

RICHARD T. EGGER, Bar No. 162581
richard.egger@bbklaw.com
JESSICA K. LOMAKIN, Bar No. 284640
jessica.lomakin@bbklaw.com
BEST BEST & KRIEGER LLP
2855 E. Guasti Road
Suite 400
Ontario, California 91761
Telephone: (909) 989-8584
Facsimile: (909) 944-1441

Attorneys for Defendants
POMONA POLICE DEPARTMENT, MICHAEL
ELLIS, in his official capacity as Chief of Police, and
CITY OF POMONA

EXEMPT FROM FILING FEES PURSUANT
TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - STANLEY MOSK COURTHOUSE

GENTE ORGANIZADA, MARIO M.
SUAREZ,

Plaintiffs,

v.

POMONA POLICE DEPARTMENT,
MICHAEL ELLIS, in his official capacity as
Chief of Police, the CITY OF POMONA,

Defendants.

Case No. 20STCV28895
Judge: Hon. Yolanda Orozco, Dept. 31

UNLIMITED JURISDICTION

**STIPULATION OF PARTIES
REQUESTING THE COURT TO
RETAIN JURISDICTION TO
ENFORCE SETTLEMENT
AGREEMENT UNDER CCP 664.6 AND
JOINT REQUEST FOR DISMISSAL
WITH PREJUDICE**

Action Filed: July 31, 2020
Trial Date: February 6, 2023

REQUEST TO RETAIN JURISDICTION TO ENFORCE SETTLEMENT

Plaintiffs GENTE ORGANIZADA and MARIO M. SUAREZ (“Plaintiffs”), and Defendants POMONA POLICE DEPARTMENT, MICHAEL ELLIS, in his official capacity as Chief of Police, and CITY OF POMONA (“City Defendants”) (collectively, the “Parties”), by and through their respective counsel, hereby acknowledge and agree as follows:

1. The Parties have reached a settlement of the above-entitled action and have executed a Settlement Agreement to resolve the present matter.

2. As part of the Settlement Agreement, Plaintiffs have agreed to dismiss the Complaint. The Parties have agreed, however, to request that the Court retain jurisdiction over the Parties for five years from the date of dismissal for the purpose of enforcing the Settlement Agreement.

3. Therefore, in order to permit the Court to retain jurisdiction over the Parties in order to enforce the terms of their Settlement Agreement as permitted under California Code of Civil Procedure § 664.6, the Parties hereby request that this Court retain jurisdiction for five years over the Parties to enforce the Settlement Agreement.

4. The Parties agree that the Settlement Agreement is not subject to the Court’s approval but attach it here as Exhibit 1 for the Court’s convenience. As set forth in the Settlement Agreement, no party will seek enforcement of the Settlement Agreement with the Court until and unless they have first exhausted the meet and confer obligations set forth therein,

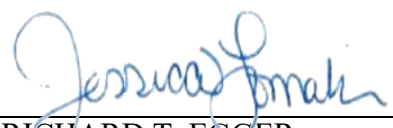
5. This Stipulation may be executed in counterparts, including multiple signature pages and signature pages executed and transmitted electronically, all electronically executed copies shall be deemed originals for all purposes, and all executed counterparts shall be deemed a single document for all purposes.

6. The undersigned represent that they have the authority to enter into this Stipulation on behalf of their respective clients.

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Dated: November 21, 2022


BEST BEST & KRIEGER LLP

By: 

RICHARD T. EGGER
JESSICA K. LOMAKIN
Attorneys for Defendants
POMONA POLICE DEPARTMENT,
MICHAEL ELLIS, in his official capacity
as Chief of Police, and CITY OF
POMONA

Dated: November 8, 2022

ACLU FOUNDATION OF SOUTHERN
CALIFORNIA

By: 

Adrienna Wong
Attorney for Plaintiffs
GENTE ORGANIZADA and MARIO M.
SUAREZ

[PROPOSED] ORDER

The Court, having considered the stipulation of the Parties, and good cause appearing therefor, orders as follows:

1. The Court retains jurisdiction over the Parties for five years from the date of dismissal, despite the dismissal of this matter, in order to enforce the terms of their Settlement Agreement as permitted under California Code of Civil Procedure § 664.6, if the requirements of that section are satisfied.

2. Except as required by the Settlement Agreement, the Parties shall bear their own costs and attorney's fees.

3. The action is dismissed as to all Parties and all causes of action with prejudice.

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

Exhibit “1”

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into by and between “the Parties”: Plaintiffs Gente Organizada and Mario M. Suarez (collectively, “Plaintiffs”), and the City of Pomona (“the City”), the Pomona Police Department (“Pomona PD”), and Pomona PD Chief Michael Ellis, in his official capacity (collectively, “Defendants”).

WHEREAS, on July 31, 2020, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief in the Superior Court of the State of California, County of Los Angeles, Case No. 20STCV28895, alleging waste and illegal expenditure of funds by Pomona PD. On October 7, 2020, the Defendants filed an answer denying the allegations, and asserting affirmative defenses. (the “Litigation”);

WHEREAS, the Parties have agreed to resolve and settle the Litigation without an admission of liability by either party;

WHEREAS, by this Agreement, the Parties intend to settle all of Plaintiffs’ claims and causes of action asserted, or which could have been asserted in the Litigation;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants, and conditions contained herein, the Parties hereby agree as follows:

1. Pomona PD Training.

- a. Pomona PD conducts training courses certified by the California Commission on Peace Officer Standards and Training (“POST”), including POST’s Perishable Skills Training Program (“PSP”). Pomona PD’s PSP V – Use of Force trainings will be based on the August 2022 sample course outline produced by POST, a copy of which is attached hereto as Exhibit A, or on any newly approved sample course outline for the Use of Force PSP V training prepared by POST which is available at least 90 days before the training occurs.
- b. Pomona PD will incorporate the following statements about AB 392 from the POST PSP Outline attached as Exhibit A into its New Hire training, Arrest & Control PSP training, and Use of Force PSP training:
 - [From p. 2] “Significant change in use of force threshold per AB 392
 - 1) Subsections (b) and (c)(1) of PC 835a provide for a clear distinction between objectively reasonable and deadly force standards
 - 2) While objectively reasonable force may be utilized “to prevent escape, or to overcome resistance” to effect a lawful arrest, as soon as the circumstances reach a threshold for deadly force the standard increases to “necessary.”
 - [From p. 3] “As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In

determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstance of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.’ [PC 835a(a)(2)]”

- [From p.5] “Peace officers must understand that the landmark cases of *Graham v. Connor*, *Tennessee v. Garner*, and *Hayes v. County of San Diego* are foundational and have historical and legal significance of the application of law. However PC 835a creates a higher standard for the application of deadly force in California.”
- c. Pomona PD will include instruction on the distinction between the standard for use of non-deadly force and the heightened standard for use of deadly force, consistent with the current POST PSP outline which is available at least 90 days before the training occurs, when use of force is discussed in Pomona PD training courses, including in its Defensive Tactics, Force Options/De-Escalation, firearms, and less-lethal force training courses.
 - d. Pomona PD will ensure that all training it requires of its officers on the standards for use of force, including any training materials created by third-party vendors used in the trainings described in paragraphs 1.a., 1.b., and 1.c. of this Agreement, are consistent with the POST Use of Force PSP sample course outline and do not contradict the statements made in Exhibit A concerning the meaning of the word “retreat” in Penal Code section 835a(d), and on the distinction between the standard for use of non-deadly force and the heightened standard for use of deadly force. Pomona PD will advise its employees that training provided by Pomona PD on the POST standards for use of force supersedes any conflicting training they may receive from other entities or individuals.
 - e. Within 30 days of the signing of this Agreement, Pomona PD will institute the inclusion of material into its scheduled trainings as described in paragraphs 1.a., 1.b., 1.c., and 1.d.
 - f. Pomona PD shall not use communications from the Peace Officers Research Association of California (“PORAC”) as formal training . For the purpose of this provision, “formal training” means communications from the Daniel Fraembs Training Center, training provided during squad briefings, training that Pomona PD makes mandatory for all sworn officers, and any discussion or exhibit used by Pomona PD in satisfaction of POST’s Minimum Standards for Training for Peace Officers set forth in 11 California Code of Regulations paragraph 1005.
2. Pomona PD Policy on Officer-Involved Shootings and Deaths.
 - a. Within thirty (30) days of the execution of this Agreement, Pomona PD will amend its policy on Officer-Involved Shootings and Deaths, Policy 304, to provide that the section on administrative investigations, Policy 304.7, includes the following statement, as set forth in Exhibit B:

“When conducting an administrative review of an officer involved shooting or other use of deadly force, the Department will consider whether officers

evaluated and used other reasonably available resources and techniques if an objectively reasonable officer would have considered it safe and feasible to do so, under the totality of the circumstances, in determining whether deadly force was necessary.”

- b. After amending Policy 304 pursuant to paragraph 2.a. above, and no later than January 1, 2023, Pomona PD will require all Pomona PD employees to review and sign an acknowledgement of the amended policy. The acknowledgment may be contained in the Department’s annual policy review requirement email communication. No later than January 1, 2023, Pomona PD will send an email from the Daniel Fraembs Training Center to all Pomona PD employees describing the requirement to review and acknowledge updated policies. That email shall include the following statement:

“SWORN MEMBERS: Please pay close attention to Policy 304 (Officer-Involved Shootings and Deaths). A provision related to use of deadly force has been added and is effective immediately. Policy 304.7 now states:

When conducting an administrative review of an officer involved shooting or other use of deadly force, the Department will consider whether officers evaluated and used other reasonably available resources and techniques if an objectively reasonable officer would have considered it safe and feasible to do so, under the totality of the circumstances, in determining whether deadly force was necessary.

Please be advised that POST certified training and Pomona Police Department policy and training on the use of deadly force supersede any conflicting information you may receive from entities other than the Department.”

3. Publication of Information About Administrative Investigations of Officer Use of Deadly Force. Within thirty (30) days of the execution of this Agreement, Defendants will institute the following practices:
 - a. Within ten (10) days of an incident involving officers described in Penal Code section 832.7(b)(1)(A)(i) and (ii), Defendants will post on the Pomona PD website that such an incident has occurred and that the Department will conduct an administrative investigation.
 - b. Within forty-five (45) days of the final completion of an administrative investigation of an incident involving officers described in Penal Code section 832.7(b)(1)(A)(i) and (ii), Defendants will post on the Pomona PD website all documents authorized for release by Penal Code section 832.7, in redacted form if authorized by Section 832.7, and consistent with any exceptions or exemptions authorized by Section 832.7. The documents posted shall include all investigative reports; materials compiled and presented for review to any person or body charged with determining whether the officer’s action was consistent with law and agency policy for purposes of discipline or administrative action, or what


discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

4. Subsequent Change in Authority. Nothing in this Agreement shall be construed to preclude or otherwise restrict Defendants from updating, amending or modifying any of its policies, procedures and/or trainings to comply with future changes in the law or POST guidance applicable to the subjects discussed in this Agreement.
5. Post Settlement Acts.
 - a. Defendants will provide Plaintiffs' counsel a copy of the email described in paragraph 2.b. of this Agreement within ten (10) days of the date the email is sent.
 - b. Within ten (10) days after amending Pomona PD Policy 304 pursuant to paragraph 2.a. of this Agreement, Defendants will post that policy on the Pomona PD website consistent with Penal Code section 13650.
 - c. Defendants will post on the Pomona PD website all training materials for the trainings described in paragraphs 1.a., 1.b., and 1.c. of this Agreement, to the extent consistent with Penal Code section 13650, within thirty (30) days from the date the materials are first used in training.
6. Each Party Responsible for Own Attorneys' Fees and Costs. The Parties each shall be responsible for the payment of their own costs, attorneys' fees, and all other expenses in connection with the Litigation., and all other matters referred to in this Agreement.
7. Authority. The individuals signing this Agreement on behalf of the City or other organizations represent that they have the authority and authorization to bind the City or entity on whose behalf they sign this Agreement.
8. Dismissal with Prejudice. Plaintiffs agree that within five (5) court days of the execution of this Agreement by all Parties, the Parties will file a Stipulation and Request for the Court to Dismiss the Litigation with Prejudice and to Retain Jurisdiction to Enforce the Settlement Between the Parties Under Code of Civil Procedure section 664.6 Plaintiffs irrevocably authorize and direct their attorneys of record to execute and deliver to the court such Request, so that the same may be filed with the Court in accordance with this Agreement.
9. Binding Agreement. This Agreement, and each and every item, covenant and condition hereof shall be binding upon and shall inure to the benefit of the respective heirs, successors, insurers, representatives, officers, directors, shareholders, and assigns of the respective Parties.

10. No Third Party Beneficiaries. The Parties acknowledge that there are no express or implied third party beneficiaries to this Agreement. No person or entity not a signatory hereto shall have any rights or causes of action against any Party hereto as a result of that Party's performance or nonperformance of any obligation hereunder.
11. Choice of Law. Each of the Parties hereto agrees that this Agreement shall be interpreted, construed, governed, and enforced under and pursuant to the internal laws of the State of California.
12. No Modifications Unless in Writing, Signed by all Parties. No modification of this Agreement shall be effective unless made in a writing signed by all Parties.
13. Retention of Jurisdiction. The Parties understand and agree that the Agreement is contingent on the Court retaining jurisdiction to enforce the terms of this Agreement pursuant to Code of Civil Procedure § 664.6 for five years from the date of entry of dismissal of the Litigation. The Parties agree, however, that before any Party seeks enforcement of the Agreement from the Court under Section 664.6, the Parties must first meet and confer in good faith to try to resolve any dispute arising under the terms of this Agreement. Within ten court days of learning facts which cause a Party to believe that another Party is not in compliance with this Agreement, the Party(ies) contemplating enforcement shall set forth in writing the basis for its/their belief that judicial enforcement is necessary and appropriate. The other Party(ies) shall have 14 calendar days to respond in writing. The Parties shall then meet and confer in person or by phone or video conference within seven calendar days of the written response. If the Parties are not able to resolve the dispute at the conference, thereafter any Party may seek enforcement under Section 664.6, and shall provide at least 30 calendar days' notice of any hearing under Section 664.6 to all other Parties. The Parties may agree in writing to extend any of the meet and confer timelines described herein. The Parties' fees, costs and all other expenses arising out of this requirement shall be governed by Paragraph 6 of this Agreement..
14. Admissibility. The Parties acknowledge that defendant City is a public entity and this Agreement, once fully executed, is a public record within the meaning of the Public Records Act and that this Agreement shall be admissible in any court, administrative or other judicial proceeding.
15. Entire Agreement. This Agreement represents the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior understandings and agreements, whether written or oral.
16. Invalidity; Severability. In case any one or more of the provisions of this Settlement Agreement shall be deemed invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.
17. Construction. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party.

18. Multiple Copies. This Agreement may be executed in any number of counterparts and multiple copies, and may be transmitted by fax or e-mail, each of which is to be considered as if it were original, but all of which together will constitute one and the same Agreement which shall be fully effective against all persons executing.

Date: _____



Gente Organizada

Date: _____

Mario M. Suarez

Date: _____

City of Pomona

Date: _____

Pomona Police Department and Chief Michael Ellis

18. Multiple Copies. This Agreement may be executed in any number of counterparts and multiple copies, and may be transmitted by fax or e-mail, each of which is to be considered as if it were original, but all of which together will constitute one and the same Agreement which shall be fully effective against all persons executing.

Date: _____

Gente Organizada

Date: 10-4-2022

Mario M. Suarez
Mario M. Suarez

Date: _____

City of Pomona

Date: _____

Pomona Police Department and Chief Michael Ellis

18. Multiple Copies. This Agreement may be executed in any number of counterparts and multiple copies, and may be transmitted by fax or e-mail, each of which is to be considered as if it were original, but all of which together will constitute one and the same Agreement which shall be fully effective against all persons executing.

Date: _____

Gente Organizada

Date: _____

Mario M. Suarez

Date: 11/8/22



City of Pomona

Date: _____

Pomona Police Department and Chief Michael Ellis

18. Multiple Copies. This Agreement may be executed in any number of counterparts and multiple copies, and may be transmitted by fax or e-mail, each of which is to be considered as if it were original, but all of which together will constitute one and the same Agreement which shall be fully effective against all persons executing.

Date: _____

Gente Organizada

Date: _____

Mario M. Suarez

Date: _____

City of Pomona

Date: 11-8-2022



Pomona Police Department and Chief Michael Ellis

EXHIBIT “A”

POST PERISHABLE SKILLS PROGRAM (PSP)

V – USE OF FORCE

(Insert Presenter Name and Number here)

CCN: 29580 | POST Certification II | Reimbursement Plan ____ | 4 hours

COURSE GOAL:

The course will provide the student with the minimum topics of Use of Force required in the POST Perishable Skills Training Program (PSP). The intent of the course is to improve the student's knowledge of use of force laws and policies as well as critical decision-making skills. The course consists of facilitated discussion, case study analysis, and scenarios for in-service personnel.

The training may be presented in a 4, 6, or 8-hour format allowing for flexibility based upon specific agency or trainee group needs, as long as the minimum topics are contained within each format independently.

USE OF FORCE

Minimum Topics/Exercises:

- a. Statutory Law
- b. Case Law
- c. Agency Policies
- d. Reverence for Human Life
- e. De-Escalation
- f. Duty to Intercede
- g. Rendering First-Aid
- h. Class Exercises/Student Evaluations/Testing

COURSE OBJECTIVES:

The student will:

- 1. Demonstrate knowledge of use of force laws.
- 2. Demonstrate knowledge of individual agency's use of force policies.
- 3. Demonstrate an understanding of force options decision-making with every technique and exercise, to include:
 - A. Reverence for Human Life
 - B. De-Escalation and Verbal Commands
 - C. Rendering First-Aid
 - D. Legal Duty to Intercede and Report Excessive Force to a Superior Officer

Minimum standards of performance shall be tested by an instructor observing the trainee during their participation in facilitated discussions, case study analysis, and scenarios. If the trainee does not meet minimum standards, as established by the presenter, remediation will be provided until the standard is met.

POST PERISHABLE SKILLS PROGRAM (PSP)

V – USE OF FORCE

(Insert Presenter Name and Number here)

CCN: 29580 | POST Certification II | Reimbursement Plan ____ | 4 hours

I. INTRODUCTION/ORIENTATION

A. Introduction, Registration and Orientation

1. Instructor/student introductions
2. Registration/rosters

B. Course Goals and Objectives

1. Increase knowledge of use of force laws
2. Increase knowledge of individual agency's use of force policies
3. Increase understanding of force options decision-making

II. POLICIES AND LEGAL ISSUES

A. Statutory Law

V(a)

1. Key Elements of Assembly Bill (AB) 392
 - a. Two measures for reasonableness
 - 1) Reasonable force
 - 2) Perspective of a reasonable officer
 - b. To effect arrest, prevent escape, overcome resistance
 - c. Significant change in use of force threshold per AB 392
 - 1) Subsections (b) and (c)(1) of PC 835a provide for a clear distinction between objectively reasonable and deadly force standards
 - 2) While objectively reasonable force may be utilized "to prevent escape, or to overcome resistance" to effect a lawful arrest, as soon as the circumstances reach a threshold for deadly force the standard increases to "necessary."
2. Key Elements of Penal Code (PC) Section 196 – Justifiable Homicide
 - a. Definition revised to rely more heavily on PC 835a – deadly force can only be used when necessary
 - b. "Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, under either of the following circumstances:" [PC 196]
 - 1) "In obedience to any judgment of a competent court order." [PC 196(a)]
 - 2) "When the homicide results from a peace officer's use of force that complies with Penal Code Section 835a." [PC 196(b)]
 - c. What changed?
 - 3) Removed "When necessarily committed in overcoming actual resistance to the execution of some legal process or in the discharge of any other legal duty"
 - 4) Removed "When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony and who are fleeing from justice or resisting such arrest."

August 2022

POST PERISHABLE SKILLS PROGRAM (PSP)

V – USE OF FORCE

(Insert Presenter Name and Number here)

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3. Key Elements of Penal Code Section 835a
 - a. “The Legislature finds and declares”: [PC 835a(a)]
 - 1) “The authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and the dignity and the sanctity of every human life.”
 - 2) “The Legislature finds and declares that every person has a right to be free from excessive use of force by peace officers acting under the color of law.” [PC 835a(a)(1)]
 - b. “As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstance of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.” [PC 835a(a)(2)]
 - c. “That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.” [PC 835a(a)(3)]
 - d. That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” [PC 835a(a)(4)]
 - e. “That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.” [PC 835a(a)(5)]
 - f. “Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.” [PC 835a(5)(b)]
 - g. “Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is **necessary** (emphasis added) for either of the following reasons.” [PC 835a(c)(1)]
 - 1) “To defend against an imminent threat of death or serious bodily injury to the officer or another person.” [PC 835a(c)(1)(A)]

POST PERISHABLE SKILLS PROGRAM (PSP)

V – USE OF FORCE

(Insert Presenter Name and Number here)

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- 2) “To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.
 - a) Where feasible, a peace officer shall, before the use of force, make reasonable efforts to identify themselves as a peace officer and
 - b) Warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.” [PC 835a(c)(1)(B)]
- i. “A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.” [PC 835a(C)(2)]
- j. “A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision, ‘retreat’ does not mean tactical repositioning or other de-escalation tactics.” [PC 835a(d)]
- k. “For purposes of this section, the following definitions apply:” [PC 835a(e)]
 - 1) “‘Deadly force’ means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.” [PC 835a(e)(1)]
 - 2) “A threat of death or serious bodily injury is ‘imminent’ when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.” [PC 835a(e)(2)]
- l. “‘Totality of the circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” [PC 835a(e)(3)]
 - 1) Officers should be prepared to articulate what actions were taken and why
 - 2) Officers should be prepared to articulate what actions were *not* taken and why they were not taken
4. Senate Bill 230
 - a. Discuss your agencies’ current use of force policy

POST PERISHABLE SKILLS PROGRAM (PSP)

V – USE OF FORCE

(Insert Presenter Name and Number here)

CCN: 29580 | POST Certification II | Reimbursement Plan ____ | 4 hours

- b. Does it accurately reflect the requirements of SB 230
 - 1) De-escalation, crisis intervention, other alternatives to force
 - 2) Objective reasonableness
 - 3) Required reporting of potential excessive force to superior officer
 - 4) Guidelines regarding situations in which officer may or may not draw or point a firearm
 - c. Consideration of surroundings and potential risks to bystanders before discharging firearm
 - d. Procedures for disclosing public records
 - e. Procedures for filing, investigation, and reporting of citizen complaints regarding UoF incidents
 - f. Duty to intercede
 - g. Guidelines regarding methods and devices available for application of force
 - h. Requirement that officers carry out duties in fair and unbiased manner
 - i. Guidelines for application of deadly force
 - j. Requirements for internal reporting and notification of UoF incidents, including to DOJ
 - k. Role of supervisors in review of UoF incidents
 - l. Prompt provision or procurement of medical assistance for injured parties, when necessary
 - m. Training to demonstrate knowledge and understanding of UoF policy
 - n. Training and guidelines regarding vulnerable populations such as children, elderly, people with disabilities, etc.
 - o. Guidelines for discharge of a firearm at or from a moving vehicle
 - p. Factors for evaluating and reviewing all UoF incidents
 - q. Minimum training regarding UoF policy
 - r. Regular review and updating of UoF policy
 - s. UoF policy available to the public
5. Pending legislation

B. Case Law

V(b)

- 1. Foundational case law
 - a. Graham v. Connor
 - b. Tennessee v. Garner
 - c. Hayes v. County of San Diego
- 2. Pending cases
- 3. Peace officers must understand that the landmark cases of Graham v. Connor, Tennessee v. Garner, and Hayes v. County of San Diego are foundational and have historical and legal significance on the application of law. However PC 835a creates a higher standard for the application of deadly force in California.

C. Agency's Use of Force Policy

V(c)

August 2022

POST PERISHABLE SKILLS PROGRAM (PSP)

V – USE OF FORCE

(Insert Presenter Name and Number here)

CCN: 29580 | POST Certification II | Reimbursement Plan ___ | 4 hours

1. Agency's existing policy
2. How has the policy changed in recent years?
3. How does this affect how officers do the job?
4. Officer's responsibility to notify supervisor following use of force
5. Supervisor's responsibility following a notification

III. REVERENCE FOR HUMAN LIFE AND DUTY TO INTERCEDE

V(d, f)

- a. Reverence for Human Life
 - i. What does "reverence for human life" mean?
 - ii. How is this applied to the use of force?
- b. Duty to Intercede [*Penal Code 13519.10(b)(2), Government Code 7286(b)(8)(9)*]
 - i. What is a "duty to intercede?"
 1. Bystander officer liability
 2. What is the stigma around this?
 3. How do we break the stigma?
 4. How does this reflect your personal and organizational core values?
 - ii. What is your responsibility as a peace officer to intervene?
 1. To the public?
 2. To fellow officer(s)?
 3. To self?
 4. To organization?
 - iii. What are the consequences and liabilities?
 1. Criminal
 2. Civil
 3. Administrative
 4. Moral/ethical
 - iv. How do you recognize when to intercede?
 - v. Agency's policy on duty to intercede
 1. What is your responsibility to report to a supervisor?
 2. Has the policy changed in recent years?
 3. What is the policy on retaliation?

c. Rendering First-Aid

V(g)

- i. What is your responsibility to render first-aid?
- ii. How does one deem when it is safe to render first-aid?
- iii. Discuss agency policy regarding handcuffing techniques when rendering aid to subjects who are severely injured or possibly deceased
- iv. Agency's policy on rendering first-aid

IV. DE-ESCALATION AND VERBAL COMMANDS

V(e)

a. De-Escalation

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- i. What is it?
- ii. How is it used?
- iii. What are the key components and considerations?
- b. Interpersonal Communications - Verbal Communications versus Verbal Commands
 - i. How does verbal communication fit in as a force option?
 - ii. How is it used as a tool for de-escalation?
 - iii. How might either verbal communication or commands affect the outcome of a situation?
- c. Control the Environment
 - i. Tactical pause
 - ii. Tactical repositioning
 - iii. Slow down
 - iv. Gather information
 - v. Develop a plan
 - vi. Time + Distance = Options
- d. Making Sound Decisions
 - i. What is important right now?
 - ii. Set priorities
 - iii. Think through your choices
 - iv. Make sound decisions

V. CLASS EXERCISES AND STUDENT EVALUATIONS/TESTING

V(h)

- a. Practice engaging in potential use of force situations via active process
 - i. Individual or small group case study review
 - ii. Discussion of case studies
 - iii. Participation in role play scenarios
 - iv. Observation of role play scenarios
 - v. Debrief of role play scenarios using the following lenses:
 - 1. Department policy/legal standards – Articulation of use of deadly force v. non-deadly force (necessity v. objective reasonableness)
 - 2. Procedural Justice – How did the response demonstrate procedural justice?
 - 3. Tactics
- b. Evaluation of potential use of force situations via demonstration
 - i. Evaluate role play scenarios
 - ii. Feedback from peers
 - iii. Feedback and debrief from instructors using the following lenses:
 - 1. Department policy/legal standards – Articulation of use of deadly force v. non-deadly force (necessity v. objective reasonableness)

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2. Procedural Justice – How did the response demonstrate procedural justice?
3. Tactics

SAMPLE

POST PERISHABLE SKILLS PROGRAM (PSP)

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Recommended Topics for Learning Activities, Facilitated Discussions, and Scenarios

- Traffic Stop
- Pedestrian Stop
- Consensual Encounter
- Disruptive/Defiant Student
- Fight in progress/Public Disturbance
- Fleeing suspect (foot & vehicle)
- Creating your own exigency
- Excessive/Potentially Excessive Force (Duty to Intercede)
- Unnecessary Force (Duty to Intercede)
- Crowd Management/Crowd Control
- Mental Health Crisis
- Person(s) with disability
 - o Autism
 - o Hearing Impaired
 - o Non-verbal
 - o Amputee
 - o Wheelchair
 - o Other disability not listed
- Alleged suspicious person(s)
- Alleged Shoplift
- Domestic Violence
- Language/Culture barriers
- Implicit/Explicit bias
 - o Officer bias
 - o Community bias
 - o Organizational bias
- Articulation and Report Writing
 - o Review of Body Worn Camera or In Car Camera video
- Courtroom testimony

EXHIBIT “B”

Amendment to Pomona PD Policy Manual, Policy No. 304.7

304.7 ADMINISTRATIVE INVESTIGATION

In addition to all other investigations associated with an officer-involved shooting or death, this department will conduct an internal administrative investigation of PPD officers to determine conformance with department policy. The investigation will be conducted under the supervision of the Internal Affairs Bureau and will be considered a confidential officer personnel file.

When conducting an administrative review of an officer involved shooting or other use of deadly force, the Department will consider whether officers evaluated and used other reasonably available resources and techniques if an objectively reasonable officer would have considered it safe and feasible to do so, under the totality of the circumstances, in determining whether deadly force was necessary.

Interviews of members shall be subject to department policies and applicable laws (see the Personnel Complaints Policy).

- (a) Any officer involved in a shooting or death may be requested or administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from the officer, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.
- (b) If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.
 - 1. If a further interview of the officer is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved officer shall be provided with a copy of his/her prior statement before proceeding with any subsequent interviews.
- (c) In the event that an involved officer has elected to not provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.
 - 1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the officer's physical and psychological needs have been addressed before commencing the interview.
 - 2. If requested, the officer shall have the opportunity to select an uninvolved representative to be present during the interview. However, in order to maintain the integrity of each individual officer's statement, involved officers shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed (Government Code § 3303(i)).

PROOF OF SERVICE

I, Christina Gordon, declare:

I am a citizen of the United States and employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 18101 Von Karman Avenue, Suite 1000, Irvine, California 92612. On November 21, 2022, I served a copy of the within document(s):

**STIPULATION OF PARTIES REQUESTING THE COURT
TO RETAIN JURISDICTION TO ENFORCE SETTLEMENT
AGREEMENT UNDER CCP 664.6 AND JOINT REQUEST
FOR DISMISSAL WITH PREJUDICE**

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Irvine, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Adrienna Wong
Mohammed Tajsar
Peter Bibring
ACLU Foundation of Southern California
1313 W. Eighth Street, Suite 200
Los Angeles, CA 90017
Phone: (213) 977-9500
Fax: (213) 977-5299
Email: awong@aclusocal.org,
mtajsar@aclusocal.org;
pbibring@aclusocal.org

Attorneys for Plaintiffs
GENTE ORGANIZADA, MARIO M.
SUAREZ

Eva Bitran
ACLU Foundation of Southern California
225 W. Hospitality Lane, Suite 302
San Bernardino, CA 92408
Phone: (213) 977-9500
Email: ebitran@aclusocal.org

Attorneys for Plaintiffs
GENTE ORGANIZADA, MARIO M.
SUAREZ

1 Carl Takei
2 American Civil Liberties Union
3 Foundation
4 125 Broad Street, 18th Floor
5 New York, NY 10004
6 Phone: (212) 549-2600
7 Email: ctakei@aclu.org

Attorneys for Plaintiffs
8 GENTE ORGANIZADA, MARIO M.
9 SUAREZ

10 I am readily familiar with the firm's practice of collection and processing correspondence
11 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
12 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
13 motion of the party served, service is presumed invalid if postal cancellation date or postage meter
14 date is more than one day after date of deposit for mailing in affidavit.

15 I declare under penalty of perjury under the laws of the State of California that the above is
16 true and correct.

17 Executed on November 21, 2022, at Irvine, California.

18 

19 Christina Gordon