. OIR employed an analysis that is forbidden by law enforcement best practices and training, the United States Supreme Court, California statute, and Department policy. OIR's analysis is the epitome of 20/20 hindsight second-guessing while failing to give the necessary deference to an officer who was forced to make a split-second decision when lives were potentially hanging in the balance.

OIR failed to analyze the evidence based on the timing and the seconds within which the events unfolded. There is absolutely no breakdown of the sequence of events. By ignoring the real-time perceptions of the officers, OIR's findings and analysis is critically flawed and should not be relied upon. Lt. Knight testified regarding this critical flaw and how he attempted to inform Mr. Connelly of the issue, but was ignored. Even Chief Williams agreed at arbitration that, when possible, determining the timing and sequence of events to best recreate the incident are details important and necessary to help ensure the integrity of an investigation. Absent those critical details, investigations can result in conclusions that are not sound and logical. (AT 175:11-178:4.)

As OIR failed to breakdown the time sequence leading up to the shooting, the Grievant submits the following analysis based upon [REDACTED] [REDACTED] BWC. (CX 16.) [REDACTED]



1 [REDACTED] BWC was activated in the intersection of Redwood and Broadway just after leaving  
2 the location where the detectives met [REDACTED] [REDACTED] (CX 16<sup>13</sup>.) Grievant's best estimate is the  
3 BWC was activated approximately 100 feet from where [REDACTED] [REDACTED] was parked. At a speed  
4 of 30 mph<sup>14</sup>, it would take approximately 2 seconds to travel 100 feet. Between three and four  
5 seconds after his BWC activation, [REDACTED] [REDACTED] makes a right turn to enter the Walgreens  
6 parking lot. Six seconds later, at the 00:11, [REDACTED] [REDACTED] activated his red and blue lights.  
7 Three seconds later, at 00:14, [REDACTED] [REDACTED] vehicle comes to a complete stop.<sup>15</sup> At 15  
8 seconds into the BWC video, approximately 11 seconds after entering the parking lot, Detective  
9 Tonn fired his duty rifle through the windshield. Detective Tonn stopped shooting in less than  
10 two seconds. From leaving [REDACTED] [REDACTED] to shots fired was approximately 17 seconds. From  
11 activation of the truck's red and blue lights to shots fired was approximately four seconds. [REDACTED]  
12 [REDACTED] advisement that the subject in black was armed occurred approximately five to seven  
13 seconds before the shots were fired. OIR attempted to portray a significant period of time where  
14 officers should have been able to plan and execute an alternative strategy. Based on the video  
15 evidence, OIR misrepresented the feasibility and time the detectives had to change tactics.

16 OIR additionally failed to include any analysis regarding the human factors involved in a  
17 stressful event like an officer-involved shooting, including the psychology and physical responses  
18 to traumatic events and situations that are tense, uncertain, and rapidly evolving. OIR had an  
19 opportunity to interview the Department's subject matter expert Sgt. Bower on use of force,  
20 firearms, and tactics, but interestingly did not provide him with any investigation materials so he  
21 could render an informed analysis. OIR then disregarded his statements because they were  
22 uninformed and did not fit their desired narrative. Their agenda was clearly to undermine every  
23 action by the Detective Tonn and his partners, and as such ignored factors related to real-world  
24 human responses to deadly threats and deadly force. As the Court stated in *Graham*:

25 We must never allow the theoretical, sanitized world of our imagination to replace  
26 the dangerous and complex world that policemen face every day. What constitutes

27 <sup>13</sup> All times refer to the video player, not the internal AXON clock.

28 <sup>14</sup> At the 00:03 mark, [REDACTED] [REDACTED] turns his steering wheel, exposing his speedometer. He appears to be travelling approximately 30 mph.

<sup>15</sup> Exterior stationary objects (i.e., trees) assist to determine the vehicle is no longer in motion.

1 reasonable action may seem quite different to someone facing a possible assailant  
2 than to someone analyzing the question at leisure.

3 OIR had the luxury and safety of their office to endlessly theorize and second-guess  
4 Detective Tonn's actions. They were not in the same position as Detective Tonn on June 2, 2020  
5 – faced with what was perceived to be an imminent deadly threat. Consistent with the Supreme  
6 Court's mandate, we must not allow OIR's "theoretical, sanitized world of [their] imagination" to  
7 replace the real-life danger Detective Tonn and his partners faced. OIR made concerted efforts to  
8 find inconsistencies in the detectives' perceptions, despite the fact that all three detectives  
9 perceived the same imminent deadly threat, thus clearly establishing Detective Tonn's perception  
10 was objectively reasonable.

11 While officer tactics leading up a use of force is a factor for consideration, it is only one  
12 of many factors to consider. Unsurprisingly, OIR used the alleged poor officer safety tactics to  
13 tip the balance of every factor against Detective Tonn. The crux of their analysis of every  
14 necessary factor was that Detective Tonn's perceptions were not reasonable because he employed  
15 poor tactics and Monterrosa was unarmed. OIR's pre-determined goal to find Detective Tonn's  
16 shooting unreasonable is patently obvious throughout their hindsight analysis. Mark Fox, a  
17 layperson without law enforcement training and experience, correctly identified that OIR's  
18 analysis was in direct contradiction to applicable legal standards.

19 There is no foundation in the record to establish that OIR Group is even qualified to render  
20 expert opinions on the use of deadly force. Outside of Chief Williams' unsupported assertion at  
21 arbitration that OIR is "nationally recognized" and "do these types of investigations" (AT p.  
22 135:22-25), their qualifications regarding use of force and police practices are unknown. Robert  
23 Fonzi conducted an independent review of Detective Tonn's officer-involved shooting for the  
24 Grievant, in which he determined Detective Tonn's use of force was objectively reasonable. (UX  
25 C-1.) Mr. Fonzi is a retired, 32-year veteran of the San Bernardino County Sheriff's Department  
26 and San Diego Police Department, and holds numerous instructor certifications in a variety of law  
27 enforcement subjects. (Please see CV at UX C-1-59-66.) In addition to his affiliation with  
28 numerous professional, law enforcement-related organizations, he has been appointed to 15 POST

1 Committees since 1992, including as a subject matter expert for use of force. (Id. at pp. 66-68.)  
2 In stark contrast to OIR, Mr. Fonzi is clearly qualified as a subject matter expert in use of force  
3 and police practices. Comparing Mr. Fonzi's report to OIR's, it is abundantly clear that Mr. Fonzi,  
4 unlike OIR, actually has the expertise to thoroughly analyze an officer's use of force utilizing the  
5 appropriate legal standards and the totality of the circumstances facing the officer at the time  
6 deadly force was used.

7 Chief Williams, who relied solely on OIR's findings and conclusions in his Notice of  
8 Discipline and arbitration testimony, similarly lacks the credibility to render appropriate  
9 conclusions regarding the reasonableness of Detective Tonn's use of deadly force. As Chief  
10 Williams' Notice of Discipline is based upon OIR's critically flawed report, his decision to  
11 terminate Detective Tonn should not be allowed to stand.

12 Chief Williams has no credibility and his arbitration testimony should be completely  
13 disregarding based upon his evasiveness and untruthfulness. Despite his ability to easily answer  
14 every question posed the counsel for Respondent on direct examination, Chief Williams suddenly  
15 had little memory of anything on cross examination. Despite the fact that the Vallejo Police  
16 Department experienced unprecedented chaos and violence on in the days leading up to June 2,  
17 2020, Chief Williams was the only witness who could not remember anything. He claimed not to  
18 be present at the command post during Lt. Knight's SWAT briefing, despite incident commander  
19 Captain Potts, Lt. Knight, and all three detectives corroborating his presence. He claimed to have  
20 no idea what was happening within his Department or the City, despite being the Chief of Police.  
21 Somehow, he was even unaware of who activated the SWAT team deployment. Captain Potts  
22 testified that as the incident commander his direct report was Chief Williams, who he kept updated  
23 throughout the day of June 1<sup>st</sup> and the days prior regarding the activity within the city, and the  
24 Department's tactical responses. At arbitration, Chief Williams was unable/refused to answer any  
25 question on cross examination, or even simple hypotheticals, that required his independent  
26 thoughts and analysis; he merely adopted every OIR opinion. Chief Williams' apparent  
27 significant memory loss is not mere forgetfulness, but equates to intentional deception. As such,  
28 Chief Williams' arbitration testimony should be disregarded.

1     D.     RESPONDENT FAILED TO CONSIDER MITIGATING EVIDENCE

2             The principles of just cause require that discipline imposed upon an employee be just and  
3 fair. (*Discipline and Discharge in Arbitration*, p. 65 (2<sup>nd</sup> Edition 2008).) Just cause requires a  
4 “reasonable proportionality between the offense and the penalty” and the consideration of any  
5 mitigating factors or extenuating circumstances that are reflected in the record, such as employee’s  
6 length of service, performance, prior disciplinary history, and management fault. (*Id.*) As Elkouri  
7 and Elkouri stated, long service with a department, particularly if unblemished, is a definite factor  
8 in favor of an employee whose discharge is reviewed through arbitration. (*See* Elkouri and  
9 Elkouri, *How Arbitration Works*, pp. 5-68 (7th Ed. 2012.) Here, Respondent both failed to  
10 consider mitigating evidence and afford other mitigating evidence the appropriate weight.

11             At the time of his termination, Detective Tonn was a 15-year veteran police officer with  
12 no prior disciplinary history. He received numerous commendations during his eight-year tenure  
13 with the Vallejo Police Department (UX U2-31) and was an officer that never fell below  
14 Department expectations. (UX R-T) In fact, for the majority of his tenure with the Department he  
15 received “Exceeds Expectations” on his Annual Employee Performance Evaluations. (UX L-O,  
16 Q.) In 2017, Detective Tonn received The Medal of Merit for his “outstanding dedication and  
17 effort to combat human trafficking.” (UX P.) In 2013, as a police officer for the City of Galt,  
18 Detective Tonn was awarded a Medal of Valor by the Galt Police Department and an Award of  
19 Valor from the California Attorney General’s Office related to the courageous rescue of an Animal  
20 Control Officer who had been shot. Despite the fact that the armed suspect was still inside the  
21 residence, Detective Tonn and his partners developed a quick plan and entered the residence to  
22 rescue the downed officer and evacuate him to medical personnel. (UX V-W.)

23             Detective Tonn’s officer-involved shooting occurred June 2, 2020, after which he  
24 continued working for the Department until he was placed on administrative leave on June 17,  
25 2021. His compelled interview with OIR did not occur until March 18, 2021. In July 2020,  
26 approximately one-month after his officer-involved shooting, Detective Tonn was made the  
27 permanent acting sergeant for CRT. In late 2020, Detective Tonn was promoted to be the SWAT  
28 team leader. On December 10, 2021, Detective Tonn successfully completed the promotional

process for the rank of Sergeant, and was ranked number one on the list with a final score of 100%.  
(UX J.)

Detective Tonn was a highly-trained and successful officer with an unblemished 15-year career in law enforcement. Respondent not only disregarded his training in their investigation, they disregarded his impeccable record of service and commitment to the community.

E. THE IMPOSITION OF TERMINATION IS UNREASONABLE AND EXCESSIVE

A disciplinary penalty must be just and proper. (*Skelly v. State Personnel Board* (1975) 15 Cal.3d 194.) Factors to be taken into consideration are the circumstances surrounding the event, the seriousness of the misconduct, the likelihood of reoccurrence, the harm to public service, employment record, and the concept of progressive discipline. Termination is the ultimate penalty in employment matters and should only be reserved for the most serious offenses when an employee has no record of discipline. Termination has often been deemed industrial capital punishment, as “[d]ischarge in industrial life is comparable to the electric chair in criminal law.” (*Just Cause: The Seven Tests*, p. 449, n.17, Koven & Smith, 3<sup>rd</sup>. Ed., 2006; *Sterling Drug, Inc.*, 67 LA 1296, 1299 (Draper, 1976).) Respondent has failed to meet their burden of proof, under any standard,

Detective Tonn’s Notice of Discipline was authored by Chief Williams, who based his decision to terminate Detective Tonn on the OIR report. As OIR’s flawed analysis runs afoul of the applicable legal standards and Department policy, their findings and conclusions should not be permitted to stand. For all the reasons stated at length above, it is clear Detective Tonn reasonably perceived an imminent deadly threat and used objectively reasonable force to protect his life and the lives of his partners. Detective Tonn did not violate the law or policy, and as such there is no harm to public service. Detective Tonn’s wrongful termination from employment should thus be overturned.

## VII. CONCLUSION

For the forgoing reasons, there is no just cause for Detective Jarrett Tonn’s termination under either a preponderance of the evidence or clear and convincing evidence standard. Respondent has failed to meet any burden of proof sufficient to sustain the alleged policy

1 violations and terminate his employment. The Grievant thus respectfully requests an award  
2 overturning the sustained findings, reinstatement of his employment, re-instatement at number  
3 one on the promotional sergeant list, and a make-whole remedy including back pay with interest,  
4 benefits, retirement credits, and all other emoluments of employment he would have earned but  
5 for his wrongful termination.

6  
7 Respectfully Submitted,

8 DATED: June 30, 2023

**MASTAGNI HOLSTEDT, A.P.C.**

9  
10 /s/ Joshua A. Olander

JOSHUA A. OLANDER

11 Attorney for Grievant Detective Jarrett Tonn  
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