

INVESTIGATIVE SUMMARY AND FINDINGS

Paul Matejcek

POST ID C65-U31

Brentwood Police Department

POST2300017

WRITTEN BY: Kevin P. Sherburne

August 23, 2024

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I. Executive Summary

On April 23, 2022, Brentwood Police Officer Paul Matejcek ("Respondent") and two other officers responded to a service call of a person screaming near garden sheds at a Home Depot. There, the officers found Victim 1 hiding in one of the sheds. Respondent detained Victim 1, placed her in handcuffs behind her back, and seated her in front of the shed where they found her. About eight minutes later, Victim 1 suddenly attempted to stand up. Body worn camera ("BWC") footage showed Respondent took three steps toward her and kicked her with his right foot, knocking her backward into the shed door, where she fell to the ground.

Brentwood Police Department opened an investigation into whether Respondent's use of force violated department policy. On June 29, 2022, the investigation found that a preponderance of the evidence substantiated that Respondent violated department policy because Respondent's level of force was "not proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance."[1] On August 31, 2022, Chief Thomas Hansen notified Respondent of his termination based upon Respondent's use of excessive force.

On January 3, 2023, Brentwood Police Department reported an allegation of serious misconduct to POST that Respondent may have engaged in physical abuse, including but not limited to, excessive or unreasonable use of force. On February 6, 2023, I was assigned to conduct an investigation of serious misconduct. In my investigation, I examined the following issue:

1. ***Did Respondent kick Victim 1 to the ground while she was handcuffed behind her back and trying to stand from a seated position? If so, did his actions constitute physical abuse as defined by California Penal Code Section 13510.8(b)(3) and POST Commission Regulation 1205(a)(3) and, if so, are there reasonable grounds to recommend revocation or suspension of his peace officer certificates?***

    a. ***Finding*: *The clear and convincing evidence substantiated that Respondent violated California Penal Code Section 13510.8(b)(3) and POST Regulation 1205(a)(3) when he kicked Victim 1 while she was handcuffed behind her back and trying to stand from a seated position because it was unreasonable.***

Based upon the evidence presented in the Brentwood Police Department Internal Affairs investigation report and my investigation, reasonable grounds exist for the Respondent's peace officer certification to be subject to disciplinary action, which is either revocation or suspension by the Commission pursuant to California Penal Code Section 13510.85(a)(1).

[1] Attachment A (Brentwood Police Department IA Report 22-07 at 1).

II. Methodology/Investigative Process

A. Methodology and Standard of Proof

This report summarizes the findings related to allegations of serious misconduct. I conducted this investigation in accordance with the regulations and policies of POST. During my investigation, I reviewed the Internal Affairs investigation, which included interviews of five witnesses, including Respondent. I also conducted an independent investigation, which included review of the Internal Affairs investigative report, review of the BWC footage, Notice of Intent to Terminate, Notice of Termination, Hearing Officer's Recommendation, Brentwood City Manager's Decision Rejecting Hearing Officer's Determination, Letter of Commendation, and a previous Internal Affairs investigation report.

Based on my review of the entire record of the administrative investigation, including the statements of the witnesses, evidence collected during the administrative investigation, the written investigative report, and my own independent investigation, I find that the administrative investigation findings were supported by reasonable grounds.

I analyzed the information in this case under the clear and convincing evidence standard. For purposes of this report, clear and convincing evidence means "evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. The evidence need not establish a fact beyond a reasonable doubt." Based on the statements of the witnesses, as well as the documentary evidence available, there was sufficient information to reach a fair and reasoned conclusion using the clear and convincing evidence standard.[2]

B. Employment History and Peace Officer Certifications

POST issued the following professional certifications to Respondent:

Certificate Type	***Certificate Number***	***Date Issued***
Basic	194086	3/8/2019
Intermediate	145737	12/18/2020

[2] A recent California State Personnel Board precedential opinion provides guidance about credibility: "A witness's credibility may be determined based on "any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony." (Evid. Code, § 780.) Relevant factors include the witness's demeanor while testifying, ability to perceive or recall, bias or other motive, and attitude toward the pending action, as well as consistency of the witness's testimony with previous statements, and the existence or nonexistence of any fact the witness testified to. (Evid. Code, § 780, subds. (a), (c), (d), (f)-(j).) When a witness testifies falsely as to some matters, some or all of his other testimony may be disregarded, whether contradicted or not. (Halagan v. Ohanesian (1967) 257 Cal.App.2d 14, 21.)."

Respondent began work as a police officer with Brentwood Police Department on August 1, 2017. He remained with Brentwood Police Department until his termination on August 31, 2022.[3]

Respondent appealed his termination. On December 12, 2023, after an administrative hearing, the hearing officer issued an advisory recommendation to the City Manager. The hearing officer found by a preponderance of the evidence that the Respondent engaged in acts that violated department policy by using excessive force. The hearing officer, however, found that the department abused its discretion when imposing the discipline of termination.[4] The hearing officer recommended a one week suspension instead.[5] Nevertheless, on January 23, 2024, the Brentwood City Manager rejected the hearing officer's recommendation for a one week suspension and upheld the department's termination of Respondent's employment.[6]

C. Other Allegations of Serious Misconduct

POST is not aware of any other allegations of serious misconduct against Respondent.

As discussed below, POST is aware of a previous Internal Affairs investigation involving a use of force complaint and a Letter of Commendation.

D. Summary of Investigations Relating to the Allegations in This Case

1. IA Case 22-07 and Appeal

Brentwood Police Department opened an Internal Affairs investigation of Respondent's use of force against Victim 1. The department retained Todd Simonson, Law Office of Todd Simonson, to conduct the investigation and relied upon his analysis of the use of force as a basis for its decision. Simonson issued a report of his findings dated June 29, 2022. In the investigation, Simonson found that a preponderance of the evidence substantiated that Respondent violated Brentwood Police Department Use of Force Policy Manual Section 300.3.2 when he kicked Victim 1 with "substantial force to her left torso area with his right foot, while [Victim 1] was handcuffed and effectively surrounded by three officers. . . ."[7] Simonson found that Respondent's use of force was "not proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance."[8]

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[3] Attachment B (EDI Profile of Respondent).
[4] Attachment C (Hearing Officer's Recommendation at 17-18 (12/12/2023)).
[5] Attachment C (Hearing Officer's Recommendation at 19 (12/12/2023)).
[6] Attachment D (Letter from Tim Ogden, Brentwood City Manager, to James E. "Jeb" Brown and Julia D. Fox, City Manager's Decision Rejecting Hearing Officer's Recommendation (1/23/2024)).
[7] Attachment A (Brentwood IA Report 22-07 at 1).
[8] Attachment A (Brentwood IA Report 22-07 at 1).

Simonson examined the Use of Force policy and factors listed in the policy to determine the reasonableness of the force.

Simonson found that Respondent was aware that Victim 1 had a history of methamphetamine and alcohol abuse, erratic behavior, and violence during encounters with police officers, including spitting on them. Respondent had six documented encounters with Victim 1, including one during which Victim 1 ran away from Respondent.[9]

Simonson further found that Victim 1 was acting erratically on April 23, 2022, and was either under the influence of alcohol, drugs, or both. Victim 1 exhibited what Simonson characterized as 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 . . . ."[10] Victim 1 also regularly and frequently used vulgar language.[11]

In sustaining the allegation that Respondent's use of force was unreasonable, Simonson relied on many factors, including the following:

- Victim 1 was effectively restrained with handcuffs securing her arms behind her back;
- Victim 1 was impaired by drugs and/or alcohol;
- Victim 1 did not present an immediate threat to the officers or anyone else at the time of the use of force; and
- Victim 1 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 [Victim 1] or 'a prompt resolution of the situation.'[12]

Simonson rejected Respondent's statements that he used force to avoid being spit on because Respondent's own actions in maintaining proximity to Victim 1 after the incident and failing to attempt to obtain a spit hood prior to the incident contradicted his statements.[13] Further, neither of the other officers bore the same concerns about Victim 1.[14] Finally, Simonson found that Respondent's statement that his police academy training justified his use of force to be "substantially rebutted by the evidence."[15]

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[9] Victim 1 ran away from Respondent approximately three months prior to the use of force at issue in this investigation. Attachment A (Brentwood IA Report 22-07 at 30, footnote 17).
[10] Attachment A (Brentwood IA Report 22-07 at 31).
[11] *E.g.*, Attachment A (Brentwood IA Report 22-07 at 9).
[12] Attachment A (Brentwood IA Report 22-07 at 32).
[13] Attachment A (Brentwood IA Report 22-07 at 32-33).
[14] Attachment A (Brentwood IA Report 22-07 at 33).
[15] Attachment A (Brentwood IA Report 22-07 at 34).

In the Notice of Intent to Terminate, dated August 15, 2022, from Chief Thomas Hansen to Respondent, Chief Hansen stated that Respondent's use of force warranted termination because it was "an egregious use of excessive force."[16] Chief Hansen further stated the Contra Costa County District Attorney was evaluating criminal charges but the filing of criminal charges would not impact the imposition of discipline as the District Attorney uses a different standard of proof.[17] On September 15, 2022, the District Attorney declined to file charges because of insufficient evidence. Following a *Skelly* hearing, Chief Hansen served Respondent with a Notice of Termination, dated August 31, 2022.[18] As stated in the Notice of Termination, Chief Hansen considered – and rejected – Respondent's and Respondent's counsel's arguments that the use of force was justified because of the threat of Victim 1 spitting or fighting. Chief Hansen stated, "Nothing can justify the violent force that you used under the circumstances. You were not faced with imminent danger and the need to make a split-second decision. You employed what can be fairly described as **bully tactics**."[19]

On September 2, 2022, Matejcek appealed the termination pursuant to Brentwood Police Department Policy Manual, Policy 1028.[20] On December 12, 2023, Paul D. Roose, the hearing officer, issued a Hearing Officer Recommendation Pursuant to Department Policy Manual ("Hearing Officer's Recommendation").[21] At the hearing, the hearing officer heard testimony, including testimony from a subject matter expert offered by Matejcek, and a Brentwood Police Department sergeant who led the department's defensive tactics program and provided training to department officers. The hearing officer found that the preponderance of the evidence substantiated that Respondent "engaged in an unauthorized use of force in violation of department policy" and the "decision to kick/push the handcuffed civilian was not reasonable."[22] The hearing officer reasoned that:

- Respondent and his fellow officers were not in "imminent danger;"
- If Victim 1 spat at the officers, they could have stepped aside;

[16] Attachment E (Memorandum from Police Chief Thomas Hansen to Officer Paul Matejcek, Notice of Intent to Terminate (8/15/2022) at 6).
[17] Attachment E (Memorandum from Police Chief Thomas Hansen to Officer Paul Matejcek, Notice of Intent to Terminate (8/15/2022) at 5).
[18] Attachment F (Memorandum from Police Chief Thomas Hansen to Officer Paul Metejcek, Notice of Termination (8/31/2022)).
[19] Attachment E (Memorandum from Police Chief Thomas Hansen to Officer Paul Matejcek, Notice of Intent to Terminate (8/15/2022) at 6) (emphasis supplied)).
[20] Attachment G (Letter from Julia D. Fox, Rains Lucia Stern St. Phalle & Silver, to Tim Ogden, Brentwood City Manager, Appeal of Notice of Termination (9/2/2022)).
[21] Under Brentwood Police Department Policy No. 1028, the recommendation of the hearing officer is advisory to the City Manager, unless the City Manager is the individual who initially imposed the discipline being appealed, in which case the recommendation is advisory to the City Council. The recommendation is not binding in any way on the City Manager (or City Council), who may either accept, modify, or reject the recommended decision.
[22] Attachment C (Hearing Officer Recommendation (12/12/2023) at 16).

- Respondent's reasoning was "after the fact justification" and any danger to potential civilians in the area was "speculative;"
- Kicking a handcuffed person was not a trained tactic;
- Respondent's reasoning that Victim 1 would spit at him is undermined by his own actions;
- Respondent's actions were not a "'split-second' decision."[23]

Although the hearing officer found that Respondent's use of force was not reasonable, the hearing officer also found that the department abused its discretion when it chose to terminate Respondent. The hearing officer therefore recommended a one week suspension on the grounds that suspension was a "progressive discipline" and a suspension would serve as a "clear signal to [Respondent] that his was a serious infraction."[24] The hearing officer reasoned:

> Retraining is not the appropriate remedy in this situation. No evidence emerged that [Respondent] was inadequately trained. He knew what to do. His lapse was in decision-making, apparently allowing his emotions to overcome his better judgment.[25]

Following receipt of the Hearing Officer's Recommendation, on January 23, 2024, Tim Ogden, Brentwood City Manager, rejected the hearing officer's recommendation and upheld the department's decision to terminate Respondent. In rendering this decision, Mr. Ogden stated that he relied on Chief Hansen's testimony during the hearing, including Chief Hansen's statements that:

- "'police officers are held at a high standard;'"
- "'[u]se of force like this breaks down trust in the community;'"
- Respondent did not acknowledge wrongdoing;
- He lacked faith that Respondent would use appropriate level of force in other situations in the future.[26]

III. Findings of Fact and Analysis

A. Background

On April 23, 2022, Brentwood Police Department received a call at approximately 5:30 a.m., that a person was screaming near the garden sheds at a local Home Depot. Officers Josh Flynn, Dave Franson, and Respondent responded to the call. There, the officers found Victim 1, a homeless person, inside one of the sheds.

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[23] Attachment C (Hearing Officer Recommendation (12/12/2023) at 16).
[24] Attachment C Hearing Officer Recommendation (12/12/2023) at 19).
[25] Attachment C (Hearing Officer Recommendation (12/12/2023) at 19).
[26] Attachment D (Letter from Tim Ogden, Brentwood City Manager, to James E. "Jeb" Brown and Julia D. Fox, City Manager's Decision Rejecting Hearing Officer's Recommendation (1/23/2024) at 2).

Respondent placed Victim 1 in handcuffs and placed her in a seated position in front of the open door to the shed. While seated, Victim 1 engaged in discussions with Respondent. Victim 1 alternated between being verbally abusive, yelling at the officers at several points using foul language, and routine conversation. Victim 1 appeared to the officers to be drunk and, based upon her erratic behavior and statements about being shot with a laser, the officers later stated that they believed that she had possibly used illegal drugs.[27]

BWC captured most of what transpired next. Officer Flynn turned off his BWC after no one other than Victim 1 was found in the sheds because, he said, he did not think anyone else was in the sheds and Victim 1 seemed to have calmed down.[28] Respondent activated his BWC; however, he turned it off after approximately two minutes into the incident. Respondent stated during his Internal Affairs interview that the situation was "static" because Victim 1 was in handcuffs, she was seated on the ground, and the officers had triangulated her.[29] Officer Franson activated his BWC; however, he turned off the audio approximately one minute prior to Respondent's use of force at issue in this investigation. Officer Franson stated he did not remember why he turned off the audio but assumed it was because the officers were going to discuss their plan for how to deal with Victim 1.[30]

Approximately seven and one-half minutes after being seated, Victim 1 started to stand up. As she was standing, the officers stated during their internal affairs interviews that they told Victim 1 to stay seated and not to stand up.[31] At the time that Victim 1 was seated, Respondent and Flynn stood approximately four or five feet from Victim 1, according to Respondent. Respondent and Flynn faced Victim 1, while Franson stood to her side. Respondent had initially positioned Victim 1 on the ground with her legs crossed. She remained handcuffed at the time she started to stand up.

Respondent stated that Victim 1 started increasing the volume of her voice and her abusive language. Respondent stated that he intended simply to knock her off balance, and that he did not intend to harm her. Respondent stated, "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."[32] Respondent stated that Victim 1 had previously spat in

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[27] *E.g.*, Attachment H (Respondent IA Interview Transcript at 41).
[28] Attachment A (Brentwood Police Department IA Report 22-07 at 5, 7); Attachment I (Flynn IA Interview Transcript at 5-6).
[29] Attachment A (Brentwood Police Department IA Report 22-07 at 18); Attachment H (Respondent IA Interview Transcript at 35).
[30] Attachment A (Brentwood Police Department IA Report 22-07 at 5, 11); Attachment J (Franson IA Interview Transcript at 16-17).
[31] Attachment J (Franson IA Interview Transcript at 18); Attachment H (Respondent IA Interview Transcript at 49).
[32] Attachment H (Respondent IA Interview Transcript at 53).

officers' faces and had been able to slide her wrists under her feet while handcuffed to get her handcuffed hands in front of her.[33]

Officer Franson's BWC footage showed that Respondent took three quick steps toward Victim 1 at 5:40:44 AM and kicked Victim 1 with his right foot in her left midsection or upper thigh.[34] Victim 1 fell back toward the open door of the shed, hitting the open door and falling to the ground. Neither Flynn nor Franson made any physical movements when Victim 1 began to get to her feet to indicate that Victim 1 was a flight risk or otherwise posed a threat of physical harm to any of the three officers. Victim 1 was not injured in the encounter.

After the incident, Flynn and Franson said that they discussed Respondent's use of force against Victim 1 while walking behind Respondent and Victim 1 to the patrol vehicle. Both stated they expressed surprise to each other that Respondent used force because they said there was no threat or safety issue requiring the use of force or that level of force.[35] Once at the patrol vehicle, Flynn stated that the three officers discussed summoning an ambulance for Victim 1 due to the use of force. She was quiet after the kick and stated at some point that she had been assaulted.[36] An ambulance arrived and, according to Franson, left after a brief examination of Victim 1 because the EMTs determined she did not require medical treatment.[37]

Respondent arrested Victim 1 for violation of California Penal Code Section 647(f)(public intoxication). While a Community Services Officer was preparing to transport Victim 1 to the county jail, Respondent stated that she told him she had AIDS or HIV and spat at him. Accordingly, Victim 1 was also charged with violation of California Penal Code Section 243(b)(battery on a peace officer).[38]

The table below sets forth a summary timeline of key events discussed in this Investigative Summary and Findings that are relevant to serious misconduct allegations of Physical Abuse.

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[33] Attachment A (Brentwood Police Department IA Report 22-07 at 21-22); Attachment H (Respondent IA Interview Transcript at 51).
[34] Attachment K (Franson BWC at 5:40:44 AM).
[35] Attachment A (Brentwood Police Department IA Report 22-07 at 8 (Flynn); Attachment A (Brentwood Police Department IA Report 22-07 at 11 (Franson)); Attachment J (Franson IA Interview Transcript at 20 ("Absolutely, I'm still surprised."); Attachment I (Flynn IA Interview Transcript at 22 ("I was very surprised. I think the video reflects that also.").
[36] Attachment A (Brentwood Police Department IA Report 22-07 at 8); Attachment J (Franson IA Interview Transcript at 27).
[37] Attachment A (Brentwood Police Department IA Report 22-07 at 12); Attachment J (Franson IA Interview Transcript at 27).
[38] Attachment H (Respondent IA Interview Transcript at 67).

Time of Day	Summary	Source
5:32:05 AM	Respondent: "Police department. Step outside." Respondent knocks on garden shed.	Respondent BWC[39]
5:32:25 AM - 5:33:29 AM	Victim 1 exits shed. Respondent: "Come out." Officer: "Hey, let me see your hands." Respondent: "Sit down, sit down, sit down. [Victim 1], sit down." Respondent holds Victim 1. Victim 1: "What are you doing, man?" Respondent: "Sit down, sit down, sit down." Victim 1: "Ow, what are you doing?" Respondent: "Put your hands behind your back." Victim 1: "Why?" Respondent: "Because I said so." Respondent places her left arm behind her back. Franson to an officer: "Watch your back, is there anybody else in there?" Victim 1: "I just got shot in my nose." Respondent places handcuffs on Victim 1 behind her back. (5:33:13 AM). He does not conduct a pat down search. Respondent: "Can I get some light over here, please?"	Franson BWC;[40] Respondent BWC

[39] Attachment L (Respondent BWC).
[40] Attachment K (Franson BWC).

Time of Day	Summary	Source
	Another officer walks over with flashlight. Respondent leans over Victim 1, who is holding items in her right hand. Respondent: "Drop your stuff, drop your stuff." Victim 1: "Somebody just fucking shot me in my nose." . . . "Thank God you guys heard me scream." Respondent: "Why didn't you step outside when we told you to?" Victim 1: "Because I didn't know who it was." Respondent: "We said police department." Victim 1: "Someone shot me in my nose. Someone shot me in my nose. Fucking shot me in my nose. Look. On the corner of it." Respondent: "Shot you in your nose? With what?" Respondent: "Shot you in your nose?" Victim 1: "Yeah." Respondent: "With what?" Victim 1: "I have no clue, looked like a laser." Respondent: "Who was it?" Victim 1: "It was that, that guy with the uh. The fucking, the one with the fucking the hawk nose, or whatever." Respondent: "The hawk nose?” Victim 1: "Yeah." Respondent: "I don't know what you're talking about."	

Time of Day	Summary	Source
	Victim 1: "He fucking, he called me up or whatever and he's like, he's like, hey, he's like, he's like, yeah, it's fine. He's like stop by Tough Shed or whatever." Respondent: "What'd he look like?" Victim 1: "Fucking, like a, like a big ass fucking nose." Respondent: "Yeah, but like, was he black, white, Hispanic?" Victim 1: "He was Mexican." Respondent: "He was Mexican?" Victim 1: "Yeah."	
5:32:23 AM – 5:32:34 AM	Respondent handcuffs Victim 1.	Respondent BWC
5:33:59 AM	Respondent turns off his BWC.	Respondent BWC
5:34:45 AM - 5:38:24 AM	Victim 1 explains how a man shot her in the nose, made it looked like she slipped and fell, and locked her in the garden shed.	Franson BWC
5:38:24 AM - 5:40:43 AM	Victim 1 is in a seated position and is handcuffed with her hands behind her back. Respondent and Flynn stand in front of Victim 1 approximately 4-6 feet away from her. Franson stands to her left approximately 4-6 feet away. Respondent: "[Victim 1], why is it so dirty over here? What is all this stuff?" Victim 1 starts screaming. Victim 1 states she did not want the officers to continue following her, tells the officers she can drink as much beer as she wants, and curses at the officers. Respondent: "Are you thinking of harming yourself?" Victim 1: "No." Respondent: "Are you thinking of harming anybody else?"	Franson BWC

Time of Day	Summary	Source
	Victim 1: "No." Respondent: "Oh, that was a softball question. And you did not hit that one." Victim 1: "Uh, I don't play softball." Officer: "I don't, either." Victim 1 continues to talk about drinking beer.	
5:39:43 AM	Officer makes inaudible statement. Franson turns BWC audio off.	Franson BWC
5:40:43 AM	Victim 1 starts to stand from cross-legged seated position.	Franson BWC
5:40:44 AM	Respondent takes 3 quick steps toward Victim 1. Flynn does not move.	Franson BWC
5:40:45 AM	Respondent kicks Victim 1 in torso. Flynn and Franson stand motionless while Respondent kicks Victim 1.	Franson BWC
5:40:46 AM	Victim 1 falls into back side of the open door to shed and to the ground. Respondent approaches Victim 1 after she falls and lifts her up.	Franson BWC
5:40:49 AM	Flynn starts walking toward Respondent and Victim 1.	Franson BWC
5:40:49 AM	Respondent grabs Victim 1 by upper arms from her back.	Franson BWC
5:40:53 AM - 5:41:07 AM	Respondent helps Victim 1 stand up. Respondent does not need another officer's assistance. Flynn approaches and stands on the side next to Respondent and Victim 1. Franson approaches and stands in front of Respondent and Victim 1. Respondent walks Victim 1 to patrol car. Flynn and Franson follow Respondent and Victim 1 from approximately 20 feet away.	Franson BWC
5:41:13 AM - 5:45:36 AM	Respondent places Victim 1 next to hood of patrol car and places Victim 1 in a position of advantage to conduct a pat down search of Victim 1. A second officer reaches down and takes an item from Victim 1's lower leg area. Respondent pulls items from Victim 1's pockets and places them on patrol car hood. Respondent double locks Victim 1's handcuffs. Respondent places Victim 1 into patrol car.	Franson BWC

The table below shows significant events and the time elapsed between them.

Event (Start)	Event (End)	Time of Day of Event	Amount of Time Elapsed (Minutes:Seconds)
Respondent makes initial contact with Victim 1 by announcing police presence.	Respondent handcuffs Victim 1.	5:32:05 AM - 5:33:13 AM	1:08
Respondent makes initial contact with Victim 1 by announcing police presence.	Respondent turns off BWC	5:32:05 AM – 5:33:59 AM	1:54
Victim 1 is handcuffed in a seated position.	Victim 1 starts to stand.	5:33:13 AM - 5:40:43 AM	7:30
Franson turns off BWC audio.	Respondent kicks Victim 1.	5:39:43 AM – 5:40:44 AM	1:01
Respondent kicks Victim 1.	Flynn makes motion to assist Respondent by walking toward Respondent.	5:40:44 AM - 5:40:49 AM	0:05

B. Physical Abuse Analysis

California Penal Code 13510.8(b)(3) and POST Regulation 1205(a)(3) each state that the definition of "serious misconduct" shall include:

> (3) Physical abuse, including, but not limited to, the excessive or unreasonable use of force.

The clear and convincing evidence substantiated that Respondent kicked Victim 1 on April 23, 2022, while she was handcuffed. The clear and convincing evidence further substantiated that Respondent's use of force was unreasonable and excessive in violation of California Penal Code Section 13510.8(b)(3) and POST Regulation 1205(a)(3).

1. The Use of Force Was Unreasonable and Excessive.

The clear and convincing evidence substantiated that Respondent's use of force was excessive and unreasonable, either or both. The evidence showed that just prior to and at the time that Respondent kicked Victim 1, she did not pose a threat to Respondent, the other officers, or anyone else, was not resisting, and was not attempting to escape. In reaching this conclusion, I reviewed Respondent's statements during his internal affairs interview to understand his perspective. I also reviewed the statements of Flynn and Franson to understand their perspective. As officers also at

the scene and faced with the same circumstances as Respondent, Flynn's and Franson's actions – or lack thereof – are as equally significant to understand the level of resistance and threat, Victim 1 posed under the totality of the circumstances the officers faced. Neither Flynn nor Franson stated the force used by Respondent was reasonable. In fact, immediately after Respondent kicked Victim 1, both Flynn and Franson stated that they were surprised by the level of force used given the lack of resistance.

While Respondent stated during his internal affairs interview that Victim 1 was resisting,[41] the clear and convincing evidence substantiated that Victim 1 did not objectively pose a threat and was not resisting. When Victim 1 attempted to rise from a seated position, Respondent was not faced with a split-second decision about how to respond to a threat. This is apparent from the initial contact the officers had with Victim 1, as Victim 1 consistently did not display indicators of resistance, threat, or escape.

For example, the handcuffing process was relatively straightforward. Respondent's BWC showed that, from the time she exited the shed to the time Respondent handcuffed her, Respondent had effective control over Victim 1 and that she did not resist the handcuffing process.[42] Officers ordered Victim 1 to sit down several times and when ordered to put her hands behind her back, although she questioned why,[43] she did not resist Respondent's physical efforts to enforce commands to sit down or place her hands behind her back.[44]

The fact that Respondent was the only officer who was physically in contact with Victim 1 also illustrated her lack of resistance at this early stage of the contact and the officers' belief that Victim 1 was not a safety threat. After Victim 1 sat down, Flynn immediately started to explore the area and left his cover position from which he stood ready to assist Respondent if he required assistance in controlling Victim 1.[45] Although Franson provided light to Respondent and continued to stand ready to assist Respondent while Flynn entered the shed, he did not have physical contact with Victim 1.

After she was seated, Respondent noticed that Victim 1 had items in her hand. Respondent ordered Victim 1 to drop what she was holding.[46] Respondent shook her hands and she immediately dropped the items in her hand without any attempt to

[41] Attachment H (Respondent IA Interview Transcript at 67).
[42] Attachment L (Respondent BWC at 5:32:23 AM – 5:32:32 AM); Attachment K (Franson BWC at 5:32:23 AM – 5:32:32 AM).
[43] I cannot reasonably find that Victim 1's questions and that officers had to order her several times to sit down constituted even passive resistance. At best, Victim 1 appeared bewildered, although lucid.
[44] Attachment L (Respondent BWC at 5:32:23 AM - 5:32:34 AM); Attachment K (Franson BWC at 5:32:23 AM - 5:32:34 AM).
[45] Attachment L (Respondent BWC at 5:32:37 AM); Attachment K (Franson BWC at 5:32:37 AM).
[46] Attachment L (Respondent BWC at 5:32:48AM); Attachment K (Franson BWC at 5:32:48 AM).

squeeze her hand to continue holding the items.[47] Respondent used her name because he recognized who she was.[48] Flynn returned to the area where Victim 1 was being detained.

As mentioned above, the handcuffing process was relatively straightforward. The BWC showed that Respondent had control of her hands[49] and that Victim 1 did not resist at this time. When Respondent applied the handcuffs to Victim 1's wrists, he applied light pressure at first, then adjusted them to a tighter position.[50] During this process, the noise of the ratchet of the handcuffs illustrated that Respondent did not apply the handcuffs in an aggressive manner.[51] Also during this process, the audio of the BWC showed that Respondent and Victim 1 engaged in a conversation free from emotion or stress. Further, Respondent's BWC did not show that Respondent double-locked the handcuffs or conduct a pat search of Victim 1.[52] Respondent did not ask Victim 1 if she had any weapons and he did not state later at his internal affairs interview that he was concerned that she had weapons. All of these factors demonstrate that Victim 1 did not resist at this stage of the encounter and that Respondent and the other officers, did not believe at the time that she posed a threat to him or the other officers.

After being handcuffed, Victim 1 was seated for approximately eight minutes without any attempt to resist before she attempted to rise to a standing position. During this time period, Respondent, the other officers, and Victim 1 engaged in conversation. The conversation – and Respondent's knowledge of Victim 1's past history of drug and alcohol abuse – provided Respondent with enough basis to reasonably form an opinion that Victim 1 was experiencing a mental health episode. The officers themselves demonstrated a belief that Victim 1 was having mental health problems when one of them asked if Victim 1 had intentions to harm herself or others.

After Respondent started asking Victim 1 about her property and drinking alcohol, Victim 1's demeanor changed. She became aggressive and started yelling at the officers and cursing.[53] Respondent escalated the tone of the conversation, responding to her delay in answering his question whether she intended to harm others by stating, "Oh, that was a softball question. And you did not hit that one."[54] The evidence reasonably showed that what had previously been a light conversation turned at this point toward a near-mocking of Victim 1 and sarcastic exchanges between Victim 1 and Respondent.[55] Franson turned the audio on his BWC off nearly

[47] Attachment L (Respondent BWC at 5:32:48 AM).
[48] Attachment K (Franson BWC at 5:32:51 AM).
[49] Attachment L (Respondent BWC at 5:32:54 AM).
[50] Attachment L (Respondent BWC at 5:32:02 AM – 5:32:11 AM).
[51] Attachment L (Respondent BWC at 5:32:03 AM – 5:32:11 AM).
[52] Respondent confirmed that he did not pat-search Victim 1 during his internal affairs interview. Attachment H (Respondent IA Interview Transcript at 32).
[53] Attachment K (Franson BWC at 5:32:24 AM – 5:40:43 AM).
[54] Attachment K (Franson BWC at 5:39:01 AM).
[55] Attachment L (Respondent BWC at 5:39:17 AM).

immediately after these exchanges at 5:39:43 AM. Silent video footage showed what continued to be dialog between the officers and Victim 1 for the next minute or so. Victim 1 then attempted to stand from a cross-legged seated position while handcuffed behind her back. In response, the BWC showed that Respondent immediately rushed at Victim 1, taking his first step toward her from several yards away from her even before she had risen to a full standing position.

[56] The BWC also showed the force with which Respondent kicked Victim 1 nearly picked her up completely off the ground and backwards into the garden shed door, where she fell to the ground.[57]

The clear and convincing evidence substantiated that Respondent's actions directed at Victim 1's attempt to stand are unreasonable and excessive. Given the evidence, Victim 1 did not reasonably pose a threat to the officers or others and was not resisting or attempting to escape.[58] Respondent took three quick strides toward Victim 1 and kicked her with such force that he knocked her backward into the open door of the shed and to the ground. During this time, neither Flynn nor Franson even flinched when they saw her attempt to stand. I conclude that meant she did not appear to Flynn or Franson to be resisting, threatening anyone, or attempting to escape. Both Flynn and Franson stated they were surprised by Respondent's use of force under the circumstances.[59] As Flynn stated, "I didn't see [Victim 1] getting up as a major issue."[60] BWC showed that Flynn remained motionless until after Respondent picked up Victim 1. Neither Flynn nor Franson had time to intervene to prevent the use of force. After Respondent's kick to Victim 1, neither Flynn nor Franson reacted in a manner that showed exigency to the situation that Respondent said existed. Both walked calmly over to assist Respondent recover Victim 1 from the ground.

Respondent stated during his internal affairs interview that he believed a kick was an appropriate use of force for someone who was actively resisting,[61] that she was actively resisting when she attempted to stand,[62] that he knew who Victim 1 was, and that he knew how "physically combative she becomes, [t]hat she actively resists,"[63] that

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[56] Attachment K (Franson BWC at 5:40:44 AM).
[57] Attachment K (Franson BWC at 5:40:46 AM).
[58] There was no evidence that Victim 1 had attempted to slip her hands from behind her to in front of her, as Respondent stated she had previously done or attempted to do with him. In fact, Respondent stated that because Victim 1 was seated, she could not attempt to slip her hands to her front. Attachment H (Respondent IA Interview Transcript at 52).
[59] Attachment A (Brentwood Police Department IA Report 22-07 at 11 (6/29/2022)(quoting Franson: "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."); Attachment I (Flynn IA Interview Transcript at 22 ("I was very surprised. I think the video reflects that also.").
[60] Attachment I (Flynn IA Interview Transcript at 22).
[61] Attachment H (Respondent IA Interview Transcript at 13).
[62] Attachment H (Respondent IA Interview Transcript at 67).
[63] Attachment H (Respondent IA Interview Transcript at 31).

she spit, kicked, and bit officers.[64] Respondent stated during his appeal hearing that he kicked Victim 1 because he knew she spit at officers in the past and he "used [his] foot to keep [himself] as far away from her as [he] could, instead of getting my hands close to her and pushing her back down to the ground."[65] I did not find Respondent's statements to be credible about the risk level Victim 1 posed. These statements are *post hoc* rationalizations to justify his actions and stand in contrast to Franson's and Flynn's statements about their perspectives at the time of the incident. Kicking Victim 1 brought Respondent closer to her and there was no indication in the previous eight to ten minutes of his contact with Victim 1 that she acted in any manner that would indicate she was going to spit at him.

Franson stated his perspective on the lack of risk Victim 1 posed:

> 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 [footnote 2 omitted], 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, would be appropriate under those circumstances, from what I recall at the time of that incident.[66]

Likewise, Flynn stated during his internal affairs interview that Victim 1 did not pose a threat of violence: "No, just the same, 'you guys are pigs. You guys are this, you guys are that.'"[67] Flynn also stated that Victim 1 was not a flight risk: "No. I thought the worst we'd have to do is maybe take a couple running steps to catch her if she tried to run since she was in handcuffs."[68]

Respondent could have engaged in less intrusive and reasonable alternatives to kicking Victim 1. As Flynn and Franson said during their IA interviews, these options included additional "verbal commands, maintaining distance to further observe [Victim 1] and her intentions, using a control hold or grabbing her arm, and either pulling

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[64] Attachment H (Respondent IA Interview Transcript at 69).
[65] Attachment C (Hearing Officer's Recommendation at 7 (12/12/2023)). *Compare* Attachment H (Respondent IA Interview Transcript at 70) ("Yeah. So that would mean I would have to bring my face closer to hers. Right? And I know that she spits, which she eventually did, and that's why I didn't want to use my hands and just simply grab her and take her to the car.").
[66] Attachment A (Brentwood Police Department IA Report 22-07 at 9-10 (6/29/2022)). Respondent's statement about Victim 1's size is similarly incredible. He stated her weight was "'closer to 170, 180.'" Attachment A (Brentwood Police Department IA Report 22-07 at 16 (6/29/2022)). In fact, Respondent had not pat-searched Victim 1. Attachment H (Respondent IA Interview Transcript at 32).
[67] Attachment I (Flynn IA Interview Transcript at 20).
[68] Attachment I (Flynn IA Interview Transcript at 21).

[Victim 1] back down into a seated position, or escorting her to one of the nearby patrol vehicles."[69]

In addition to being unreasonable, as described above, the clear and convincing evidence substantiated that Respondent's use of force was excessive. Respondent stated during his internal affairs interview his thoughts about the level of force he used:

> So what I saw here was 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.[70]

The internal affairs investigator explored the level of force in the following colloquy during Respondent's interview:

> Paul Matejcek:
>
> Yes. And I didn't use... I used only 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.
>
> Todd Simonson:
>
> No, explain that to me.
>
> Paul Matejcek:
>
> 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.
>
> Todd Simonson:
>
> You would've used the same amount of force to knock her off balance to get her on her butt in a position you could handle her without her spitting on you?
>
> Paul Matejcek:
>
> No, with my foot. So I would've used the same amount of force to push her with my foot as I would have with my hands to push her into that door so that way she would be off balance.

[69] Attachment A (Brentwood Police Department IA Report 22-07 at 35).
[70] Attachment H (Respondent IA Interview Transcript at 52).

Todd Simonson:

Okay. So, you think if you used your hands, you would've shoved her-

Paul Matejcek:

The same amount of force.

Todd Simonson:

Okay.

Paul Matejcek:

The same amount of pressure.

Todd Simonson:

So I guess I'm just kind of asking in a roundabout way because it happens, kind of the, I don't know my own strength kind of thing. Did you intend to use the amount of force behind that kick as you did?

Paul Matejcek:

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.[71]

Respondent's statements about the level of force he used are not credible, especially in light of the BWC footage that showed the impact to Victim 1. The BWC showed Victim 1 slamming into the shed door and to the ground in a violent fashion. Fortunately, Victim 1 was not injured.

Respondent's level of force was not proportional to even the threat Respondent stated Victim 1 posed. She was not – as he feared – spitting, kicking, and biting. At most, Victim 1 was vocal in stating her views and attempting to stand. The officers also all stated their belief Victim 1 was under the influence of drugs and/or alcohol and given that her hands were cuffed behind her back, a kick was not "proportional to the seriousness of the offense or the reasonably perceived level of actual or threatened resistance," as Brentwood Police Department Use of Force policy states.

In sum, the clear and convincing evidence substantiated that Respondent's use of force was not reasonable and was excessive.

[71] Attachment H (Respondent IA Interview Transcript at 53-54).

2. Prior Conduct and Likelihood of Recurrence Warrant Regulatory Action

POST Regulation 1213 provides that the Commission shall consider a variety of factors in "considering whether to take action against a peace officer's certification, and in considering whether a revocation or suspension is appropriate." Because of the finding that clear and convincing evidence substantiated unreasonable force occurred, I obtained evidence in this case that relates to two factors set forth in POST Regulation 1213 for consideration by the Commission:

- "prior conduct, discipline and service record"[72]
- "the likelihood of recurrence"

In 2020, Respondent was the subject of an internal affairs investigation that involved similar circumstances to this case.[73] Specifically, as was the case here, the allegations against Respondent in that case included his use of unreasonable force against a restrained, spitting, and belligerent female subject who appeared to be experiencing a mental health crisis and refused to remain seated.[74] The investigator referred his factual gatherings to the police chief, who found that a preponderance of the evidence did not sustain that Respondent's conduct constituted a policy violation for unreasonable or unwarranted force on a person under arrest.[75]

Although the 2020 IA investigation resulted in a finding of not sustained, analysis of the POST Regulation 1213 factors above is warranted for consideration whether a revocation or suspension is warranted as evidence of prior misconduct by the Respondent that further shows the likelihood that this type of misconduct will reoccur in the future.

The 2020 IA stemmed from Respondent's actions during a service call involving a pregnant woman experiencing a mental health episode. On May 7, 2020, a bystander observing Respondent's actions related to a call for service involving a pregnant woman [referred to herein as Victim 2] who threatened to drive her vehicle off a bridge. The bystander alleged that Respondent lost "control of his emotions,

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[72] Respondent received a letter of recognition on September 9, 2019. Respondent and two other officers responded to a service call involving the detention of an individual on probation who was known to be associated with promoting side shows and a previous incident involving a gunshot wound. Respondent and the officers conducted a probation search and located stolen vehicles and evidence of an active chop shop. Attachment M (Memorandum from Sergeant Eric Huesman to Officer Michael Gibson and Respondent, Letter of Recognition for BPD Cases #1904282 & 1904283 (9/9/2019).).

[73] Chief Hansen was the police chief at the time of the 2020 IA investigation, as well as for the IA investigation in this serious misconduct case.

[74] Attachment N (Memorandum from Chief Thomas Hansen to Officer Paul Matejcek, Administrative Investigation IA # 20-03 (6/29/2020)).

[75] According to Brentwood Police Department Policy Manual Section 1019.6.4, the term "not sustained" means "When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member."

resulting in his inability to keep the situation from escalating."[76] The bystander alleged that Respondent "lost control" after Victim 2 became "belligerent, us[ed] profanity, [was] out of control, and was not listening to the officer" and spit on Respondent, Respondent "over-reacted when he threw his forearm into [Victim 2's] chest area in order to put her body position back to the stretcher."[77]

Respondent and another officer arrived at the scene and found Victim 2 seated in the rear hatch of her vehicle. Victim 2 admitted to feelings of wanting to kill herself and had signs and symptoms of being under the influence of an intoxicant.

Victim 2 was belligerent, uncooperative, and yelled at the officers.[78] Victim 2 met the criteria for a mental health evaluation hold. Victim 2 attempted to run away from the officers in what Respondent believed was an attempt to avoid the mental health hold. Respondent restrained Victim 2. Victim 2 resisted. Respondent grabbed her and applied a rear twist lock and escorted her to an ambulance gurney.[79]

Victim 2 then attempted to punch Respondent, at which time Respondent used his body to pull her to the ground and used his right leg to knock her off balance. She landed on the cement roadway. Respondent handcuffed Victim 2 and attempted to seat her on the gurney. Victim 2 continued to refuse to sit down.

Ultimately, after she was handcuffed, the officers and medics were able to force her to sit on an ambulance gurney. There, she spat at Respondent, who then used his right elbow to hold her head down, placed his arm on the left side of her face and turned her head away from him.[80] Respondent admitted stating something to the effect that "you don't fucking spit at the cops" to emphasize he was being serious when Victim 2 was not cooperating.[81] Like in the present case, Respondent did not activate his BWC during the incident.

Although the policy finding was different in IA 20-03, the underlying circumstances are similar to those in this case. Specifically, both incidents involved females who engaged in actions that Respondent perceived as defiant and both females were displaying signs of impaired judgment at the time of their arrest. In the 2020 arrest, the Victim 2 was suffering a mental health crisis that resulted in her being placed on a mental health hold. In this serious misconduct incident, Victim 1 was intoxicated and possibly suffering from a mental health episode at the time of her

[76] Attachment O (Brentwood Police Department IA Report 20-03 at 1).
[77] Attachment O (Brentwood Police Department IA Report 20-03 at 1-2).
[78] Attachment O (Brentwood Police Department IA Report 20-03 at 3).
[79] Attachment O (Brentwood Police Department IA Report 20-03 at 6).
[80] Attachment O (Brentwood Police Department IA Report 20-03 at 6).
[81] The 2020 IA also included an allegation that Respondent violated Brentwood Police Department Policy that prohibited use of "obscene, indecent, profane, or derogatory language while on duty or in uniform." The chief found that Respondent was "exonerated" of this allegation. Brentwood Police Department Policy defines "exonerated" to mean "When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper."

arrest, as demonstrated by her unbelievable claims about how she sustained the injuries to her face when officers initially contacted her and the screaming that prompted Home Depot employees to call the police. As the hearing officer in this serious misconduct case stated, Respondent's "lapse was in decision-making, apparently allowing his emotions to overcome his better judgment."[82] Likewise, I find that the 2020 fact pattern to be similar enough (even with a different outcome) to warrant comment here.[83] The complainant in that case reported that Respondent "lost control of his emotions," which resulted "in his inability to keep the situation from escalating."[84] In both the 2020 incident and in the instant investigation, the Respondent:

- Escalated situations involving individuals experiencing mental health and substance abuse episodes
- Resorted to use of force against restrained, belligerent individuals who attempted to defy Respondent.

Subsequent to the 2020 incident and prior to the 2022 incident, Respondent received additional training. Respondent undertook two training classes related to the use of force and one class related to arrest and control.[85]

C. Reasonable Grounds Exist for Regulatory Action

Reasonable grounds exist for revocation of Respondent's peace officer certificates, including:

- Respondent failed to accept responsibility for his actions, as demonstrated in his IA interview statements that described illogical reasons for his use of force that, for example, he "pushed" Victim 1 with his foot and that Victim 1 was resisting;[86]
- Respondent's actions amounted to "bully tactics" by resorting to use of force as intimidation instead of opting for lesser alternatives; and
- Respondent's previous behavior in escalating situations with a restrained subject that resulted in Respondent's use of force put him on notice that his use of force would result in scrutiny of his emotional responses, especially in situations involving restrained individuals.

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[82] Attachment C (Hearing Officer's Recommendation at 19).
[83] I also considered the 2020 incident in the context of the professional lifespan of Respondent's position as a peace officer certificate holder, including education, training, potential risk to public safety, and rehabilitation efforts.
[84] Attachment O (Brentwood Police Department IA Report 20-03 at 1).
[85] Attachment B (EDI Profile of Respondent).
[86] Attachment H (Respondent IA Interview Transcript at 63 (describing the kick as a "push" with his foot); 67 (her resistance was standing to her feet)).

IV. Supporting Evidence and Documentation

Evidence	Attachment
Brentwood Police Department IA Report 22-07 (6/29/2022)	A
EDI Profile of Respondent	B
Hearing Officer's Recommendation (12/12/2023)	C
Letter from Tim Ogden, Brentwood City Manager, to James E. "Jeb" Brown and Julia D. Fox, City Manager's Decision Rejecting Hearing Officer's Recommendation (1/23/2024)	D
Memorandum from Police Chief Thomas Hansen to Officer Paul Matejcek, Notice of Intent to Terminate (8/15/2022)	E
Memorandum from Police Chief Thomas Hansen to Officer Paul Metejcek, Notice of Termination (8/31/2022)	F
Letter from Julia D. Fox, Rains Lucia Stern St. Phalle & Siliver, to Tim Ogden, Brentwood City Manager, Appeal of Notice of Termination (9/2/2022)	G
Respondent IA Interview Transcript	H
Flynn IA Interview Transcript	I
Franson IA Interview Transcript	J
Franson BWC	K
Respondent BWC	L
Memorandum from Sergeant Eric Huesman to Officer Michael Gibson and Respondent, Letter of Recognition for BPD Cases #1904282 & 1904283 (9/9/2019)	M
Memorandum from Chief Thomas Hansen to Officer Paul Matejcek, Administrative Investigation IA #20-03 (6/29/2020)	N
Brentwood Police Department IA Report 20-03 (6/9/2020)	O

V. Conclusion

As stated above, reasonable grounds exist to submit this case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation or suspension of Respondent's peace officer certificates pursuant to California Penal Code Section 13510.8.