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CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGED INVESTIGATIVE REPORT

IA 22-07

Employer: City of Brentwood

Subject: Police Officer Paul Matejcek

Investigator: Todd Simonson

Date: June 29, 2022

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I. INTRODUCTION

The City of Brentwood ("City"), through its Police Department ("BPD"), retained Todd Simonson ("Investigator") to conduct an investigation into Police Officer Paul Matejcek's use of force against a local V1 -year-old transient named V1 on April 23, 2022.

In summary, at approximately 5:30 a.m., Officer Matejcek and two cover officers—Officers David Franson and Josh Flynn—responded to a call of a person screaming from the area of a line of several garden sheds for sale in the parking lot of the Home Depot on Lone Tree Way and found Ms. V1 hiding in one of the sheds. As shown on video from Officer Franson's body-worn camera, approximately eight minutes after detaining Ms. V1 in handcuffs, seating her on the ground in front of the same shed, and conversing with Ms. V1 about the circumstances that led to her discovery in the shed, Ms. V1 stood up while she remained handcuffed. At that point, Officer Matejcek took about three quick steps toward Ms. V1 and, with his right foot, kicked Ms. V1 on her left torso area, knocking her backwards into the open shed before she fell back to the ground. Officer Matejcek arrested Ms. V1 for Battery on a Peace Officer (Penal Code section 243(b)) and Public Intoxication (Penal Code section 647(f)) and wrote a report describing the incident and characterizing his use of force against V1 as reasonable under the circumstances.

BPD requested the Investigator to determine whether Officer Matejcek's use of force against Ms V1 on April 23, 2022, was reasonable or unreasonable under the circumstances.

This report contains factual findings based upon the information made available in the course of the investigation. While numerous hours were spent reviewing documents and video footage and interviewing witnesses, this report does not purport to include every detail as described by the individuals involved. Rather, it assesses the important facts as they pertain to the incidents investigated.

II. SUMMARY OF FINDINGS

There is sufficient evidence to find that Officer Matejcek used unreasonable force on April 23, 2022, by kicking Ms V1 with substantial force to her left torso area with his right foot, while Ms. V1 was handcuffed and effectively surrounded by three officers, because Ms. V1 stood up contrary to commands to remain seated. After consideration of the relevant "factors used to determine reasonableness of force" referenced in section BPD Policy Manual section 300.3.2, the Investigator finds that Officer Matejcek's level of force against Ms. V1 was "not proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance" and, therefore, violated the BPD Use of Force policy.

Finding: Sustained.

III. METHODOLOGY OF THE INVESTIGATION

A. Persons Interviewed

The witnesses were each provided with a Notice of Interview compelling them to participate in the interview, requesting each witness to keep confidential all aspects of the interview during the course of the investigation, to answer the Investigator's questions truthfully, and to refrain from, and report, any suspected retaliation.

All witness interviews were digitally recorded and roughly transcribed. Copies of recorded interviews or transcriptions will only be provided to authorized personnel upon request.

Interview Subject	Position	Date Interviewed
Josh Flynn	Police Officer	May 26, 2022
David Franson	Police Officer	May 30, 2022
Mitchell Alvarez	Sergeant of Police	May 31, 2022
Paul Matejcek	Police Officer	June 10, 2022
Richard Nance	Sergeant and BPD Lead Defensive Tactics Instructor	June 13, 2022

B. Documents Reviewed

Ex.	Description
1	Officer Franson's body-worn camera video that captured Officer Matejcek's use of force against Ms. V1 (at 9:07)
2	Officer Franson's dash camera video that captured the sound of Ms. V1 reaction to being kicked by Officer Matejcek (at 8:50)
3	BPD Misdemeanor Report, Case Number 2201912, regarding the arrest of Ms. V1 on April 23, 2022
4	Audio recording of reporting party's call with dispatcher about person screaming near garden sheds at Brentwood Home Depot on April 23, 2022; audio recording of BPD radio traffic regarding the same call
5	CAD Incident Report regarding call at Brentwood Home Depot on April 23, 2022
6	Memorandum dated April 23, 2022, from Sergeant Alvarez to Chief Thomas Hansen regarding "Use of Force by Officer Matejcek #595, Case #2201912"
7	Six photographs of Ms. V1 and one photograph of beer cans recovered from Ms. V1 clothing following her arrest on April 23, 2022
8	Email on April 27, 2022, from Lieutenant Mark Louwerens to Sergeant Alvarez regarding corrections and clarifications to Officer Matejcek's report
9	Pages from Officer Matejcek's police academy workbooks: Learning Domains 20-2 (overcoming active resistance), 33-1 (the foot as a personal weapon), and 33-7 (the midsection of a suspect as a target for impact weapons)
10	Six BPD police reports documenting arrests of Ms. V1 by BPD officers for obstructing a police officer (Penal Code §148(a)(1)), between February 8, 2019 and January 31, 2022
11	Six CAD Incident Reports regarding calls involving Ms. V1 when Officer Matejcek was present at the scene, between October 13, 2018 and January 6, 2022

Ex.	Description
12	BPD Person Record for V1
13	BPD Misdemeanor Report, Case Number 1702597, regarding arrest during which Officer O2 O2 kicked the suspect in the "head area" on May 17, 2017
14	Officer Matejcek's training records
15	BPD Policy 300 – Use of Force
16	BPD Policy 306.5 – Application of Spit Hoods
17	Email from BPD Captain Herbert to Investigator regarding BPD officers' access to spit hoods

IV. WITNESS STATEMENT SUMMARIES

A. Josh Flynn

1. Background

Josh Flynn was hired by the City as a police officer in 2016 and has been assigned to Patrol, has served on the SWAT team, and has also served as a field training officer. In 2021, Officer Flynn left the Department for about nine months to work as a safety coordinator for a construction company and returned to the Department in March 2022. Prior to being hired by the City, Officer Flynn was a police officer with the City of Hutchinson in Kansas.

2. Relationship with Officer Matejcek and Prior Defensive Tactics Training

Officer Flynn stated that on April 23, 2022, he was working on a Patrol team comprised of himself, Officer Dave Franson, Officer Tanner Kephart, Officer Jordan Stroben, Officer Paul Matejcek, and Sergeant Alvarez. The Patrol team worked from 8:00 p.m. to 7:00 a.m. with four days on and four days off. Officer Flynn stated that the Patrol teams used to be on a four-month rotation schedule, and he had previously worked one or two four-month rotations with Officer Matejcek. Officer Flynn stated that he and Officer Matejcek had gotten along "decently well" and that they had never had any prior issues with one another.

Officer Flynn stated that the Patrol team he was with in April had attended a Defensive Tactics training some time shortly before the April 23, 2022 incident with V1. Asked to describe the Defensive Tactics training, Officer Flynn stated:

> I believe there was a 10-hour training day. We went over policy as it relates to use of force. And more specifically that day we were going over the new duty to intercede law that's just been passed or . . . yeah, I think just passed recently. And then, in the actual hands-on training, we were learning a lot of grappling type techniques for being able to use certain techniques to control people, or I guess control subject with having to be overly violent, I guess.

Officer Flynn stated that his entire Patrol team, including Officer Matejcek, had attended this training. Asked if there was any defensive tactics instruction or training about kicking, Officer Flynn stated, "There have been . . . we have not trained physically to kick people. I think where kicking has come into the conversation is utilizing tools if you're in hand-to-hand combat type of situation. And if you can utilize kicks in a hand-to-hand combat type of

situation, then kicks would be allowed." Officer Flynn stated that Sergeant Nance is in charge of the Department's in-service defensive tactics training.

3. Arrest of [redacted]

Officer Flynn recalled that the incident involving [redacted] came out as a dispatched call to the Home Depot on Lone Tree Way at 5:24 a.m. on April 23, 2022. Officer Flynn stated that he had not been on any significant calls earlier in his shift that would have affected his ability to observe what happened on this particular call. Officer Flynn stated that the Home Depot is on Officer Matejcek's beat, and Officer Flynn responded to cover in an undercover vehicle and arrived first on the scene. Officer Flynn stated that he parked on the north side of the Home Depot parking lot to the west of the storage sheds and waited for other units to arrive. Officer Flynn stated that Home Depot always leaves these sheds unlocked and it is a "constant issue." Officer Flynn stated that Officer Franson met with the Reporting Party and then walked over and said that the officers should focus their attention toward the center of the line of sheds. Officer Flynn stated that he recalled the door of one of the sheds being pulled shut in a hard manner, "and it was very obvious that somebody retreated back inside the shed and pulled the door shut."

Officer Flynn stated that when he approached the shed, he did not know the identity or gender of the person that was inside. The Investigator showed Officer Flynn a screenshot of Ms. [redacted] and Officer Flynn identified Ms. [redacted] by name. Officer Flynn noted that he had dealt with Ms. [redacted] in the past for things "much of the same, intoxicated in public, yelling, screaming, causing issues for paying customers of various businesses in Brentwood." Officer Flynn stated that he previously had about a half dozen contacts with Ms. [redacted] and knew her to be a methamphetamine user and a heavy alcohol user. Officer Flynn stated that he did not know if Ms. [redacted] was flagged with Dispatch as a dangerous person, "but I know that the majority of officers know that she has aggressive tendencies. And I know she has spit on officers in the past." Officer Flynn stated that he did not know if Ms. [redacted] had spit on Officer Matejcek in the past or if Officer Matejcek had contacts with Ms. [redacted] in which she acted violently toward him and Officer Flynn stated that he did not recall having any prolonged discussions about Ms [redacted] prior to the call on April 23, 2022.

The Investigator reviewed with Officer Flynn the body-worn camera footage of the incident from Officer Franson's body camera, starting at time stamp 53 seconds and ending at 1:03 minutes. In this snippet, Ms. [redacted] came out of the shed and Officer Matejcek pulled Ms. [redacted] by her left arm, forced her to the ground, and handcuffed her. Asked whether he had any issues with Officer Matejcek's use of force at this point, Officer Flynn stated, "No, he gave her multiple commands to sit down and stop and she wasn't listening. And so I felt it was appropriate to get her to the ground and detain her in handcuffs." Officer Flynn stated that he was surprised when Ms. [redacted] came out of the shed because she was standing so close to the door when the officers opened it:

> I think we were all surprised that she came out of the shed and we had given multiple command to . . . for whoever was inside before we knew it was her, we have multiple commands for whoever was inside the shed to come out and nobody emerged from the shed. And that's ultimately why we had to open the door and figure out what was going on. I think for me personally, I was

> overwhelmed by what it looked like inside the shed. It was very obvious that a struggle or erratic behavior had happened, just with broken bottles and trash everywhere. And then when we opened the door, who we found to be V1 V1 was standing I mean almost nose to the door. And at least for myself, I was very surprised. You always want to expect that there's somebody behind the door. And we knew there was somebody behind the door, but for her to be that close to the door was definitely a shock. And I think when—this is me only assuming—but if it was me in Officer Matejcek's position, and she started walking towards him after I just got surprised by somebody inside a door, I think your natural reaction is to detain the person and figure out why weren't you listening to me? Why didn't you open the door and why didn't you come out when I told you to?

Officer Flynn stated that there was broken glass at the scene and inside the shed was "a bunch of trash, newspaper, toilet paper. It smelled like alcohol and feces." Asked if Ms. V1 appeared to be under the influence of methamphetamines or alcohol, Officer Flynn stated, "at least alcohol," and said that he could detect the odor of an alcoholic beverage on her person. The Investigator reviewed with Officer Flynn additional footage from Officer Franson's body camera depicting Officer Flynn checking the other sheds. Officer Flynn stated that after he determined nobody else was in the sheds, he shut off his own body camera because, "I thought my involvement . . . I fully expected to clear the call. It seemed like at best we were going to arrest V1 for being intoxicated in public and she seemed to have calmed down. So since I was in a UC car, I intended to clear. I don't remember what made me stick around and not activate my camera, but think maybe we were talking through the details about, well, do we have any crime."

Officer Flynn stated that he did not recall Ms V1 stating that she had been attacked by a Hispanic male, but did recall that "she kept on screaming about being shot and having lasers pointed at her and being beat up." The Investigator reviewed with Officer Flynn the video around the 6:45 minute mark, and Officer Flynn stated that during this timeframe, "we were discussing what type of crime we had or whether based on what she was talking about and how she was acting if she fits the 5150 criteria." Officer Flynn stated that he is an EMT and former medical instructor, so officers relied on his opinion related to medical matters. Officer Flynn stated that Officer Matejcek suggested placing V1 on a 5150 W&I hold, but Officer Flynn stated that he told Officer Matejcek that she did not fit the criterion and they should arrest Ms. Flynn for Penal Code § 647(f). The Investigator noted that the audio on Officer Franson's video was deactivated at the minute 8:10 mark, and Officer Flynn explained that it is common practice to deactivate audio while discussing the elements of a crime and specific matters of a case to prevent those conversations from being scrutinized in court.

Officer Flynn stated that Ms. V1 oscillated between being calm and yelling at the officers and that she got highly agitated, possibly from overhearing the officers discuss arresting her. The Investigator reviewed with Officer Flynn that video footage at the 8:53 minute mark which shows Ms. V1 yelling at Officer Matejcek. Officer Flynn stated at this point Ms. V1 had moved her body weight in a manner suggesting she was going to stand up, and he, Officer Matejcek, and Officer Franson were ordering her to stay seated, with words to the effect, V1 just sit down, just stay seated. You don't need to get up right now." Asked if he had any

concern about his or the other officers' safety if Ms. V1 did manage to stand up, Officer Flynn stated, "No. I thought the worst we'd have to do is maybe take a couple of running steps to catch her if she tried to run since she was in handcuffs." Officer Flynn stated that he did not know whether Ms. V1 had a history of running from the police.

The Investigator reviewed with Officer Flynn the body camera footage starting at the 9:04 minute mark which shows Officer Matejcek taking a few steps forward and then kicking Ms. V1 in the left arm and chest area. Asked about how Ms. V1 landed on the ground (which is difficult to see in the video), Officer Flynn stated, "Based on what I remember, she landed on her butt and then kind of fell to her left side or her momentum carried her to the left side." Officer Flynn stated that he had "no clue" ahead of time that Officer Matejcek was going to kick Ms. V1 and had "no idea" why Officer Matejcek did so. Asked if he was surprised by the kick, Officer Flynn stated, "I was very surprised. I think the video reflects that also." Officer Flynn noted that at the 9:15 minute mark the video shows, "I almost slow motion look at Franson, like what just happened?" Officer Flynn stated that he had not moved toward Ms. V1 as she tried to stand because, "I didn't see V1 getting up as a major issue. I mean, we didn't want her to stand up, but I didn't feel like [it was an] immediate safety issue." Officer Flynn stated that he did not believe that Officer Matejcek's kick was reasonable force under the circumstances, and he would have chosen to sit her back down again or to escort her to a police vehicle.

Officer Flynn stated that after the kick, Officer Matejcek quickly escorted Ms. V1 to his vehicle. Officer Flynn stated that he and Officer Franson trailed behind and discussed with each other that they did not understand the level of force that was used. Officer Flynn stated that once they reached the police vehicle, Officer Franson told Officer Matejcek something to the effect, "Hey, we'll take it from here," because "we didn't know what was going on or if something happened that we didn't see or there was another reason for the use of force." Officer Flynn said that in response to Officer Franson's offer, Officer Matejcek turned and smiled and said something to the effect, "No, I'm good. We're good." Asked if Officer Matejcek had said anything about the kick, Officer Flynn stated, "He said she was standing up. He said that she had been aggressive with him in the past and he felt the need to get her back on the ground as fast as possible." Officer Flynn stated that this conversation happened at the police vehicle when he, Officer Matejcek, and Officer Franson were discussing summoning an ambulance due to the use of force. Asked if Ms. V1 said anything after the kick, Officer Flynn stated, "No. She was quiet. I remember when . . . because we called for paramedics to come check her out and clear her medically. I remember at a certain point there she said something about, 'You assaulted me,' or, 'The cops assaulted me,' or something like that."

Officer Flynn stated that Officer Matejcek never made any admissions, such as "I might have screwed up there," or anything of the like. Officer Flynn stated that he did not know why Officer Matejcek included a battery on a police officer charge (Penal Code § 243b) against Ms. V1. Officer Flynn stated that he did not write a supplemental report because he was not really involved in the matter beyond standing around and that Officer Franson had written a supplemental report because he had drawn his Taser when they were opening the door of the shed.

Officer Flynn stated that once back at the Police Department, he, Officer Matejcek, and Officer Franson met with Sergeant Alvarez and had a quick discussion in which Officer Matejcek gave an account of the force he had used. Sergeant Alvarez had said something to the effect, "Okay, I'll review the video and we'll talk about it." Officer Flynn stated no further conversation occurred because when he returned to work, Officer Matejcek was on administrative leave.

B. David Franson

1. Background

David Franson was hired by the City as a police officer in June of 2020 and has primarily worked Patrol on the graveyard shift. Prior to working for the City, Officer Franson worked for the San Mateo County Sheriff's Department, where he started as a correctional officer in 2007, and then became a Deputy Sheriff in 2011 primarily working in the Patrol Division.

2. Recent Defensive Tactics Training

Officer Franson stated that in March or April 2022, he and his team, including Officer Matejcek, attended a defensive tactics training. Asked to describe that training, Officer Franson stated:

> I mean, we did a lot of hands-on stuff for the defensive tactics portion. We did some of the force options simulator during that class. I know some of the classroom portion did cover, and I can't tell you the sections or the laws or whatever on it, but the kind of newer stuff, how we're mandated to report stuff to a supervisor.

Officer Franson said that the training lasted a full day and he recalled that Sergeant Aguiar had been the instructor.

3. Arrest of V1 [redacted]

Officer Franson stated that in April 2022, his Patrol team was comprised of himself, Officer Matejcek, Officer Flynn, Officer Kephart, Officer Stroben, and Sergeant Alvarez, and their shift hours were from 8:00 p.m. to 7:00 a.m. Officer Franson stated that he recalled responding to a call on April 23, 2022 at 5:24 a.m., and "It was a report of someone screaming from the parking lot, it was a report of transients who lived in the storage sheds that were on display there in the Home Depot parking lot." Officer Franson stated that the call was on Officer Matejcek's beat and Officer Franson was responding as a cover officer. Officer Franson stated that when he pulled into the lot, he was driving by the garden department when the reporting party waved him down and told Officer Franson that she had heard someone screaming from somewhere in the middle of the line of sheds that were out on display. The reporting party said that she had not seen anyone and could not describe them, and also stated she did not know if it was more than one person screaming and that whoever was yelling might have been experiencing some sort of mental health episode.

Officer Franson stated that after meeting with the reporting party, he drove over to meet with Officer Matejcek and Officer Flynn and together they approached the line of sheds. Officer Franson stated, "As we were getting closer to them, suddenly one of the doors on one of the sheds kind of slammed shut, it was ajar, but kind of slammed shut, and so kind of gave away

that, okay, there's somebody in there." Officer Franson stated that he pounded his fist on the side of the shed and announced something to the effect, "Police Department, come out with your hands up," but received no response. Officer Franson stated that Officer Matejcek went to the door of the shed and signaled that he was going to open it, and Officer Franson drew his Taser for officer safety reasons. Officer Franson stated that when Officer Matejcek opened the shed's door, V1 was standing there.

Officer Franson stated that he previously had contact with Ms. V1 on about five occasions or less, and probably had not been the primary officer on those contacts. Officer Franson stated that he had heard about other contacts with Ms. V1 from other officers and "knew that she was somebody who has been contacted numerous times by the Police Department." Asked if he knew Ms. V1 to be a methamphetamine user, Officer Franson stated, "I've never evaluated her for drug influence, but I did make that assumption, I think, I mean, I can't say for sure, but I believe I heard that she was a drug user and then I just believed she was." Officer Franson stated that he did not have any knowledge of Ms. V1 being a heavy drinker. Officer Franson recalled that on one occasion he responded to a call and saw Ms. V1 on a stretcher being treated by AMR after she had broken into a home that was under construction and was found hiding in a closet. Officer Franson stated that Ms. V1 was yelling while she was on the stretcher and, "It was not normal behavior by any means." Officer Franson stated that he believed that he heard of Ms. V1 acting violently in the past but could not recall a specific instance.

The Investigator reviewed with Officer Franson footage from his body camera of the April 23, 2022 incident starting at the 1:06 minute mark.[1] Officer Franson recognized Ms. V1 as she came out of the shed and was pulled to the ground and handcuffed by Officer Matejcek. Officer Franson stated he believed "at that point" the use of force was reasonable under the circumstances and that it was appropriate to detain Ms. V1 Officer Franson stated:

> I mean, based off the call for service to somebody yelling, screaming, we didn't know what was going on. So, I mean, as part of our investigation, like one of my concerns I expressed to you a couple of minutes ago, is we don't know if there's someone else involved, if there's somebody inside that's been, for example, stabbed or shot or somebody who overdosed, I don't know what's going on in there. And so, for our safety, I think that was absolutely not only reasonable, but necessary at that time to detain her.

Officer Franson stated that he recalled Ms. V1 saying something about a man attacking her and being shot in the nose. The Investigator reviewed with Officer Franson video of himself, Officer Flynn, and Officer Matejcek having a discussion. Officer Franson stated that he could not recall exactly what they were talking about, "but I think one of the things we may have

[1] Officer Franson stated that the only time he had previously reviewed this footage was when he wrote a supplemental report, and the only portion he had reviewed related to his meeting with the reporting party and drawing his Taser. Officer Franson stated that he had not reviewed Officer Matejcek's report and had not spoken in any substance with members of his team about this incident. Officer Franson stated the only cursory discussion he had was with Officer Flynn about "the fact that there was an interview coming up."

discussed was alcohol influence. I do remember smelling a strong odor of an alcoholic beverage coming from her person, her eyes were red and watery. I believe there was alcohol influence. I don't know at that point, I believe there was drug influence."

Officer Franson stated that he felt like Ms. V1 "was maintaining a certain level of calm, and then I feel like all of the sudden it kind of ramped up and I'm not sure why that happened." The Investigator played footage from 6:44 minute mark to the 7:58 minute mark in which Ms. V1 tells Officer Matejcek to stop following her and says, "I don't give a fuck if it's beer or not, drink as much beer as I fucking want." Officer Franson stated at that point he was just standing off to the side waiting for Officer Matejcek to figure out a disposition for the call, "and I would think in the forefront of his mind would be alcohol influence, drug influence, trespassing, something like that, maybe even vandalism."

Asked why he muted the audio on his camera (at the 8:10 minute mark) in the video footage, Officer Franson stated, "I'm assuming, I can't tell you for sure if there was something I was about to say, I think just game planning is why, and there being no need to record what we were going to discuss, but I don't know for sure what we said at that point." Officer Franson stated that in watching the video leading up to the kick, he could not recall exactly what was being discussed, but he recalled that Ms. V1 got upset and began moving her body and tucking her legs in preparation to stand up while Officer Matejcek and Officer Flynn ordered her to remain seated. Officer Franson estimated that at this point he, Officer Flynn, and Officer Matejcek were all standing about seven to eight feet away from Ms. V1. Officer Franson agreed that starting at the 8:58 minute mark, the video appeared to show Officer Matejcek take two or three quick steps toward Ms. V1 and then kick her in the left torso area with his right foot causing Ms. V1 to fall backwards.

Officer Franson stated that he did not know why Officer Matejcek kicked Ms. V1, and that he had "no idea" ahead of time that Officer Matejcek was going to do that. Asked if he was surprised by the kick, Officer Franson stated, "Absolutely. I'm still surprised." Asked why he and Officer Flynn were standing still when Officer Matejcek initiated the kick, Officer Franson stated that was because "I did not fear a threat near that level at that point at all." Officer Franson agreed that there were other options involving less force such as pulling Ms. V1 back into a seated position by her arms or escorting her to be detained in a vehicle. Officer Franson stated that he did not believe that Officer Matejcek's kick was a reasonable use of force under the circumstances. Asked to explain why it was not reasonable, Officer Franson stated:

> Well, first off she's handcuffed. She's a fairly small person, that's comparing her to me. Officer Matejcek's size is different than mine,[2] it's different than Flynn's, he's smaller than both of us as far as height . . . Yeah, so comparing size, the fact she's handcuffed, I believe that she had been pat searched at that point, so there's no concern. I mean, maybe biting, but she wasn't showing us that as an indicator that she might bite us, or spitting, there was none of that going on. It was clearly just way too far, as far as force goes, for that. Like you said, grabbing an arm, verbal commands to light touch, to maybe a control hold,

[2] Officer Franson previously stated his height is PII and his weight is PII

would be appropriate under those circumstances, from what I recall at the time of that incident.

Asked whether he was taught during defensive tactics training at the San Mateo Sheriff's Department or at Brentwood that there were situations in which a suspect could be kicked, Officer Franson stated:

> I mean, I don't remember specifically talking about kicking a suspect in that situation. However, the way that continuum of force goes, I mean, for example, lethal force doesn't have to be from a firearm, it doesn't have to be from a vehicle or blade, it can be anything, but that's if that situation requires that or reaches that level, and this, no.

Asked whether Ms. V1 actions rose to the level he had just described, Officer Franson stated, "No, unless I completely missed something, I don't think I did though." Officer Franson stated that he was not aware of any prior negative interactions between Officer Matejcek and Ms. V1 that would have prompted Officer Matejcek to kick her. Officer Franson stated that after the incident, he and Officer Flynn spoke with Officer Matejcek while Ms. V1 was in the back of the patrol car and told him that they did not agree with his use of force and that they would need to discuss it with the Sergeant. Officer Franson stated that Officer Matejcek became "defensive" and was "taking offense" to this criticism and said that "he felt her standing up was presenting some sort of threat to him." Officer Franson stated, "the way he spoke about it was almost like it was a justifiable use of force, and I did not agree with that. Never saw that and still don't."

Officer Franson said that he discussed the incident with Officer Flynn at the scene while Officer Matejcek was off somewhere else, perhaps at the front of the Home Depot building. Officer Franson stated, "I think we both briefly discussed it and we were shocked. We were just completely like, 'Where did that come from? What just happened?' So we were just trying to process it and we were like, 'Hey, did you see what I saw?' 'Yes.' 'Okay, so we're on the same page, why did that happen?' And we were both baffled by it." Officer Franson stated that he had never seen Officer Matejcek do anything like that before.

Officer Franson stated that after the incident he believed that Ms. V1 must have complained about the kick because "I think that's what prompted me to suggest that we call for medical attention, was just in case there was something related to that [kick]." Officer Franson recalled that AMR was only on the scene briefly and after examining Ms. V1 the EMTs determined that she did not require medical treatment.

Officer Franson stated that when he returned to the Department, Officer Matejcek and Officer Flynn were standing at the sallyport with Sergeant Alvarez. Officer Franson stated that they explained to Sergeant Alvarez "in essence, that this was the situation we came upon, what we were dispatched to, which I believe he was already aware of that we contacted V1 at the shed. She was cuffed, she got mouthy, she stood up, Officer Matejcek kicked her. I don't remember verbatim what was said, but I think it was conveyed to him [Sergeant Alvarez] that it was a use of force and it may not have been a justifiable use of force." Officer Franson stated

that he believed Ms V1 was transported from the Department to County jail by CSO Alan Sheffield.

Officer Franson stated that he was later directed to write a supplemental report to document the brandishing of the Taser because that is technically a use of force and also to document his initial contact with the reporting party. Officer Franson stated that he did not include Officer Matejcek's use of force in the supplemental report because he was not directed to do so, and also because he was not authoring the primary report.

Asked if he had anything to add to his interview, Officer Franson stated:

> Sure. That again, like I already said, I think, to you, that I was shocked by what happened. I never saw it coming. I'm still baffled as to why it happened, I don't understand it. But what I wanted to say is with that said . . . maybe part of the reason I'm surprised by that is because of Officer Matejcek and my history with him. This year is my first year really working with him, being on the same team. He's a good guy and he is a go-getter. I've looked up to him as being a competent police officer who really does care about the value of the job. So I think maybe that's why I'm surprised it happened from a guy like him. I respected him and I mean, his volume of arrests and proactivity and I've worked with him quite a bit this year and seen him work and I'm impressed with the way he's talked to people and all that stuff, and he has been professional. So I think all that stuff, considering that, and then seeing what happened, it was just shocking. I just never suspected that would happen. So anyway, that's all.

The Investigator advised Officer Franson that if he recalled anything else or wanted to add to his statement he was free to contact the Investigator to do so.

C. Mitchell Alvarez

1. Background

Mitchell Alvarez was hired by the City as a police officer in 2012 and was promoted to sergeant in December 2019. During his tenure with the City, Sergeant Alvarez has served as an FTO, traffic officer, driving instructor, and as a member of the SWAT team. Prior to being hired by the City, Sergeant Alvarez was a police officer with the City of Benicia for four years.

2. Involvement with V1 Arrest

Sergeant Alvarez stated in April 2022 he was the sergeant for the A Side graveyard team which was comprised of Officer Matejcek, Officer Flynn, Officer Kephart, and Officer Franson. Sergeant Alvarez stated that he had previously supervised Officer Matejcek for a month or two when Sergeant Alvarez was first promoted. Sergeant Alvarez stated that he remembered hearing a dispatched call for service on April 23, 2022 regarding a person screaming in the Home Depot parking lot. At the time of this call, Sergeant Alvarez was at the Police Department dealing with a notification of a potential COVID exposure to some of the swing shift officers. Sergeant Alvarez stated after responding to the call, Officer Matejcek advised

over the radio that he was returning to the Department with a person in-custody and requested that Sergeant Alvarez meet him by the sallyport.

Sergeant Alvarez stated that at about 6:30 a.m. he met with Officer Matejcek who told Sergeant Alvarez that he had a use of force incident but wanted to wait for the arrival of Officer Flynn and Officer Franson before he discussed it any further. Sergeant Alvarez stated that once Officers Flynn and Franson arrived at the sallyport, Officer Matejcek gave the following explanation of the incident:

> Officer Matejcek said they responded to a call of someone yelling in one of the sheds at the Home Depot. They arrived, Officer Franson briefly contacted the, I guess the reporting party, and they went over to the sheds where they located someone in one of the middle sheds.
>
> As she was exiting the shed, he told her to sit down numerous times, she wouldn't, she wouldn't comply, so he performed a leg sweep to take her down, and then he detained her in cuffs.
>
> I guess at some point she was seated on the ground, handcuffed, and she kept trying to stand up, told her "do not stand up" numerous times, told her not to stand up, eventually she stood up and he kicked her in the chest area . . . with the bottom of his foot. He did that because she was known to spit on officers, fight and flee from them.
>
> He said she had been complaining that she had been shot in the face. There was no evidence to indicate that. He called AMR to the scene who eventually evaluated her and determined she was fine, she was not shot. Then at the scene, that was pretty much it at the scene I believe.

Sergeant Alvarez stated that Officer Flynn and Officer Franson did not contribute to this conversation and that, "Officer Matejcek explained it all in front of them and he did explain that they watched video footage on one of their vehicles, and that basically Officers Franson and Flynn were worried about the use of force used, and that basically Officer Matejcek would tell me in front of them to make sure nothing was missed." Sergeant Alvarez said that when he finished his explanation of the incident, Officer Matejcek asked Officer Franson and Officer Flynn if they had anything to add and they said they did not.

Sergeant Alvarez told the officers that if there were concerns with the use of force, Sergeant Alvarez would review the video and they would "go from there." Sergeant Alvarez stated that Officer Matejcek informed him that he would be absent the following shift to attend a training, and Sergeant Alvarez told Officer Matejcek that since the incident involved a use of force, he would need to complete a report before leaving for the day.

After meeting with Officer Matejcek, Sergeant Alvarez went back inside the station, possibly to deal with the COVID exposure issue, and then went back to the lot to speak with Officer Matejcek and ask if Ms. V1 was complaining of pain and whether her chest area had been photographed. At this time, Officer Matejcek was in his patrol car and Ms. V1 was in the transport van with CSO Alan Sheffield who was preparing to transport her to the County jail.

Sergeant Alvarez stated that he only briefly saw Ms. V1 in the van and did not have any contact with her.

Sergeant Alvarez stated that after meeting again with Officer Matejcek, he went back inside the station to review the video from Officer Franson's body camera. Sergeant Alvarez stated that in reviewing the video, he had no concerns with the leg sweep and "I thought it was fine," but "then the kick, I had concerns with the kick." Asked about his concerns with the kick, Sergeant Alvarez stated, "Well, she was handcuffed for one, she hadn't really . . . She just stood up, she didn't lunge at them, didn't try to assault them, she basically was just standing up, and no one was really next to her when she stood up. Then Officer Matejcek goes and kicks her in the chest." Asked what he would have done differently, Sergeant Alvarez stated, "I would've, as well as I think most officers, would've just grabbed her."

Sergeant Alvarez stated that Ms. V1 behavior in the video was consistent with the behavior that he had witnessed in prior contacts with Ms. V1 Sergeant Alvarez stated that he knew Ms. V1 to be a methamphetamine user and heavy drinker who is "very belligerent when we deal with her." Asked whether he had prior experience with Ms. V1 spitting, fighting, or fleeing, Sergeant Alvarez stated, "Personally? No. I just know she's belligerent, I've never had her fight with me or seen her fight with anyone." Sergeant Alvarez stated that after watching the video footage, he called Lieutenant Louwerens at about 7:00 a.m. to notify Lieutenant Louwerens about the concerns with the kick. Sergeant Alvarez stated that he and Lieutenant Louwerens "were on the same page that the report needed to be completed before the shift was over or before he went off, and then he said he would come in and look at it. I think it was a Sunday morning so he was off. Yeah, so he would have to come in and look at it."

Sergeant Alvarez stated that when he came into work the following night, he found that Officer Matejcek had been placed on administrative leave and Sergeant Alvarez completed a memorandum documenting the incident. Asked about the substance of his memorandum, Sergeant Alvarez stated, "That basically I met the officers by the sallyport, Officer Matejcek explained to me what happened, about the use of force, and then about, let's see, the photos, trying to photograph her. She had no injuries. Then the report may be done since he was going off. Then lastly I wrote that I, upon watching the video, that I had concerns with the use of force."[3]

Sergeant Alvarez stated that he met with Officers Flynn and Franson and told them something to the effect, "Hey, I watched the video. You guys did nothing wrong." Sergeant Alvarez noted that the incident occurred so suddenly that Officers Flynn and Franson did not even have time to react, and he also told them, "It is what it is, he put us in this situation."

Sergeant Alvarez stated that Officer Matejcek turned in an initial report but that there were "a few questions that our administration wanted answered on the report." Sergeant Alvarez stated that he met with Lieutenant Louwerens who suggested that Sergeant Alvarez meet with Officer Matejcek at his house to correct the issues with the report on the computer in Sergeant Alvarez's vehicle. Sergeant Alvarez stated that he told Lieutenant Louwerens this was a bad

[3] Sergeant Alvarez later sent his memorandum to the Investigator. It is Exhibit 6 to this report.

idea, and eventually Lieutenant Louwerens agreed that Sergeant Aguiar, the PSU sergeant, should approve the report. Sergeant Alvarez recalled that Lieutenant Louwerens had sent an email that outlined the further information required for Officer Matejcek's report and reviewed that email during his interview with the Investigator. The email was sent on April 27, 2022, and the issues for clarification included: whether Officer Franson needed to write a supplemental report documenting his contact with the reporting party; spelling and grammar issues throughout the report; the report of screaming "comes out of nowhere"; verification of which leg Officer Matejcek used to conduct the leg sweep; confirmation that Ms. V1 facial injuries were not a result of the leg sweep since there was broken glass on the ground; confirmation that the broken glass was from alcohol bottles; confirmation that in addition to the unopened beers recovered from Ms. V1 there were also empty beer cans at the scene; and an explanation as to whether there was any type of psychiatric or drug influence evaluation that was done on Ms. V1 [4]

D. Paul Matejcek[5]

1. Background

Officer Matejcek was hired by the City as a police officer in August 2017 and has worked in Patrol on day shift, swing shift, and graveyards. The Patrol teams work a rotating four-day schedule with A side and B side shifts that cover each other's days off. In April 2022, Officer Matejcek was working the A side graveyard shift with Officer Dave Franson, Officer Josh Flynn, Officer Jordan Stroben, Officer Tanner Kephart, and Sergeant Mitchell Alvarez.

2. Relationship with Officers Flynn and Franson; Prior Defensive Tactics Training; and History of Kicks as Approved Use of Force

Officer Matejcek stated that he had a good relationship with both Officer Flynn and Officer Franson. Asked if he had any prior significant issues with either officer, Officer Matejcek stated, "No, I enjoyed working with Josh [Flynn] just because he had left and come back and he had been on the SWAT team. I had just got on the SWAT team so we connected that way. Officer Franson is a DRE [Drug Recognition Expert] and I'm big into investigating drugs and people under the influence of drugs."

Officer Matejcek stated that he had undergone defensive tactics training while he was in the Contra Costa County Police Academy and has also undergone Department-sponsored defensive tactics training courses about twice a year since being hired by the City. Officer Matejcek stated that the most recent Department-sponsored defensive tactics training course he attended was in April 2022, and that class was taught by Officer Doug Morrison who was assisted by Taylor Johnson and Jason Fish. Officer Matejcek could not recall whether Sergeant Nance attended the April training, but he knows Sergeant Nance to be a defensive tactics instructor as well.

Asked if he had received training with respect to kicking a suspect, Officer Matejcek stated that he had received such training in the Academy. Officer Matejcek stated that he had

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[4] Sergeant Alvarez later sent Lieutenant Louwerens' email to the Investigator. (Exhibit 8.)

[5] Officer Matejcek was represented at his interview by Julia Fox, Esq.

practiced kicking techniques while at the Academy, but that none of that training involved a hypothetical situation in which a handcuffed suspect was involved. Officer Matejcek stated that he had brought to the interview some relevant Learning Domains that he had received during the Academy, including the Use-of-Force, Arrest Control, and Custody Learning Domains. The Investigator reviewed with Officer Matejcek a chart entitled "Body Parts as Personal Weapons," from Learning Domain 33, Chapter 1, page 15 which lists the foot as a personal weapon and lists the various parts of the foot that may be used including the "instep," "heel," "ball of foot," "edge of foot," and "the toe." Also from Learning Domain 33, at Chapter 7, the investigator reviewed with Officer Matejcek a body schematic entitled, "Guidelines for Impact Weapons," that lists "possible target areas," including "chest," "midsection," "rib cage," "arms," and "legs." The Investigator also reviewed with Officer Matejcek a chart entitled "Resistance" from Learning Domain 20, Chapter 2 which lists the various types of resistance including "cooperative," "passive non-compliance," and "active resistance," with the various "possible force options" associated with each kind of resistance.[6]

Officer Matejcek stated that based on the Learning Domains he reviewed with the Investigator, Officer Matejcek believed that depending on the circumstances, a kick was an appropriate use of force for a subject that was actively resisting. Officer Matejcek stated that he had not reported a kick as a use of force prior to April 23, 2022. Asked if he was aware of any other officer who had reported a kick as a use of force, Officer Matejcek stated that he was aware that Officer O2 O2 had reported a kick as a use of force, but Officer Matejcek did not know the circumstances or the date of the occurrence. Officer Matejcek stated that he had spoken with retired Lieutenant Sal DiMercurio who told Officer Matejcek that Officer O2 had kicked a suspect in the head and that Officer O2 was subsequently exonerated for this use of force. Officer Matejcek stated that it was his understanding that this incident had occurred prior to Officer Matejcek's tenure with the City,[7] and he noted that Officer O2 is currently one of the Department's defensive tactics instructors.

3. Prior Contacts with Ms. V1 and Knowledge of Other Officers' Contacts with Ms. V1

Officer Matejcek estimated that he had about two contacts a month with Ms. V1 since 2019, but then revised the number to be about 24 total contacts with her from 2019 to the present. Officer Matejcek stated that some of the contacts involved Ms. V1 breaking the restraining order that her father has against her and that he also dealt with her in connection with burglary-related issues. Officer Matejcek elaborated:

> Okay. Burglarizing vehicles. She found a vacant apartment complex and she destroyed it as far as like breaking plumbing, defecating everywhere, and that kind of stuff. Shoplift, drug usage, big time drug user, alcohol, steals alcohol. Those are like the calls that I've gone to her for. Whenever I contact her, and there's been only one time where I've contacted her where I believe she was

[6] The Investigator photographed the three Learning Domain pages presented by Officer Matejcek during his interview. (Exhibit 9.)

[7] The Investigator later requested the police report documenting Officer O2 kick to a suspect's head. The police report, dated May 17, 2017, is Exhibit 13 to this report.

completely sober, but other than that, she's either high on meth or drunk or both.

Officer Matejcek stated that one of the reasons he knows Ms. V1 to be a methamphetamine user is because he has arrested her for possession of methamphetamine as well as for possession of paraphernalia. Officer Matejcek stated that he has known Ms. V1 to be violent, combative, and aggressive. Asked to describe Ms. V1 behavior, Officer Matejcek stated:

> So, in my last, not including the contact that we're talking about right now, but in my last two contacts prior, I arrested her for 647(f) and I believe it was 148 as well. While she was in the back of the car, she's tried kicking at me, she's tried spitting. The contact after that, I responded to a liquor store because she was reported to have been acting suspicious and possibly stealing from the liquor store. When I showed up on scene, she started yelling at me. Then I didn't have a cover unit with me and I couldn't confirm if anything was taken or if the liquor store wanted anything done. So, I saw her, told her to get out, and then she immediately started yelling and then she just ran off and I just let her run away because I wasn't going to chase after her by myself for no reason.

Officer Matejcek estimated that these two contacts occurred, respectively, in January of 2022 and the summer of 2021. Officer Matejcek stated that Ms. V1 name is flagged by Dispatch meaning that she poses an officer safety risk and calls involving her require a minimum of a two-officer response. Asked what he had heard about Ms. V1 from other officers, Officer Matejcek stated, "She absolutely fights. She has no problem kicking and running away and spitting at officers. Between the times of my last contact with her and the date of this incident, she had been reported to have been stealing from the same liquor store where I contacted her. That officer chased after her." Officer Matejcek stated that the incident he heard about at the liquor store occurred in March 2022 and involved Officer Michelle Hall who "ended up getting into a ground fight wit V1 until V1 was taken into custody." Officer Matejcek stated that he was aware of this incident prior to his contact with Ms V1 on April 23, 2022. Officer Matejcek stated that Ms. V1 had previously been on probation with Alameda County for a Penal Code section 148 violation, but was taken off probation in 2019 when the law was changed to limit misdemeanor probation to two years. Officer Matejcek stated that he recalled looking at Ms. V1 criminal history and seeing "she had been arrested a minimum of 16 times for 148, and I think there was a couple of felony PC 69s in there as well." Officer Matejcek stated that while Ms V1 was listed at 5'7" and 145 lbs. on the police report, Officer Matejcek believes that "she's definitely heavier than that now," and estimated her weight to be "closer to 170, 180."

When the Investigator noted that Ms. V1 did not appear to be as heavy as Officer Matejcek suggested, Officer Matejcek stated that Ms. V1 appearance changes. Asked to explain, Officer Matejcek stated:

> Shaves her head, hair grows back. She gets thin, she gets big. That kind of thing. Even when I first contacted V1 when we opened up the shed door and V1 was standing there, I immediately recognized her. And that's why . . . And

> I remembered everything that I've done with her, every contact that I've had with her, as far as being combative, resisting, all of the above, as well as other officers. And that's why I put her in handcuffs right on the spot . . . Okay. At that point, Officer Flynn, who was right with me, was like, "Who's this?" And I said, "V1." And he goes, "Really? I didn't recognize her because she changes."

During follow-up questioning by Ms. Fox, Officer Matejcek stated that he believed Ms. V1 had been convicted of felony assault on her father, which was why her father had a restraining order against her.

4. Arrest of V1 on April 23, 2022

Officer Matejcek stated that in April 2022, his Patrol team's regular hours were from 8:00 p.m. to 7:00 a.m., but that with his supervisor's permission, he started his shift on April 22, 2022 at about 10:00 or 11:00 p.m. because he had attended a graduation ceremony earlier in the day and needed to sleep prior to working graveyard. Officer Matejcek recalled a dispatched call later in the shift at about 5:24 a.m. on April 23, 2022, and stated, "it was described as a male screaming in the Home Depot parking lot and the reporting party believed it was a homeless male who was living in the display sheds in front of the Home Depot, in their parking lot."[8] Officer Matejcek stated that he had encountered homeless people in these sheds on four or five previous occasions. Officer Matejcek stated that when the call came out, he had just gotten gas and was enroute to the Department to book some property related to a warrant arrest[9] that he had made about an hour earlier, so two other units were dispatched on the call. Officer Matejcek stated that the call was on his beat, and because he had good beat integrity, he cancelled one of the units and responded as the primary officer with Officer Franson responding as his cover unit. Officer Matejcek stated that Officer Flynn was in an unmarked vehicle and showed up on the call as well.

Officer Matejcek stated that on the northwest corner of the Home Depot parking lot there is a line of sheds the fronts of which all face south. Officer Matejcek stated that once he arrived on scene, he parked in front of the sheds and got out of his car as Officer Franson drove up to him. Officer Franson had met with the reporting party near the front of the store prior to driving over to meet with Officer Matejcek near the sheds. Officer Matejcek stated that he had no prior contact with IP8 the reporting party. Officer Matejcek said that as he was talking to Officer Franson and Officer Flynn, he heard a door to one of the sheds slam shut, and Officer Matejcek told Officers Flynn and Franson something to the effect, "I'm going to take a guess and say that whoever we're looking for is in that shed."

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[8] Officer Matejcek stated that he had not been to any significant calls earlier in the shift that would have impaired his ability to observe the events surrounding the arrest of Ms. V1

[9] In the latter part of the interview, the Investigator mentioned to Officer Matejcek that the Investigator had been provided with body camera footage of Officer Matejcek interacting with a homeless African American man. Officer Matejcek stated that video related to the warrant arrest that he had made about an hour prior to responding to the call that involved Ms. V1

The Investigator reviewed with Officer Matejcek video footage of the incident with Ms. V1 from Officer Franson's body camera starting with footage of the officers in front of the line of sheds. Officer Matejcek explained:

> So, what [Ms. V1] had done at this point, so we heard the door shut. We said, "Okay, we're probably going to take a guess and say, whoever we're looking for is in there." Then we hear, it sounded like someone had thrown themselves on the ground or against a wood wall. So, we're like, "Okay, somebody's definitely in there." So that's when we announced, "Police, come out." We started shining our lights in the window. We can't see anything because what she had done was lay down on the ground, like right up against the door so that way we can't see her."
>
> We had coordinated like, "All right, Franson you're going to stand in front of the door. You've got the Taser." Flynn's off to the side, I'm not sure if he had any force options out. And then I was going to throw the door open.

The Investigator reviewed the footage with Officer Matejcek through the 1:22 minute mark which depicts the initial contact with Ms. V1 and Officer Matejcek's detention of Ms. V1 in handcuffs. Officer Matejcek stated that he asked Ms. V1 several times to sit down but she did not comply, and explained why he felt it was necessary to pull her to the ground and handcuff her:

> Just because the call that we had responded to was someone screaming for whatever reason. And then I see her, and I remember how physically combative she becomes. That she actively resists, all of the above, or she doesn't like cops, that kind of thing. So, I see her. I know that if we're dealing with her, it's probably best that she goes in handcuffs.

Officer Matejcek stated that at the time he handcuffed Ms. V1 he did not pat search her, but did see a lighter in her hand. When the Investigator noted that Officer Matejcek had turned off his body camera around this point in time, Officer Matejcek stated, "After she was in handcuffs and she was sat down and myself, Flynn, and Franson had triangulated her, we were comfortable with the situation at the time. It was static. And I was having an administrative conversation on where to go with V1 from then." Officer Matejcek stated that he had no idea why Ms. V1 was saying that she had been shot in the nose by an unknown male and that he did not find any other subjects at the scene. Officer Matejcek stated that he noticed that Ms. V1 had some small cuts to her nose and that there was broken glass on the ground, and it was his assumption that Ms. V1 had thrown a bottle on the ground and some of the glass had ricocheted and cut her face causing her to scream.

The Investigator and Officer Matejcek reviewed the video which showed Officer Flynn searching other sheds while Ms. V1 talks to Officer Franson. Officer Matejcek stated that during this time period he was thinking through, "Okay, where are we going to go from here? Is there anything else we need to look for? She's saying she was shot in the face. Flynn's looking for somebody else, that kind of thing." Officer Matejcek stated as he watched and listened to Ms. V1 he could smell alcohol on her breath, heard slurred speech, and saw

that her eyes were watery, "so I'm more than certain she's under the influence of at least alcohol." Officer Matejcek explained:

> So, I know that she gets combative when she finds out she's going to jail. So, I'm like, okay. And this is the administrative conversation that I have with Flynn where I'm like, "What do you think? Where should we go from here? What do we have?" That kind of thing. We kind of cancel out that there was a fight, as far as her fighting somebody else and it was just her at the scene that morning. So, I'm thinking like, "Okay, let's call AMR. Let's just have her get on the gurney and we'll send her away for intoxication . . . To say that she's . . . Well, I mean, we already asked her if she would be willing to go on the gurney, because she's more than willing to go into gurney to go to the hospital and get checked out than to go to jail. And then we can say that she's so intoxicated that she needs to be medically evaluated.

Officer Matejcek stated that he also considered placing Ms. V1 on Welfare & Institutions section 5150 psychiatric hold, but that Ms. V1 denied that she felt inclined to hurt herself or others. Asked if there was any thought of just leaving Ms. V1 at the scene, Officer Matejcek stated, "Absolutely not." Asked to explain why, Officer Matejcek stated:

> Because if she's to the point where she's throwing bottles down and she's hurting herself and she's not caring about it, who is to say that once people start to arrive more for work or be in that general area, who's to say that she's not going to throw them at them or she's going to walk through traffic or something like that next to Lone Tree, which a busy fairway, busy thoroughfare. If anybody goes and contacts and says 'Leave,' it's more likely that they're going to get into a confrontation with her because of her actions.

The Investigator reviewed with Officer Matejcek footage from the 6:46 minute mark through the 7:16 minute mark in which Officer Matejcek asks Ms. V1 why the area was so dirty. Officer Matejcek stated that he asked that "just to see if she was the one causing all that garbage that was on the ground. It looked like somebody had just taken their trash can and just dumped it right out front." In the video footage, Ms. V1 also yells that the officers need to quit following her and complains about flashlights shining in her face. Officer Matejcek stated that Ms. V1 had yelled at him like that during his prior contacts with her. Officer Matejcek stated, "She goes through . . . And this is why I think she was under the influence of drugs as well, because she just does giant mood swings and that's one of them. She's low. She's calm at first or not calm, but calmer at first. And then on the blink of an eye, she's just erupting like that." Officer Matejcek stated that he did not know why Ms. V1 would say, "Quit following me," as he had never followed Ms. V1 and had only encountered her on dispatched calls.

The Investigator reviewed with Officer Matejcek the footage from minute mark 7:17 through the 8:10 minute mark in which Officer Matejcek comments on Ms. V1 beer consumption and she responds, "I don't give a fuck if it's beer or not. I drink as much beer as I fucking want." Officer Matejcek stated that at this point he could see beer cans protruding from Ms. V1 jacket pocket. Asked why Officer Franson muted his body camera at the 8:10 minute

mark, Officer Matejcek stated, "Yeah, we were going . . . Or she was just going in circles. There was nothing really else that we were going to get out of her as far as the statement, but he just decided I'm going to take . . . I guess, and say that he just decided to keep the video rolling just in case." Officer Matejcek stated that while the audio was deactivated, Ms. V1 kept making bizarre statements while he and Officer Flynn were having an administrative conversation as to whether to just have Ms. V1 medically evaluated or whether to transport her to MDF. Officer Matejcek stated that Ms. V1 "exploded," when Officer Franson or Officer Flynn inadvertently called her by the wrong name, possibly Unrelated name,"

Officer Matejcek stated that he had decided that after Ms. V1 's last outburst, he thought "we're obviously past the point of just AMR," and had decided that Ms. V1 would need to be transported to jail. Asked whether there was any thought as to how they would get Ms. V1 off the ground and get her into a vehicle, Officer Matejcek stated:

> Yeah. So, my de-escalation in my head was if we don't put her in the back of a car, if we just let her sit here and we get the ambulance to come and take her, this is going to resolve her from finding out that she's going to go to jail and she's going to explode. So, if just keep her here, say, "Hey, we've got the ambulance on the way," she'll stay calm. I believe she'll stay calm. And then she'll be on her merry way to the hospital, which is something she would much rather do instead of go to jail. If we put her in the back of the car, now we're opening the door for her to go after us.

The Investigator reviewed the now audio-less footage with Officer Matejcek starting at the 8:36 minute mark. Officer Matejcek stated that at this point Ms. Hurley "ramped up the volume on her voice," and was yelling something to the effect, "I see you in my dreams," and "Fuck this, fuck you." Officer Matejcek stated that based on his Academy training, he had Ms. V1 cross her legs when she initially sat down, and explained:

> When we have them sat down, when they're sitting on the curb, they cross their legs. Because it's, now if they uncross their legs, it's more likely that they're going to stand up or they're going to try and run away. So, we always have them cross their legs. So that's how she was when she was placed on the ground. She's crossed her legs. So, when she uncrossed her legs, I'm like, "Okay, now she's going to try and make a move." She has a history of running and fighting cops. This is it. This is where she's going to start to make that decision. And she rolled forward, or she uncrossed her legs and rolled forward.

Officer Matejcek stated that after uncrossing her legs, Ms. V1 began to tuck her legs underneath herself in an effort to stand up. Asked if Ms. V1 said anything about running, Officer Matejcek stated, "No. But because of my prior history with her and her being violent and her running away multiple times from me, from other officers, I knew that this was not . . . She wasn't just going to stand up and just hang out." Officer Matejcek stated that he gave Ms. V1 two commands to the effect, "V1 stay seated. V1 sit down." Asked if Ms. V1 seemed to hear him, Officer Matejcek stated:

> Yes. I don't think she cared, but I know she heard me because I hadn't changed my distance. I had said it louder than I would have when we were conversating, as far as like, "Hey, are you thinking of hurting yourself or are you thinking of hurting anyone else?" So, I know she could hear me, but as far as her acknowledging me, she did not make any acknowledgment.

Officer Matejcek estimated that at this point, he was about four or five feet away from Ms. V1 and that Officer Flynn and Officer Franson were a foot or two further away than Officer Matejcek was from Ms. V1 . The Investigator reviewed with Officer Matejcek the footage starting at the 9:07 minute mark which Officer Matejcek agreed depicts him take three quick steps toward Ms. V1 and kick her in the left torso area with his right foot. Officer Matejcek stated, "So, I know it sounds crazy, but when she undid her feet and rolled forward, I thought at that point she was going to jump out at me because that's a V1 thing." Asked to explain his thought process further, Officer Matejcek stated:

> As far as like being unpredictable and how she comes at you. So, in my head I was thinking, "Okay, she's hopped up on drugs and she's hopped up on alcohol. This would not surprise me if jumped forward towards me." And then if she was going to jump towards me, she was going to stand all the way up. And then she was going to come after us or she was going to run away or she's going to spit at us.

Asked if the fact that Ms. V1 was handcuffed entered into his calculus of his decision to kick Ms. V1 , Officer Matejcek stated:

> Yes. So, you can see that she was standing in front of the door and I knew that if I go hands on with her, my face is going to be right next to her. And she's more than likely going to spit in my face because now her hands are tied behind her, they're handcuffed behind her back and she's likely to spit in my face because she's done that before to other people.

Asked if Ms. V1 had spit on him during prior contacts, Officer Matejcek stated:

> Me personally? No. So where she's standing, I was like, if I grab her, one, I'm going to get spit in the face, but I'm also going to have to try and throw her to the ground to get her back onto her stomach, to be able to pick her back up or handle her however we need to, as far as putting her in a wrap or whatever it is to control her legs. So that way now she can't kick us or slip her cuffs, which she has done before as well.

Officer Matejcek stated that on prior occasions, Ms. V1 had slid her wrists underneath her feet to get her handcuffed hands in front of her. Officer Matejcek stated, "So what I saw here was that she's got this solid backdrop behind her, as far as the wooden door. If I push her into the door, now she'll be thrown off balance. She could slide down the door, back onto her butt and not hit her head on anything."

Asked if he intended to kick Ms. V1 with enough force to send her back into the door of the shed, Officer Matejcek stated:

> So, the amount of force I used would . . . And if you slow the video down, you can see where only the top of . . . like the ball of my foot actually contacts her where I'm extended. So, my thinking was only an amount of force in order to knock her off balance into this door. I wasn't trying to field goal punt her through the shed. I wasn't trying to like harm her or break any bones or anything like that. I wasn't trying to hurt her. I was just trying to get her off balance into the door so that she would go back down and that way I can get behind her, pick her up.

Asked if he had done what he intended to do with the kick, Officer Matejcek stated, "Yes. And I only used enough to push her off, but I wouldn't have used any more force if I had pushed her back down with my hands if that makes sense . . . I used the same amount, right? So regardless if I was pushing her with my foot or if I was pushing her with my hands, the same amount." Asked if perhaps the kick was a "kind of the, I don't know my own strength kind of thing," and whether he had actually intended to kick as forcefully as he did, Officer Matejcek stated, "Yes, because I believe that was the least intrusive force method as well as that was the smallest amount of force to get her to do what I wanted her to do." Officer Matejcek stated that due to concerns of spitting, "The kick was to allow as much distance between my face and hers as possible while still being able to push her into a seated position."

Asked why he did not simply ask Officer Franson or Officer Flynn to help him escort Ms. V1 to a vehicle, Officer Matejcek stated, "Because she was already standing up here. She was already on her way up at that point and I wanted to . . . I knew that it was going to either be a fight or she was going to run away, or she was going to spit on us like she had done in the past. So, I knew that if I act now, act quickly, then I'm going to resolve the situation and she wouldn't be able to do any of those." Asked why he did not let Ms. V1 run and then grab her, Officer Matejcek stated, "Because if she runs, then it's more likely that we're going to have to tackle her. And now her hands are behind her back. And if she falls, then how is she going to brace herself?" Asked if he had actually thought through all of these options before he kicked Ms. V1, Officer Matejcek stated, "Yes, as this is all going down." Asked if Ms. V1 might have said anything that prompted him to kick her, Officer Matejcek stated, "I don't recall her threatening me. I just remember her being aggressive in the tone she was using, the fuck yous and stuff like that."

The Investigator reviewed with Officer Matejcek footage from Officer Franson's vehicle camera at minute mark 8:30 to minute mark 9:02 in which it sounds like Ms. V1 is saying something to the effect of "quit calling me that" and shortly afterward the sound of Ms. V1 audible reaction to being kicked can be heard.[10] Officer Matejcek stated he believed that was when Officer Flynn or Officer Franson had mixed up Ms. V1 name and called her Unrelated name."

Officer Matejcek stated that after Ms V1 was knocked to the ground, he escorted her back to his vehicle and recovered the three Budweiser beer cans from her pocket and placed her in the rear of his vehicle without incident. Officer Matejcek stated that after putting Ms. V1 in the vehicle, Officer Flynn and Officer Franson "were like, 'What the heck?' Like they were

[10] Exhibit 2, 8:53.

kind of caught of guard." Officer Matejcek stated that he explained to them, "Hey look, she fights, she kicks, she bites, she spits. She does everything to not go to jail and because she's standing up, I was confident that she was going to either try and run. She was going to spit. She was going to kick us. She's going to try to slip out of her cuffs, whatever it is, not to go to jail." Officer Matejcek stated the three of them watched the body camera footage at the scene, and Officer Flynn made a comment to the effect, "If she had taken a step forward it would have been more justified." Officer Matejcek stated that he responded something to the effect, "I didn't want it to get to that point. I didn't want to have to wait for her to try to attack us, actively attack us or actively run away. I wanted to stop it before all of that happened." Officer Matejcek said he had the feeling that both Officer Flynn and Officer Franson thought the kick was excessive but neither specifically told him that. Officer Matejcek stated that both Officer Franson and Officer Flynn expressed concern about being in breach of the new policy that required them to intercede. Officer Matejcek told them something to the effect, "It's not like I'm not going to say anything. I'm going to tell the sergeant what happened. That's why we're going back to the station."

Officer Matejcek stated that he called an ambulance to the scene "to have her checked out as far as being kicked and injuries to her face." Officer Matejcek stated that Ms. V1 did not complain of pain to her torso from being kicked and that AMR checked out Ms. V1 in the parking lot and medically cleared her. Officer Matejcek stated that while he was driving back to the station, he notified Sergeant Alvarez that there had been a use of force. Asked why he did not call Sergeant Alvarez to come to the scene, Officer Matejcek stated, "Between me, Franson, Flynn, I believe that we had enough experience that we were getting all the things that whatever Alvarez was going to need to take care of, we were doing it there. All we needed to do was notify him."

Officer Matejcek stated that he, Officer Flynn, and Officer Franson met with Sergeant Alvarez at the sallyport, and Officer Matejcek told Sergeant Alvarez something to the effect, "We get this call. She's sitting down, she's in handcuffs. I know her to be combative and run and all of the above. She goes to stand up. In order to prevent her from escaping or spitting at us or fighting with us, I push her to the end of the shed and she slides down." Officer Matejcek said that he characterized his actions to Sergeant Alvarez as a "push" with his foot.[11] Officer Matejcek said that Officer Flynn and Officer Franson agreed with his recitation of the incident to Sergeant Alvarez and did not say that they thought excessive force had been used. Officer

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[11] Asked if he understood why some might view the "push" as a kick, Officer Matejcek stated because "it's with a foot." Officer Matejcek agreed that he had described the use of force as a "kick," in his report but clarified:

> A discretionary kick. Yes. But my intent was to push her into the shed, push her off balance into the shed. If I wanted to kick someone . . . I could see how that would be a kick, but that was not . . . My intent was to not . . . I didn't want to injure her so that's why I'm pushing her to the ground. Not kicking her. Like I said before, not throwing her through the shed, I'm just pushing her off balance with enough force with my foot.

Matejcek said that Sergeant Alvarez asked if photos had been taken of Ms. V1 njuries. Officer Matejcek said Ms. V1 was not wearing a shirt underneath her jackets and there was no female officer on duty to inspect her, so he only was able to view and photograph from her mid-thorax and below. Sergeant Alvarez also told Officer Matejcek that since he would be gone the next shift for training and this was the end of his work week, Officer Matejcek needed to finish the report before he left that day and it would be reviewed by the day watch supervisor, Sergeant Tonkel.

Officer Matejcek stated that Sergeant Tonkel approved his initial report, but that once it was reviewed by the Lieutenants and a Captain, there were additional questions that they wanted to be resolved before the report was finalized. Officer Matejcek stated that there were questions as to what happened to the beer cans and some grammatical issues were raised. Officer Matejcek stated the reason that he included a Penal Code section 243(b) charge in the report was because while Ms. V1 was in the transportation van, she had told CSO Sheffield that V1 Medical Condition and then spit into his mouth. Officer Matejcek stated that he included the Penal Code section 148 charge because Ms. V1 had tried to stand up when he had told her not to do so.

Asked if he wanted to add anything, Officer Matejcek stated:

> And my intention is not to hurt her. I didn't want to use any force. If we could have avoided this altogether, then we wouldn't be sitting here. And if that option had come up, then we obviously wouldn't be here. But she forced my hand to do something. And in order to prevent us from having to go more hands on with her, now she's got three officers on top of her on the ground. Possibly could hit her head. Whatever it is. Or she tries to kick at us, tries to bite us, spit at us, whatever it is, that's why I acted the way I did. And that's based on my training and experience, with her being resistive and whatnot. So, I don't think the amount of force that I used, I believe it was the least intrusive and reasonable. And I can see how it looks bad on camera, but where I was standing and from my point of view, I knew that there was a danger if she was to get to her feet.

Asked if he harbored any animosity toward transients such as Ms. V1 Officer Matejcek stated, "Absolutely not. I regularly contact them. I specifically picked Beat One because I know there's a large homeless population that's growing and I want to help minimize it by helping them get to where they need to be." Officer Matejcek stated that he regularly worked with the Department's Homeless Liaison, Sergeant Peart, to help find resources and shelter for the homeless people on his beat.

E. Richard Nance

1. Background

Richard Nance was hired by the City as a Police Officer in January 1998. He has been a BPD defensive tactics instructor since 2001, and took over as leader of the defensive tactics training program at BPD when he was promoted to Sergeant in 2019.

In addition to BPD training, Sergeant Nance has conducted numerous trainings for outside agencies as well—including training he developed for the California Commission on Peace Officer Standards and Training ("POST")—in the areas of defensive tactics, arrest and control tactics, and firearms. Sergeant Nance was the defensive tactics columnist for Officer.com and for LawOfficer.com for several years, and is currently on the editorial advisory board for Officer Magazine. He has contributed articles regarding defensive and arrest and control tactics to Police magazine, CATOnews (California Association of Tactical Officers), and several firearm industry publications intended primarily for private citizens.[12]

Sergeant Nance stated that he reviewed Officer Matejcek's report about the incident, as well as Officer Franson's body-worn camera video, prior to his interview with the Investigator.

2. Officer Matejcek's Training

Sergeant Nance has worked around Officer Matejcek "off and on" since Officer Matejcek was hired in 2017. Sergeant Nance did not recall being present at any use-of-force by Officer Matejcek and has not rendered any opinions about any prior use-of-force by Officer Matejcek. Sergeant Nance stated that he did not have any prior negative history with Officer Matejcek.

Sergeant Nance agreed with the three pages of Learning Domain literature provided by Officer Matejcek from Officer Matejcek's police academy workbooks; that is, in cases where an unhandcuffed suspect was actively resisting, an officer's use of the foot as an impact weapon to a suspect's midsection could be reasonable depending on the circumstances. Sergeant Nance noted that a BPD defensive tactics course taught in April 2018 specifically addressed kicking as part of a segment that reviewed "striking and personal body weapons to include viable possible techniques, development of power, and use of striking to facilitate movement or disengage with a suspect." The most recent BPD use-of-force training in April 2022 was an introduction to "Gracie Survival Tactics"—involving takedowns, clenches, and "ground control" when wrestling with a suspect—policy review, and de-escalation techniques.

Sergeant Nance also stated ". . . we've never trained to strike a handcuffed suspect" in any of the BPD courses—including the use-of-force, arrest and control, and defensive tactics trainings that officers are regularly required to complete as renewal of "perishable skills." When asked if there were circumstances he was aware of where kicking or otherwise striking a handcuffed suspect would be reasonable, Sergeant Nance stated that he had not been personally involved in such a situation but believed that in a "very, very unusual circumstance"—like if a handcuffed suspect reached for a weapon such as a firearm, or was about to run into traffic—that striking the handcuffed suspect might be deemed as reasonable.

Sergeant Nance stated that BPD records show that Officer Matejcek is currently up to date with perishable skills training and that Officer Matejcek took other relevant training, outside

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[12] *See, e.g.*, LinkedIn (https://www.linkedin.com/in/richard-nance-a1759017/), Officer.com (https://www.officer.com/home/contact/10234412/richard-nance), Officer Magazine editorial advisory board (https://www.officer.com/command-hq/article/21263337/introducing-the-officer-media-group-editorial-advisory-board); Police magazine (https://www.policemag.com/339931/cuffing-with-useful-force).

of BPD perishable skills training, from outside providers such as POST and the CNOA (California Narcotics Officers' Association).[13]

3. Prior involvement with this matter

Sergeant Nance stated that following Officer Matejcek's use-of-force on April 23, 2022, Sergeant Tonkel—the day watch patrol sergeant who had initially been asked to review Officer Matejcek's report about the incident by Sergeant Alvarez—called Sergeant Nance, while Sergeant Nance was off duty, described the incident, asked for Sergeant Nance's opinion about the kick at issue, and asked if the April 2022 use-of-force training had included kicking. Sergeant Nance, in turn, spoke to Officer Sares—the lead defensive tactics instructor for the Gracie Survival Tactics portion of the training—who told Sergeant Nance there had not been any curriculum about kicking at the April 2022 training.

Sergeant Nance also was asked by Sergeant Eric Huesman and Officer Aaron Peachman—both of whom "are very heavily involved with the POA"— about Officer Matejcek's kick of Ms. V1 and about any BPD training about kicking.

Following the questions from Sergeant Huesman and Officer Peachman, Sergeant Nance reviewed the video of Officer Matejcek's kick of Ms. V1 captured on Officer Franson's body-worn camera and assumed he would see Officer Matejcek "using his foot to prevent [Ms. V1 from standing;" instead, "it was [Officer Matejcek] actually kicking her." After reviewing the video, Sergeant Nance told Sergeant Huesman and Officer Peachman that he did not think that Officer Matejcek's kick of Ms. V1 was reasonable.

4. Sergeant Nance's review of the Franson body-worn camera video with the Investigator and his opinion regarding Officer Matejcek's use of force

In addition to Sergeant Nance's prior review of Officer Matejcek's report and Officer Franson's body-worn camera video that captured Officer Matejcek's kick of Ms V1 and to provide additional context when reviewing the video with him, the Investigator provided Sergeant Nance with basic background information about the time of day, nature of the call, the location of the incident, and how the involved officers came upon Ms V1 inside the shed shown in the video. The Investigator then played portions of Officer Franson's body-worn camera video to provide Sergeant Nance with additional context about the incident so that he was as aware as possible about the circumstances that led to Officer Matejcek's use of force.

Sergeant Nance stated that he recognized Ms. V1 from "probably less than five" prior contacts he has had with her. Sergeant Nance noted that Ms. V1 was "oftentimes intoxicated and/or under the influence of a controlled substance" during his prior contacts with her. Sergeant Nance knew from his contacts with Ms V1 and/or information from other BPD officers, that Ms. V1 was a methamphetamine user who sometimes engaged in erratic behavior and ran from officers. Sergeant Nance also believed that Ms. V1 had attempted

[13] Exhibit 14.

to spit or kick at other officers and had prior arrests for obstructing officers (Penal Code section 148) and public intoxication (Penal Code section 647(f)).

Sergeant Nance watched the portion of the video during which Ms. V1 emerged from the shed and Officer Matejcek pulled Ms. V1 to the ground with her left arm into a seated position after Ms. V1 did not comply with Officer Matejcek's directions to "sit down."[14] Sergeant Nance stated that Officer Matejcek's actions were reasonable in that instance.

When asked by the Investigator about Officer Matejcek's and Officer Flynn's deactivation of their respective body-worn cameras during the incident to have "administrative conversations" about what to do with Ms. V1 , Sergeant Nance stated that it would have been preferable if they had muted, rather than deactivated, their respective cameras, but described that muting or deactivating cameras during such "administrative conversations" is "not uncommon" at BPD.

The Investigator played a portion of the video starting approximately two minutes before Officer Matejcek kicked Ms. V1 during which Ms. V1 yelled, with profanity throughout, at Officers Matejcek, Flynn, and Franson to "quit following" her, objected to them shining lights in her eyes, alleged that they killed people, and argued that she could drink "whatever the fuck I want" before Officer Franson muted the audio on his body worn camera.[15] The Investigator then provided Sergeant Nance with a general description of the recollections of Officers Matejcek, Flynn, and Franson about what occurred during the approximately one minute of muted audio prior to Officer Matejcek kicking Ms. V1 The Investigator described:

> According to all the officers, they're discussing what to do with V1 . They discuss 5150. They decide they don't have that. They land on 647(f) because she does seem intoxicated and meets the elements of public intoxication. They discuss having AMR [the ambulance] come to have some scratches on her face looked at, which I think they suspect she got from throwing a bottle against the wall of that shed and breaking it. She gets upset, starts kind of talking and yelling nonsense to them, like she was before Franson muted his body-worn camera. And then right before the kick, she starts trying to stand up.

The Investigator twice played for Sergeant Nance the portion of the video during which Officer Matejcek kicked Ms. V1 . The Investigator also provided Sergeant Nance with Officer Matejcek's perceptions of Ms. V1 actions immediately before he kicked Ms. V1 : uncrossing her legs, leaning forward, and tucking her legs beneath her. The Investigator told Sergeant Nance that Officer Matejcek estimated standing about four to five feet away from Ms. V1 before stepping forward and using his right foot to kick Ms. V1 in the left midsection, and estimated Flynn to be a foot or two behind him, and Franson five to six feet away from Ms. V1 at the time of his kick. The Investigator provided Sergeant Nance a

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[14] Exhibit 1, 0:50 – 1:45.

[15] Exhibit 1, 6:44 – 8:10.

summary of Officer Matejcek's stated rationale for kicking Ms. V1 in the manner that he did:

> [Matejcek] thought that V1 was either going to jump forward at him if she stood up, spit at them or run away, which might require them to tackle her causing more injury. So he said that he wanted to push her off balance with his foot back into the shed door and onto her butt, if possible, but did not want to go hands on because he did not want to be spit on.

The Investigator then asked if Sergeant Nance believed that Officer Matejcek's kick was reasonable force under the circumstances. Sergeant Nance responded:

> No . . . Because there was other officers present. There was no imminent threat. She's handcuffed. She's not at risk of escaping. She's not going to outrun those three officers handcuffed. She did not lunge at the officers, although the officer may well believe she might, it did not appear that she made any attempt to close distance. Based on those reasons, yeah, it seems like it was not a reasonable use of force.

The Investigator relayed to Sergeant Nance that Officers Franson and Flynn each believed there were less intrusive options available at the time to secure Ms. V1 including use of a control hold and sitting her back on the ground or bringing her to a nearby patrol vehicle, or maintaining their distance and seeing what Ms. V1 did. Sergeant Nance agreed that each of those less intrusive options was reasonable under the circumstances.

Sergeant Nance added: ". . . it does not appear to me as though the kick was delivered with the intent of causing injury or diminishing the suspect's capacity to fight back. I do believe he kicked her in order to push her back to the ground." Sergeant Nance believed Officer Matejcek's kick might have been more reasonable than it was if Ms. V1 had not been handcuffed, but "would still likely be unreasonable in my opinion."

V. CREDIBILITY ASSESSMENTS

In connection with determining the facts alleged, and consistent with EEOC guidelines, the Investigator assessed the credibility of each witness by evaluating the witness's demeanor, potential bias or motivation to be untruthful, ability to recall information, the specificity of the information provided, the consistency of statements with a witness's prior statements and/or the statements of other witnesses, the inherent plausibility of witness statements, and, in some cases, the past record of a witness.

The Investigator found each witness to be forthright, honest, and credible.

Officer Matejcek seemed to sincerely believe his use-of-force was reasonable under the circumstances. While the other witnesses unanimously disagreed with Officer Matejcek's opinion about the force he used, and the findings below conclude that his use-of-force was not reasonable, the Investigator does not impute an intention by Officer Matejcek to purposefully overstate his perception of the threat presented by Ms. V1, the nature of his relevant training, or any of the circumstances that led to his use-of-force.

VI. STANDARD OF PROOF, FINDINGS, AND ANALYSIS

A. Standard of Proof and Keys to Findings

In weighing the evidence, the general civil standard of proof was applied. An incident was found to have occurred if the preponderance of the evidence obtained during the investigation supported that conclusion. That is, it was more likely than not that the event happened. In reaching these determinations, it is critical that the information is both reliable and susceptible of proof. Credibility resolutions were made where appropriate.

The following is a key to the terminology used in reaching findings:

SUSTAINED	There is sufficient evidence to establish the act(s) occurred.
NOT SUSTAINED	There is insufficient evidence to sustain the complaint or fully exonerate the member.
UNFOUNDED	The alleged acts did not occur.
EXONERATED	The alleged acts occurred but the acts were justified, lawful, and/or proper.

B. Findings and Analysis

The allegation is **sustained**. There is sufficient credible evidence to find Officer Matejcek used unreasonable force when he kicked Ms. V1 on April 23, 2022, while Ms. V1 was handcuffed and effectively surrounded by Officer Matejcek, Officer Franson, and Officer Flynn.

In reaching this finding, the Investigator considered the BPD Use of Force policy, Section 300, as a whole, and applied the relevant "factors used to determine reasonableness of force" referenced in section 300.3.2[16] to the credible evidence gathered during the course of this investigation. The following factual findings are supported by more than a preponderance of credible evidence and address the cited relevant "factors used to determine reasonableness of force" in the BPD Use of Force policy:

Officer Matejcek, Officer Flynn, and Officer Franson had prior contacts with V1 before April 23, 2022. Between the three officers, they were aware, to varying degrees, that Ms. V1 used methamphetamine, drank alcohol to excess, could act erratically and aggressively, and that she sometimes fought with officers, spat at officers, and ran away from officers during Ms. V1 multitude of contacts with BPD personnel. Of all the witnesses, Officer Matejcek professed the most knowledge about Ms. V1 estimating that he had contacted her approximately 24 times since he started at BPD in August 2017. Officer Matejcek specifically raised his two most recent contacts with Ms. V1 —in the summer of

[16] The BPD Use of Force policy is Exhibit 15 to this report.

2021 and January 2022—and his knowledge of BPD Officer Michelle Hall "getting into a ground fight" with Ms. V1 during an arrest in approximately March 2022, as evidence of Ms V1 propensity to fight with officers, run away from officers, and/or spit at officers.[17] Based on a review of all the evidence, there is sufficient evidence to find that Officer Matejcek knew of Ms V1 use of methamphetamine and alcohol, that she could act erratically and aggressively, and that she sometimes fought with officers, spat at officers, and ran away from officers. However, there was no documentary evidence provided by the BPD that Ms. V1 ever fought with, or spat at, Officer Matejcek during Officer Matejcek's nearly five-year career with the BPD.[18]

It had been more than three months since Officer Matejcek had any documented contact with Ms V1 when Officers Matejcek, Franson, and Flynn responded to the April 23, 2022 call at the Home Depot on Lone Tree Way regarding a person screaming near the garden sheds in the parking lot. As Officer Franson's video depicts, Officer Matejcek quickly recognized Ms. V1 as she emerged from the shed while he was holding open the door, calling her V1 within a few seconds and ordering her to "sit down" as Ms V1 slowly shuffled to her right

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[17] According to Officer Hall's police report, Ms. V1 ran from Officer Hall twice on January 31, 2022, while Officer Hall was investigating a possible auto burglary involving Ms. V1. According to Officer Hall's report, Ms V1 struggled and kicked at Officer Hall before a citizen helped hold down Ms V1 so that Officer Hall could handcuff Ms. V1 and take her into custody. A search of BPD records showed that Officer Matejcek has not arrested Ms. V1 for obstructing an officer (Penal Code section 148(a)(1)) or for any incidents involving violence by Ms. V1. (Exhibit 10.)

BPD records also show that Officer Matejcek was present during six incidents—not 24 incidents as estimated by Officer Matejcek—involving Ms. V1 prior to April 23, 2022, three during which he had any contact with Ms. V1, and one, the latest in January 2022, during which Ms. V1 ran away from Officer Matejcek. A summary of the six incidents: October 13, 2018 (Ms. V1 father reported a concerning text message from Ms. V1. Ms. V1 was not present at the scene); November 16, 2018 (Ms. V1 was accused of vandalizing her father's vehicle and left the scene prior to Officer Matejcek's arrival); December 14, 2018 (Ms. V1 was thought to be responsible for a possible auto burglary and was not present at the scene); December 22, 2018 (Ms. V1 was reported to be lying near a traffic signal, and Officer Matejcek told dispatch V1 was sleeping moved along"); July 26, 2021 (Ms. V1 was detained and released by Officer Matejcek after a customer at Happy's Laundry reported that Ms. V1 was "yelling, screaming, touching ppl's clothes, and touching her privates"); and, as referenced by Officer Matejcek, January 6, 2022 (Ms. V1 ran away from Officer Matejcek when he attempted to contact her for causing a disturbance at the Brentwood Game Exchange.) (Exhibit 11.)

According to Ms. V1 "Person Record," she has been contacted on more than 100 different dates since August 2005 by BPD officers, more than 90 of those dates are since July 2018. (Exhibit 12.)

[18] Exhibit 15, Section 300.3.2(r).

and toward Officer Matejcek, seemingly dazed and not focusing on Officer Matejcek. Ms. V1 was initially slow to comply with Officer Matejcek's initial commands to "sit down" as she emerged from the shed and Officer Matejcek, without hesitation, grabbed Ms V1 by her left arm and conducted what he described as a "leg sweep" while pulling her down to her buttocks, then handcuffed her[19]—actions that all witnesses, including Sergeant Nance, deemed as reasonable under the circumstances.

Within one minute of her discovery in the shed, Ms. V1 was effectively restrained with handcuffs behind her back and seated on the pavement in front of the open shed door she had emerged from. For the next seven plus minutes, Ms. V1 remained in that position while she conversed with, and yelled at, the three larger officers triangulated around her—each about six to seven feet from Ms V1 .[20] Officer Matejcek chose not to pat search Ms. V1 for weapons, did not express any concern that Ms. V1 possessed any weapons at the scene or during his interview, and there were no visible weapons or "dangerous improvised devices" within Ms. V1 limited reach or close vicinity.[21]

The video shows, and the officers' statements confirmed, that Ms V1 exhibited symptoms of alcohol impairment that supported her arrest for public intoxication (Penal Code section 647(f))—a relatively minor misdemeanor—including the smell of an alcoholic beverage on her breath, slurred speech, watery eyes, the fact that she was hiding in a shed when they found her, and her sometimes erratic and non-sensical speech. Officers Matejcek and Franson suspected Ms. V1 might be under the influence of drugs based on her erratic behavior, but no drug recognition tests were performed by the officers and Ms V1 was not arrested for being under the influence of methamphetamine or any other drug.[22] Ms. V1 was able to respond to questions by the officers (albeit sometimes sarcastically) about the suspect who allegedly shot her in the nose and her mental state. Officer Flynn and Officer Matejcek each turned off their respective body-worn cameras early in the contact with Ms. V1 because, as described by Officer Matejcek, the situation was "static" at the time. According to Officers Flynn and Matejcek, Ms. V1 did not meet the criterion to place her on a temporary hold for psychiatric evaluation pursuant to Welfare & Institutions Code section 5150, and Ms. V1 expressly denied wanting to hurt herself or others when asked by Officer Matejcek.[23]

After Officer Franson muted the audio on his body-worn camera at the minute 8:10 mark of the video, Ms V1 , according to the similar descriptions by each of the three officers, continued to exhibit a "rollercoaster" of emotions—shifting between calm and yelling at the officers, then became agitated and upset to the point that her voice was louder and more audible

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[19] Exhibit 1, 0:47-1:00.

[20] Exhibit 15, Section 300.3.2(a), (b), (c), (i).

[21] Exhibit 15, Section 300.3.2(h).

[22] Exhibit 15, Section 300.3.2(e); Exhibit 1,1:00-9:06.

[23] Exhibit 15, Section 300.3.2 (e), (f), (g), (k); Exhibit 1 at 7:16-7:28.

on the camera in Officer Franson's car than it had been for most of the contact.[24] At the minute 9:08 mark on Officer Franson's body-worn camera video, Ms. V1 can be seen leaning forward in an attempt to stand up despite Officer Matejcek reporting that he told Ms. V1 to "stay seated" and "sit down" (which cannot be heard on Officer Franson's vehicle camera video, but was attested to by Officer Flynn). Officer Matejcek then took his first of three quick steps toward Ms. V1 from about six feet away as she began to stand up, then kicked Ms. V1 hard with his right foot to her left torso area. Officer Matejcek's kick connected with Ms. V1 left side just as Ms. V1 appeared to stand up completely, and with enough force to send Ms. V1 sprawling backwards into the open shed door before falling to the ground on her buttocks. As captured on Officer Franson's vehicle camera, Officer Matejcek's kick of Ms V1 sounded as if it caused Ms V1 to yell "aah" and created an audible "thud" as her body struck the open shed door behind her.[25]

At the time Officer Matejcek kicked Ms V1 she did not present any immediate threat to Officers Matejcek, Franson, or Flynn, or any other citizen.[26] While she had yelled at officers and started to stand up contrary to the commands by Officer Matejcek to "sit down," Ms. V1 made no movement toward Officer Matejcek or the other two officers indicating physical resistance, made no movement indicating an attempt to run away, and made no attempt to spit at the officers.[27] At the moment Officer Matejcek started his approach toward Ms. V1 then kicked her with considerable force, Ms. V1 did not present any reasonably foreseeable potential of injury to the three officers or any other person, did not present a reasonably foreseeable risk of escape, and there was no apparent need for "immediate control" of Ms. V1 or "a prompt resolution of the situation."[28] To the contrary, Ms. V1 was impaired by alcohol, handcuffed, effectively surrounded by three larger officers, and was in the middle of a large, otherwise empty, parking lot. Despite Officer Matejcek's stated concerns about the risk of Ms. V1 "running away or being able to slip her handcuffed arms from behind her" if she stood up, Ms. V1 did not attempt to do either before Officer Matejcek kicked her. Had Ms. V1 intended to fight or run from officers, she was at a profound disadvantage in every sense, and could have been subdued without much effort using less intrusive means, just as Officer Matejcek had demonstrated when he initially detained Ms. V1

Officer Matejcek's assertions that he used the kick to create distance from Ms V1 to avoid being spit on is unpersuasive and contradicted by his actions. Ms. V1 had neither spit nor attempted to spit on Officers Matejcek, Flynn, or Franson before Officer Matejcek kicked her. Moreover, Officer Matejcek made no effort during the several minutes before the kick, or

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[24] Exhibit 2, 8:30-8:55.

[25] Exhibit 1, 9:07-9:12; Exhibit 2, 8:50-8:54.

[26] Exhibit 15, Section 300.3.2(a).

[27] Exhibit 15, Section 300.3.2 (n).

[28] Exhibit 15, Section 300.3.2 (m), (o), (p).

thereafter, to obtain a spit hood and place it on Ms. V1 to prevent being spit on by her, even though all BPD patrol vehicles are equipped with spit hoods and BPD officers are authorized to use them in such circumstances.[29] Further, immediately following the kick, Officer Matejcek is shown on the Franson body-worn camera video searching Ms V1 for about four minutes at the hood of his car, often placing his face within one to two feet of Ms. V1 head without registering any concern that Ms V1 might spit at him.[30]

Officer Flynn and Officer Franson did not have the same concerns about Ms V1 standing up as Officer Matejcek did, which was evinced on Officer Franson's body-worn camera video when neither of them moved discernably at all when Ms. V1 started standing up. Officer Flynn and Officer Franson each unhesitatingly stated during their interviews that they were surprised by Officer Matejcek kicking Ms. V1 in the manner that he did, and each believed Officer Matejcek's kick of Ms. V1 to have been unreasonable under the circumstances. Officer Flynn and Officer Franson also offered a number of feasible, reasonable, and less intrusive alternatives to Officer Matejcek's kick that were available at the time, such as more verbal commands, maintaining distance to further observe Ms V1 and her intentions, using a control hold or grabbing her arm, and either pulling Ms. V1 back down into a seated position, or escorting her to one of the nearby patrol vehicles.[31]

Sergeant Nance—a defensive tactics instructor at BPD for over 20 years, the lead BPD defensive tactics instructor for the last three years, an accomplished outside agency instructor in defensive tactics, arrest and control, and uses of force, and a published author and editor for noted law enforcement publications about those subjects—substantially and independently agreed with the observations of Officers Flynn and Franson, including their belief that there were feasible, less intrusive options to control Ms. V1 at the time. Sergeant Nance, after viewing the video showing Officer Matejcek's kick of Ms. V1 several times, reading Officer Matejcek's report, and being provided Officer Matejcek's stated reasoning for his kick of Ms. V1 also opined that Officer Matejcek's kick was unreasonable under the circumstances, "Because there was other officers present. There was no imminent threat. She's handcuffed. She did not lunge at the officers, although the officer may well believe she might, it did not appear that she made any attempt to close distance." Sergeant Nance added that he did not believe Officer Matejcek intended to cause injury to Ms. V1 and that it appeared that Officer Matejcek intended to kick Ms. V1 in order to push her back to the ground.[32]

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[29] Exhibits 16, 17.

[30] Exhibit 1, 9:16-14:03 (end of video). Ms. V1, still without a spit hood, later spit on CSO Alan Sheffield at the Martinez Detention facility. (Exhibit 3 (CSO Sheffield's supplemental report).)

[31] Exhibit 15, Section 300.3.2(j).

[32] The Investigator concurs with Sergeant Nance on this point and does not find that Officer Matejcek was attempting to injure Ms. V1 Instead, consistent with Officer Matejcek's explanation that he was effectively trying to topple Ms. V1 and "wasn't trying to field goal

Finally, Officer Matejcek's contentions that his kick of Ms. V1 was justified by police academy training he received, and that BPD Officer O2 O2 had been exonerated for kicking a suspect in the head, were substantially rebutted by the evidence. For one, the three "Learning Domain" pages from Officer Matejcek's police academy workbooks that Officer Matejcek provided as support for the idea that kicking an actively resisting suspect in the midsection was proper, did not include any mention of kicking a handcuffed suspect and Officer Matejcek conceded that none of his police academy kick training involved hypothetical situations of kicking a handcuffed suspect.[33] Sergeant Nance stated that BPD training records show Officer Matejcek is currently up to date with all perishable skills training and emphatically added that the BPD "never trained to strike a handcuffed suspect" in any of the BPD courses—including the perishable skills trainings involving use of force, arrest and control, and defensive tactics. Sergeant Nance also opined that only in a "very, very unusual circumstance" might striking a handcuffed suspect be deemed as reasonable, such as a handcuffed suspect reaching for a weapon such as a firearm, or about to run into traffic.

Relatedly, a review of Officer O2 May 17, 2017, police report[34] shows that Officer O2 was involved in one of those "very unusual circumstances." According to the report, Officer O2 assisted with the apprehension of a suspect wanted for stalking in Emeryville who had engaged Emeryville PD and California Highway Patrol units in a vehicle pursuit to the suspect's home in Brentwood. Officer O2 was one of three officers who apprehended the suspect in the suspect's garage. The suspect struggled with the three officers and refused to comply with repeated commands to place his hands behind his back. Officer O2 wrote that he kicked the unhandcuffed suspect on the left side of the face and back of the head believing the suspect's actions presented an "imminent danger" to the officers if he continued to reach for a possible weapon in his waistband area.

Based on all of the foregoing evidence, and consideration of the relevant "factors used to determine reasonableness of force" referenced in section BPD Policy Manual section 300.3.2, there is sufficient evidence to find that Officer Matejcek used unreasonable force on April 23, 2022, by kicking Ms V1 with substantial force to her left torso area with his right foot while Ms. V1 was handcuffed and effectively surrounded by three officers, because Ms. V1 stood up contrary to commands to remain seated. Officer Matejcek's level of force against Ms. V1 was "not proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance" and, therefore, violated the BPD Use of Force policy.

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punt her through the shed," it appears that Officer Matejcek's leg was nearly fully extended at the point his foot made contact with Ms. V1 torso. Nevertheless, under the circumstances here, even a somewhat restrained kick was not reasonable.

[33] Exhibit 9.

[34] Exhibit 13 at p. 16.

Respectfully Submitted,

Todd Simonson

Todd Simonson, Investigator

LAW OFFICE OF TODD SIMONSON, PC