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June 8, 2015

Chief Raul Quezada
Anaheim Police Department
425 S. Harbor Blvd.
Anaheim, CA 92805

Re: Officer-Involved Shooting on Sept. 19, 2014
Fatal Incident Involving Steen Thomas Parker
District Attorney Investigations Case # SA 14-013
Anaheim Police Department Case # 14-134837 and 14-134720
Orange County Crime Laboratory Case # FR 14-52504

Dear Chief Quezada,

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 Anaheim Police Department (APD) Officers Nick Bennalack, Mark Brydges, Jeff Burke, Douglas Elms, Catalin Panov, and Stephen Salicos. Steen Thomas Parker, 43, did not survive his injuries and died as a result of this officer involved shooting incident. The incident occurred in the City of Anaheim on Sept. 19, 2014.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the Sept. 19, 2014, officer-involved fatal shooting of Parker. The letter includes an overview of the OCDA's investigative methodology and procedures employed, as well as a description of the relevant evidence examined, information from witnesses, factual findings, and legal principles applied in analyzing the incident and determining whether there was criminal culpability on the part of the APD officers involved in the shooting. The format of this letter was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Sept. 19, 2014, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 21 interviews were conducted. OCDASAU Investigators also obtained and reviewed the following: APD reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Parker; criminal history records related to Parker, including prior incident reports; the personnel records of Officers Bennalack, Brydges, Burke, Elms, Panov, and Salicos; 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 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 APD officers or personnel, specifically Officers Bennalack, Brydges, Burke, Elms, Panov, and Salicos. The OCDA will not be addressing issues of policy, training, tactics, or civil liability.

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 lead 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 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.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Officer Douglas Elms provided a voluntary statement to OCDA Investigators on Sept. 19, 2014, and Officers Bennalack, Brydges, Burke, Panov, and Salicos provided voluntary statements on Sept. 29, 2014. From the beginning and until the conclusion of this investigation, all the involved APD officers were very professional in their dealings with the OCDA Investigators.

FACTUAL SUMMARY

On Friday, Sept. 19, 2014, at approximately 12:00 p.m., Parker and John Doe 1 entered the parking lot of a Fry's Electronics store (Fry's), located in the City of Anaheim, driving a black Honda Pilot with California license plate 6XDY115. They parked near the front customer entrance to Fry's and entered the store. Shortly thereafter, Parker and John Doe 1 caught the attention of the store's Loss Prevention Officers who were monitoring the surveillance video. Parker was wearing beige pants, a white shirt, a dark-colored blazer, and a black baseball cap. John Doe 1 was wearing grey shorts and a dark-colored shirt.

At approximately 12:09 p.m., the Loss Prevention Officer observed John Doe 1 in the "flashlight aisle." John Doe 1 took several flashlights off of the shelf and walked to the "electronics aisle," where he met with Parker. The two men spoke for approximately one minute before separating. John Doe 1 walked around and eventually stopped at a demonstration display in the video gaming area and then placed the flashlights he had collected on an adjacent shelf and began playing a video game. At approximately 12:25 p.m., one of the Loss Prevention Officers observed Parker carrying several items throughout the store.

At approximately 1:04 p.m., John Doe 1 stopped playing the video game and selected a box containing a video gaming system from the shelf under the display. The game was packaged in a box that appeared to have an alarmed security strap. John Doe 1 walked around the store with the box for several minutes, stopping briefly to look at other items.

At approximately 1:10 p.m., Parker entered the checkout line and proceeded to check stand #17 where he purchased several items totaling approximately \$32. Upon completion of the purchase, Parker exited the store and walked to the Honda Pilot. The Loss Prevention Officer watched Parker via the surveillance cameras as Parker opened the driver's door and entered the vehicle. Parker sat for several minutes before exiting the Pilot and reentering the store, no longer wearing the black baseball cap. At approximately 1:32 p.m., after returning from a brief interruption in his surveillance, the Loss Prevention Officer observed Parker in the computer department, carrying a Luxa2 brand, dual wireless charging station box and two Motorola two-way radios. Parker walked around the store carrying the items for approximately two minutes and then began to open the items. He walked to aisle 44B, where he removed a pocket knife from his right front pocket and proceeded to cut open the box containing the Luxa2 brand charger and removed it from the box. Parker concealed the charger in the pocket of his blazer and then closed the box. Parker continued to walk through the store and remove the Motorola radios from the packaging before placing them in his blazer. Parker then returned the closed, empty boxes to their original shelves.

At approximately 1:40 p.m., John Doe 1 was walking through the store carrying the boxed gaming system with the security strap removed. He appeared to be alone in an aisle when he bent over and began to look around. John Doe 1 untucked his undershirt and placed the box under his shirt in an attempt to conceal it. Once the box was under his shirt, John Doe 1 appeared to realize that the box was too large to conceal, so he returned it to the shelf. John Doe 1 exited the store and entered the passenger's side of the Pilot.

The Loss Prevention Officers decided to contact Parker in the store and advise him of their observations prior to him attempting to leave with the merchandise and complete the theft. As the Loss Prevention Officer approached Parker near the front of the store, Parker retrieved a black, semi-automatic handgun from a shoulder holster under his blazer. Parker held the handgun with both hands, pointed it at the Loss Prevention Officer, and ran towards him. The Loss Prevention Officer told Parker, "It's no big deal, just leave," and Parker exited the store.

At approximately 1:47 p.m., one of the Loss Prevention Officers watched Parker run to the Pilot, enter the driver's seat, and drive out of the parking lot at a high rate of speed. John Doe 2, a Fry's customer, had just entered the parking lot when Parker ran out of the store, and it appeared to him that Parker was concealing something in his blazer. John Doe 2 asked the Loss Prevention Officer if the store had been "robbed" and the Loss Prevention Officer responded affirmatively, so John Doe 2 turned his vehicle around and followed the Pilot. At approximately 1:49 p.m., the Loss Prevention Officer called the APD and reported that an armed robbery had just occurred and the suspect was seen leaving the location in a black Honda Pilot. At approximately 1:50 p.m., APD Officers Andre Pedroza, Chris Petropoulos, and Justin Whitehead were working in a patrol capacity when APD dispatchers informed them that an armed robbery had taken place at Fry's located at 3370 East La Palma in the City of Anaheim. Dispatch advised that the suspect had brandished a handgun at Loss Prevention Officers and fled the scene in a black Honda Pilot.

As APD dispatched officers to the location, John Doe 2 followed Parker northbound on Tustin Avenue. During this pursuit, John Doe 2 observed California Highway Patrol (CHP) Officer Cody Gil stopped at the intersection of Tustin Avenue and Pacific Center Drive in a marked black and white CHP patrol vehicle. John Doe 2 got Officer Gil's attention and advised him of what had taken place. Officer Gil asked John Doe 2 to remain there while he attempted to locate the Pilot. At approximately 1:54 p.m., Officer Gil observed a black Honda Pilot that had been involved in a traffic collision on Miraloma Avenue, east of Tustin Avenue. There were no occupants in the Pilot. One witness told Officer Gil that a white male with a gun, wearing a grey sports coat, ran into Manheim Auto Auction (Manheim) located at 1320 North Tustin Avenue. The second suspect was described to Officer Gil as a white male wearing shorts, last seen running eastbound on Miraloma Avenue. Officer Gil requested additional units from the CHP to "set up a perimeter" around the Manheim while he looked for the second suspect.

As Officer Gil traveled eastbound on Miraloma Avenue, he observed a white male, wearing shorts, walking briskly through the parking lot of a local business. Officer Gil made contact with the individual, later identified as John Doe 1, and detained him pending further investigation. Shortly thereafter, Officer Pedroza arrived at the scene of the traffic collision and observed several CHP vehicles at Etchandy Lane, north of Miraloma Avenue. Officer Pedroza drove to

that location and saw that John Doe 1 had been detained by several CHP officers. At approximately 1:58 p.m., Dispatch advised that Parker was seen headed northbound on Tustin Avenue and had jumped a fence into Manheim Auto Auction.

Manheim had numerous surveillance cameras that filmed video of various locations on the property. An exterior camera captured video images of Parker as he climbed from the west side of the fence (between Bedard Automotive and Manheim) into Manheim's vehicle storage lot. Parker appeared to drop something after landing on Manheim's property, retrieved it from the ground, and proceeded to walk northbound towards the main auction house. Another exterior camera captured Parker, seconds later, continuing to walk towards the open bay doors of the auction house. He walked into a large, open bay door on the south side of the building, and appeared to use his left arm to conceal something underneath his blazer. Parker headed towards the vehicles parked in the northeast portion of the lot and began to run between the vehicles.

At approximately 2:04 p.m., APD Officer Petropoulos advised Dispatch that he was entering the Manheim parking lot and requested that Dispatch notify management of the incident that was evolving. Manheim management advised that they would be calling all employees off the lot. APD Officer Ken Johnson and his trainee, APD Officer Emily Ladino, were also in the parking lot walking northbound, when Officer Ladino observed Parker in the east portion of the lot, crawling on the ground between cars.

At approximately 2:12 p.m., "Angel," APD's helicopter, arrived on the scene to provide aerial support. APD Officer Ty Hagenson piloted Angel and APD Officer Joshua Blackburn assisted as the Tactical Flight Officer. From an altitude of 700-1,000 feet, Officer Hagenson utilized Angel's public address (PA) system to instruct Parker to surrender, but Parker did not comply. At approximately 2:30 p.m., APD Lieutenant Eric Trapp instructed APD Sergeant James Cossin to organize a meeting of the Special Weapons and Tactics (SWAT) Rapid Response Group (RRG), comprised of APD SWAT operators and tactical paramedics from the Anaheim Fire Department (AFD). At approximately 3:09 p.m., Officer Blackburn broadcasted via the police radio that Parker was last seen in the east end of the Manheim parking lot, entering a dark grey BMW sport utility vehicle. Between 2:12 p.m. and 3:17 p.m., Officer Hagenson gave numerous commands to Parker to surrender. Parker ignored all those commands.

At approximately 3:11 p.m., APD K-9 Officers Brett Klevos and Dale Miller drove their police vehicles into the lot and were directed to the northeast portion where a BMW was parked. Officers Klevos and Miller retrieved their service dogs and took a position behind a vehicle approximately 25 to 30 yards west of Parker. At approximately 3:13 p.m., APD SWAT Snipers Bennalack, Salicos, and Mark Caballero set up on the rooftop of 1397 North Jefferson Street, a building located on the north side of the parking lot which provided a clear view into the BMW. At approximately 3:17 p.m., Officer Hagenson advised his colleagues that he would discontinue commands from the air and allow the ground units to address Parker. Officer Klevos was able to broadcast Parker's actions from his vantage point. Parker was seen moving between the front seats, rear seats, and rear cargo area of the BMW, and he appeared to be "looking around for police officers."

At approximately 3:23 p.m., APD K-9 Officer Brian Bonczkiewicz took a position in the bed of a truck approximately 70 yards west of the BMW. Officer Bonczkiewicz had an unobstructed view through the front windshield of the BMW, and he yelled commands to Parker, four to five times, requesting that he exit the vehicle with his hands raised. Parker did not comply. APD Officer Ken Johnson moved Officer Bonczkiewicz's vehicle to his position behind the truck, and addressed Parker with the vehicle's PA system. Shortly after Officer Johnson gave the commands, Parker placed his left hand on the driver's headrest and raised his right hand as if he was aiming something towards Officer Klevos. Due to the lighting conditions, Officer Klevos was unable to confirm if Parker was pointing a gun at him or simulating that action.

At approximately 3:28 p.m., Parker exited the BMW with his hands raised. Once out of the BMW, Parker moved between the vehicles toward another vehicle parked just north of the BMW. As Parker moved between the cars, he concealed his right hand underneath his blazer. It appeared that Parker could not gain entry into the vehicle as he

intended, so he moved back towards the BMW, still keeping his right hand concealed. Officer Miller instructed Parker to "show his hands," but Parker did not comply. Approximately one minute later, Parker re-entered the BMW. Officer Johnson continued to give commands to surrender and asked if Parker could hear the commands. Parker responded by raising one of his hands and waving.

At approximately 3:39 p.m., APD's Peacekeeper, a light-armored SWAT vehicle, arrived at the scene and parked approximately 40 yards south of the BMW. Officer Panov rode on the outside of Peacekeeper and jumped off when the vehicle came to a stop and took a position at the right front of the vehicle, utilizing the Peacekeeper as cover. Officer Burke took a position in the Peacekeeper's turret and aimed his weapon at the BMW. Thereafter, Sergeant Christopher Masilon instructed Officer Elms to retrieve a 40mm multi-launcher from the APD SWAT annex. Officer Elms responded to the annex and returned to the scene with the weapon and a bandolier of rubber baton munitions. Sergeant Cossin instructed Officer Elms to, "Man the multi-launcher, should it be needed." APD Sergeant Tony Montanarella gave Parker numerous commands in English and Spanish with the megaphone in the Peacekeeper. Sergeant Montanarella told Parker to exit the vehicle and surrender so they could end the incident "peacefully." Sergeant Montanarella also offered drinking water to Parker due to the heat.

SWAT officers broadcasted on the police radio when Parker moved from the front seat to the rear seat. Parker opened the right rear passenger-side door and put his hands up. Parker exited the vehicle and took a position in "a low ready shooting stance," with both of his hands together and down at his waistline. A gun was not observed in his hands. Parker walked east, to the rear of the BMW in view of the SWAT officers on the Peacekeeper. Parker looked at the SWAT officers, turned around, and walked towards the front of the BMW. Parker was still in the "low ready shooting stance" as he walked around the vehicle. Parker then re-entered the BMW through the right rear passenger-side door. Parker continued to ignore the SWAT officers' repeated commands to surrender.

APD Officer Elms loaded the 40mm launcher with oleoresin capicum (OC) rounds and fired four rounds of OC gas into the BMW. The first round entered the open driver's-side window and shattered the front passenger-side window, but failed to disperse any OC gas inside the vehicle. Officer Elms then fired three additional rounds of OC gas into the BMW. The OC gas dispersed into the vehicle, but did not appear to deliver the desired reaction from Parker. Officer Elms then fired an additional round at the left rear door window which did not break the glass. Officer Elms then utilized a pepper ball gun and fired approximately seven or eight powder-based pepper ball projectile rounds into the vehicle. The balls broke upon contact with the dashboard of the BMW and dispersed the irritant inside. Sergeant Montanarella continued to give Parker commands to surrender, but Parker failed to comply.

At approximately 4:26 p.m., Sergeant Cossin requested that APD's fully-armored tactical vehicle, known as the "Bear," respond to the scene. APD Sergeant Luis Correa responded to the APD annex with APD Officer Trace Gallagher to retrieve the Bear. Approximately 15 to 20 minutes later, Sergeant Correa arrived on the scene and parked the Bear behind the Peacekeeper. SWAT Officers Brydges, Cossin, Elms, Masilon, and Montanarella, along with AFD Tactical Paramedics Ryan Herr and Nicholas Colonelli, exited the Peacekeeper and then entered the rear of the Bear. Detective Barraza drove the Peacekeeper northbound on an access road and parked approximately six to eight feet east of the BMW, with a chain link fence separating the two vehicles.

Officers Elms and Panov took a position in the rear gun port. Officer Elms fired a 40mm rubber baton from the multi-launcher into the rear window of the BMW in an attempt to break the glass. The rubber baton created a hole in the upper right portion of the window which Officer Elms utilized to introduce approximately seven or eight rounds of pepper balls into the interior of the BMW. The pepper ball irritant did not deliver the desired reaction from Parker as he continued to ignore the commands to surrender. A small amount of movement was still observed inside the BMW.

Officer Elms was instructed to try and break out the remainder of the window, but he had exhausted the supply of 40mm rubber batons, so he utilized a twelve-gauge, less-lethal beanbag. Officer Elms fired three beanbag rounds into the rear window causing it to shatter and fall, providing an unobstructed view into the interior of the BMW. Parker could now be seen hiding under a vinyl tarp in the cargo area of the BMW. Officer Brydges, armed with a M16-A1 rifle, was positioned

at the forward gun port of the Bear and observed Parker's hand raise. At approximately 5:14 p.m., a short time after the rear window collapsed, Sergeant Cossin heard a gunshot. Officer Elms saw what appeared to be a hole or "dimple" in the roof of the BMW. Officer Bernalack, who was on a nearby roof, heard what he described as a gunshot followed by a high-speed projectile "cutting through the air." Officer Burke, who was positioned in the turret of the Peacekeeper, also heard the noise which he described as a single gunshot and the "whizzing of a bullet through the air." Officer Burke said he realized that Parker was armed with a functioning firearm, which scared him. Officer Burke believed that Parker was attempting to "bait" the officers into believing he had committed suicide so they would approach the BMW and Parker could attempt to harm them. At approximately 5:16 p.m., Sergeant Masilon advised over the radio that a confirmed bullet hole was observed protruding from the roof of the BMW. Officers on the scene were convinced that Parker was armed with a real pistol and that it was fully functional.

Approximately two minutes later, Parker was seen moving inside the rear of the vehicle. Parker sat up from underneath the vinyl tarp allowing Officers Brydges and Panov to view his torso. At this time, Parker's true identity was not known and officers on the scene were told that his name was possibly "Wayne." Officer Brydges was close enough to Parker that the two made eye contact, and Officer Brydges said, "Hey, Wayne, can you hear me?" Parker replied, "Yes," and nodded his head. Officer Brydges instructed Parker to show his hands. Parker complied, revealing a handgun magazine in one hand. From their close proximity, Officer Panov could see that the magazine contained at least two cartridges. Both Officers Brydges and Panov instructed Parker several times to drop the magazine. Parker complied and dropped the magazine into his lap while keeping his hands in a raised position. Officer Brydges then instructed Parker to exit the BMW. Parker appeared to move his body to the right six to eight inches, as if he was going to comply, then stopped and stared at the officers. When Parker stopped, Officers Brydges and Panov made several observations that caused them to suspect that Parker was under the influence of a controlled substance: Parker's movements were short and choppy, and he displayed bruxism, a form of continually clenching one's teeth and jaw.

While Officers Brydges and Panov assessed the situation, Parker dropped his hands down and out of view. Officers Brydges and Panov gave commands for Parker to raise his hands, but Parker did not comply. Officer Panov knew that, from this distance, Parker could "point shoot," meaning that he had the ability to raise his handgun and fire at his target without having to obtain a sight picture before shooting and be reasonably accurate with his shot placement. Officer Panov requested authorization from Sergeant Cossin to use non-lethal beanbag rounds to gain compliance from Parker. As Officer Panov was making the request, Parker raised his hands again and dropped them back down quickly. Sergeant Cossin authorized the use of the non-lethal beanbags, and at approximately 5:26 p.m., Officer Elms fired one round, striking Parker's left shoulder. Parker fell to his right, clutched his left shoulder, and screamed. Within ten seconds, Parker sat up from his position, reached down, and with a "punching motion," pointed a pistol towards Officers Brydges and Panov and began firing in their direction.

Officer Brydges heard the rounds hitting the exterior of the Bear and believed that Parker was trying to kill him and Officer Panov. Officer Brydges regained his position in the gun port, quickly sighted his weapon, and fired five or six rounds, hitting Parker on his left side. Officer Panov responded by firing his 9mm pistol until he exhausted a complete magazine and the pistol went to slide-lock. Officer Burke fired one round through the front window of the BMW. Officer Bernalack fired three rounds at Parker's chest. Officer Salicos fired two rounds at Parker, after which Parker fell backwards. Officer Brydges observed blood coming from Parker as he fell backwards and his "gun hand dropped to his legs." Parker screamed, appeared to sit up again, and began to raise his weapon. Officer Brydges feared that Parker was going to fire again towards his position, so Officer Brydges fired approximately ten additional rounds. Simultaneously, Officer Burke fired three additional rounds through the front window, and Officer Panov fired eight to nine additional rounds. Officer Brydges' ninth or tenth round caused Parker's head to jerk backwards, his mouth opened, and he stopped moving.

When the gunfire stopped, Detective Barraza exited the Peacekeeper and SWAT officers exited the Bear. Sergeant Cossin summoned Paramedics Colonelli and Herr to the BMW to provide medical treatment to Parker. Paramedic Colonelli observed numerous gunshot wounds to Parker, in addition to cerebral matter and blood draining from Parker's left ear. Paramedic Colonelli attempted to feel for a carotid pulse but was unable to locate one. Parker's pupils were

fixed and unresponsive, and there was no respiratory effort made by Parker. At this time, Paramedic Colonelli pronounced Parker deceased.

AUTOPSY

On Sept. 22, 2014, a postmortem examination of Parker was conducted by Dr. Nicole Ellis, a forensic pathologist for the Orange County Sheriff-Coroner. Dr. Ellis noted that Parker's aorta, lungs, and liver had all been perforated. Following the autopsy, Dr. Ellis determined that Parker's death was the result of multiple gunshot wounds.

EVIDENCE COLLECTED

The following items of evidence were collected from 1320 North Tustin Avenue:

- Two .223 casings with head stamps of "WCC 13"
- Apparent bullet jackets and several bullet fragments from the 2003 BMW X-5
- Browning Arms, RP 9MM pistol, serial number T146323, loaded with cartridges in the magazine and one cartridge in the chamber
- 9 MM casing
- Bean bag
- Purple folding knife

The following items of evidence were collected from the rooftop at 1397 Jefferson Street:

- Two .223 casings with head stamps of "WCC 13"
- Smith & Wesson, Model M&P-15 .223 caliber rifle, serial number SR 95171, loaded with multiple cartridges in the magazine and one cartridge in the chamber
- Colt AR-15, .223 caliber rifle, serial number 1843767, loaded with multiple cartridges in the chamber and one cartridge in the chamber

EVIDENCE ANALYSIS

Firearms Examination

All firearms used in this incident were test-fired and operated without malfunction, including Parker's pistol.

Toxicological Examination

A sample of Parker's postmortem blood yielded the following results:

DRUG	MATRIX	RESULT
Amphetamine	Postmortem Blood	0.342 +/- 0.022 mg/L
Methamphetamine	Postmortem Blood	4.84 +/- 0.32 mg/L
Morphine (Free)	Postmortem Blood	0.0205 +/- 0.0021 mg/L
Amphetamine	Brain	0.838 +/- 0.052 mg/kg
Methamphetamine	Brain	10.1 +/- 0.7 mg/kg
Morphine (Free)	Brain	0.0545 +/- 0.0054 mg/kg
Morphine (Free)	Vitreous	Detected

PARKER'S PRIOR CRIMINAL HISTORY

Parker had a California Criminal History dating back to 1990, including but not limited to arrests for rape, carrying a loaded firearm in a public place, and being under the influence of a controlled substance.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a fatal shooting include murder [Penal Code Section 187]; manslaughter [Penal Code Section 192]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. To convict an officer of any of these charges, it must be proven beyond a reasonable doubt that no legal justification existed for the officer's actions. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-42.) Several justifications may apply in any case as 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. The felony must involve violence or the threat of violence. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 332-33.)

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 to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. This 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." (*Id.*) 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 505 permits a person to use deadly force to defend himself or someone else if he reasonably believes the immediate use of deadly force is necessary to defend against imminent danger of being killed or suffering great bodily injury. The law requires that no more force be used than was reasonably necessary to defend against that danger. Furthermore, 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, 641-42.) Furthermore, courts have held 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." (*People v. Martin* (1985) 168 Cal.App.3d 1111, 1124; *Tennessee v. Garner* (1985) 471 U.S. 1, 3.)

This limitation was subsequently clarified by the United States Supreme Court in *Graham v. Connor* (1989) 490 U.S. 386, wherein the High 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 High 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 396-97.)

The United States Supreme Court's analysis and teachings in *Graham* are very much applicable to the circumstances surrounding the interactions of Officers Bennalack, Brydges, Burke, Elms, Panov, and Salicos with Parker.

LEGAL ANALYSIS

The facts in this case are determined by considering all the available evidence and relevant material, including the involved officers' statements to the OCDA investigators.

The issue is whether the conduct of Officers Bernalack, Brydges, Burke, Elms, Panov, and Salicos on Sept. 19, 2014, was criminally culpable and without justification. As stated above, in order to charge any of the officers with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officers' conduct. Therefore, in order to lawfully charge the officers with a crime, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense. If the actions that day of Officers Bernalack, Brydges, Burke, Elms, Panov, and Salicos were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted. It should be stated without any equivocations that a review of the entirety of the facts of this case clearly demonstrates that all the involved APD officers acted reasonably, professionally and justifiably. As a matter of fact, the responding officers tried very patiently to convince Parker to surrender, and when he refused to follow the lawful commands, the officers used all available less-than-fatal force to arrest him and end the stand-off. The use of deadly force by the involved APD officers was nothing more than a lawful response to Parker's action in using deadly force against the officers.

As the Court of Appeal held in a recent case, it is well settled that "unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it.' Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the [] police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense." (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.) Where potential dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that in effect, "the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable if 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. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack." (*Brown v. Ransweiler, supra*, 171 Cal.App.4th at p. 528.)

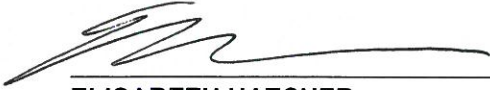
Officers Bernalack, Brydges, Burke, Elms, Panov, and Salicos were justified in believing that Parker posed a significant threat of death or serious physical injury to their partners and themselves. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Parker leading up to the shooting. Parker committed an armed robbery of an electronics store and fled the scene. Then, despite numerous commands to surrender and police use of non-lethal force, Parker continued to brandish a handgun. Finally, Parker actually opened fire at the officers from close proximity. It is very hard to imagine a more dangerous set of circumstances to police officers than being in close proximity to an armed robbery suspect who is pointing his gun at the officers and firing at them. Officers Bernalack, Brydges, Burke, Elms, Panov, and Salicos fired at Parker in lawful self-defense.

It should also be noted that in order for Officers Bernalack, Brydges, Burke, Elms, Panov, and Salicos 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 the officers did not act in reasonable and justifiable self-defense or defense of another when they shot at Parker. As should be apparent from the above-described facts and analysis, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would justly conclude that it was reasonable for the officers to believe that their lives and the lives of others were in danger. This is so because it is undisputed that the officers' lives were actually in danger. Therefore, the officers were justified when they shot at Parker. Simply stated, Officers Bernalack, Brydges, Burke, Elms, Panov, and Salicos did not commit a crime; to the contrary, they carried out their duties as peace officers in a reasonable and justifiable manner.

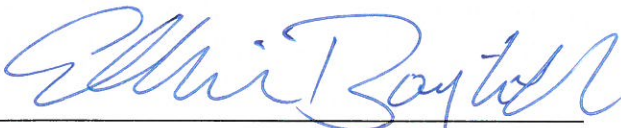
CONCLUSION

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 Officers Bernalack, Brydges, Burke, Elms, Panov, and Salicos, and there is overwhelming evidence that their actions were reasonable and justified under the circumstances when they shot Parker on Sept. 19, 2014.

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



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READ AND APPROVED BY **EBRAHIM BAYTIEH**
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