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May 24, 2023

*Via Electronic Mail & USPS*

Lt. Jin Kim  
San Francisco Sheriff's Department  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Jinyong.Kim@sfgov.org

Re: Officer Involved Shooting (OIS) on September 5, 2019. SFDA #2019-010

Dear Lt. Kim:

The San Francisco District Attorney's Office's Independent Investigations Bureau (IIB), has completed its review of the September 5, 2019, Officer Involved Shooting (OIS) incident at 2048 Polk Street by San Francisco Sheriff's Department Deputy (SFSD) Paul Lozada who shot and killed a pit bulldog named "Ruby." The dog's owner, David Wesser was struck by and injured inadvertently by the same bullet when he belatedly tried to restrain the dog as she advanced towards Sheriff's deputies in an aggressive manner. After a thorough review of the available evidence, we conclude that there is insufficient evidence of criminal misconduct by any Sheriff's personnel. Accordingly, the District Attorney declines to file criminal charges in this matter.

IIB's review of the case focused exclusively on whether criminal charges relating to any conduct by SFSD officers are warranted. The SFDA only addresses whether there is sufficient evidence to support the filing of a criminal action in connection with the events of the shooting and does not examine issues such as any of the involved officers' compliance with internal SFSD policies and procedures, their training or tactics, or any issues related to civil liability. The decision not to pursue criminal charges should not be interpreted as expressing any opinion on such non-criminal matters.

## FACTUAL SUMMARY

### Description of the Scene

The incident occurred at the Broadway Hotel located on 2048 Polk Street. The Broadway Hotel is a single-room occupancy building with multiple units that houses justice-involved individuals. Per Broadway Hotel staff, weapons are not allowed on the premises. Room 232 is located on the third floor with a front door that faces the main hallway and a rear window that is viewable from the communal restroom. A surveillance camera is elevated and faces room 232..

The front door of room 232 measures 6'7" in height and 2'7" in width, faces the main hallway and opens into the unit. The main hallway measures 3'9" in width. Two average size adults

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would have difficulty walking shoulder to shoulder within the main hallway. The front door to room 232 is 6'3" from the adjacent hallway that leads to the entrance of the communal restroom. The adjacent hallway is narrower than the main hallway, measuring approximately 3'1" in width. The main hallway and adjacent hallway form a T-intersection outside of Room 232. All measurement provided by the SFSD.

### The Events Before the Shooting

On September 5, 2019, San Francisco Sherriff Deputies from the department's Warrant Service Unit attempted to serve two active felony warrants at the Broadway Hotel, issued by the Honorable Michael Begert on August 30, 2019, directing Deputies to arrest David Wesser for failures to appear for his felony criminal matters.

Deputy Lozada and his partner spoke to the building manager who confirmed that Mr. Wesser lived in room 232 and was the only one registered to that specific room. The building manager provided deputies authority to enter via a passkey to room 232.

Deputy Lozada and his partner Deputy R.B. arrived at room 232 at approximately 11:06 AM. The deputies knocked on the door and stated, "Hey David, it's me. Open the door." An unknown male voice responded from inside the room and asked who was there. Deputies verbally announced their presence and stated, "It's the Sheriff's department. We have a warrant for your arrest. Open the door." Deputies determined an occupant was inside room 232 based on the male voice they heard, and movement seen through the peep hole. They also observed moving shadows through cracks of the door frame. Deputies also heard what sounded like a large dog barking inside the room. Deputies believed the bark to be from a medium to large size dog based on the volume of the bark. Deputies did not receive any additional responses from the occupant inside room 232 despite continued knocks and announcements of their presence.

Between 11:06 AM and 11:38 AM (32 minutes) deputies knocked and announced their presence over fifteen times. Due to the configuration of the apartment, Deputies watched the front door and the back window of 232 to ensure no one left the room at any time. Deputies were also uncertain about other occupants in the room as well as the presence of any weapons. Deputies tried to use the pass key provided by the building manager. The building managers also tried to use the key. It was at this point that the building manager told Deputies the door was likely jammed or blocked from the inside because the key did not turn the lock. During this entire time, Deputies repeatedly told Mr. Wesser to leash the dog and made clear to the occupants of the room their intention to enter. All attempts to have Mr. Wesser exit the room were unsuccessful despite deputies repeated urgings to come out peacefully.

At 11:39 AM, Deputies forcibly opened the door to room 232 with a door ram. An off-leash pit bull immediately appeared, at the doorway.<sup>1</sup> Deputies reported, and video confirmed, the dog appeared to be agitated, bared teeth, and lunged towards Deputy Lozada's partner. The dog made it past the door opening, with its head and two front paws only inches away from Deputy Lozada's partner when Deputy Lozada fired a single shot to protect him. The single shot struck the dog on the left side of the torso. Because Mr. Wesser belatedly grabbed the dog his right hand was injured. Deputies discovered Mr. Wesser along with an adult female, J. E., were inside the room. Deputies secured the scene, rendered medical aid to Mr. Wesser's hand, and called medics to treat his wounds.

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<sup>1</sup> Per SF Animal Care and Control Kennel Card, Animal No. A424414 was a brown pit bull "Ruby"

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### Surveillance Video<sup>2</sup>

Security cameras located at the scene of the incident captured and confirmed the above.

#### Statement of David Wesser

Police later interviewed Mr. Wesser. He stated he initially heard 4 to 5 loud knocks and believed it was his housing counselor regarding his stay. He heard his name "David" and responded with "Yeah." At this time, he heard a voice state: "Sheriff's department. Open up." Mr. Wesser knew of the arrest warrants and that he was wanted because he missed his last court date. Mr. Wesser woke J. E. whom he knows as "Amy" and told her police were there to take him to jail. He told J. E. to take his dog and phone, to write down his number, and to call his mom.

Mr. Wesser stated he wanted to open the door but explained: "I'm not ready yet, you know what I mean [sic]... I just needed five minutes of peace so I could explain to [J.E.] everything." Mr. Wesser admitted it was then that he took a "hit" of fentanyl while the deputies were outside. He further stated that J. E. was mad at him because he did not open the door right away. After he told J. E. to take his possessions, J. E. decided she wanted to take a "hit" as well.

Mr. Wesser stated he was leaning against the door during the initial strike. After the initial hit, he stated "All right. All right. I'm opening the door." At the same moment, deputies breached the door causing the door to fall on top of him. Mr. Wesser believed J. E. must have let go of the pit bull as it was able to run towards the door and deputies. He stated that the deputies told him to "get the fucking dog". Mr. Wesser described the pit bull as having half its body outside of the door before he attempted to grab the pit bull with his right hand and was injured. Mr. Wesser believed approximately 15 to 20 minutes passed from the deputies first knock until the door was forced open and conceded that it was a long time for somebody to be banging on a door saying, "Sheriff's department."

Mr. Wesser described the pit bull as short and muscular. He also stated the pit bull was protective of him, would bark, but had not attacked anyone.

#### Statement of J. E.

J. E. was also interviewed and told deputies she knew Mr. Wesser as "Dave" or "Gator." She was asleep when Mr. Wesser pushed her awake and told her the police were at the door. Mr. Wesser ran to the door and held the lock shut and told her to hand him his "crack, foil, wallet, and to write down his mom's phone number". During this time, J. E. heard continued banging and commands to open the door for approximately 10 minutes while Mr. Wesser asked her to help "hold the door so he could jump out the window".

J. E. stated the pit-bull barked at the banging on the door and that she heard deputies give multiple orders to secure the dog. She believed the deputies heard the pit bull bark because she (J.E.) heard the deputies tell Mr. Wesser "...a million times" to leash the dog. Mr. Wesser asked J. E. to hold the pit bull but she was unable to locate the leash and instead used a duffel bag strap and attached it to the dog's collar. J.E. stated that the deputies broke the door open at the same time that Mr. Wesser unlocked the door. J. E. dropped the strap once deputies entered the room and ordered everyone to put their hands up in the air. The pit-bull jumped back and then lunged towards the deputies at which point a single shot was fired. J.E. told deputies that she was annoyed that "Gator" chose his drugs over his dog.

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<sup>2</sup> Surveillance video footage provided by the Broadway Hotel staff

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#### Statement of Deputy Paul Lozada

Deputy Lozada and his partner (Deputy R.B.) attempted service of two warrants to arrest David Wesser at the Broadway Hotel. Upon arrival they spoke to hotel managers who confirmed that Mr. Wesser was a hotel tenant in room 232 and provided a spare key to the room to deputies. Deputy Lozada's partner knocked on the door of room 232 and called for "David" to which a male voice responded. Deputy Lozada also reported he heard footsteps and a continual dog bark from inside. Deputy Lozada's partner attempted to use the spare key unsuccessfully. The hotel managers also tried unsuccessfully to use the key to unlock the room. Managers informed the deputies that Mr. Wesser "owns a big dog". It was then that Deputy Lozada's partner went to obtain the door ram.

Approximately 30 to 40 minutes passed, Deputy Lozada's partner struck the door twice with the battering ram. After the third strike, Deputy Lozada immediately saw a pit bull lunge into the hallway "snapping its jaws [at the partner deputy]," who was defenseless because he still held the door ram. Deputy Lozada immediately recognized the dog to be a threat and fired one shot to stop the dog's attack. Deputy Lozada stated at the time he fired the shot, he was unaware of Mr. Wesser's location in the apartment and never saw him reach for the pit bull.

#### Statement of Deputy R.B.

Deputy R.B and Lozada responded to the Broadway Hotel to serve two outstanding felony warrants on Mr. Wesser. Hotel managers confirmed Mr. Wesser was a resident of room 232 and provided pass keys to enter. Deputy R.B. then went to room 232 and stated, "Hey David, it's me. Open the door." To which a male voice answered, "Yeah, what's up? Who is it?" Deputy R.B. responded, "It's the Sheriff's department. We have a warrant for your arrest. Open the door." Deputies heard no response and continued to knock and announce their presence. Deputy R.B reported he heard a dog bark sporadically inside. He then attempted to use the pass key provided by hotel staff but was unsuccessful. The hotel managers were asked to open the door but were unable and theorized that Mr. Wesser had the door blocked.

Deputy R.B. used the door ram to breach the room. After the first strike, Deputy R.B. heard a male voice as well as a dog bark. After a few seconds without any action, Deputy R.B. struck the door two more times and opened it.

Deputy R.B. reported he immediately saw the dog approach him in a vicious manner. Because he still held the door ram, which was difficult to move due to its weight, he was defenseless against the dog and reliant on his team for security. He moved back with the door ram and saw Mr. Wesser unsuccessfully attempt to pull the pit bull back into the room. The pit bull lunge towards Deputy R.B. and Deputy Lozada fired a single shot. Deputy R.B. stated he feared for his safety based on the pit bull's size and demeanor and believed that if the pit bull had reached him, it would have caused him serious injury.

#### Statement of Deputy V.P.

Deputy V.P. corroborated all of the above.

#### Statement of Deputy J.M.

Deputy J.M also corroborated the above and added he immediately saw a "vicious" dog come out that "appeared to be in attack mode" when the door was forced open.

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### Medical Examination

San Francisco Animal Care and Control responded on scene and declared the dog dead.

Mr. Wesser was treated for non-life-threatening injuries which consisted of a fracture and superficial flesh wound to two fingers on his right hand. The cause of the injuries was determined to be consistent with the single shot fired. Mr. Wesser was discharged from the hospital the same day.

### Statement of Animal Control Officer R.F.

ACO R.F. responded to the above incident due to the report of an aggressive and injured dog that was shot. ACO R.F. spoke to a man with a pit bull on leash outside of the building on Polk. The man identified himself, stated he lived at 2048 Polk St. and verified a brown pit bull lived on the second floor that was used as a fighting dog by the previous owner. The man stated that to his knowledge the current owner does not use the dog to fight. But he added he and other owners kept their dogs away from the brown pit bull because the dog was aggressive. He further stated he did not know the dog's name or which unit he lived in but provided a description of the pit bull which matched the dog who was shot.

## LEGAL STANDARD

### Duties of Law Enforcement Officers

All peace officers throughout the state are authorized to execute arrest warrants.<sup>3</sup> It is the policy of the San Francisco Sheriff's Department Patrol Unit to make diligent effort to effectuate all warrants brought to their attention.<sup>4</sup> If the offense charged is a felony, and the arrest occurs in the county in which the warrant was issued, the officer making the arrest must take the defendant before the magistrate who issued the warrant or some other magistrate of the same county.<sup>5</sup>

### Standards for Knock-Notice

Peace officers may forcibly enter a citizen's home after informing the citizen of their intention to arrest the citizen, and the citizen flees or resists that arrest.<sup>6</sup>

To accomplish that arrest, a peace officer is permitted to use "all necessary means" to enter a home if reasonable grounds to believe the person to be arrested is inside and the entry is achieved in a reasonable manner.<sup>7</sup>

To have entered in a reasonable manner, officers must knock to alert occupant of officer's presence; announce authority and purpose; demand admittance; and wait a reasonable time for refusal before forced entry. Absent an exigency, the police must knock and receive an actual refusal or infer one.

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<sup>3</sup> Cal. Pen. Code § 816 "A warrant of arrest is directed generally to any peace officer ... in the state, and may be executed by any of those officers to whom it is delivered"

<sup>4</sup> San Francisco Sheriff's Patrol Unit Policy and Procedures. Policy # SPU.DPH.05-050

<sup>5</sup> Cal. Pen. Code § 821

<sup>6</sup> Cal. Pen. Code § 830.1(a) "Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county ... is a peace officer."

<sup>7</sup> *Wilson v. Arkansas* (1995) 514 U.S. 927, 934.

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Courts have ruled that a refusal to allow entry may occur by either affirmative conduct or inaction of the person inside the home. Refusal by inaction occurs when the occupant fails to admit officers within a reasonable amount of time after they announced their authority and purpose.<sup>8</sup> The determination for a reasonable amount of time is based on the totality of the circumstances. The facts known to the police are what count in judging the reasonable waiting time before a forced entry.<sup>9</sup>

### Use of Force by Police

California law permits peace officers to use deadly force. Use of deadly force is justified, and not unlawful, if the defendant was a peace officer, and the use of deadly force was committed while the officer reasonably believed, based on the totality of the circumstances, that the force was necessary to defend against an imminent threat of death or serious bodily injury to themselves or another person.<sup>10</sup> The People have the burden of proving beyond a reasonable doubt that the use of deadly force was not justified.

## LEGAL ANALYSIS

### The Forced Entry Was Reasonable and Lawful

Deputies were lawfully allowed to enter as they reasonably believed Mr. Wesser was inside Room 232, announced their authority and purpose, attempted service of the warrant during the daytime, allowed 32 minutes for Mr. Wesser to comply, and then gained entry to the room in a lawful manner.

Deputies knocked and announced their presence, expressed their intention to enter by force, and directed the occupants multiple times to leash the barking dog. California courts have held that an unreasonable delay in responding to officers constitutes refused admittance. Deputies were then authorized to use force, by use of a metal door ram, to enter the room.

### The Use of Force Was Reasonable and Lawful

The unleashed dog represented a serious threat and danger to officers. By all accounts, the dog aggressively lunged at deputies while agitated, barking and with bared teeth. That threat required immediate action to eliminate the danger of bodily harm to deputies who had a lawful purpose for entering the room.

Deputies were only able to enter the room by use of a ram and strikes to the door, and despite the multiple commands to leash the dog, were met with an unleashed pit bull that lunged towards at least one deputy in a narrow hallway.

Deputy Lozada fired a single shot to protect Deputy R.B. from harm. He believed his partner was defenseless when the pit bull appeared. Deputy Lozada stated at the time he fired the shot, his

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<sup>8</sup> *P v. Elder* (1976) 63 Cal.3d 731, 739 [“An unreasonable delay in responding to the officer constitutes refused admittance.”]

<sup>9</sup> *U.S. v. Banks* (2003) 540 U.S. 31 [15 to 20 second delay found to be reasonable where officers did not receive a response after knocking and feared the occupant may be destroying drug evidence that was the target of the warrant.]; See also *U.S. v. Jenkins* (1999) 175 F.3d 1208 [14 to 20 second delay was reasonable as officers knocked and announced their intention and authority twice before forcing entry. Court reasoned that execution of the warrant at 10 A.M., “somewhat reduced the required waiting time” since “most people are awake and engaged in everyday activities.”]

<sup>10</sup> Cal. Crim § 507

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focus and intention was to protect his partner. All of the deputies feared the aggressive dog on scene. aggressive dog was shared by all deputies on scene.

The evidence overwhelmingly supports Deputy Lozada's subjective belief that he needed to use deadly force in those split seconds to protect his partner. Furthermore, the evidence supports that objectively, any reasonable peace officer standing in Deputy Lozada's shoes, would likely conclude that a pit bull that presented as agitated and then aggressively lunged posed an imminent threat of great bodily injury.

Finally, Deputy Lozada intended to discharge his firearm at the dog in self-defense or defense of another, and the unintended consequence of the injury to Mr. Wesser's hand, was due to Mr. Wesser's belated attempt to control the dog as it advanced towards deputies. As discussed above, the calculus of whether a seizure is unlawful is dependent on whether the action was reasonable. It is clear that Deputy Lozada acted reasonably and within California's self-defense or defense of others law.

#### CONCLUSION

For the reasons discussed above, the San Francisco District Attorney concludes that there is insufficient evidence to file any criminal charges against Deputy Paul Lozada in this matter. Further, there are ample facts to support findings that the officer's conduct in discharging his weapon on September 5, 2019, was legally justified as it was only done in self-defense or defense of others from the imminent threat an unleashed, aggressive, and uncontrolled dog presented. It is unfortunate that Mr. Wesser's dog was killed, but it was the obligation of an animal's owner to protect that animal by controlling it. It is also regrettable that Mr. Wesser was injured, but from the events as reported by everyone on scene and confirmed by video, Mr. Wesser's had at least 30 minutes to secure his dog and it was his untimely attempt that caused his injury which was an unintended consequence of Deputy Lozada's actions to defend the physical safety of his partner. Therefore, the District Attorney declines to file any criminal charges against Deputy Lozada in this matter.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Brooke Jenkins  
District Attorney



Mark Koo  
Assistant District Attorney,  
Independent Investigations Bureau

cc: [UNDERSHERIFF KATHERINE JOHNSON; CHIEF OF STAFF RICHARD JUE; LT. DANIEL ROSEN; LEGAL COUNSEL RANI SINGH], [SFSD Department]