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August 24, 2022

Chief of Police Kenny Williams
McFarland Department
401 W. Kern Avenue
McFarland, CA 93250

**Re: McFarland Police Dept. Officer-Involved Shooting of Eduardo Figueroa on January 1, 2022;
Deputy Chief Tyler Helton, Sergeant Christopher Rivera, Officers Matthew Dewar, Freddy Hernandez, Leticia Hernandez, Colin Newhouse, and Andrew Galvan;
East Sherwood Avenue, McFarland, CA. KCSO report number 2022-00000301;
Disposition of Request for Charges Regarding Officers Newhouse and Galvan**

Dear Chief Williams,

The Kern County District Attorney's Officer-Involved Shooting Committee has reviewed reports and other materials submitted by your agency and the Kern County Sherriff's Office regarding the shooting noted above. The Officer-Involved Shooting Committee reviews cases for criminal liability under state law. The findings of the Officer-Involved Shooting Committee are noted below.

In addition to the review, the District Attorney's Office has considered an additional request for charges relating to the firearms used by Officers Andrew Galvan and Colin Newhouse during the incident. The request for charges was included with the officer-involved shooting review and was considered in conjunction with the officer-involved shooting review.

Summary

On Saturday January 1, 2022, Eduardo Figueroa had a felony arrest warrant for a post release supervision violation and failure to appear in case BV013195A, was a known Myfa gang member, and had other misdemeanor arrest warrants outstanding. Between 8:09 p.m. and 8:45p.m., Figueroa attempted to evade contact with McFarland police while driving a silver Nissan (reported stolen on January 2, 2022, at 3 p.m.) by failing to yield to police during an attempted traffic stop at 3rd Street and West Perkins Avenue.

Figueroa led officers on a chase involving speeds as high as 100 miles per hour, failed to stop at 14 stop signs, and drove with the vehicle lights turned off. When the silver Nissan finally ran out of gas, Figueroa pulled to the south curb of East Sherwood Avenue near San Lucas Street in McFarland at approximately 8:45pm.

Multiple police vehicles stopped west of Figueroa's position on East Sherwood Avenue. McFarland officers were joined by Delano canine officer Axel and his handler, Delano Police Officer Murguia, who sought to assist with the felony high-risk stop. At 8:48 p.m. Eduardo Figueroa complied with officers' orders to throw the car key out the window but failed to obey commands to show both of his hands and exit the vehicle.

Figueroa continued to ignore officer commands to exit the Nissan and failed to show both of his hands. At 8:51 p.m. Officer Dewar deployed a non-lethal pepper ball into the Nissan, however, Figueroa still did not exit the vehicle still refused to show officers both of his hands. Officers continued verbal commands, going so far as to allow the mother of Figueroa's children to address him during the standoff and implore Figueroa to give up and come out of the car. At 8:59 p.m. Figueroa was advised that if he did not surrender and exit the car that the canine would be deployed. At 9:01 p.m. officers continued to plead with Figueroa to exit the car, and Figueroa was explicitly warned that failure to comply would result in the canine deployment and that he would get bit. The warnings continued for several minutes, but Figueroa still refused to exit the Nissan and show both of his hands.

At 9:11:12 p.m. non-lethal force was deployed, as canine officer Axel was sent towards the Nissan in an effort to have Axel extract Figueroa from the car. Figueroa responded by drawing a revolver, pointing it towards police officers, and discharging it. The shot came as Axel was between Figueroa and several officers, and a shot fired by Figueroa struck Axel. Officers yelled 'gun' upon observing Figueroa exit with the revolver, and multiple officers responded to Figueroa's firing of a revolver in their direction by returning fire. Shots fired by the officers hit Figueroa, striking him multiple times. After 5-6 seconds of gunfire officers approached the Nissan and detained Figueroa. Officers seized the revolver that Figueroa had ultimately dropped in the street. Kern Regional Crime Laboratory testing of the revolver resulted in DNA evidence connecting Figueroa to DNA found on the both the revolver and the shell casings that remained in the revolver's cylinder.

The shooting occurred after an extended vehicle pursuit and standoff that involved multiple officers. Seven different law enforcement officers discharged firearms, resulting in an approximately 73 rounds being fired over a 5-6 second period. The standoff between Figueroa and officers lasted approximately twenty-six minutes and followed immediately after a thirty-six-minute vehicle pursuit. Figueroa survived multiple gunshot wounds and Axel also survived the gunshot wound he suffered. During the investigation of the officer-involved shooting, it was determined that two officers involved had deployed rifles that the officers were not permitted to possess under California laws.

Officers from McFarland Police Department who discharged firearms on January 1, 2022

Officer	Matthew Dewar	15-16 rounds	Glock 9mm
Officer	Freddy Hernandez	5 rounds	Glock 9mm
Officer	Leticia Hernandez	9 rounds	Glock 9mm
Sergeant	Christopher Rivera	10 rounds	Glock .45 caliber
Deputy Chief	Tyler Helton	3-4 rounds	870 Remington shotgun
Officer	Andrew Galvan	1 round	Hardened Arms semi-automatic rifle
Officer	Colin Newhouse	30 rounds	Anderson MFR semi-automatic rifle

Legal Principles and Analysis

The facts in this case are determined by considering all available information, including but not limited to cellphone video from civilians, law enforcement body worn camera video, recorded statements by witnesses, pictures/images, 911 radio dispatch recordings and logs, investigative reports, and Kern Regional Laboratory reports.

The issue is whether the use of deadly force by Deputy Chief Tyler Helton, Sergeant Christopher Rivera, Officers Matthew Dewar, Freddy Hernandez, Leticia Hernandez, Colin Newhouse, and Andrew Galvan, are criminally culpable and without justification. To charge any of the law enforcement personnel with a criminal violation, the prosecution must be able to prove beyond a reasonable doubt that no legal justification existed for the police officer's conduct. Therefore, to lawfully charge any officer with a crime against Eduardo Figueroa, the prosecution must be able to prove that they did not act in lawful self-defense or defense of others. If each officer's actions were justifiable and necessary as lawful self-defense or defense of others, then criminal charges will not be warranted.

Where potential dangerous, emergency conditions, or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that in effect, "the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack." (*Brown v. Ransweiler* (2009), 171 Cal.App.4th 516 at p. 528.) Additional analysis, pursuant to California Penal Code section 835a, permits deadly force when the officer reasonably believes it is necessary, based upon a totality of the circumstances, to defend themselves or others against an imminent threat of death or serious bodily injury.

In this case, Eduardo Figueroa had already led police on a dangerous thirty-six-minute vehicle pursuit, refused to show officers his right hand, refused to exit a vehicle for twenty-five minutes and showed no indication he was planning to exit the vehicle when canine officer Axel was released. Prior to any officer discharging any firearm Eduardo Figueroa drew a revolver, pointed it in the direction of officers, civilians, as well as Axel, and ultimately shot canine officer Axel.

Based on the totality of all available evidence the prosecution will not be able to prove beyond a reasonable doubt that Deputy Chief Tyler Helton, Sergeant Christopher Rivera, Officers Matthew Dewar, Freddy Hernandez, Leticia Hernandez, Colin Newhouse, and Andrew Galvan were not justified in believing that Eduardo Figueroa posed a significant threat of death or serious physical injury to officers or civilians. Faced with a non-compliant suspect who had shown a clear intent on escaping arrest at any cost, the officers attempted to affect the arrest by imploring Figueroa to surrender, going so far as to enlist the assistance of a known acquaintance of Figueroa to help try to convince him to give up peacefully. Attempts at non-lethal force were made, including the use of a pepper-ball launcher and ultimately the deployment of canine officer Axel. Axel was deployed after an extended vehicle pursuit ended only because Figueroa's vehicle ran out of gas, and even then, only when Figueroa refused multiple commands to surrender and exit the vehicle peacefully. The deployment of Axel was an attempt to safely extricate Figueroa from the vehicle that came after repeated warnings were issued to Figueroa that if he continued

to resist arrest that the canine would be deployed. When Axel was deployed, Figueroa suddenly opened the car door and produced a revolver. When he pointed it toward officers, Axel was in the line of fire between Figueroa and officers, and the shot fired by Figueroa struck Axel. Despite the presence of multiple officers on the scene, Figueroa chose to produce and fire a revolver in the direction not only of officers on the scene, but a large gathering of civilians who were drawn to the commotion.

When Figueroa responded to the efforts to affect his arrest by producing a firearm and shooting it in the direction of officers, he was an imminent threat to both the lives of the officers and the civilians who were present at the scene. Officers responded to the lethal, imminent threat by returning fire. Figueroa had significant cover in the form of the vehicle that he for so long refused to exit, and a large number of the shots fired by officers struck various parts of the vehicle. Several shots did hit Figueroa, primarily wounding him on his extremities. Though the sheer volume of shots fired was substantial, the officers' response was limited to 5-6 seconds, and firing ceased when the threat posed by Figueroa had been neutralized.

Analysis of Each Involved Officer

On January 1, 2022, **Officer Dewar** participated in the lengthy vehicle pursuit of Eduardo Figueroa and observed officers Newhouse and Estrada's vehicle closest to Eduardo Figueroa at the end of the pursuit. Officer Dewar personally observed Eduardo Figueroa fail to comply with officer commands and fail to comply with a family members request for him to get out of the car. Officer Dewar is the officer that deployed the pepper ball into the Nissan to diffuse the situation in a non-lethal manner. When Axel was released, the door swung open, and he saw a silver revolver in Eduardo Figueroa's hand. Officer Dewar yelled "Gun, Gun, Gun!" to alert other officers. Officer Dewar observed Eduardo Figueroa point the revolver at Officer Dewar and other officers and shoot Axel. Because Officer Dewar was in fear for his life and the lives of fellow officers, he discharged his Glock firearm at least fifteen times. Based on the totality of the circumstances known to or perceived by this officer at the time a reasonable officer in the same situation would have found it reasonable and necessary to defend against an imminent threat of death or serious bodily injury to this officer, other officers, or civilian bystanders. Therefore, Officer Dewar's use of a firearm was justified as self-defense and defense of others under California State law.

Officer Freddy Hernandez had prior contacts with Eduardo Figueroa and has been told that he carries a firearm. On January 1, 2022 he joined the vehicle pursuit of Eduardo Figueroa but did not observe any of the chase because he was last in line. He did monitor the pursuit on police radio and was present shortly after Eduardo Figueroa pulled to the side of the road. Officer Freddy Hernandez heard officers and a family member give verbal commands to Eduardo Figueroa to exit the Nissan and show his hands and could see the Nissan clearly because there was a spotlight on the vehicle. He observed Eduardo Figueroa fidgeting reaching in the center console, opening & closing the door, and looking back at officers. When canine Officer Axel was released and entered the car he saw a muzzle flash inside the Nissan, heard a gunshot from inside the Nissan, and heard an officer yelling gun. Officer Freddy Hernandez was in fear for his life, the lives of his partners, Officer Murguia, and Axel when he discharged his Glock firearm five times. Based on the totality of the circumstances known to or perceived by this officer at the time a reasonable officer in the same situation would have found it reasonable and necessary to defend against an imminent threat of death or serious bodily injury to this officer, other officers, or civilian bystanders. Therefore, Officer Freddy Hernandez's use of a firearm was justified as self-defense and defense of others under California State law.

Officer Leticia Hernandez joined the pursuit of Eduardo Figueroa driving a silver Nissan as the number one car and observed him fail to stop at numerous stop signs, travel more than 100 miles per hour, turn his lights off, and drive on the wrong side of the road among other dangerous driving. She turned over the number one position in the pursuit approximately five minutes before Eduardo Figueroa's vehicle stopped. During the standoff she heard officers giving numerous orders for Eduardo Figueroa to show his hands and exit the Nissan, but he ignored orders. After Officer Dewar used a pepper ball launcher and his children's mothers call for him to come out did not succeed, she heard Officer Murguia announce that he would release canine Officer Axel. She saw Eduardo Figueroa looking back at officers and concealing his right hand. When Axel was released, she saw a muzzle flash inside the Nissan, heard one gunshot come from inside the Nissan, and heard an officer yell "gun." She believed that Eduardo Figueroa was shooting at Axel, other officers, and herself and that she and other officers were in imminent threat of death or great bodily injury because he was shooting at officers. Officer Leticia Hernandez discharged nine rounds from her Glock firearm. Based on the totality of the circumstances known to or perceived by this officer at the time a reasonable officer in the same situation would have found it reasonable and necessary to defend against an imminent threat of death or serious bodily injury to this officer, other officers, or civilian bystanders. Therefore, Officer Leticia Hernandez's use of a firearm was justified as self-defense and defense of others under California State law.

Sergeant Christopher Rivera knows Eduardo Figueroa well from prior contacts, was aware he is a Myfa gang member, had responded to domestic violence calls for service at Eduardo Figueroa's residence, and has been familiar with him in a law enforcement capacity since 2017. On January 1, 2022 prior to any shooting, Sergeant Rivera was advised that Figueroa had a felony warrant and vehicle violations. Sergeant Rivera arrived at the standoff approximately five minutes after Eduardo Figueroa stopped the Nissan. He pleaded with Eduardo Figueroa to give himself up and obtained permission to have the mother of his children use the public address system to attempt to get him out of the Nissan. He heard officers giving numerous orders for Eduardo Figueroa to show his hands and exit the Nissan, but he ignored orders. When Officer Murguia released canine Officer Axel he saw the front door of the Nissan open and saw Eduardo Figueroa point a silver revolver at officers and shoot Axel. He heard one pop and saw Axel immediately release his bite and start yelping and Figueroa began to point the gun in his direction. Sergeant Rivera yelled "gun" and believed deadly force was necessary to preserve human life, including his own and other officers and discharged his Glock firearm ten times. Based on the totality of the circumstances known to or perceived by this officer at the time a reasonable officer in the same situation would have found it reasonable and necessary to defend against an imminent threat of death or serious bodily injury to this officer, other officers, or civilian bystanders. Therefore, Sergeant Christopher Rivera's use of a firearm was justified as self-defense and defense of others under California State law.

Deputy Chief Tyler Helton observed the silver Nissan driven by Eduardo Figueroa fail to stop at the intersection of Sherwood Avenue and 3rd Street on January 1, 2022. The Nissan had expired registration and he enacted an enforcement stop. He recognized Eduardo Figueroa as the driver and sole occupant. When Figueroa would not cooperate Deputy Chief Helton requested an additional unit for assistance prompting Eduardo Figueroa to flee the traffic stop in the Nissan. Deputy Chief Helton led the chase, but had to disengage when his patrol vehicle's brakes malfunctioned. Deputy Chief Helton followed the pursuit on the radio which ended near Sherwood and San Lucas. When he arrived at the high-risk traffic stop Officer Dewar was deploying a pepper ball into the Nissan, but Eduardo Figueroa failed to surrender. Deputy Chief Helton recognized Myfa criminal street gang members gathering in the area as well as gang associates. Eduardo Figueroa failed to comply with verbal orders, even from the mother of his child, who was allowed to call out to him over the public address system. A records check was conducted which revealed he was wanted for multiple misdemeanor and felony warrants. After verbal orders from officers, from his children's mother, and the pepper ball did not work, Axel was deployed. Axel entered the

Nissan and he saw Eduardo Figueroa with a chrome revolver in his right-hand shoot Axel, then point the revolver at him, with members of the public standing behind him on the street. Deputy Chief Helton yelled gun and recognized Eduardo Figueroa to be committing numerous felonies including PC 245, PC 186.22, and PC 25850(c)(3). He concluded Eduardo Figueroa posed an immediate safety risk to himself and the public and discharged Officer Dewar's shotgun three or four times. Based on the totality of the circumstances known to or perceived by this officer at the time a reasonable officer in the same situation would have found it reasonable and necessary to defend against an imminent threat of death or serious bodily injury to this officer, other officers, or civilian bystanders. Therefore, Deputy Chief Helton's use of a firearm was justified as self-defense and defense of others under California State law.

Officer **Colin Newhouse** joined the vehicle pursuit of Eduardo Figueroa on January 1, 2022 near the intersection of San Juan and West Perkins, eventually assuming the primary position. Officer Newhouse observed Eduardo Figueroa fail to stop for numerous stop signs and drive unsafely. Once the Nissan stopped Officer Newhouse positioned his police car offset and behind Eduardo Figueroa, and ordered him to turn off the car and throw the keys out the window, which he did. However, for 26 minutes Eduardo Figueroa failed to comply with numerous verbal commands to exit the Nissan or show both of his hands. He failed to exit the vehicle after a pepper ball was deployed inside the Nissan. He continually looked back at officers and failed to show both hands. Eventually after continuous failed attempts to verbally order Eduardo Figueroa out of the Nissan, canine Officer Axel was deployed. When Axel approached the door Eduardo Figueroa kicked the driver's door open, produced a silver revolver, and began pointing it in the direction of Officers, Axel, and bystanders who were directly in line with assisting officers. He saw Eduardo Figueroa shoot Officer Axel with the revolver. To stop the threat of serious bodily injury or death to himself, other officers, and bystanders he discharged approximately 30 rounds from his AR-15 style semi-automatic rifle. Based on the totality of the circumstances known to or perceived by this officer at the time a reasonable officer in the same situation would have found it reasonable and necessary to defend against an imminent threat of death or serious bodily injury to this officer, other officers, or civilian bystanders. Therefore, Officer Colin Newhouse's use of a firearm was justified as self-defense and defense of others under California State law.

Officer **Andrew Galvan** did not join the vehicle pursuit of Eduardo Figueroa but did attempt to put down a spike strip to disable the Nissan during the pursuit. He was generally aware of the chase. He arrived at East Sherwood Avenue and San Lucas Street after the Nissan was already stopped. He heard officers giving commands for Eduardo Figueroa to surrender peacefully and when canine Officer Axel was deployed, he saw Eduardo Figueroa open the driver door holding a silver revolver in his right hand as Axel entered the Nissan. Officer Galvan yelled gun to alert other officers. He then heard two gunshots coming from inside the Nissan and saw Axel rapidly pulling away from the car whimpering in the roadway. Eduardo Figueroa turned his view toward officers, while holding the revolver in his right hand raising it in officers' direction. In order to avoid the imminent threat of death or serious bodily injury to himself, other officers, and bystanders Officer Galvan discharged one .223 caliber round from his AR. Officer Galvan retrieved the silver revolver from the roadway. Based on the totality of the circumstances known to or perceived by this officer at the time a reasonable officer in the same situation would have found it reasonable and necessary to defend against an imminent threat of death or serious bodily injury to this officer, other officers, or civilian bystanders. Therefore, Officer Andrew Galvan's use of a firearm was justified as self-defense and defense of others under California State law.

Request For Charges Relating to Firearms Deployed by Officers Andrew Galvan and Colin Newhouse

In the course of investigating the officer-involved shooting, KCSO investigators noted that the rifles used by both Officer Newhouse and Officer Galvan each had been modified to an extent that they met the definition of a 'short-barreled rifle' and an 'assault weapon' under California law. A review of statutes regarding the ability of certain law enforcement officers to possess types of weapons, including a "short-barreled rifle" revealed that neither Galvan, nor Newhouse qualified for an exception that permitted the possession of the rifles used during this incident. A review of the available evidence indicates that the rifles at issue were both purchased as frame-only "lowers" and were registered as such, but then were built with aftermarket parts that, when built in the manner they were, met the technical qualifications of a "short barreled rifle" under Penal Code Section 33215 as well as the qualifications of an "assault weapon" under Penal Code Section 30605. The rifles both had barrels that, when attachments were removed, measured 10.5 inches. A "short-barreled rifle" is defined in relevant part of Penal Code Section 17170 as being a rifle that has a barrel of less than 16 inches in length.

An "assault weapon" is defined as relevant here under Penal Code Section 30515. That section outlines the individual characteristics of a semiautomatic centerfire rifle required for such a rifle to be considered an "assault weapon." Both rifles deployed by Officers Newhouse and Galvan were found to fall within the legal definition as an "assault weapon" because of the presence of a pistol grip, and a telescoping stock.

Notably, the law has exemptions available to peace officers that would permit officers to utilize weapons the type deployed by officers Galvan and Newhouse in this incident. Penal Code Section 33220 and 30630 outline conditions in which officers would be lawfully permitted to possess a "short barrel" "assault weapon" in the course of their duties. However, in this case, it was determined that neither Newhouse nor Galvan met all the conditions required for the exemption to lawfully apply to their possession of the rifles at issue. One condition for the exemptions is the manner in which the firearms are registered. The firearms at issue were registered personally and individually by each officer, and were not registered to, or the property of the McFarland Police Department. Additionally, there was no evidence that the weapons were registered with a copy of a formal, written authorization from the employing police department, a requirement for the assault weapon exemption.

The Penal Code provides a specific, permissible method by which violations of the short barrel and assault weapon laws can be addressed. Penal Codes 30800 permits the District Attorney to, "in lieu of criminal prosecution, bring a civil action or reach a civil compromise in any superior court to enjoin the...possession of an assault weapon or .50 BMG rifle that is a public nuisance." Penal Code Section 18010 outlines a similar process to address other weapons, including short barrel rifles. The statutes permit the court to issue a civil fine of up to \$300 for possession of an assault weapon and ensure the weapon's destruction. Additionally, the court in a nuisance abatement action may impose costs of prosecution, as well as issue injunctions to monitor and ensure that violations are not permitted to recur.

The circumstances in which the possession of the weapons deployed by Officers Galvan and Newhouse were discovered are certainly uncommon. The violations were discovered during an officer-involved-shooting investigation that followed a use of lethal force that ultimately has been deemed justified. The existence of exemptions in the law that would allow for the use of the weapons by officers if all proper requirements were met is also noteworthy. In light of these unique circumstances, as well as the lack of criminal history for each officer involved, the provisions for civil penalties, injunctions, destruction of the firearms, and nuisance abatement that are specifically provided for these violations will be employed in this case. As the statutes require that such penalties may only be used "in lieu of criminal prosecution,"

criminal charges will not be filed.

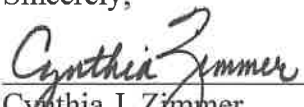
A civil nuisance abatement will be filed, and it has resulted in a proposed stipulated judgment pursuant to Penal Codes 30800 and 18010 with both Officers Galvan and Newhouse. The proposed stipulated judgment involving both officers include following terms:

1. Each officer will have to pay the \$300 civil penalty.
2. Additionally, each officer will have to pay \$1,000 in investigative costs.
3. Each officer will be permanently enjoined from possessing the firearms in question.
4. The firearms will be destroyed by the Kern County Sheriff's Office.
5. Each officer is permanently enjoined from owning or possessing a firearm that violates the Roberti-Roos Assault Weapons Control Act or the Dangerous Weapons Control law, which specifically includes short-barrel rifles and assault weapons.

Conclusion

The actions of Deputy Chief Tyler Helton, Sergeant Christopher Rivera, Officers Matthew Dewar, Freddy Hernandez, Leticia Hernandez, Colin Newhouse, and Andrew Galvan were legally justified as self-defense and defense of others under California State law. There is no violation of state law because each officer's actions were reasonable, justified, and necessary under the circumstances. This conclusion is based upon a review of the evidence and reports submitted by the Kern County Sheriff's Office, McFarland Police Department, and reports from the Kern Regional Crime Laboratory, the evidence is corroborated by cell phone video and officer worn body camera video. The request for criminal prosecution specifically related to the type of weapons deployed by Officers Newhouse and Galvan has been addressed as a civil nuisance abatement action as specifically permitted in Penal Codes 30800 and 18010. As such an action must only be commenced "in lieu of criminal prosecution," and in consideration of the unique circumstances of the case, no criminal charges pertaining to the weapons deployed will be filed.

Sincerely,


Cynthia J. Zimmer
District Attorney