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June 21, 2012

Police Commissioner Paul Walters
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92702

Re: Officer Involved Shooting on April 20, 2010
Fatal Incident involving Marcus Sulusi Tagatauli
District Attorney Investigations Case # S.A. 10-010
Santa Ana Police Department DR # 10-12775
Orange County Crime Laboratory Case # FR 10-44585

Dear Police Commissioner Walters,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion in connection with the above-listed incident involving on-duty Santa Ana Police Department (SAPD) Officer Enrique Ruvalcaba. Marcus Sulusi Tagatauli, 19, Garden Grove, died as a result of his injuries. The incident occurred in the City of Santa Ana on April 20, 2010.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the April 10, 2010, fatal officer-involved shooting of Tagatauli. The letter includes an overview of the OCDA's investigative methodology and procedures employed, as well as a description of the relevant evidence examined, witnesses interviewed, factual findings, and legal principles applied in analyzing the incident and determining whether there was criminal culpability on the part of any SAPD officers involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On April 10, 2010, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators interviewed three witnesses, numerous SAPD officers and Santa Ana Fire Department (SAFD) personnel, and obtained and reviewed the following: SAPD reports; Orange County Crime Lab (OCCL) reports including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; video surveillance tape; criminal history records related to Tagatauli including prior criminal history records and prior incident reports; the personnel records of Officer Ruvalcaba; and other relevant reports and materials. All police and fire personnel provided voluntary statements except for Officer Ruvalcaba. The entire incident occurred in the City of Santa Ana.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and

has impartially reviewed all evidence and legal standards available. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of SAPD officers or personnel, specifically Officer Ruvalcaba. The OCDA will not be addressing herein issues of policy, training, tactics or civil liability.

Officer Ruvalcaba would not provide a statement to OCDASAU Investigators.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units. Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide or Gang Units review fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Prosecutors assigned to the Special Prosecutions Unit review the non-fatal officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor will be in consultation with his or her supervisor, and this Assistant District Attorney will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

FACTS LEADING UP TO THE SHOOTING

On April 20, 2010, at approximately 8:12 p.m., Tagatauli entered a Subway restaurant on South Bristol Street. This was captured on security surveillance footage. According to Alexander Talauega, who accompanied Tagatauli, the two men walked to the Subway with the intention of committing a robbery, and Tagatauli was armed with a replica handgun, which was actually a BB gun.

A Subway employee, Witness #1, assisted Tagatauli by making his ordered sandwich. Witness #1 noticed that Tagatauli kept his right hand in his right jacket pocket, as if he was holding something. At 8:14 p.m., Talauega entered the Subway, obtained a cup of water, and exited the business within one minute. While Witness #1 was preparing the sandwich, Tagatauli dropped a bag of chips on the floor. When Tagatauli picked up the chips, Witness #1 observed what he believed was the butt of a black handgun in Tagatauli's right jacket pocket.

At 8:15 p.m., Tagatauli exited the Subway. He and Talauega walked south of the restaurant to a market on West Edinger Avenue. At approximately 8:16 p.m., based on security surveillance footage, Tagatauli entered the El Metate Market while Talauega waited outside. At approximately 8:17 p.m., a Subway employee, Witness #2, telephoned 911 and advised of a possible attempted robbery and that the subject was possibly armed with a handgun.

Victim #1 and Victim #2 were shopping together at the market. While standing at the checkout register, Victim #1 left Victim #2 to get additional items. At approximately 8:18 p.m., Tagatauli was standing behind Victim #2, who was loading her groceries onto the checkout register stand. Victim #2 had her left hand on top of her purse, which was in the grocery cart. Tagatauli grabbed her purse and ran toward the exit. The market manager observed the theft and locked the exits. Tagatauli was chased through the market by employees and eventually broke through the front window with his body to exit the market.

A market employee, Victim #3, heard someone yell that a women's purse had been stolen. He observed Tagatauli jump over the kitchen cash counter and onto a kitchen-area metal preparation table against the north-facing kitchen glass window. Tagatauli banged on the window and the glass eventually shattered. Tagatauli climbed out through the broken window and fled. Victim #3 unlocked the market's front doors. Victim #3 and Victim #1 chased Tagatauli.

Victim #4 observed Tagatauli climbing out through the broken window of the market. Victim #4 heard someone advise that Tagatauli had stolen a purse, so Victim #4 chased Tagatauli. Victim #3 caught up to and tripped Tagatauli. Victim #3 and Victim #1 were wrestling with Tagatauli when Talauega began to kick them, enabling Tagatauli to stand up and flee. Victim #1 and Victim #4 followed Tagatauli and Talauega. Victim #4 told Tagatauli to return to the store.

With his right hand, Tagatauli pulled out what appeared to be a firearm from the left front side of his waistband, pointed it at Victim #4, and said, "Back off." It was later determined that the apparent firearm was actually a BB gun. Tagatauli and Talauega fled and were last observed walking west toward the rear of a property on South Bristol Street.

At approximately 8:23 p.m., two SAPD units were dispatched to the Subway. At approximately 8:25 p.m., Victim #1 telephoned the police regarding Tagatauli in possession of a handgun and stealing Victim #2's purse. He advised that Tagatauli and Talauega were last observed to the rear of a property on South Bristol Street. At approximately 8:27 p.m., via police radio, SAPD Sergeant Tony Miranda updated the incident as a robbery at the El Metate Market on West Edinger Avenue.

FACTS DESCRIBING THE SHOOTING

SAPD Officer Ruvalcaba, who shot Tagatauli, refused to make a statement to OCDA Investigators concerning the shooting. However, SAPD Officer David Yettaw gave the following statement:

Officer Yettaw heard Sergeant Miranda over the police radio stating that the subjects possibly ran behind a church. Officer Yettaw, who was familiar with the area, responded to search the area. He was driving eastbound on Occidental Street from Pacific Avenue when he observed Tagatauli and Talauega walking westbound on the north side of Occidental Street, crossing Pacific Avenue. They matched the description of the subjects involved in the above two incidents. Talauega was carrying a black jacket in his left hand and had his right arm around Tagatauli's back. It appeared as if Talauega was assisting Tagatauli with walking.

Officer Yettaw drove past the suspects and made a U-turn at Poplar Street. He drove west on Occidental Street in order to contact Tagatauli and Talauega at Pacific Avenue and Occidental Street. As Officer Yettaw was preparing to contact them, Officer Ruvalcaba drove south on Pacific Avenue, approaching the location.

At approximately 8:29 p.m., Officer Yettaw advised over the police radio that he was contacting two subjects at Occidental Street and Pacific Avenue. Officer Yettaw activated his patrol unit spotlight, illuminated Tagatauli and Talauega, and exited his patrol unit. Tagatauli and Talauega were approximately 30 feet away from him.

Officer Ruvalcaba stopped his patrol unit facing south on Pacific Avenue at Occidental Street. Officer Ruvalcaba illuminated Tagatauli and Talauega with his patrol unit spotlight. Officer Yettaw called out to them once or twice, "Hey stop right there, hey." Officer Ruvalcaba called out, "Stop right there." Officer Yettaw observed Tagatauli and Talauega quickly glance at the officers and then run westbound away from them.

Officer Yettaw ran west on Occidental Street, south of a car which was parked along the north curb. Per the previous radio call information, Officer Yettaw recalled that the subject with the jacket may be armed with a firearm. Due to that information, Officer Yettaw focused his attention primarily on Talauega, but also divided his attention toward Tagatauli, of whom his view was partially obstructed by landscape and a parked vehicle.

Officer Ruvalcaba also ran westbound chasing Tagatauli and Talauega. Officer Ruvalcaba was positioned northwest of Officer Yettaw as they pursued the suspects. At this time, Sergeant Ulysses Gonzalez drove west on Occidental Street as Officers Ruvalcaba and Yettaw pursued Tagatauli and Talauega. The two suspects separated as they ran from SAPD. Talauega continued west and Tagatauli turned north onto the south grass of a residence on South Pacific Street. Tagatauli was positioned northwest of Officer Yettaw. Officer Yettaw's initial view was of Tagatauli's back left side. As Tagatauli turned north, Officer Yettaw's view encompassed Tagatauli's right side. Tagatauli's arms were positioned by his waist and he was "hunched over" at the waist as he was running toward the south fence of the residence on South Pacific Street.

Officer Yettaw diverted his attention toward Talauega and heard three or four gunshots. He redirected his attention toward Tagatauli, and observed Tagatauli falling toward the ground and Officer Ruvalcaba standing approximately 20 feet away from Tagatauli. He heard Officer Ruvalcaba stating, "998," which means an officer-involved shooting had occurred.

POST-SHOOTING EVENTS

The following events were constructed from interviews with Officers Steve Ahearn, Yettaw, and Gonzales.

Officer Ahearn responded to assist and stopped his patrol vehicle on Occidental Street, west of Pacific Avenue. Officer Ahearn exited his patrol vehicle, unholstered his duty weapon, and pointed it at Tagatauli, who was being held at gunpoint by Officer Ruvalcaba. Officer Ruvalcaba was giving commands to Tagatauli to get on his knees and stomach. Tagatauli complied. Officer Ruvalcaba placed handcuffs on Tagatauli. Officer Ahearn observed that Tagatauli was bleeding from his legs and mouth.

Sergeant Gonzalez drove west ahead of the suspects and stopped his vehicle near the northeast corner of Occidental Street and Spruce Street. Officer Yettaw redirected his attention toward Talauega. He observed Sergeant Gonzalez stop his patrol vehicle at the northeast corner of Occidental Street and Spruce Street, blocking Talauega's path. As Talauega continued running westbound, Officer Yettaw heard an object hitting the ground and then observed Talauega drop his jacket west of a driveway. Talauega then stopped. Officer Yettaw ordered Talauega into a prone position and Sergeant Gonzalez covered him as Officer Yettaw handcuffed and searched Talauega.

Sergeant Gonzalez walked east on the sidewalk toward Pacific Avenue and observed a black jacket on the sidewalk, east of where Talauega was taken into custody. Further east of the jacket, Sergeant Gonzalez observed a handgun on the grass parking strip between the sidewalk and the street.

Sergeant Miranda arrived at the scene and assisted Officer Ruvalcaba with handcuffing Tagatauli. Sergeant Gonzalez determined Officer Ruvalcaba was the officer involved in the shooting and ordered a safety statement from him. Officer Ruvalcaba told him that he fired two to three rounds in a westerly direction.

Sergeant Gonzalez noted that Tagatauli was breathing, coughing, and making noises. Sergeant Gonzalez used his hand-held radio and requested the assistance of paramedics from SAFD.

Based on SAPD radio transmissions, the time Tagatauli and Talauega initially ran from Officer Yettaw to the time of the shooting was approximately 10 seconds.

As Officer Yettaw escorted Talauega to a patrol unit, he observed what appeared to be a large black plastic handgun on a driveway just east of the jacket that Talauega had dropped. Officer Yettaw did not observe Talauega drop the handgun, however, he believed the handgun hitting the ground was the sound he heard after the gunshots and prior to Talauega dropping the jacket.

At approximately 8:34 p.m., SAFD Paramedics were dispatched to the area of West Occidental Street and South Pacific Avenue. At approximately 8:40 p.m., paramedics were directed by SAPD personnel to Tagatauli, who was handcuffed and lying face down near a fence. Once the handcuffs were removed, paramedics began their preliminary examination and noted a gunshot wound to the left back and right lower leg, and blood coming from Tagatauli's mouth. They connected Tagatauli to their electrocardiogram monitor and noted that he was in cardiac arrest. They began cardiopulmonary resuscitation.

At approximately 8:51 p.m., Tagatauli was placed in the paramedic unit and transported to Western Medical Center in Santa Ana. While en route to the hospital, an intravenous line (IV) was inserted, allowing paramedics to administer the standard advance lifesaving (ALS) medications to Tagatauli. In addition to the IV, a needle thoracostomy was performed to assist with opening Tagatauli's airway. At approximately 9:00 p.m., Tagatauli arrived at Western Medical Center. A trauma team took over all ALS techniques. Tagatauli had no heartbeat and showed no signs or response to their treatment. At approximately 9:15 p.m., hospital staff declared Tagatauli deceased.

AUTOPSY

On April 21, 2010, forensic pathologist Dr. Anthony A. Juguilon conducted a post-mortem examination on Tagatauli at the Orange County Sheriff-Coroner Forensic Science Center. Two gunshot entrance wounds were located on the body. One was left of center on the mid-back, and another was located on the back of the right calf.

A gunshot exit wound was located below the knee on the right shin area. The apparent trajectory was in an upward direction. The gunshot wound to the back lacerated the heart, left lung, diaphragm, spleen, kidney and liver. A projectile was recovered in the chest cavity. A left rib, under the left side chest abrasion, was determined to be fractured. Dr. Juguilon concluded that the gunshot wound to Tagatauli's torso was the cause of death after it perforated his heart and one of his lungs, and caused bleeding sufficient to cause death.

EVIDENCE ANALYSIS

Officer Enrique Ruvalcaba's Handgun

Officer Ruvalcaba's weapon is a Glock Model 22 Pistol, .40 Smith & Wesson caliber. OCDA Investigators collected Officer Ruvalcaba's service weapon, a 15-round capacity magazine from the handgun containing 12 rounds in the magazine, and one round in the chamber of the pistol. All were Winchester .40-caliber rounds. OCDA Investigators also took two 15-round capacity magazines from Officer Ruvalcaba's magazine pouch on his duty belt. Each of these contained 15 rounds, all of which were Winchester .40-caliber rounds.

Ruvalcaba's Glock pistol was test fired and operated without malfunction.

Ballistics Examination

OCDA Investigators located two shell casings north of the north sidewalk of West Occidental Street and just west of the west wall of the shooting scene. OCDA Investigators located an additional shell casing in the grass in the southside yard of the residence. Two bullets were recovered from the scene of the shooting, and one bullet was removed from Tagatauli's chest cavity during the autopsy.

The three fired cartridge casings from the scene were microscopically compared to the test-fired cartridge cases from Officer Ruvalcaba's pistol. All three were determined to have been fired by Officer Ruvalcaba's Glock pistol. The bullets from the scene and the bullet from the autopsy were determined to have the same class characteristics as Officer Ruvalcaba's Glock pistol, but did not have sufficient detail to make a definitive identification as to the exact weapon which fired them.

Replica Handgun Found at the Scene

Although no actual handgun was found at the scene, one "Tanfoglio Witness 1911" semi-automatic replica, BB gun was recovered, as well as a black magazine and a grip for the replica firearm. DNA typing was conducted on this

replica firearm with the following results:

A standard of Tagatauli's blood was taken and a DNA profile from it was obtained and compared to a DNA profile that was obtained from swabbing the replica firearm recovered at the scene. The same 15-locus DNA profile was obtained from the apparent blood from the BB gun and from Tagatauli's standard, therefore, Tagatauli was not eliminated as the source of the apparent blood from the BB gun. The frequency of choosing an individual, at random, who could be the source of the DNA from the apparent blood is more rare than one in one trillion unrelated individuals. Talauega was eliminated as the source of that DNA. As a practical matter, such a numerical conclusion translates as confirmation that Tagatauli's DNA was on the replica firearm.

Tagatauli was not eliminated as the major contributor to the mixture of DNA from the pistol grip and slide swabs, and trigger-guard swab. Talauega was eliminated as a major contributor to the firearm swabs. It was inconclusive as to whether or not Talauega was a minor contributor to those samples.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a shooting include murder [Penal Code Section 187]; attempted murder [Penal Code Section 664/187]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. *People v. Banks* (1977) 67 Cal. App. 3d 379, 383-84. Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a.

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are "charged with a felony" and who are fleeing from justice or resisting such arrest. Section 196 applies both where the suspect in question is "charged with a felony" and where the officer has "reasonable cause" to believe that the person has committed a felony. *People v. Kilvington* (1894) 104 Cal. 86, 89. The felony must involve violence or the threat of violence. *Kortum v. Alkire* (1977) 69 Cal. App. 3d 325, 333.

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

California Penal Code Section 835a allows any police officer who has reasonable cause to believe that a person to be arrested has committed a felony [public offense] to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer "who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance." As with Penal Code Section 196, Section 835a only allows use of deadly force by the police officer when the suspect's felony involves violence or the threat of violence. *Kortum v. Alkire* (1977) 69 Cal. App. 3d 325, 333. The court in *Kortum* further held that deadly force against a fleeing felony suspect is justifiable only when the felony "is of the violent variety, i.e., a forcible and atrocious one which threatens death or serious bodily harm, or there are **other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another.**" *Kortum v. Alkire, supra*, 69 Cal. App. 3d at 333.

In addition, Penal Code section 834a requires that if a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest.

Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself from attack if, as a reasonable person, he had grounds for believing and did believe that bodily injury was about to be inflicted upon him or upon another person. In

doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

The law as detailed in CALCRIM 3470 and in well-settled case law therefore permits a person, if confronted by the **appearance of danger** which arouses in his mind, as a reasonable person, an honest fear and conviction that he or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest convictions. The person's right of self-defense is the same **whether the danger is real or merely apparent**. *People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.

Nevertheless, the above justifications must be interpreted in light of United States Supreme Court precedent that limits the right of a police officer to use deadly force. *People v. Martin* (1985) 168 Cal. App. 3d 1111, 1124. Thus, in *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the United States Supreme Court ruled that a police officer is entitled to use deadly force only when "the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily injury to the officer or others."

This limitation was, however, subsequently clarified by the United States Supreme Court in the seminal case of *Graham v. Conner* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer's right to use force [i.e., his weapon] is to be analyzed under the Fourth Amendment's "objective reasonableness" standard. The Supreme Court further stated that the determination of the reasonableness of an officer's use of force "must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and evolving." *Id.* at 397. Thus, the Court cautioned that "[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." *Id.* at 396.

The United States Supreme Court's analysis and teachings in *Graham, supra*, are very much applicable to the circumstances surrounding the interactions of Officer Ruvalcaba with Tagatauli.

LEGAL ANALYSIS

Officer Ruvalcaba did not make a statement regarding the shooting, so there is no firsthand account of what he was thinking or perceiving at the time of the shooting. The circumstances surrounding the shooting suggest, however, that Officer Ruvalcaba may have had a reasonable and good faith belief that he was acting in self-defense and defense of others when he shot Tagatauli.

Officer Ruvalcaba was responding to a report that Tagatauli had just committed a robbery. Officer Ruvalcaba also observed that Tagatauli was a fleeing felon, and it had been broadcast that Tagatauli possessed a firearm. It was only later determined that the firearm was a replica. Therefore, Officer Ruvalcaba had a legal justification and even obligation to pursue Tagatauli pursuant to Penal Code Section 185a.

Officer Yettaw was in a position to observe the shooting, as noted above, but when interviewed said that he "diverted his attention" just prior to the shooting. Importantly, however, he says that he saw Tagatauli in a "hunched over" position with his arms positioned at his waist immediately prior to the shooting. One reasonable interpretation of these facts is that Officer Ruvalcaba reasonably believed that Tagatauli was reaching to his waist for the handgun witnesses reported he possessed. In that case, Officer Ruvalcaba's shooting would be justified self-defense. *Kortum v. Alkire, supra*, 69 Cal. App. 3d at 333; *People v. Jackson supra* 233 Cal.App.2d 639, 641-642.

In order for any criminal charges to be justly brought against Officer Ruvalcaba, it would need to be shown that he did not act in reasonable and justifiable self-defense or defense of others when he shot Tagatauli. An analysis of the facts as presented in this case does not disprove the proposition that Officer Ruvalcaba shot in lawful self-defense or in defense of others. Moreover, a reasonable interpretation of the evidence is that Officer Ruvalcaba used the force

that appeared to be objectively reasonable at the time considering all of the facts and circumstances. See, e.g., *Graham v. Conner* (1989) 490 U.S. 386.

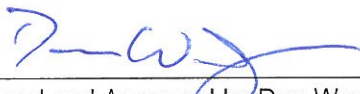
CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews we reviewed, and pursuant to the applicable legal principles, the evidence does not support a finding of criminal culpability on the part of Officer Ruvalcaba when he shot Tagatauli on April 20, 2010.

Accordingly, the OCDA is closing its inquiry into this incident.



Cameron Talley
Senior Deputy District Attorney
Homicide Unit



Read and Approved by Dan Wagner
Assistant District Attorney
Head of Homicide Unit