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November 1, 2019

Today, the San Joaquin County District Attorney's Office (SJCDA) released its findings in the January 19, 2016 officer-involved use of force that resulted in the death of Filiberto Valencia. It is the decision of the SJCDA that no criminal charges are warranted against Stockton Police Officers involved in the arrest of Mr. Valencia.

This decision was made after SJCDA Office's Officer-Involved Critical Incident Review Committee reviewed the investigations by the San Joaquin County District Attorney's Bureau of Investigations, the Stockton Police Department, and the San Joaquin County Sheriff-Coroner's Office.

The findings and conclusion of this investigation was completed on October 2, 2019 and has been memorialized in a report. On that date, this Office notified the Stockton Police Department of the findings.

In addition, family members of Mr. Valencia were notified of a decision and given an opportunity to meet with us to discuss our findings and the report. In addition, yesterday morning, members of the SJCDA Office met with family members of Mr. Valencia to discuss this decision. A copy of the report has been provided to them.

The memorandum detailing the SJCDA's findings and conclusion follow below.

SAN JOAQUIN COUNTY DISTRICT ATTORNEY  
MEMORANDUM OF THE  
OFFICER-INVOLVED CRITICAL INCIDENT  
OF JANUARY 19, 2016  
AT THE 3100 BLOCK OF NICOLE STREET, STOCKTON, CA

[SPD DR # 16-2494]



TORI VERBER SALAZAR, DISTRICT ATTORNEY  
OFFICER-INVOLVED CRITICAL INCIDENT UNIT

OCTOBER 2, 2019



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## MEMORANDUM

**TO:** ERIC JONES, CHIEF  
STOCKTON POLICE DEPARTMENT

**FROM:** SAN JOAQUIN COUNTY DEPUTY DISTRICT ATTORNEY

**DATE:** October 2, 2019

**SUBJECT:** INVESTIGATION OF THE IN-CUSTODY DEATH OF  
FILIBERTO VALENCIA, (SPD DR #16-2494).

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Pursuant to the provisions of the San Joaquin County Officer-Involved Critical Incident Protocol, effective August 1, 1994, the responsibility of the Office of the District Attorney is to review the facts and determine what, if any, criminal charges should be filed whenever there is an officer-involved fatality or life threatening incident.

This memorandum reviews the death of Filiberto Carrillo Valencia on January 19, 2016. The investigation was jointly conducted by investigators from the San Joaquin County District Attorney's Investigation Unit, the Stockton Police Department, and the San Joaquin County Sheriff-Coroner's Office.

### INVESTIGATION SUMMARY

On January 19, 2016 at approximately 6:25 p.m., Stockton Police Officers responded to the 3100 block of Nicole Street, Stockton, California after multiple calls of a man trying to enter multiple homes. As officers were dispatched, the call was updated to reflect that the man had entered a home and was holding the residents captive – the residents included several women and children. When the officers arrived, they encountered Filiberto Valencia (DOB 11/02/1989) in a bathroom with three women and a 10-year-old girl.

During the attempt to restrain Mr. Valencia, he became unresponsive. Officers and then paramedics at the scene attempted life-saving efforts. The efforts were unsuccessful and Mr. Valencia was pronounced dead at 6:50 p.m.

As provided by the Memorandum of Understanding for the San Joaquin County Officer-Involved Critical Incident Protocol (hereinafter referred to as "Protocol"), the Stockton Police Department invoked the Protocol. A multi-agency task force was created that included San Joaquin County District Attorney's Office's Bureau of Investigations (hereinafter "BOI"), the Stockton Police Department (hereinafter referred to as "SPD"), and the San Joaquin County Sheriff-Coroner's Office (hereinafter referred to as "Coroner").

### FACTUAL SUMMARY

On January 19, 2016, police received multiple 9-1-1 calls from residents of different homes on Nicole Street in Stockton, reporting a man, later identified as Mr. Valencia, trying to enter their homes. Two final 9-1-1 calls were placed from a group home on Nicole Street. This group home was a level three group home for developmentally disabled women.<sup>1</sup>

Mr. Valencia, unable to enter the other homes on Nicole Street, gained entry into the group home. Inside, he encountered Witness #1 and her 10-year-old daughter, Witness #2. Witness #1 was employed to supervise and care for the residents at the home. She and her daughter had just finished dinner when Mr. Valencia broke into the home.

Witness #1 called out to the other three residents, Witnesses #3, #4, and #5, in an attempt to get them into a hallway bathroom. That room was the only room in the home with a lock. As she and her daughter ran to the bathroom, Mr. Valencia grabbed the little girl by her hair. By this time, Witness #3 and #4 were in the hallway by the bathroom. Mr. Valencia pushed the woman and the girl into the bathroom. Witness #5 ran into her own bathroom located in her bedroom. She called 9-1-1 and began relaying information to the operator throughout the incident. This call was recorded.

Once inside the hallway bathroom with the four females, Mr. Valencia placed the girl in a chokehold and demanded that someone call 9-1-1. Mr. Valencia threatened to harm or kill the little girl if this was not done. Witness #1 called 9-1-1

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<sup>1</sup> The California Department of Developmental Services describes a level three Community Care Facility or group home as a home requiring "supervision, and ongoing training for persons with significant deficits in self-help skills, and/or some limitations in physical coordination and mobility, and/or disruptive or self-injurious behavior."

and the attack in the bathroom was recorded by the 9-1-1 operator. This call was also recorded.



*Hallway Bathroom*

Throughout the ordeal in the bathroom, while continually holding Witness #2 by the neck, Mr. Valencia threatened to snap the girl's neck, to blind her with his fingers, and to stab her with the handle of a toilet plunger. Mr. Valencia also bit the girl's head, shoved his fingers in her mouth, slapped the side of her head, and choked her causing her to have difficulty breathing. In addition, Mr. Valencia punched Witness #3 and #4 in the face. Mr. Valencia also threw a bathroom scale at Witness #1.

When Officers Jason DiGiulio and Kyle Amant arrived, they had to kick the home front door in because the residents were either being held captive in the bathroom, or were hiding out of fear. Officers could hear screaming and crying from inside the bathroom. Officer Amant kicked in the bathroom door and they saw Mr. Valencia with his arm around the neck of the ten-year-old girl who was crying. Officers DiGiulio and Amant immediately moved in while giving verbal commands to Mr. Valencia to show them his hands and to get down on the ground. Mr. Valencia refused to comply with verbal orders.

A struggle then ensued during which Mr. Valencia grabbed Officer DiGiulio's handgun twice. Officer DiGiulio struck Mr. Valencia with the butt of the gun two times on the top of his head, which had little to no effect. Officer DiGiulio holstered his weapon and Mr. Valencia continued to hit and kick at Officer DiGiulio. Officer Amant used his baton to strike at Mr. Valencia's legs but again there was no effect.

Sgt. Dana Mosher arrived and all three officers ordered Mr. Valencia to stop resisting and to give them his hands. Mr. Valencia refused to comply with the orders and Sgt. Mosher used his TASER. The TASER had no effect on Mr. Valencia. The struggle continued until additional officers arrived and they were able finally to place handcuffs on Mr. Valencia. Soon after, they realized Mr. Valencia was unconscious. Sgt. Mosher immediately had the handcuffs removed and life-saving measures were begun, however, Mr. Valencia succumbed to his injuries. The struggle lasted approximately four minutes.

Officer DiGiulio, the women, and the girl all had visible injuries which were documented and tended to.

### WITNESS STATEMENTS

Investigators from the San Joaquin County District Attorney's Office and Stockton Police Department detectives jointly interviewed the involved officers, medical personnel, and civilian witnesses. Whenever possible, these interviews were recorded. The investigators also conducted an area canvas to locate witnesses. Not every witness interviewed is summarized here. The individual witness synopses below are to assist the reader in supplementing the above Factual Summary. Civilian witnesses are identified in this memorandum as "Witness #" to protect their privacy rights.<sup>2</sup>

#### Stockton Police Officer Jason DiGiulio

Officer Jason DiGiulio was interviewed on January 20, 2016, by investigators at the Stockton Police Department at 1:20 a.m. and stated the following:

Officer DiGiulio is a thirteen-year veteran police officer of the Stockton Police Department. On this date, his assignment was patrol. He was dressed in his standard Stockton Police Department uniform and driving a marked Stockton Police Department vehicle.

At approximately 9:10 p.m., Officer DiGiulio received a dispatch of a man in a house or on a roof at Nicole Street. Updates continued to come in with differing reports: a man on a roof, and a strange man in a house. Officer DiGiulio activated his lights and sirens and drove to the location. As he drove, he received updates that relayed different locations with a man on the roof, a man at a front door, and then a man inside the home.

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<sup>2</sup> See, "Confidential Page APPENDIX A: Civilian Witness Information."

Officer DiGiulio arrived on Nicole Street just moments before Officer Kyle Amant arrived. Both he and Officer Amant began walking down Nicole Street and stopped to look inside one of the homes. Down the street, neighbors began yelling that “he” went in a different house. A few people in the crowd told Officer DiGiulio that the person who was on the roof went into another house on the block.

He and Officer Amant knocked on the door of one residence, announcing their presence. The door was opened and seven to eight people who had been hiding appeared. A juvenile female told Officer DiGiulio that a man had shown up and was after her father and was looking to kill him. Officer DiGiulio and Officer Amant were about to enter this house when they received an update from dispatch giving the address on Nicole Street where people were being held captive and there was a struggle.

Officer DiGiulio and Officer Amant immediately went to the Nicole Street address provided to them by dispatch. The door was locked, and Officer DiGiulio began knocking on the door and announcing his presence. Another update was dispatched informing them that the residents were inside but stuck in the bathroom. Immediately, Officer DiGiulio kicked in the front door in and began moving down the hallway.

Officer DiGiulio heard movement and noise from the bathroom and at the same time, a distraught woman came out in the hallway telling him she had called and that “they” were in the bathroom. Officer DiGiulio could hear crying from the bathroom. The bathroom door was locked and Officer Amant kicked it open. They were only able to get the door partially open because there was a woman behind it.

Looking in, Officer DiGiulio saw Mr. Valencia crouched behind a crying juvenile female with his arm around her neck. Officer DiGiulio, with his gun drawn, began ordering Mr. Valencia to get his hands up. Mr. Valencia did not respond to the commands and continued to have his arm around the girl.

Officer DiGiulio moved toward Mr. Valencia and when he got within striking distance, Mr. Valencia stood up and loosened his grip on the girl. Seeing this, Officer DiGiulio grabbed the girl and got her out of the bathroom. Two women were in the shower screaming; another woman was behind the door also crying and screaming. As Officer DiGiulio attempted to get the women out of the bathroom, he used his right hand to pin Mr. Valencia down in a corner of the bathroom floor while holding his service pistol in his left hand.

As soon as Officer DiGiulio placed his hand on Mr. Valencia, Mr. Valencia began swinging his fists, throwing elbows, and kicking at Officer DiGiulio. As Officer DiGiulio continued to pin Mr. Valencia down, he felt Mr. Valencia grab his gun. Officer DiGiulio yelled at Mr. Valencia not to grab his gun. To prevent Mr. Valencia from taking away his pistol, Officer DiGiulio struck Mr. Valencia on the top his head with the butt of the pistol. Undeterred, Mr. Valencia continued to throw punches and grabbing for Officer DiGiulio's pistol. Officer DiGiulio again struck Mr. Valencia on the top his head with the butt of the pistol. This second time, the blow appeared to stun and slow Mr. Valencia and Officer DiGiulio was able to holster and secure his pistol.

When Officer DiGiulio holstered his pistol, Mr. Valencia began throwing punches and fighting again. Mr. Valencia was partially pinned to the ground but Officer DiGiulio did not have control of Mr. Valencia. During this struggle, Mr. Valencia bit Officer DiGiulio's left hand. The struggle moved toward the bathroom door of the bathroom and soon Officer Amant was able to pull Mr. Valencia partially out of the bathroom.

Once they were partially out of the bathroom, Officer DiGiulio heard someone yelling, "TASER! TASER! TASER!" and saw a red dot. Officer DiGiulio leaned back to avoid being hit by the TASER. Officer DiGiulio heard the TASER being deployed and saw the prongs connect with Mr. Valencia in the torso. The TASER had no effect and Mr. Valencia grabbed at the prongs as if to pull them out.

After the TASER failed to stop Mr. Valencia, Officer DiGiulio attempted to pin Mr. Valencia to the ground. Mr. Valencia continued to swing his fists and kick Officer DiGiulio. Officer DiGiulio delivered several distraction blows to Mr. Valencia. Eventually, Officer DiGiulio was able to get one arm pinned and believed that Officer Amant was able to get Mr. Valencia's other arm hooked.

At this point, another officer arrived and the three of them were able to roll Mr. Valencia over, and get his hands cuffed. Once they had Mr. Valencia cuffed, they rolled him over and he saw that Mr. Valencia's eyes were open. Officer DiGiulio, exhausted, stood up and stepped back. Officer DiGiulio then heard someone say that Mr. Valencia appeared to be passed out. Officer DiGiulio attempted a sternum rub to wake Mr. Valencia.<sup>3</sup> The rub failed to arouse Mr.

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<sup>3</sup> A sternum rub is the application of a stimulus to cause pain with the knuckles of closed fist to the center chest of a person who is unresponsive; the pain is designed to arouse the person. The sternum rub is the most common painful stimulus practiced in the field by emergency medical technicians and paramedics.



Valencia and other officers began doing chest compressions. At some point, Officer DiGiulio took over chest compressions until paramedics arrived and took over life saving measures.

Officer DiGiulio was photographed and inspected following the incident. Officer DiGiulio had a large cut to the bridge of his nose and scratch marks to his forehead and face. Officer DiGiulio also had an injury to his left hand consistent with a bite mark.

Officer DiGiulio said his body worn camera had not been turned on. It had been inside his jacket pocket prior to arriving on scene and when the situation escalated quickly, he had forgotten to retrieve the camera from his pocket, secure it, and turn it on.

#### Stockton Police Officer Kyle Amant

Officer Kyle Amant was interviewed on January 20, 2016, by investigators at the Stockton Police Department at 2:54 a.m. and stated the following:

Officer Amant is a thirteen-year veteran police officer of the Stockton Police Department. On this date, his assignment was patrol. He was dressed in his standard Stockton Police Department uniform and driving a marked Stockton Police Department vehicle.

At approximately 9:10 p.m., Officer Amant received a dispatch call of a possible prowler on Nicole Street. While driving toward the call location, updates continued to come in of a man banging on the back door, and then of a man inside a residence. Officer Amant and Officer Jason DiGiulio, driving a separate patrol vehicle, arrive on Nicole Street together. They parked approximately five houses down from the call location.

Officer Amant exited his vehicle and began walking up the street with Officer DiGiulio, when several people began yelling at them that the man they were looking for was in a house, indicating which house they were referring. While at this first house, dispatch continued to send updates. The last update stated that the man was located two houses down from them in a bathroom with residents. Officer Amant and Officer DiGiulio went down to that house and were at the front door while still getting updates that there were residents locked in the bathrooms.

Officer DiGiulio kicked the door in and they made entry into the home. They went down the hallway when Officer Amant heard screaming coming from the

bathroom. Officer Amant checked the door and found it locked so he immediately kicked it open. Both he and Officer DiGiulio had their service weapons drawn and Officer DiGiulio made entry into the bathroom.

Officer DiGiulio immediately began ordering Mr. Valencia to show him his hands. Officer Amant saw Mr. Valencia with his arm around a young girl's neck in front of him; she was crying. Officer Amant holstered his service weapon and when Officer DiGiulio was able to grab the girl, Officer Amant helped her out of the bathroom. Officer Amant saw another woman in the bathtub and he was able to help her slide by or crawl out and exit the bathroom.

Officer DiGiulio, who still had his service weapon drawn, moved toward Mr. Valencia to pin him against the wall. Officer Amant saw Mr. Valencia grab for Officer DiGiulio's pistol and heard Officer DiGiulio yell at Mr. Valencia not to grab the pistol. Officer DiGiulio then struck Mr. Valencia on top of his head with the butt of the pistol. Mr. Valencia then began swinging his fists at Officer DiGiulio and scratching at his face. Officer DiGiulio then again struck Mr. Valencia on top of the head with the butt of the pistol. Officer DiGiulio then holstered his service weapon.

Officer Amant moved in with his baton and jabbed Mr. Valencia with the end of the baton with no effect. Officer DiGiulio, now on top of Mr. Valencia, so Officer Amant used the baton and struck Mr. Valencia three times in the shins. The strikes had no effect on Mr. Valencia who continued unabated fighting and resisting Officer DiGiulio. Officer Amant dropped his baton and radioed Sergeant Dana Mosher to bring his TASER. Officer Amant grabbed one of Mr. Valencia's pant leg and dragged both he and Officer DiGiulio into the hallway to get more room so he could assist in detaining Mr. Valencia.

Sergeant Mosher arrived and immediately yelled "TASER! TASER! TASER!" Officer DiGiulio slightly slid off of Mr. Valencia and Sergeant Mosher fired the TASER. The prongs hit Mr. Valencia but had no visible effect - Mr. Valencia did not twitch or act in any manner that one typically sees when someone is struck with a TASER. Sergeant Mosher then activated the TASER twice more but there was still no effect on Mr. Valencia's behavior.

Officer Amant moved around toward Mr. Valencia's head and was able to pin his head to the ground with his leg and foot. At this point, Officer DiGiulio was able to get Mr. Valencia's hand under control, other officers had arrived, and Mr. Valencia was handcuffed. Officer Amant then noticed Mr. Valencia was no longer moving. Officer DiGiulio rolled him over and it appeared he was unconscious.

When the sternum rub did not work, someone checked his pulse, and when one could not be found, someone uncuffed him and CPR was started.

Officer Amant said that during the struggle, he had taken a few kicks to the chest but due to the safety vest, he did not feel he had suffered any injuries and had no complaints of pain.

Officer Amant had his body worn camera but he did not activate it until the struggle had subsided.

#### Stockton Police Sergeant Dana Mosher

Sergeant Dana Mosher was interviewed on January 20, 2016, by investigators at the Stockton Police Department at 2:55 a.m. and stated the following:

Sgt. Mosher is a thirteen-year veteran police officer of the Stockton Police Department. On this date, his assignment was Sergeant-in-charge of the Park/Seaport patrol district. He was dressed in his standard Stockton Police Department uniform and driving a marked Stockton Police Department vehicle.

While monitoring police radio traffic, Sgt. Mosher heard a dispatch regarding a prowler and knew that Officers DiGiulio and Amant were enroute. Sgt. Mosher decided to head in that direction of the call in case the officers needed assistance. While enroute, Sgt. Mosher heard dispatch reporting there was now an individual inside another house on the same block, and the residents were locked inside the bathroom. Dispatch advised the man inside the home was yelling about wanting to kill someone so at that point Sgt. Mosher activated his emergency lights and siren.

While enroute, Officer DiGiulio had contacted Sgt. Mosher on the radio and told him the man they were looking for was at a different house and the door was locked. Sgt. Mosher gave Officer DiGiulio permission to kick in the front door to gain entry. Upon arriving at the location, Sgt. Mosher grabbed his less-than-lethal beanbag shotgun. While heading toward the front door he heard Officer Amant asking for a TASER. Sgt. Mosher realized at that moment that Officers DiGiulio and Amant were in a fight with the suspect and ran into the house.

Sgt. Mosher looked down the hallway and realized due to its close quarters, the beanbag shotgun would be ineffective. Sgt. Mosher dropped the beanbag shotgun and headed toward the struggle in the hallway. Sgt. Mosher could see Officer DiGiulio on top of Mr. Valencia while yelling at him to give him his hands

but Mr. Valencia was refusing to comply with the commands and actively resisting. Sgt. Mosher shouted out, "TASER, TASER, TASER!" Officer DiGiulio rolled back and Sgt. Mosher deployed the TASER striking Mr. Valencia in the upper torso with both prongs. Mr. Valencia attempted to pull the prongs out, so Sgt. Mosher activated the TASER a second time. There was little to no effect so Sgt. Mosher activated the TASER a third time. Again, there was no effect on Mr. Valencia. Nevertheless, Officer DiGiulio was able to get completely on top of Mr. Valencia and appeared to be gaining some control.

At this point, two more officers arrived and they were able to roll Mr. Valencia over and get him handcuffed. Sgt. Mosher had the officers check Mr. Valencia's vitals and realized he was not breathing and did not have a pulse. Sgt. Mosher ordered the handcuffs to be removed and police began doing chest compressions. Life saving measures were continued until the paramedics arrived and took over treatment.

Sgt Mosher had his body worn camera but he did not activate it until the struggle had subsided.

#### Witness #1 (Victim)

Witness #1 was interviewed on January 19, 2016, by investigators at the scene and again later that night at the Stockton Police Department at 12:50 a.m., and stated the following:

Witness #1 was employed as a direct support professional and was the House Manager for the residence. On this night, she and her ten-year-old daughter, Witness #2, had just finished dinner and were in the living room watching television. Witness #1 heard a man's voice, Mr. Valencia's, in the kitchen demanding that someone call 9-1-1, claiming that someone was trying to kill him. She did not know Mr. Valencia and immediately began to gather the other residents, Witness #3, #4, and #5, so she could place them in the bathroom. The bathroom is the only room in the home with a lock.

Her daughter began to run to the bathroom when Mr. Valencia grabbed her daughter by the hair. Mr. Valencia started yelling, "I'm going to kill her! I'm going to kill her, motherfucker! I'm going to kill her!" With everyone now by the bathroom door, Mr. Valencia forced everyone but Witness #5 inside the bathroom - somehow, Witness #5 was able to escape.

Once inside the bathroom, Mr. Valencia locked the bathroom door behind them. Mr. Valencia then shoved Witness #4 into the shower and forced Witness #3

to kneel and put her head by the toilet saying, "I could drown you in the toilet." Still holding onto Witness #2 with his arm around her neck, Mr. Valencia told Witness #1, "I'm going to snap her neck if you move. Just call the cops." Witness #1 called 9-1-1 while pleading with Mr. Valencia to stop hurting her daughter.

At some point, Mr. Valencia placed his fingers on Witness #1's daughter's eyes and threatened to poke them out. Witness #1 recalled thinking as Mr. Valencia had Witness #2 around the neck, "Oh my God he's not going to let go. She's going to pass out right in front of me. She's going to die in front of me. [...] I asked him, 'She's my only daughter. Just let her go. Let her go!'"

Witness #1 then staring hitting Mr. Valencia telling him to stop. Mr. Valencia only responded, "If the cops don't come in nine minutes I'm going to kill her." Mr. Valencia then grabbed the toilet plunger and placed the plunger against her daughter's stomach saying, "I'm going to kill you bitch. I'm going to kill you!" Witness #1 grabbed the plunger away from him. Mr. Valencia grabbed a bathroom scale and threw at Witness #1 who able to block it with her arm.

At some point, Witness #1 entered the shower with Witness #4. Mr. Valencia continually threatened Witness #2's life. Witness #1 tried to calm Witness #4 who was screaming. Nevertheless, Mr. Valencia punched or slapped Witness #4 for screaming. He also struck Witness #3 hard as she knelt by the toilet while screaming, "Bitch, I'll kill you! I'll just kill you! I'll kill you! I'll kill you!"

At this point, police officers forced their way into the bathroom. All the women were screaming. Her daughter and Witness #3 were able to run out. She and Witness #4 remained in the shower. Witness #1 saw two tall officers enter, one of who had his gun drawn, and a third remained by the doorway. Witness #1 was facing Witness#3 trying to keep her calm.

Hysterical and admittedly not "hav[ing a] clue what happened," she could hear officers telling Mr. Valencia to "get down" and "to stop." She saw Mr. Valencia on the ground but didn't know how he got there. Witness #1 recalled an officer kick Mr. Valencia. She saw blood but did not know where it came from.

The officers were able to partially drag Mr. Valencia out of the bathroom. One officer called out, "It's OK ma'am. It's OK. It's OK. It's OK." With Mr. Valencia partially in the bathroom and continuing to fight, she heard what she believed was a TASER. Officers were soon able to get him entirely out in the hallway. At this time, an officer called out to her to get out of the bathroom so she and Witness #4 ran out of the bathroom. Around this time, she heard an officer say that Mr. Valencia was unconscious – she interpreted that to mean he had been knocked unconscious.

Once she left the bathroom and went outside the home, Witness #1 began screaming for her daughter, Witness #2. A police officer told her that her daughter was safe in the kitchen and she went to her.

When she came back in, she could see officers performing CPR on Mr. Valencia.

#### Witness #2 (Victim)

Witness #2 was interviewed on January 19, 2016, by investigators at the scene and again later that night at the Stockton Police Department at 1:24 a.m. and stated the following:

On this evening, Witness #2, 10 years old, recalled that she saw a man, Mr. Valencia, but had never seen him before

Mr. Valencia grabbed Witness #2 by her hair and neck. When he grabbed her by the neck, (similar to a chokehold), she recalled "I thought I was going to faint, I tried to breathe through my mouth but I couldn't."

Witness #2 said that Mr. Valencia used his free hand and placed his fingers inside her mouth, grabbing the upper part of her mouth and pulling up. Mr. Valencia told her mother, "You have 9 [sic] seconds for cops to get here or I'm going to kill your daughter."

She felt Mr. Valencia bite her at least two times causing a lot of pain and slapped her head approximately four times. After Mr. Valencia bit her, he placed two fingers on her eyes and said, "I'm gonna make your daughter go blind".

Inside the bathroom, Mr. Valencia took hold of Witness #2 and demanded that someone call 9-1-1. Mr. Valencia grabbed a plunger and said, "I'll stab your daughter with plunger if cops don't come". He also threatened to snap her neck if he mother did not call 9-1-1. While in the bathroom with Mr. Valencia, she saw him slapping Witness #3 and either slap or punch Witness #5.

Witness #2 saw officers enter the bathroom. Once they were inside, she ran out. She and Witness #3 ran to the kitchen.

Witness #2 had multiple injuries to her face and neck. The injuries were tended to and later photographed.

Subsequently, Witness #2 was re-interviewed at the Child Advocacy Center (CAC) on January 21<sup>st</sup> by a child advocate and stated the following:

A stranger, Mr. Valencia, broke into her mom's job. Mr. Valencia told them to call 9-1-1. She was in the living room and as she and her mom tried to get away from him, Mr. Valencia grabbed her by her hair. Witness #3 and Witness #4 came out of their room. Mr. Valencia pushed everyone, including her, into the bathroom. Mr. Valencia said that he would kill her if her mom did not call 9-1-1-. Her mom replied, "Don't hurt my daughter, she doesn't deserve this," and called 9-1-1. [*Witness #2 began crying at this point in the interview.*] Mr. Valencia began counting down to zero but her mom showed him that she had called 9-1-1 and he stopped.

Mr. Valencia then ordered Witness #4 into the bathtub, Mr. Valencia then ordered Witness #3 to put her face into the toilet. Witness #2 said this made her feel "horrible".

Witness #2 added that Mr. Valencia had his arm around her neck and told her mom, "I'm going to snap your daughter's neck if you don't call 9-1-1." Mr. Valencia then took his free hand and put two of his fingers by her eyes: "He was going to poke out my eyes, poke my eyes out. And, and make me blind." Her mom reacted by hitting Mr. Valencia. Mr. Valencia took his free hand and placed it her mouth' he then began biting her head. Mr. Valencia bit her a few times and then began hitting her in the head with an open hand. Witness #2 was afraid he would kill her so she did nothing to prevent Mr. Valencia's continued abuse.

Mr. Valencia then grabbed a toilet plunger and threatened to stab her in the stomach. Her mom took the plunger away and began hitting Mr. Valencia with it. Mr. Valencia ordered her mom into the bathtub with Witness #4. Witness #3 was still kneeling by the toilet who Mr. Valencia was periodically punching. Mr. Valencia then began to punch Witness #4 in the face.

During this entire time, Mr. Valencia had his arm around her neck. At this point, he began to squeeze her and she felt her face turning red. He let go momentarily and began speaking oddly. He then said something like "I'm going to kill this child," and grabbed her by the neck again.

At this point, the police broke through the bathroom door. She and Witness #3 fled. She ran to the living room and then to the kitchen.

Witness #2 said the ordeal made her feel "bad," which causes her to "start to cry."

Witness #3 (Victim)

Witness #3 was interviewed on January 19, 2016, at 11:59 p.m. by investigators at the Stockton Police Department and stated the following:

Witness #3 had been living at the care home for approximately four months. This evening she was sitting in the living room with Witness #2 when she heard someone force the sliding glass door to the backyard open. Witness #3 heard someone enter the home into the kitchen. Witness #3 got off the couch to investigate and saw a man, Mr. Valencia. Witness #3 had no idea who he was and had never seen him before. Mr. Valencia was rambling about some type of business and being part of the IRS.

Mr. Valencia began yelling at them to get into the bathroom. Witness #3 entered the bathroom and saw Witness #1, #2, and #4 already inside. Once she was in the bathroom, Mr. Valencia demanded someone call the police. Mr. Valencia then began hitting Witness #3 in the head with his fist, causing bruising and a cut to her forehead.

Witness #3 and everyone was crying. Mr. Valencia began yelling for them to shut up or he would hurt them worse. Mr. Valencia was saying, "If you don't do what I say I'm going to kill you." At one point, Witness #3 saw Mr. Valencia poke Witness #2 in the eyes and appeared to bite her on the head as he was holding her "like he's wanting to give her a choke." Witness #2 was screaming and crying. Witness #3 was crying and yelling at Mr. Valencia to stop hurting her and the other women in the bathroom were yelling and cussing for him to stop.

Mr. Valencia heard the police arrived and saw them come through the bathroom door. Officers told her and the other residents to get out of the bathroom and helped them out. Mr. Valencia exited the bathroom and heard officers yelling at Mr. Valencia to get down. Witness #3 could no longer see what was going on but heard what she believed was a TASER.

Witness #3 recalled seeing blood in the hallway but not in the bathroom.

Witness #3 next saw officers bringing Mr. Valencia to the living room and five minutes later, paramedics arrived.



Witness #4 (Victim)

Witness #4 was interviewed on January 20, 2016, at 1:59 a.m. by investigators at the Stockton Police Department and stated the following:

Witness #4 had been living at the care home for approximately a month. This evening she was in the kitchen eating dinner with Witness #1 when a man, Mr. Valencia, began shaking the latch on the sliding glass door, and forced the door open. Mr. Valencia came inside the kitchen and said, "You bitch, I'm going to kill you."

Mr. Valencia told Witness #4 as well as Witness #1, #2, and #3, to get in the bathroom. Mr. Valencia ordered Witness #4, "Get in the tub, now. Get in the tub, now, bitch." Mr. Valencia kept saying he was going to kill them, and when Witness #5 said something back to him, Mr. Valencia hit her on the right cheek area. Witness #4 started screaming for help but Mr. Valencia would not let them out of the bathroom. Mr. Valencia was telling all of them to shut up. At some point, Mr. Valencia grabbed Witness #2 by her hair and bit her causing her to cry. Mr. Valencia told Witness #2 [sic] put her head down and "drink the toilet water." Around this time, Mr. Valencia broke the toilet seat.

When the police showed up, they got the women and the girl out of the bathroom. Witness #4 heard officers yelling at Mr. Valencia to get down but he was refusing to comply. Witness #4 saw officers fighting with Mr. Valencia. "They" struck Mr. Valencia with a baton as Mr. Valencia fought. Mr. Valencia would not get down. The police used the TASER, and it looked like Mr. Valencia fell down. Witness #4 left the bathroom and went out front. When she left, the police were still fighting with Mr. Valencia. Witness #4 could not remember if she ever saw Mr. Valencia out of the bathroom.

Witness #5 (Victim)

Witness #5 was interviewed on January 20, 2016, at 1:17 a.m. by investigators at the Stockton Police Department and stated the following:

Witness #5 had been living at the care home for approximately three years. This evening Witness #5 was preparing to take a shower in her bedroom bathroom. As she was walking in the hallway, she encountered a man, Mr. Valencia. Mr. Valencia was on his knees saying he was the "head honcho" and that he "owned this town and everything." Witness #5 saw Witness #1, #2, #3, and #4 go into the

hallway bathroom. Mr. Valencia did not grab her so when she heard Witness #1 yell out, “Call the cops,” she ran to her bathroom and locked the door.

Witness #5 heard Witness #2 crying and yelling, “Let me go! Let me go!” It sounded as if Witness #2 was being choked. Witness #1 was yelling, “Let her go! Let her go!” Mr. Valencia was yelling 'I'm going to kill you! I'm going to kill you!'”

As Witness #5 spoke to the 9-1-1 operator, she heard Witness #4 yell out, “Why you hurt me?” and the others screaming and crying.

When police arrived, Witness #5 left her room and when into the hallway just in time to see an officer kick in the hallway bathroom door. An officer told her to run away. She then saw officers pull Mr. Valencia out of the bathroom by his pant leg. Mr. Valencia was hitting the officers and they were hitting back. Witness #5 saw an officer with a bleeding, “gushing” cut on his nose and a cut elsewhere on his face. Mr. Valencia was also bleeding – from his forehead and near his eye.

Then Witness #5 saw an officer use a TASER in “his belly” – she thought it was used four times. Mr. Valencia was still fighting until his head “slammed” against the hallway wall. The fight stopped. Witness #5 also saw an officer with a baton but he did not use it.

Witness #5 believed that if she had not been able to get away and call 9-1-1, she and everyone else would be dead.

#### Witness #6 and #7

The parents of Mr. Valencia were interviewed by investigators at the Stockton Police Department on the evening of January 19, 2016. They were interviewed together and stated the following:

After dinner, Witness #6 felt his son was acting scared; Mr. Valencia had been a mental health patient. Witness #6 was trying to calm his son when the doorbell rang. Mr. Valencia asked Witness #6 to not answer the door because someone was trying to kill him. Witness #6 answered the door and it was a salesperson.

Witness #6 tried to explain to Mr. Valencia that there was nothing to worry about but Witness #6 could tell that his son had not been taking his medication and that he was in a crisis. Witness #6 called police for assistance and during the time he was on the phone, Mr. Valencia ran out the back door of the house.

Witness #6 said Mr. Valencia has schizophrenia, which makes him scared. Mr. Valencia had recently stopped taking his medication. Witness #6 took Mr. Valencia to a mental health facility the day before but he was released.

Witness #6 also said that a year before, he called the police because Mr. Valencia was being aggressive and acting scared. When police arrived, Mr. Valencia fought with them and had to be taken into custody by force. Witness #6 added that Mr. Valencia smoked marijuana and it seemed to relax him. His son did not use any other drugs.

## SUBSEQUENT INVESTIGATION

### Recorded Documentation

This event occurred in January of 2016. In June of 2015, the Stockton Police Department purchased 275 body worn cameras (BWC) for the patrol division. BWC were purchased and implemented in July. Practice, policy and implementation continued to evolve with the usage of the BWC with a technological upgrade and reevaluation of the policy in December of 2016.

There is no BWC footage of the incident from the BWCs of Officers DiGiulio, Amant, or Sgt. Mosher - none of the officers initially responding to the scene activated their cameras prior to the struggle. Sgt. Mosher and Amant activated their BWC after the struggle. Officers DiGiulio did not activate his BWC. Responding and backup officers who responded after Mr. Valencia had been handcuffed did activate their BWC. In the background of these videos, the residents can be heard still crying and hysterical from the incident.

### SPD Officer Kyle Amant's Body Worn Camera (BWC)

The BWC of Officer Amant was obtained and reviewed. The recording starts at 6:30 p.m. Witness #1 is heard crying and an officer asks if Mr. Valencia is awake. Other officers arrive and they attempt to roll Mr. Valencia over and determine his level on consciousness. Witness #1 continues to cry saying, "He tried to kill my daughter." Once they determine Mr. Valencia is unconscious, they attempted to revive him and when he does not respond, officers attempt CPR.

The video shows an officer performing CPR and the victims in the background. Officers continue CPR until paramedics arrive.

## SPD Sergeant Dana Mosher's Body Worn Camera (BWC)

The BWC of Sgt. Mosher was obtained and reviewed. The recording starts at 6:40 p.m. Sgt. Mosher's BWC overlaps with the end of Officer Amant's BWC and shows the arrival of the paramedics as well as their efforts attending to Mr. Valencia.

### Dispatch and 9-1-1 Calls

Calls to 9-1-1 from Witnesses #1 and #5 capture some of the incident. Below is a summary of the multiple calls made to 9-1-1.

18:11:22 Witness #8, 13 year old female, calls from [address redacted - two doors east of the group home] Nicole Street home to report a man to trying to enter her home.

18:13:45 Witness # 6 calls from his Barbara Street home to report that his son, Mr. Valencia, is trying to hurt himself.

18:14:36 Witness #9 calls from her [address redacted - three doors east of the group home] Nicole Street home to report a man on her families' roof.

18:15:36 Witness #8 reports that her entire family (parents and 8 children) are hiding in their bathroom.

18:15:40 Witness #10 from his [address redacted - across the street from the group home] Nicole Street home that there is a man on a rooftop. Witness #10 reports that he hears yelling and it appears the man is trying to break into a home.

18:18:57 Witness #5 calls from the bathroom of her room at the group home to report a man has entered the home and is "hurting [the little girl] in bathroom."

- The 9-1-1- operator keeps Witness #5 on the line as Witness #5 describes what she can hear screaming coming from the bathroom were the other residents are.

18:21: 42 The 9-1-1- operator dispatches that she can hear the subject yelling in the background.

18:23:09 The 9-1-1- operator believes she hears officers at the front door trying to enter.

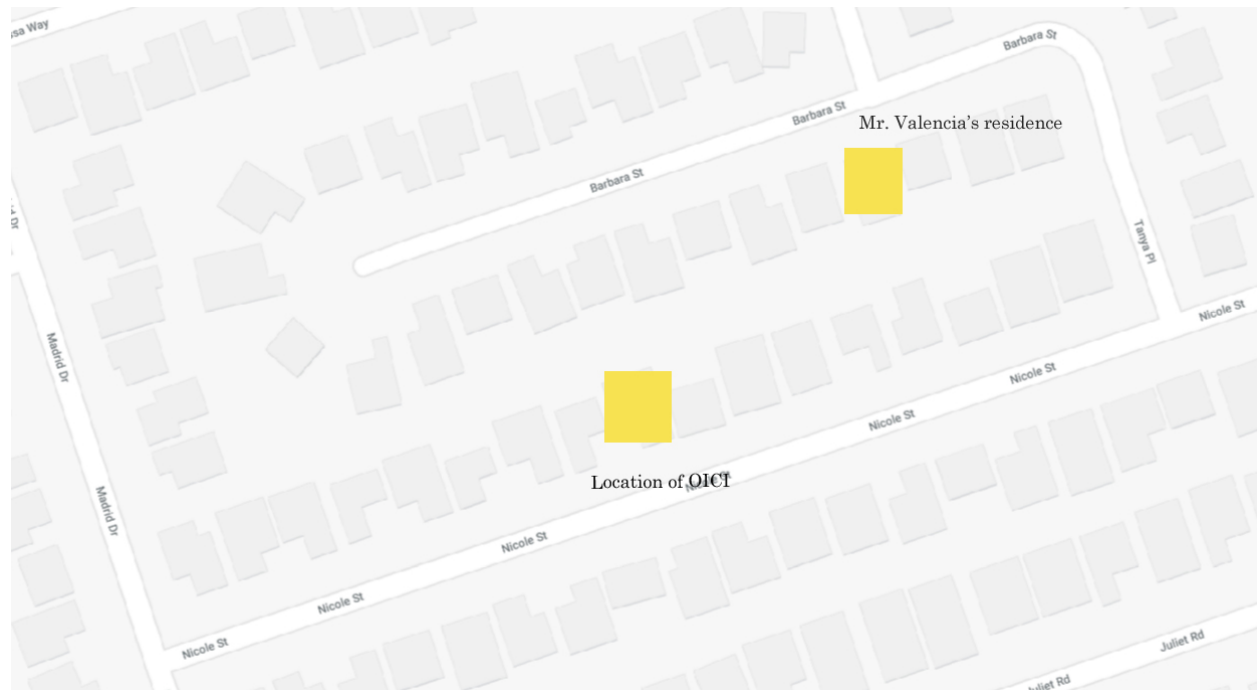
18:23:23 Witness #1 is speaking to a separate 9-1-1-operator. Witness #1 is begging for Mr. Valencia not to hurt her. Mr. Valencia is yelling that is he going to kill her

daughter, Witness #2. Witness #1 yells, “Don’t bite her! ... Don’t hit me! Don’t hit her!”

18:27:09 Officers have now entered the bathroom. Officers are yelling at Mr. Valencia and a struggle is heard. Women and Witness #2 are screaming and crying.

- This can all be heard from the 9-11 calls from Witness #1 and Witness #5 who has moved from her hiding place to the hallway next to the bathroom.

18:31:53 Officers radio that Mr. Valencia is unresponsive and request medics enter the home.



*Redacted Google Map*

### TASER Examination

Sergeant Dana Mosher’s TASER was examined and a log of its status was produced. The log indicated that Sgt. Mosher deployed his TASER four times as follows:

- 6:29:10 p.m. for 5 seconds
- 6:29:16 p.m. for 5 seconds.
- 6:29: 28 p.m. for 5 seconds.
- 6:29:48 p.m. for 5 seconds.

### Pathologist's Report

On January 19, 2016, at 10:23 p.m., San Joaquin County Pathologist Bennett Omalu performed an autopsy upon Mr. Valencia. In addition, Dr. Omalu originally responded to the scene and inspected Mr. Valencia at the group home.

The toxicology screen demonstrated that Mr. Valencia was not compliant with his medications for depression and hallucinations. Dr. Omalu opined that this abrupt discontinuation is a potential cause of Mr. Valencia's emergent mania. Additionally, toxicology reports showed THC levels of 16 ng/mL.

Upon completion of the autopsy, review of mental health records, and a review of relevant investigation reports that included the inspection of the scene, Dr. Omalu opined that Mr. Valencia died because of "Blunt Force Trauma to the Head, Neck, and Trunk" sustained by, but not limited to, contact with the walls, floor, and toilet causing a compression of the neck and trunk.

### Legal Analysis

Under Penal Code sections 197 and 198, homicide is justifiable and not unlawful when committed by a person who reasonably believed that he, or someone else, is in imminent danger of being killed, suffering great bodily injury, or to prevent a forcible and atrocious crime (*People v. Ceballos* (1974) 12 Cal.3d 470, 478). For a homicide to be in self-defense, the person must actually and reasonably believe in the need to defend with deadly force (*People v. Flannel* (1979) 25 Cal.3d 668, 674). If the belief both subjectively exists and is objectively reasonable, it constitutes "perfect self-defense" and the homicide is considered legally justified. (*In re Christian S.* (1994) 7 Cal.4<sup>th</sup> 768, 783).

Penal Code Section 197 states:

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

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,
2. When committed in defense of habitation, property, or person against one manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in violent, riotous or tumultuous manner. To enter the habitation of another for the purpose of offering violence to any person therein; or
3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such

person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline in further struggle before the homicide was committed.

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Homicide committed by a law enforcement officer is governed by Penal Code section 196 (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333). Penal Code section 196 states:

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

The test whether a police officer may use deadly force to apprehend a fleeing felon was announced in *Tennessee v. Garner* (1985) 471 U.S. 1, 11-12: “Where the officer has probable cause to believe the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”

The test of reasonableness is judged by an objective standard of “a reasonable officer on the scene, rather than with the 20/20 vision of hindsight....The calculus of reasonableness 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.” (*Graham v. Conner* (1989) 490 U.S. 386, 396-397, see also, *Jeffers v. Gomez* (9<sup>th</sup> Cir. 2001) F.3d 895, 909, “broad discretion...must be afforded to police officers who face tense situations.”)

Penal Code section 835a also states that, “[a] peace 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 an officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or prevent escape or to overcome resistance.” As stated above, “if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary.” (*Garner, supra*, 471 U.S. at 11-12.)

The test for determining whether a homicide was justifiable under Penal Code section 196 is whether the circumstances “reasonably created a fear of death or serious bodily harm to the officer or to another.” (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4<sup>th</sup> 334). Reasonableness must be considered in the context of the “dangerous and complex world” police officers face every day, because “what constitutes ‘reasonable’ action might seem quite different to someone facing a possible assailant than to analyzing the question at leisure.” (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4<sup>th</sup> at 343, quoting *Smith v. Freeland* (6<sup>th</sup> Cir. 1992) 954 F.2d 343, 347).

Penal Code sections 196 and 835a, *supra*, have recently been amended by Assembly Bill (A.B.) 392. Passed by the legislature this year, Governor Gavin Newsom signed the bill into law on August 19, 2019. A.B. 392 incorporates the language of section 196, relevant United States Supreme Court case law - discussed in this memorandum - and placed it within section 835a. Additionally, in the new language of the amended statute, emphasis is placed on “imminent” threats and “necessary” use of force. While the law will not be in effect until January 1, 2020, the standard set forth by A.B. 392 is consistent with the standard in current use by the District Attorney’s Office and is applied in this case.

### Application of Law

In analyzing the reasonableness of use of force by Sgt. Mosher, Officer DiGiulio and Officer Amant, the totality of the circumstances, including the information that the individual officer possessed at the time of his decision, is examined. The “‘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." (*Graham*, supra, 490 U.S. at 396.)

In the instant case, the following set of facts have been sufficiently established:

- 1) The entrance of Officer DiGiulio and Officer Amant, and later Sgt. Mosher, into the group home and into the bathroom was made under exigent circumstances and was reasonable. (*Missouri v. McNeely* (2013) 569 U.S. 141; *Michigan v. Fisher* (2009), 558 U. S. 45; *United States v. Santana* (1976) 427 U. S. 38 (1976))
- 2) Officer DiGiulio's use of force against Mr. Valencia to extricate Witness #2 as well as Witnesses #1, #3, and #4 from Mr. Valencia's captivity, and to restrain Mr. Valencia from striking him and gaining control of his firearm was reasonable and necessary. (Penal Code §§ 196, 835a; *Atwater v. Lago Vista* (2001)) 532 U.S. 318.)
- 3) Officer Amant's use of force by striking non-vital areas of Mr. Valencia was a use of reasonable and necessary force to "effect the arrest, to prevent escape or to overcome resistance." (Penal Code §835a; *Lago Vista*, supra.)
- 4) Officer DiGiulio's and Officer Amant's use of force to restrain Mr. Valencia and handcuff him was a use of reasonable and necessary force to "effect the arrest, to prevent escape or to overcome resistance." (Penal Code §835a.)
- 5) Sgt. Mosher's use of force by employing the non-lethal force of the TASER was reasonable and necessary under the circumstances given Mr. Valencia's violent resistance to verbal commands and the initial use of force. (*Graham*, supra, 490 U.S. at 396-97.)
- 6) Mr. Valencia was in the process of committing a "forcible and atrocious crime" (*Ceballos*, supra, 12 Cal.3d at 478), and his subsequent struggle with officers "posed an immediate threat to the officers' or public's safety." (*Graham*, supra, 490 U.S. at 396.) In addition, Mr. Valencia was actively "resisting arrest [and] attempting to escape. (Id.)

### CONCLUSION

In applying the prevailing legal standards, and based upon the totality of the circumstances and in light of all of the evidence obtained from the multi-task force investigation, it is the opinion of the District Attorney that the use of force by Officer Jason DiGiulio, Officer Kyle Amant, and Sergeant Dana Mosher on January 19, 2016, was reasonable and necessary, and that no criminal charges are warranted.

CONFIDENTIAL APPENDIX SECTION

*[Intentionally Left Blank]*