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January 30, 2015

Sheriff Sandra Hutchens
Orange County Sheriff's Department
550 N. Flower Street
Santa Ana, CA 92703

Re: Officer-Involved Shooting on June 29, 2014
Non-Fatal Incident involving Shaun Bradley Paquette
District Attorney Investigations Case # 14-009
Orange County Sheriff's Department Case # 14-121963
Orange County Crime Laboratory Case # FR 14-48703

Dear Sheriff Hutchens,

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 Orange County Sheriff's Department (OCSD) Deputy Justin Mathieson. The incident occurred in the City of Ladera Ranch on June 29, 2014. Shaun Bradley Paquette, 29, Ladera Ranch, survived his injuries.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the June 29, 2014, non-fatal, officer-involved shooting of Shaun Paquette. 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 the OCSD deputy 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 June 29, 2014, Investigators from the OCDA Special Assignments Unit (OCDASAU) responded to this incident. During the course of this investigation, 14 interviews were conducted, and 14 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: OCSD reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Paquette; criminal history records related to Paquette; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

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The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has reviewed all available evidence and legal standards impartially. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of OCSD deputies or personnel, specifically Deputy Mathieson. The OCDA will not be addressing issues of policy, training, tactics, or civil liability.

In a case where there is an officer-involved shooting incident and the OCDA files criminal charges against the individual shot by the police, it is the OCDA's policy to release the final report regarding the officer involved shooting incident after the issue of guilt is decided in the underlying filed criminal case. This policy is in place to ensure that the OCDA does not release any information that may be viewed as prejudicing the right of a defendant to receive a fair trial while his or her case is still pending.

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. Deputy District Attorneys 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 memoranda. 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.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Deputy Mathieson gave a voluntary statement to OCDA Investigators on July 1, 2014.

FACTUAL SUMMARY

On the evening of June 29, 2014, Shaun Bradley Paquette, his wife Jane Doe, and their two young children attended a party at a friend's home. Paquette became intoxicated and accused a fellow guest of stealing \$11 from him. Jane Doe had been drinking as well, so their family was taken home by a sober driver.

Upon returning to their home, Paquette and Jane Doe began arguing about Paquette's theft accusations at the party. Jane Doe felt embarrassed by Paquette's actions. During this dispute, Jane Doe sent the children up to their bedroom on the second floor of their residence.

The argument then turned to the family's financial difficulties and Paquette's unhappiness with his work and marriage. Paquette told Jane Doe that he no longer wanted to be with her, and he asked her for the car keys so he could leave. Jane Doe refused to give Paquette the keys because of his intoxicated state.

Paquette was enraged by Jane Doe's refusal to give him the car keys, and he said he was going upstairs to retrieve his gun. Jane Doe knew Paquette kept a gun in a safe in their bedroom. She was frightened by his threat, so she took the children outside of the house. Paquette followed them outside and confronted Jane Doe while holding his handgun in his right hand. Jane Doe described Paquette as being loud and yelling the whole time.

A neighbor, John Doe, heard the argument from inside his residence. Looking down from a second story window, John Doe observed Paquette standing over Jane Doe in an apparent position to strike her with his closed right fist. John Doe could hear Jane Doe screaming and a baby crying nearby. Based on his observations, John Doe called the police for assistance at approximately 10:24 p.m. When John Doe returned to the window, the couple was no longer visible, but he continued to hear yelling and arguing while he was speaking with the 911 dispatcher.

At approximately 10:26 p.m., Deputies Justin Mathieson and Patrick Baek were dispatched to Paquette's residence regarding a "domestic disturbance." Dispatch further advised that the male suspect was pushing the female victim to the ground.

Deputy Baek and Chaplain Christopher Grant, who was accompanying Deputy Baek, were first on scene. They met with John Doe, who directed them to the area where he observed the disturbance. Yelling was audible from the Paquette's residence. Deputy Baek heard a female say, "Stop! Don't hit me! Let go!" As Deputy Baek moved toward the front door of the residence, he heard a sobbing woman say, "Give me the gun." Deputy Baek could not see anyone through the window. At approximately 10:41 p.m., Deputy Baek broadcasted this updated information on his police radio and requested additional sheriff units respond "Code 3" – signaling an emergency. Deputy Baek resumed a position of cover in front of the Paquette residence, approximately four feet north of the front door.

Deputy Mathieson heard Deputy Baek's broadcast as he arrived on the scene as the handling officer. Deputy Mathieson made visual contact with Deputy Baek and Chaplain Grant before going to the windows on the northwest side of the residence. From this vantage point, Deputy Mathieson saw Paquette armed with a handgun in his right hand, standing over Jane Doe, pointing a gun at her head from one to two feet away. Jane Doe was sitting on the ground with her arms behind her, backing away from Paquette. Her location obstructed Deputy Mathieson's line of fire. Deputy Mathieson heard Jane Doe plead with Paquette not to shoot or kill her.

At that time, Deputy Mathieson was assigned to CIRT, the OCSD's Critical Incident Response Team, and had specialized training for circumstances with active shooters and extreme violence. Deputy Mathieson feared for Jane Doe's life based on Deputy Mathieson's training and experience, Paquette's deliberate and aggressive demeanor, Jane Doe's pleas for Paquette not to kill her, and the fact that he saw the gun pointed at Jane Doe's head. Deputy Mathieson stated, "I thought she was going to be executed right there. I thought I was going to witness a murder."

Paquette continued to advance towards Jane Doe while pointing his handgun at her head. Deputy Mathieson feared Paquette intended to shoot her. Still on the floor, Jane Doe continued to back away from Paquette towards a room in the northwest part of the house, where Deputy Mathieson was positioned. Paquette followed Jane Doe and Deputy Mathieson drew his firearm. As Deputy Mathieson focused his aim, Paquette moved towards the southeast window where Deputy Baek and Chaplain Grant were positioned. At this point, Jane Doe was approximately seven to eight feet away from Paquette and no longer in Deputy Mathieson's line of fire.

Paquette turned his head from Jane Doe to look out the window towards Deputy Baek and Chaplain Grant, but kept his handgun pointed at Jane Doe. Deputy Mathieson believed Paquette saw Deputy Baek and Chaplain Grant through the window. Fearing for the safety of his partner, the chaplain, and Jane Doe, Deputy Mathieson yelled to Paquette and ordered him to drop the gun several times. Paquette did not comply, so Deputy Mathieson fired three rounds at Paquette from a distance of approximately 20 to 25 feet. Paquette dropped to the ground. Deputy Mathieson told the DA Investigators that at the time he fired his weapon, he thought Paquette was going to shoot Jane Doe, then shoot his partner who was right outside the door, and "that's why I gave him those commands right away...and fired those three rounds."

Deputies Mathieson and Baek entered the residence. Deputy Mathieson handcuffed Paquette, searched his person, and requested paramedics. An additional, loaded magazine was found in Paquette's front left pants pocket. Paquette's handgun was located on the ground near his feet and was cleared by Deputy Baek. Jane Doe and the children were

escorted out of the residence shortly thereafter.

At approximately 10:51 p.m. Orange County Fire Authority (OCFA) arrived on the scene. OCFA Paramedics treated Paquette and transported him to Mission Hospital. Paquette had bullet entrance wounds on his lower abdomen and right hip area. An abrasion or grazing wound was observed on Paquette's lower buttocks area. Paquette's vital signs were stable and no resuscitation was performed. During the x-ray, two bullets were observed inside of Paquette's body. No surgical intervention was conducted because the bullets were considered non-life-threatening.

Statement of Shaun Paquette

On June 30, 2014, Paquette was advised of his Miranda rights. Paquette invoked said rights and requested to speak with an attorney prior to providing any statement. The interview was terminated at that time.

EVIDENCE COLLECTED

The following items of evidence were collected from the scene:

- Three Federal .40 S&W cartridge cases
- A Smith and Wesson, M&P .40 caliber pistol (serial number HAN1242) with a magazine containing nine .40 caliber cartridges, and one .40 caliber loose cartridge
- A fully loaded ten-cartridge capacity Smith and Wesson magazine
- A window screen containing three apparent bullet holes (*Photographed only*)
- A bullet removed from the interior wall

The following items of evidence were collected from Deputy Mathieson:

- A Sig Sauer, Model P226 Equinox, .40 caliber, semi-automatic pistol
- One magazine from the handgun containing eight cartridges, and one cartridge from the chamber of the weapon
- Three additional magazines from the magazine pouch, containing 12 cartridges each
- A black X-26 Taser containing one cartridge, serial number X00-529534

EVIDENCE ANALYSIS

Firearms Examination

Deputy Mathieson's Sig Sauer pistol was test-fired at the Orange County Crime Lab and fired without malfunction in both single and double actions. Paquette's Smith & Wesson pistol was test-fired also and operated without malfunction.

Projectile Examinations

The projectile and three Federal brand .40 S&W caliber cartridge cases collected from the scene were determined to have been fired from Deputy Mathieson's Sig Sauer pistol.

Toxicological Examination

A sample of Paquette's pre-transfusion blood was examined by an OCCL Forensic Scientist and yielded a BAC of 0.20. Paquette's blood at the hospital tested negative for drugs.

PAQUETTE'S CRIMINAL HISTORY

Paquette's criminal history was reviewed and considered. Paquette's criminal history includes being a minor in possession of alcohol while operating a motor vehicle.

PAQUETTE'S POST-INCIDENT CONVICTION

On July 2, 2014, the OCDA filed criminal charges against Paquette in Orange County Superior Court case 14HF1876,

consisting of one felony count each of assault with a firearm, a violation of California Penal Code section 245(b); felony child endangerment, in violation of California Penal Code section 273a(a); and misdemeanor spousal battery, a violation of California Penal Code section 243(e)(1). On Jan. 13, 2015, Paquette plead guilty to all counts, except child endangerment, which was dismissed pursuant to a negotiated disposition. Paquette was sentenced to one year in the Orange County Jail and was placed on probation.

Pursuant to his plea agreement, Paquette admitted the following:

"In Orange County, California, on 6/29/14, I did willfully, unlawfully and personally commit an assault upon the person of Jane Doe with a semi-automatic firearm. I also did willfully and unlawfully commit a battery against Jane Doe, who is my spouse."

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a non-fatal shooting include 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. Adrian* (1982) 135 Cal.App.3d 335, 340-342.) 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. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 332.) The felony must involve violence or the threat of violence. (*Id.* at 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." The Court of Appeal 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 p. 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/her mind, as a reasonable person, an honest fear and conviction that he/she 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 physical injury to the officer or others."

This limitation was, however, clarified subsequently by the United States Supreme Court in the seminal case of *Graham v. Connor* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer's right to use force [*i.e.*, his/her 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 rapidly evolving—about the amount of force that is necessary in a particular situation" (*Id.* at 396-397.)

The United States Supreme Court's analysis and teachings in *Graham* are very much applicable to the circumstances surrounding the interactions of OCSD Deputy Mathieson with Paquette.

LEGAL ANALYSIS

The issue is whether the conduct of Deputy Mathieson on June 29, 2014, was criminally culpable and without justification. In order to lawfully charge Deputy Mathieson with a crime, the prosecution must prove beyond a reasonable doubt that he did not act in lawful self-defense. However, if the actions of Deputy Mathieson were justifiable as lawful self-defense or defense of others, criminal charges will not be warranted.

Based on the entirety of the available evidence, it is clear that Deputy Mathieson was justified in believing that Paquette posed a significant threat of death or serious physical injury to Deputy Mathieson and others. Deputy Mathieson was dispatched to a domestic disturbance where the male suspect was described as pushing a female to the ground, and he was aware there was a firearm involved. Once on scene, Deputy Mathieson heard yelling and obscenities coming from inside the residence, and saw Paquette pointing a gun at Jane Doe's head from one to two feet away. Deputy Mathieson heard Jane Doe plead with Paquette not to shoot or kill her, as Jane Doe was on the ground, backing away from her husband. Paquette followed her, keeping his handgun pointed at her head. Based upon those observations, as well as Paquette's deliberate and aggressive demeanor, Deputy Mathieson rightfully believed that Paquette was going to execute Jane Doe.

Deputy Mathieson's fear increased to reasonably include Deputy Baek and Chaplain Grant, when Paquette looked out the window where they were positioned. Deputy Mathieson believed Paquette could see Deputy Baek and Chaplain Grant, and would shoot them, as well as Jane Doe. Deputy Mathieson yelled to Paquette to drop the gun, but despite Deputy Mathieson's commands, Paquette continued to point his handgun at Jane Doe's head. Because Paquette failed to comply, Deputy Mathieson fired three rounds at Paquette. Based on his specialized CIRT training and experience, as well as simple common sense, Deputy Mathieson believed Paquette was going to shoot Jane Doe, then shoot his partner who was right outside the door, and "...that's why I gave him those commands right away...and fired those three rounds."

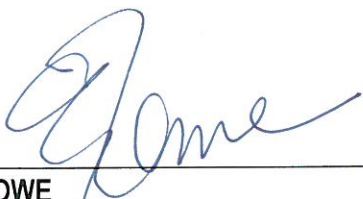
In order for Deputy Mathieson to be justly and lawfully charged and convicted with a crime in this incident, it is the OCDA's burden to prove beyond a reasonable doubt that Deputy Mathieson did not act in reasonable and justifiable self-defense or defense of another when he shot Paquette. As should be apparent from the above-described analysis, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would justly conclude it

was reasonable for Deputy Mathieson to believe Jane Doe's life, and the lives of his fellow deputy and the Chaplain, were in imminent danger. Therefore, Deputy Mathieson was justified when he shot Paquette. Deputy Mathieson did not commit a crime; to the contrary, there is overwhelming evidence that he carried out his duties as a peace officer in a reasonable and justifiable manner while faced with very stressful and dangerous circumstances.

CONCLUSION

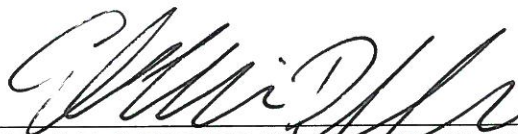
Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of Deputy Mathieson, and there is substantial evidence that his actions were reasonable and justified under the circumstances when he shot Paquette on June 29, 2014.

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



ERIN ROWE

DEPUTY DISTRICT ATTORNEY
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READ AND APPROVED BY **IBRAHIM BAYTIEH**
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