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October 14, 2014

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

Re: Officer Involved Shooting on February 23, 2013
Non-Fatal Incident involving John Raymond Celis
District Attorney Case # 13F12851
District Attorney Investigations Case # S.A. 13-003
Orange County Sheriff's Department DR # 13-034439
Anaheim Police Department DR # 13-25715
Orange County Crime Laboratory Case # FR 13-42769

Dear Sheriff Hutchens,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion in connection with the above-listed incident involving on-duty Orange County Sheriff's Department (OCSD) Deputy Carlos Cammon. John Raymond Celis, of Garden Grove, age 39 at the time of the incident, survived his injuries. The incident occurred in the City of Anaheim on Feb. 23, 2013.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the Feb. 23, 2013, non-fatal officer-involved shooting of John Raymond Celis. The letter includes an overview of the OCDA's investigative methodology and procedures employed, as well as a description of the relevant evidence examined, witnesses interviewed, factual findings, and legal principles applied in analyzing the incident and determining whether there was criminal culpability on the part of the OCSD deputy involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Feb. 23, 2013, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators interviewed more than 35 witnesses and obtained and reviewed the following: OCSD and Anaheim Police Department reports, video recordings, audio recordings, and dispatch and radio traffic recordings; Anaheim Fire Department incident reports; Orange County Sheriff-Coroner Department OC Crime Lab (OCCL) reports including toxicology, forensic alcohol examination, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Celis; criminal history records related to Celis including prior criminal history records, surveillance videos, 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 impartially reviewed all evidence and legal standards available. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of OCSD deputies or personnel, specifically Deputy Cammon. The OCDA will not be addressing herein 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 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.

FACTS

At approximately 3:00 a.m. on Feb. 23, 2013, employees at the McDonald's restaurant, located at 11097 South Beach Boulevard, in the City of Stanton, noticed an unknown man in a black Chevrolet Tahoe parked at the drive-thru window. The driver, later identified as Celis, appeared asleep at the wheel. Restaurant employees went outside to wake up the driver. When one employee knocked on the passenger side window, Celis awoke, flipped off the employee, then went back to sleep.

At approximately 3:09 a.m., the employee called 911 and reported that Celis appeared drunk and was parked in the drive-thru lane of the McDonald's restaurant. OCSD Deputies Sam Kong and Carlos Cammon were dispatched to the McDonald's restaurant. OCSD Sergeant Eric Nester also responded and arrived within seconds of the call being dispatched. Deputies Kong and Cammon arrived shortly after Sgt. Nester.

The Tahoe was parked at the first drive up window, near the south west corner of the restaurant. Sgt. Nester parked his marked black and white Sheriff's patrol unit outside of the drive-thru lane, to the rear of the Tahoe. He broadcasted the license plate, California 5BZA359, which was registered to Celis. Deputy Kong parked his marked black and white Sheriff's patrol unit parallel to Celis' Tahoe, in an adjacent parking lot separated by a long median. Deputy Cammon parked his marked black and white Sheriff's patrol unit behind Deputy Kong's unit.

Deputy Kong walked to the driver's side window, while Deputy Cammon walked to the front passenger side window. Celis was reclined in his seat and appeared to be asleep. The Tahoe's engine was running, the lights were off, and the doors were locked. Deputy Kong knocked on the driver's side window in an attempt to get Celis to wake up and exit the vehicle. After several attempts, Celis woke up and looked at Deputy Kong. Deputy Kong shined his flashlight on his uniform to identify himself as a police officer, while verbally identifying himself and Deputy Cammon as deputies with the OCSD. Celis looked at Deputy Kong, then looked at Deputy Cammon, and flipped off the deputies using both hands.

Deputy Kong advised Sgt. Nester that Celis was uncooperative and received permission to break the window to turn the engine off. Sgt. Nester moved his vehicle from behind the McDonald's restaurant to the northwest corner of the building, to block the drive-thru exit. Deputies Kong and Cammon simultaneously broke the front driver and passenger windows of the Tahoe. Deputy Cammon reached inside to unlock the passenger door. As he did, Celis shifted the Tahoe into drive and the vehicle lurched forward and hit the curb, with Deputy Cammon still hanging on to the vehicle. Both Deputies Kong and Cammon backed away from the vehicle.

The Tahoe moved forward until it ran into a light pole on the south curb line of the drive-thru. Celis tried to continue driving, but the pole prevented his forward movement. Instead, Celis backed away from the pole, drove forward a few feet in the drive-thru lane, and stopped.

Believing that Celis was possibly under the influence of alcohol or drugs and was going to try to drive away from the McDonald's restaurant, Deputy Cammon ran to a police unit. Deputy Cammon drove around the restaurant to the drive-thru exit, to block Celis' escape. At that point, the drive-thru exit was completely blocked by Deputy Cammon's and Sgt. Nester's marked patrol units.

Deputy Kong then got into the remaining police unit, and drove it over two raised curbs in an attempt to enter the drive-thru lane in front of Celis' Tahoe, to block his escape. Before Deputy Kong could get into the lane, Celis drove the Tahoe around the unit and toward the exit.

As Celis made the turn in the drive-thru lane toward the exit, he encountered Sgt. Nester and Deputy Cammon blocking the exit with their vehicles. Celis accelerated and drove over the raised curb, across the grass and under the arch of a stationary marquee sign. After striking the right hand side of the arch and causing extensive damage, Celis continued accelerating and rammed into the driver side rear quarter panel of Deputy Cammon's vehicle. The impact spun the unit 90 degrees counterclockwise. After striking Deputy Cammon's vehicle, Celis backed his Tahoe into the marquee sign, causing additional damage. Celis then fled northbound on Beach Boulevard in the southbound lanes, drove over the center median, and continued northbound on Beach Boulevard from Katella Avenue.

Sgt. Nester and Deputy Kong were not able to follow Celis because the driveway was blocked by Deputy Cammon's unit. Instead, they drove through the shopping center parking lot and exited onto eastbound Katella Avenue, then proceeded northbound on Beach Boulevard. By that time, they had lost sight of Celis' Tahoe.

Both Sgt. Nester and Deputy Kong drove northbound on Beach Boulevard with their emergency lights and sirens activated, looking for Celis. They located him in the area north of Cerritos Avenue, driving northbound in the number four lane of Beach Boulevard. Celis was driving at approximately 30 miles per hour with no lights on. When Sgt. Nester illuminated the Tahoe with his spotlight, Celis accelerated to approximately 50 miles per hour.

As Celis approached Ball Road, Sgt. Nester slowed down and Deputy Kong moved in behind Celis as the primary unit in the vehicle pursuit. Celis turned eastbound on Ball Road from Beach Boulevard, with Deputy Kong and Sgt. Nester behind him. Once on Ball Road, Celis accelerated to approximately 50 miles per hour and continued to drive in the number two lane. Deputy Kong tried to advise the dispatcher of the license plate on the Tahoe, but due to the angle and distance, he was unable to clearly see it. Deputy Cammon joined the vehicle pursuit. When Deputy Cammon realized Deputy Kong was unable to read the license plate, Deputy Cammon accelerated in the number one eastbound lane and attempted to pull up behind and to the left of the Tahoe to read the license plate number. As Deputy Cammon approached the Tahoe, Celis suddenly braked, nearly causing Deputy Kong to rear end the Tahoe. The abrupt stop occurred in front of 2826 West Ball Road in the city of Anaheim.

The sudden braking caused Deputy Cammon's patrol car to inadvertently stop alongside the Tahoe in the number one lane. Deputy Cammon angled the front end of his unit slightly ahead and toward the right, to direct Celis to pull over. Several seconds later, Celis turned the front wheels of the Tahoe to the left and accelerated, ramming into Deputy Cammon's front passenger door. The impact moved Deputy Cammon from the number one eastbound lane into the two

way left turn lane of eastbound Ball Road.

Celis continued to accelerate, pushing Deputy Cammon's patrol car into oncoming traffic lanes. Deputy Cammon saw the headlights of opposing traffic coming toward him, and accelerated his unit to push back. Because Celis had rammed Deputy Cammon's police unit twice, and because of Celis' reckless driving, Deputy Cammon was fearful for his own safety, as well as the safety of other drivers. Deputy Cammon believed that if Celis continued, Celis would seriously injure or kill him or another motorist. Deputy Cammon drew his firearm and fired one shot at Celis, through Deputy Cammon's passenger window, and into the driver's window of the Tahoe.

After Deputy Cammon fired one round at Celis, the Tahoe pulled away from Deputy Cammon's unit and continued eastbound on Ball Road with Deputies Cammon and Kong, and Sgt. Nester, still in pursuit. As Celis approached Dale Avenue, he continued through the intersection on the yellow traffic light. As Celis continued eastbound on Ball Road, smoke began spewing from the driver side front tire area of his Tahoe, and he frequently weaved into the number two lane and the two way left turn lane. At approximately 2449 West Ball Road, Celis crossed into the oncoming westbound lanes. Instead of changing back into the eastbound lanes, Celis continued driving eastbound in westbound traffic. Celis eventually moved into the two-way left turn lane and continued eastbound on Ball Road.

Upon Deputy Cammon's broadcast over the radio that Celis was driving in the opposing traffic lanes, Sgt. Nester gave approval over the radio for any unit available to attempt to perform a Precision Intervention Technique (PIT) maneuver to neutralize the threat Celis was presenting to the public and to the pursuing deputies.

Deputy Kong maintained his position as the primary unit in the pursuit, behind Celis in the two-way left turn lane. Deputy Cammon moved into position to perform a PIT maneuver on Celis. Deputy Cammon accelerated past Deputy Kong in the number two eastbound lane and moved over into the number one lane of eastbound Ball Road, toward the rear quarter panel on the passenger side of the Tahoe. Celis again began to weave into the opposing lanes of Ball Road.

At 2411 West Ball Road, Deputy Cammon's patrol unit made contact with Celis' Tahoe while both vehicles were travelling at approximately 40 to 45 miles per hour. The contact caused the Tahoe to spin approximately 180 degrees, eventually resting in a north westerly direction. As the Tahoe continued to roll slowly in reverse, Deputy Kong placed the driver side corner of his patrol unit's front bumper against the driver's door of the Tahoe, to prevent Celis from attempting to flee in the Tahoe or on foot. Deputy Cammon then made contact with the front end of his patrol unit and the front end of the Tahoe, and pushed it over the curb and onto the sidewalk, disabling the Tahoe. The impact caused Celis, who was not wearing a seatbelt, to strike his face against the steering wheel of the Tahoe.

Deputies held Celis at gunpoint as Celis was removed from the Tahoe and placed into custody. Anaheim Fire Department paramedics were called to the scene to treat his injuries. As a result of the gunshot, Celis had a 1.5 inch laceration to his left forearm, which was bandaged for bleeding control. Medical professionals noted that Celis smelled of alcohol. Celis was initially transported to West Anaheim Medical Center (WAMC), but was later transferred to University of California, Irvine Medical Center (UCIMC) to be treated for facial trauma and possible C-spine injury. The gunshot wound was determined to be a superficial laceration.

A cartridge casing was located on the floorboard of Deputy Cammon's vehicle, but investigators were unable to locate any bullet entry or exit points in the interior or exterior of Celis' Tahoe. No projectiles were recovered.

Voluntary, Consensual Statement of Deputy Cammon

Deputy Cammon gave a voluntary, consensual statement to the OCDA on Feb. 26, 2013. At the time of the interview, Deputy Cammon had been employed as a police officer with the OCSD for approximately six years. This incident occurred during his regular work hours while Deputy Cammon was armed with a Glock, Model 22, .40 caliber semi-automatic pistol. The following is a summary of Deputy Cammon's statement.

On Feb. 23, 2013, shortly after 3:00 a.m., Deputies Cammon and Kong were dispatched to the McDonald's restaurant on Beach Boulevard in Stanton. The call described a male drunk passed out in his vehicle in the drive-thru. Deputies Kong and Cammon arrived within two minutes, joining Sgt. Nester who was already on scene. Deputies Cammon and Kong parked in the parking lot, on the opposite side of a median and parallel to where Celis was parked in the drive-thru lane.

Deputy Cammon observed a dark SUV parked in the McDonald's drive-thru. Deputy Cammon approached the passenger side of the SUV, while Deputy Kong approached the driver's side window. Deputy Cammon observed a male Hispanic, later identified as Celis, unconscious in the driver's seat. The vehicle was running. Deputies Cammon and Kong knocked on the windows with their flashlights for a full minute before Celis woke up. The deputies told Celis to turn the vehicle off and open the door. Celis looked at both deputies, extended both his arms, and flipped them both off. Sgt. Nester gave permission to break the windows, which both deputies did simultaneously.

Deputy Cammon reached his hand inside the vehicle to try and unlock the passenger door. Celis put the vehicle in drive and lurched forward while Deputy Cammon was still inside. Celis hit the curb and Deputy Cammon retreated. Deputy Cammon ran to the first available police unit and drove to the end of the drive-thru driveway to block Celis' exit. Sgt. Nester also positioned his police unit to block Celis' exit.

Celis rounded the drive-thru corner, heading toward the drive-thru exit. Deputy Cammon started to step out of his vehicle when he and Celis made eye contact and Celis smiled at Deputy Cammon. Celis then aimed his vehicle and accelerated toward Deputy Cammon. Deputy Cammon jumped back into his unit as the driver's side of Celis' Tahoe hit the rear door on the driver's side of Deputy Cammon's vehicle. Deputy Cammon's airbag deployed as a result of the impact, and Deputy Cammon sustained scrapes and a bump to his head. Celis continued to accelerate past Deputy Cammon's unit, pushing it to the left. Celis exited the parking lot by driving over the curb and across the sidewalk before entering Beach Boulevard, and going northbound in the southbound lanes before correcting at the intersection.

Deputy Kong and Sgt. Nester immediately followed Celis. Once Deputy Cammon determined his unit was still operable, he joined in the pursuit. All police units deployed their lights and sirens. When Deputy Cammon caught up to Deputy Kong and Sgt. Nester, he noticed Celis' vehicle was driving 35 to 40 miles per hour with no lights. Celis turned onto Ball Road. Deputy Kong was directly behind Celis, while Deputy Cammon was positioned behind and to the left of Celis.

Deputy Cammon tried to get parallel to Celis when Celis suddenly braked, and nearly caused a collision with Deputy Kong. Deputy Cammon stopped one or two lanes to the left of Celis, and his police unit was approximately one to two feet ahead of the Tahoe. Deputy Cammon and Celis were stopped for several seconds. Celis turned his wheel to the left and accelerated his vehicle into Deputy Cammon's passenger side. Deputy Cammon believed it was deliberate, and "a straight shot to the passenger side of my vehicle." The impact pushed Deputy Cammon's vehicle across the painted center divider, into oncoming traffic lanes. Deputy Cammon noticed headlights from opposing traffic and accelerated his own vehicle to push Celis back. Deputy Cammon believed Celis was, "pushing me over to crash me into opposing traffic." Deputy Cammon stated, "... I'm scared that I'm going to crash. I'm going to get hit, um, and I'm also thinking if I don't, if he gets away, he's going to go around and either go into opposing traffic and hit someone else."

Deputy Cammon believed that if Celis continued to drive, someone would be killed or seriously injured, and he was in fear for his own safety and the safety of the other drivers and deputies. Deputy Cammon saw Celis look at him and turn the Tahoe's steering wheel to the left to try and push Deputy Cammon back over. To neutralize the threat posed by Celis, Deputy Cammon drew his firearm and fired one shot at Celis. Deputy Cammon fired through his passenger window into Celis' driver's window. At that time, Celis' vehicle disengaged and continued eastbound on Ball Road.

Celis was driving in the number one lane, closest to the painted center divider. Celis started to veer off into opposing traffic lanes, which Deputy Cammon announced over the radio. Sgt. Nester gave authorization to perform a PIT maneuver to stop or disable Celis. Deputy Cammon's unit was closest to Celis. Deputy Cammon aimed his vehicle at Celis' rear axle and accelerated. Deputy Cammon's unit hit the Tahoe's rear axle and spun the vehicle around. Celis'

vehicle was perpendicular to Deputy Cammon's vehicle, facing north while Deputy Cammon's vehicle was still facing east. Deputy Cammon turned his vehicle toward Celis and started driving. Deputy Kong then hit Celis' vehicle on the driver's side, and both units pushed Celis back to the curb line and up onto the sidewalk to disable the vehicle.

When they came to a stop, Deputy Cammon had difficulty seeing Celis because there was excessive smoke coming from the Tahoe. Deputy Cammon climbed out the passenger side of his unit because the driver's door would not open. Other deputies approached with weapons drawn. Celis' door was open and Deputy Cammon and another deputy pulled Celis out of the Tahoe. Celis pulled back his hands and refused instructions to give the deputies his hands. Afraid that Celis might be trying to reach for a weapon in his waistband, Deputy Cammon struck Celis several times in the face until Celis took his hands out from underneath him. Celis was then placed into custody,

When asked what would have happened had they not stopped Celis, Deputy Cammon said that "there was no doubt" in his mind that Celis was trying to hurt him and push his patrol car over to crash into incoming traffic causing him [Deputy Cammon] and innocent motorists on the road to be injured.

Post-Shooting, Voluntary Interviews with Civilian Witnesses in the Neighborhood

Given the time of the incident, no civilian witnesses observed the shooting or collisions. One witness was driving and saw the chase. He described flashing police lights coming toward him, and cars fanning out with a black SUV in front, "going like hell with no lights or anything." The witness pulled into a parking lot, and heard the police units and black SUV crash.

John Celis' Consensual, Voluntary, Pre-Miranda Statements of Events

On Feb. 23, 2013, an investigator from the OCDASAU interviewed Celis at UCIMC. Celis agreed to answer questions regarding the incident. Celis stated he was under pressure due to financial difficulties. Celis was diagnosed with depression and anxiety in 2007 and takes medication for those conditions. On Friday, Feb. 22, 2013, Celis did not take his usual evening dose of medication. At approximately 6:00 p.m., Celis went to the liquor store and bought three, 24-ounce cans of beer. Celis brought the beer home and drank it. At 10:00 p.m., Celis drove back to the liquor store and bought an additional three, 24-ounce cans of beer. Celis parked his vehicle somewhere north of Magnolia Street and drank one or two of the cans of beer. Celis did not remember anything else about that evening. His next recollection was waking up and realizing he was in a traffic accident and getting pulled out of his vehicle.

EVIDENCE COLLECTED AT THE SCENE

From Deputy Cammon:

The following items of evidence were collected by an OCCL forensic scientist: a Glock Model 22, .40 caliber semi-automatic pistol; one 15 cartridge magazine from the pistol, containing 14 cartridges of Federal SW40 ammunition; one cartridge of Federal SW40 ammunition from the chamber; and two 15 cartridge magazines from Deputy Cammon's duty belt, each containing 15 cartridges of Federal SW40 ammunition.

From the police vehicles and Celis' Tahoe:

An OCCL forensic scientist collected the cartridge casing, head stamp "Federal 40 S&W," from the floorboard behind the driver's seat of the police unit driven by Deputy Cammon. Celis' Tahoe was transported to OCCL for processing. As part of the investigation at the scene of the PIT maneuver, an OCSD Deputy downloaded and preserved data from the crash data recorders of Celis' Tahoe and the two police units. An OCSD Investigator searched the interior of the Tahoe and located the following items: Blackberry Cellular phone; Nike sandals; empty CVS prescription pill bottle bearing patient name, JOHN CELIS, prescribed medication, 100 milligram Lamotrigine tablets, prescription filled 11-15-12; 2.1 ounce plastic bottle labeled, "Herbalife N R G." containing a brown unknown powder; CVS prescription pill bottle bearing patient name, JOHN CELIS, prescribed medication, 100 milligram Lamotrigine tablets, 60 pill prescription, 36 pills inside bottle, prescription filled Oct. 27 2011.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of CELIS' blood was drawn at WAMC and submitted to the OCCL. The alcohol content level was determined to be .20 percent.

Toxicological Examination

An OCCL Forensic Scientist examined Deputy Cammon's duty weapon. The Glock Pistol, Model 22, .40 caliber, was test fired and operated without malfunction. The fired cartridge case found in Deputy Cammon's police unit was determined to have been fired from Deputy Cammon's pistol.

JOHN CELIS' MEDICAL CONDITION

Celis was diagnosed with a superficial soft tissue laceration to his left forearm as a result of the gunshot. It was treated with a bandage. Celis was also diagnosed with nasal and orbital facial fractures, which were successfully treated with surgery.

JOHN CELIS' PRIOR CRIMINAL HISTORY

Celis' criminal history was reviewed and considered. In 1995, Celis was convicted of felony driving under the influence of alcohol, resulting in bodily injury, felony driving with a blood alcohol exceeding the legal limit, causing bodily injury, and felony evading a police officer causing serious bodily injury. In 1998, Celis was arrested for burglary, possession of a bad check, and receiving stolen property; he was subsequently convicted of possessing a financial instrument with the intent to defraud.

JOHN CELIS' POST-INCIDENT CONVICTION

On Feb. 25, 2013, the OCDA charged Celis in Orange County Superior Court Case 13WF0544 with one felony count of violating California Vehicle Code section 2800.2, Evading a Peace Officer, two felony counts of violating California Penal Code section 245(c), Assault with a Deadly Weapon on a Peace Officer, and one count of violating California Vehicle Code section 23153(a), Driving Under the Influence of Alcohol Resulting in Bodily Injury. On Nov. 3, 2013, the OCDA added one charge of violating California Vehicle Code section 23153(b), Driving With a Blood Alcohol Greater than .08 percent Resulting in Bodily Injury, and one charge of violating California Penal Code section 148(a), Resisting Arrest. On Nov. 14, 2013, the OCDA filed an Information alleging all the above listed charges but changed the driving under the influence related charges from felonies in violation of Vehicle Code sections 23153 (a) and (b) to misdemeanors in violation of Vehicle Code sections 23152 (a) and (b). Celis plead guilty to all the charges on June 25, 2014. He was sentenced on July 31, 2014, to four years in state prison.

Celis' written guilty plea, made and signed under penalty of perjury, included the following factual summary and admission by Celis:

"In Orange County, California, on or about 2/23/13 I did willfully and unlawfully commit all of the following acts: (1) Drive a vehicle while under the influence of an alcoholic beverage while my blood alcohol level was over .20%; and (2) while driving said vehicle I did drive with willful and wanton disregard for the safety of persons and property and with the intent to flee and elude a pursuing peace officer whom I knew to be a peace officer as the peace officer's car was distinctly marked with a lighted red lamp at the front, that I saw, and the officer's car sounded a siren that I heard, and the officer wore a distinctive uniform; and (3) while driving said vehicle I used a deadly weapon, my vehicle, and committed an assault upon the person of Deputy Cammon on two separate occasions and I knew that Deputy Cammon was a peace officer lawfully engaged in the performance of his duty; and (4) resist, delay, or obstruct Deputy Cammon, whom I knew was a peace officer lawfully discharging the duty of his office and employment.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a non-fatal shooting include attempted murder [Penal Code Section 664/187]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a

reasonable doubt that no legal justifications existed for the officer's actions. *People v. Banks* (1977) 67 Cal. App. 3d 379, 383-84. Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a.

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

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

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

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

Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself from attack if, as a reasonable person, he had grounds for believing and did believe that bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

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

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

This limitation was, however, subsequently clarified by the United States Supreme Court in the seminal case of *Graham v. Conner* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer's right to use force [i.e., his weapon] is to be analyzed under the Fourth Amendment's "objective reasonableness" standard. The Supreme Court

further stated that the determination of the reasonableness of an officer's use of force "must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and evolving." *Id.* at 397. Thus, the Court cautioned that 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." *Id.* at 396.

The United States Supreme Court's analysis and teachings in *Graham, supra*, are very much applicable to the circumstances surrounding the interactions of Deputy Cammon and Celis.

LEGAL ANALYSIS

This incident involved a peace officer who acted reasonably and properly in trying to arrest and neutralize a dangerous individual, who was acting with complete and utter disregard for the safety of innocent human beings, as well as the safety of the peace officer.

Deputies Cammon and Kong, and Sgt. Nester, were called to investigate a man passed out in the drive-thru at approximately 3:00 a.m. Upon finding Celis unconscious in his locked and idling Tahoe, they were able to rouse him after one minute of both deputies pounding on his windows. Celis looked at each uniformed deputy, extended his arms, and flipped them both off. Fearing Celis would drive away, the deputies broke the windows to try and turn off the vehicle. While Deputy Cammon was leaning inside the Tahoe to unlock the passenger door, Celis accelerated, creating a dangerous situation for Deputy Cammon. The deputies retreated and returned to their units to block Celis' exit from the drive-thru lane.

Deputy Cammon parked at the drive-thru exit and was partially out of his vehicle when he saw Celis round the corner. Deputy Cammon got back inside his vehicle. Rather than continue in the drive-thru lane, Celis drove up the curb, hit the marquee sign, and accelerated into the driver's side of Deputy Cammon's vehicle, where Deputy Cammon had been standing moments earlier. Based upon his eye contact with Celis, and the rapid acceleration of Celis' vehicle, Deputy Cammon believed the collision was intentional. Clearly, Deputy Cammon was reasonable in so believing.

Celis then fled over the curb, through the sidewalk, and entered the street going the wrong way. Sgt. Nester and both deputies pursued Celis, who drove erratically and without lights endangering the lives of innocent human beings. All units had lights and sirens activated. After Celis turned on Ball, he made an abrupt stop. Deputy Kong, directly behind Celis, almost rear-ended Celis. Deputy Cammon was to the left of Celis, and stopped parallel and a few feet ahead of Celis. After a short delay, Celis suddenly accelerated and rammed the Tahoe into the passenger side of Deputy Cammon's unit, pushing Deputy Cammon's unit into opposing traffic lanes. Deputy Cammon could see the lights of approaching cars. Afraid for the safety of himself, his colleagues, and innocent human beings on the road, Deputy Cammon fired one shot at Celis to disable him. The conduct of Deputy Cammon in firing his weapon, based on the entirety of the circumstances, was reasonable and justifiable.

The Tahoe then disengaged from Deputy Cammon's unit and Celis fled again, this time weaving into the lanes of oncoming traffic. Sgt. Nester authorized a PIT maneuver because of the danger Celis posed to civilian motorists. Celis was finally stopped after Deputies Cammon and Kong applied the PIT maneuver and pushed the Tahoe onto the sidewalk.

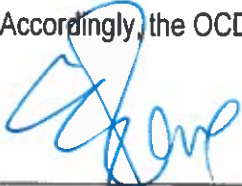
In order for Deputy Cammon to be justly and lawfully charged and convicted with a crime in this incident, it is the prosecution's burden to prove beyond a reasonable doubt that Deputy Cammon did not act in reasonable and justifiable self-defense or defense of others when he shot at Celis. As should be apparent from the above-described legal analysis and legal conclusion, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would likely conclude that it was reasonable for Deputy Cammon to use the force that he did in this circumstance. There is significant and overwhelming competent evidence showing that Deputy Cammon acted reasonably under the circumstances.

CONCLUSION

Deputy Cammon did not commit any crime in connection with this incident. On the contrary, Deputy Cammon's conduct was reasonable and justifiable as his actions greatly contributed to the lawful arrest of a dangerous criminal. The only person who committed crimes in connection with this incident was Celis.

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews we reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of Deputy Cammon, and there is overwhelming evidence that Deputy Cammon's actions were reasonable and justified under the circumstances, in order to protect the public, his colleagues, and himself, when he shot John Celis on Feb. 23, 2013.

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



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READ AND APPROVED BY **EBRAHIM BAYTIEH**
ACTING ASSISTANT DISTRICT ATTORNEY
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