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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

CIVDS 1504326

ACLU OF SOUTHERN CALIFORNIA,
Petitioner,

v.

SAN BERNARDINO COUNTY SHERIFF'S
DEPARTMENT,
Defendant.

) Case No.

) VERIFIED PETITION FOR WRIT OF
) MANDATE DIRECTED TO THE SAN
) BERNARDINO COUNTY SHERIFF'S
) DEPARTMENT ORDERING
) COMPLIANCE WITH THE CALIFORNIA
) PUBLIC RECORDS ACT

) [Gov't Code §§ 6250 *et seq.*]

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 26 2015

By Sandra Ortega
SANDRA ORTEGA Deputy

1 ACLU of Southern California (the “ACLU”) petitions this Court for a writ of mandate
2 directed to the San Bernardino County Sheriff’s Department (the “Sheriff’s Department”),
3 commanding the Sheriff’s Department to comply with the California Public Records Act
4 (“CPRA”). The ACLU brings this petition under sections 1085 *et seq.* of the Code of Civil
5 Procedure and sections 6250 *et seq.* of the Government Code. By this verified Petition, the ACLU
6 alleges:

7 INTRODUCTION AND SUMMARY OF ALLEGATIONS

8 1. Electronic control devices, commonly known as “Tasers,” are weapons that deploy
9 an electrical current to disrupt voluntary muscle control and cause neuromuscular incapacitation.
10 Tasers shoot probes that deliver a debilitating electrical charge to targeted individuals. Tasers may
11 also be used in a “Drive-Stun” mode to inflict severe pain. San Bernardino County Sheriff’s
12 deputies use Tasers, with and without “Drive-Stun” mode, in the field and in county jails.

13 2. In 2012, the San Bernardino County Civil Grand Jury (the “Grand Jury”) formed an
14 Ad Hoc Committee to examine the Sheriff’s Department’s policies on the use of Tasers, in
15 response to a pattern of deaths occurring nationwide and specifically in San Bernardino County
16 following the deployment of Tasers by law enforcement officers.

17 3. The Grand Jury reviewed the Sheriff’s Department’s Taser training and policy
18 manuals, as well as “data on [T]aser usage within the scope of use of force instances” that were
19 provided to the committee by the Sheriff’s Department, and published a “Final Report” containing
20 its findings and recommendations regarding the Sheriff’s Department’s Taser policies and use.

21 4. In the Final Report, the Grand Jury observed: “Taser related deaths are not
22 uncommon in San Bernardino County.”

23 5. In one case described by the Grand Jury, a Lake Arrowhead man died after three
24 Sheriff’s Department deputies shot him with their Tasers 16 times. News accounts of the incident
25 made clear the man was unarmed, and had been stopped by deputies for allegedly running a stop
26 sign.

27 6. In another case described by the Grand Jury, an Apple Valley man died after
28 Sheriff’s deputies shot him with their Tasers three times. Yet another man died in custody at West

1 Valley Detention Center after Sheriff's deputies there shot him with their Tasers two times.

2 7. The Grand Jury observed that the "vast majority" of Taser-related deaths "occurred
3 when the person received multiple [T]aser exposures." The Grand Jury found that Sheriff's
4 Department officers had incorrectly assumed their Tasers were not working properly in scenarios
5 where the targeted individual did not exhibit symptoms of neuromuscular incapacitation or
6 compliance, leading to potentially unnecessary discharges. The Grand Jury also found that the
7 Sheriff's Department's Taser training manual did not require on-scene tracking of Taser usage in
8 scenarios involving multiple officers. It stated: "This lack of situational awareness may lead to
9 multiple, repeated, and continuous exposures[.]" The Grand Jury made specific recommendations
10 to the Sheriff's Department about ways to amend its Taser training manual and improve its training
11 program to reduce the use of unnecessary, multiple, repeated, and continuous Taser exposures.

12 8. The Grand Jury's observations and recommendations were consistent with
13 guidelines published by the U.S. Department of Justice in cooperation with the Police Executive
14 Research Forum ("PERF") in 2011. The 2011 PERF Guidelines noted that "repeated or multiple
15 applications [of Tasers] may increase risk of death," and they stressed that "[o]fficers must be
16 trained to understand that repeated applications and continuous cycling of [Tasers] may increase the
17 risk of death or serious injury and should be avoided."¹

18 9. The Sheriff's Department issued a response to the Final Report, agreeing with the
19 Grand Jury's findings. With respect to the Grand Jury's recommendations, the Sheriff's
20 Department indicated that it would:

- 21 a. Assess options to improve communication among deputies involved in Taser
22 deployment to minimize the possibility of unnecessary, repeat, and prolonged Taser
23 exposures;
- 24 b. Continue educating deputies on identification of effective Taser deployment and the
25 importance of situational awareness;

26
27 ¹ U.S. Dep't of Justice, Office of Community Policing Services & Police Executive
28 Research Forum, 2011 Electronic Control Weapon Guidelines ("PERF Guidelines") (2011) p. 13
<<http://ric-zai-inc.com/Publications/cops-p202-pub.pdf>> (as of Mar. 5, 2015).

1 c. Reinforce, in future training, the importance of alternative force options when a
2 deputy believes the Taser is ineffective, “to minimize [T]aser dependency or
3 repeated or prolonged use.”

4 10. On August 12, 2014, a Sheriff’s Department deputy shot Victorville resident Dante
5 Parker 12 times with a Taser. According to Mr. Parker’s family, other Sheriff’s deputies arrived
6 later and also deployed their Tasers against him — in total, he received up to 27 Taser shocks
7 before he died shortly thereafter. Mr. Parker was unarmed.

8 11. Subsequently, the NAACP’s San Bernardino and Victor Valley branches held a
9 press conference calling for “transparency and accountability” for the circumstances surrounding
10 Mr. Parker’s death.

11 12. Since the issuance of the Grand Jury’s Final Report, numerous current and former
12 inmates have alleged that Sheriff’s Department deputies staffing the West Valley Detention Center
13 routinely and repeatedly shocked them with Tasers, with little or no provocation — sometimes as
14 part of hazing rituals or for the deputies’ entertainment.

15 13. In light of the above events, the ACLU served a CPRA request on the Sheriff’s
16 Department to obtain certain documents regarding its Taser policies and practices. The ACLU
17 sought to review records related to the implementation (if any) of measures the Sheriff’s
18 Department agreed to take in response to the Grand Jury’s Final Report, as well as information
19 relating to the Sheriff’s Department’s Taser use that could reveal the efficacy or insufficiency of
20 such measures.

21 14. The Sheriff’s Department refused to disclose records responsive to the ACLU’s
22 CPRA request. It asserted that it was entitled to withhold all records containing information about
23 the number and duration of exposures involved in Taser deployments by Sheriff’s deputies, because
24 such information is contained in use of force reports; it claimed that use of force reports are exempt
25 from disclosure under the CPRA because they are privileged attorney-client communications and
26 contain attorney work product. The Sheriff’s Department made the same assertions about records
27 containing information about the stated justifications for its deputies’ Taser deployments. As set
28 forth in further detail herein, the Sheriff’s Department’s claims that use of force reports are

1 privileged attorney-client communications and attorney work product are legally and factually
2 baseless.

3 15. The information about Taser use that the Sheriff's Department withheld is contained
4 in disclosable records other than use of force reports, but the Sheriff's Department failed to identify
5 and produce those records. The Sheriff's Department failed to adequately search for, identify, and
6 produce other records requested by the ACLU, such as documents related to revisions to the
7 Sheriff's Department's Taser policies and training manuals and the need for such revisions.

8 16. Only by having access to the records requested by the ACLU can the public properly
9 evaluate whether the Sheriff's Department has taken seriously the concerns raised by the Grand
10 Jury's Final Report, and whether and how the Sheriff's Department has taken action to curtail the
11 inappropriate, excessive, and/or abusive use of Tasers. Given the Sheriff's Department's
12 consistent — and sometimes fatal — problems with use of Tasers, the public has an interest in
13 understanding how Sheriff's deputies deploy these weapons against members of the public in San
14 Bernardino County.

15 17. The danger of improper Taser use has become a matter of serious public concern,
16 nationwide and internationally. On November 28, 2014, the United Nations Committee Against
17 Torture released its Concluding Observations, wherein it offered recommendations for systemic
18 reform that would align the United States with its international human rights commitments. In its
19 Concluding Observations, the Committee expressed concern about “numerous, consistent reports
20 that police have used electrical discharge weapons against unarmed individuals who . . . fail to
21 comply immediately with commands.” The Committee observed a need for “more stringent
22 instructions to law enforcement personnel entitled to use electric discharge weapons,” as well as
23 strict monitoring and supervision of Taser use “through mandatory reporting and review of each
24 use.”

25 18. Despite the public's strong interest in information about the Sheriff's Department's
26 Taser use, the Sheriff's Department has disregarded its legal obligations under the CPRA and
27 denied public access to the information requested by the ACLU.
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1 acts and omissions complained of herein occurred in the County of San Bernardino. *See* Code Civ.
2 Proc. §§ 393, 394 subdiv. (a).

3 **FACTUAL BACKGROUND**

4 **The ACLU's Public Records Request**

5 26. On January 30, 2015, Petitioner ACLU sent a CPRA request to the Sheriff's
6 Department (the "January 2015 request"). A true and correct copy of the January 2015 request is
7 attached to this Petition as Exhibit A.

8 27. All of the records the ACLU sought in the January 2015 request fall within the
9 definition of public records set forth in the CPRA. Gov't Code § 6252.

10 28. The January 2015 request sought documents previously requested from the Sheriff's
11 Department in separate CPRA requests dated September 26, 2014 (the "September 2014 request")
12 and November 12, 2014 (the "November 2014 request"), to which the Sheriff's Department had
13 inadequately responded. True and correct copies of the September 2014 request and the November
14 2014 request are attached to this Petition as Exhibits B and C, respectively.

15 29. The Sheriff's Department responded to the September 2014 request and the
16 November 2014 request in letters dated October 16, 2014 and November 20, 2014 (the "October
17 2014 response" and the "November 2014 response," respectively). In those letters, the Sheriff's
18 Department agreed to provide certain categories of records; claimed that some requested records
19 did not exist; and refused to disclose other requested records, claiming that they are exempt from
20 disclosure under the CPRA. True and correct copies of the October 2014 response and the
21 November 2014 response are attached to this Petition as Exhibits D and E, respectively.

22 30. Although the Sheriff's Department produced some documents in response to the
23 September 2014 request and the November 2014 request, its responses to those requests were
24 incomplete and inadequate in the following ways:

- 25 a. The Sheriff's Department improperly withheld records responsive to the September
26 2014 request and the November 2014 request, claiming that those records are
27 exempt from disclosure under the CPRA. For example, the Sheriff's Department
28 refused to disclose any records compiling and/or listing the number and duration of

1 exposures associated with Taser deployments, asserting that such information
2 “would be contained in a Use of Force report.” *See* Exhibit D, pp. 3-4. The
3 Sheriff’s Department also refused to disclose any records reflecting the justifications
4 or reasons for Taser deployments because such information would be contained in
5 use of force reports. The Sheriff’s Department erroneously claimed that such reports
6 “are generated at the behest of County Counsel in anticipation of litigation and, as
7 such, are attorney-client communications made privileged pursuant to Evidence
8 Code Section 954.” *See* Exhibit D, p. 4. The Sheriff’s Department also erroneously
9 claimed that use of force reports “contain attorney work product that is privileged
10 pursuant to Code of Civil Procedure 2018.030(a).” *See id.*

11 b. The Sheriff’s Department claimed that records sought by the September 2014 and
12 November 2014 requests do not exist, when in fact it has prepared, owned, retained,
13 and used such records; the Sheriff’s Department failed to conduct a search adequate
14 to identify and compile the records it claimed do not exist. For example, the
15 September 2014 request sought documents relating to deaths associated with Taser
16 deployments by Sheriff’s deputies. Although the Sheriff’s Department has such
17 records in its possession, it failed to identify or provide any such records, claiming
18 only: “there is no such instances [sic].” Similarly, the Sheriff’s Department retains
19 records relating to the utilization of use of force reports in its systems of internal
20 review, as well as records relating to its transmission of use of force reports to
21 entities other than County Counsel, but it claimed that those records do not exist in
22 its response to the November 2014 request for records.

23 c. The Sheriff’s Department did not search for or produce all records responsive to the
24 September 2014 request and the November 2014 request; its public records
25 production was incomplete even for the categories of records that it agreed were
26 disclosable. For example, the Sheriff’s Department agreed to disclose records
27 reflecting the Sheriff’s Department’s training materials and policies on Taser use at
28 the time of the Grand Jury’s inquiry, as well as records reflecting the Sheriff’s

1 Department's current training materials and policies on Taser use; the September
2 2014 request sought both categories of documents. The September 2014 request
3 also sought records reflecting revisions to the Sheriff's Department's training
4 materials and policies on Taser use, and records relating to any evaluation,
5 assessment, or review of those policies conducted in response to the Grand Jury's
6 Final Report. The Sheriff's Department claimed that all such records were included
7 in the documents it produced in response to the September 2014 request. However,
8 the Sheriff's Department produced only one version of its Taser training materials
9 and policies and two manuals released by the company TASER International, Inc.,
10 in response to the September 2014 request; it failed to produce records sufficient to
11 identify whether and how the Sheriff's Department has made changes to its Taser
12 training program since the time of the Grand Jury's inquiry.

13 31. To address the insufficiency of the Sheriff's Department's responses to the
14 September 2014 and November 2014 requests, the ACLU sought records responsive to those
15 requests by submitting the January 2015 request. The January 2015 request asked the Sheriff's
16 Department for records responsive to the September 2014 and November 2014 requests that it had
17 failed to produce, including, specifically:

- 18 a. Records compiled or created in response to the 2012-2013 San Bernardino County
19 Grand Jury's inquiry and report on San Bernardino County Sheriff's Department's
20 Taser policies and usage (*see* Exhibit A, p. 1);
 - 21 b. Records compiling and/or listing the following information with respect to the
22 deployment of Tasers by Sheriff's Department officers from January 1, 2008 to the
23 present:
 - 24 i. The number and duration of exposures associated with any such
25 deployments; or
 - 26 ii. The justifications and/or reasons for any such deployments (*see* Exhibit A, p.
27 1);
- 28

- c. Any records reflecting or relating to revisions, updates, or the need for revisions or updates to the Taser Training Academy Manual, Instructor's Certification Lesson Plan, or other Taser-related training materials since 2009 (*see* Exhibit A, p. 2);
- d. Any other records reflecting current Sheriff's Department's policies, procedures, or guidelines regarding the use of Tasers, including those governing the use of Tasers (*see* Exhibit A, p. 2);
- e. Records reflecting the Sheriff's Department's policies and procedures with respect to the investigation and review of uses of force (*see* Exhibit A, p. 2);
- f. Records relating to the Sheriff's Department's transmission of reports, documentation, or data concerning uses of force to entities outside the Sheriff's Department, including, but not limited to, the San Bernardino County Grand Jury, federal investigators, or county, state or city auditors (*see* Exhibit A, p. 2);
- g. Records reflecting the Sheriff's Department's current policies and procedures with respect to the creation of incident reports and arrest records, and any prior versions of such policies or procedures effective at any time in the last ten years (*see* Exhibit A, p. 2); and
- h. Any prior versions of blank forms used by the Sheriff's Department to report or document uses of force and/or instructions for those forms used in the last ten years (*see* Exhibit A, p. 2).

32. On February 5, 2015, the Sheriff's Department responded by letter to the January 2015 request. It reiterated the Sheriff's Department's positions articulated in the October 2014 and November 2014 responses and stated "that no further information is available at this time and the responses already provided are confirmed." A true and correct copy of the Sheriff's Department's response letter is attached to this Petition as Exhibit F.

Records Related to the Sheriff's Department's Taser Deployment and Use of Force Reports

33. The Sheriff's Department has withheld records that would make it possible for the public to evaluate how Sheriff's deputies actually utilize Tasers against members of the public,

1 including records containing anonymized and/or aggregate information. For the reasons described,
2 the manner and extent to which Sheriff's deputies deploy Tasers against individuals in San
3 Bernardino County is a matter of great public concern.

4 34. The January 2015 request sought records compiling and/or listing the number and
5 duration of exposures associated with Taser deployments. In responding to the January 2015
6 request, the Sheriff's Department failed to produce any such records. Rather, the Sheriff's
7 Department reaffirmed its October 2014 response to the September 2014 request, in which it
8 refused to disclose any such records — asserting that information about the number and duration of
9 exposures associated with the Sheriff's Department's Taser deployments is contained in use of
10 force reports, and claiming that use of force reports are privileged attorney-client communications
11 that contain attorney work product. *See* Exhibit F, p. 1.

12 35. The January 2015 request sought records listing and/or compiling information
13 relating to the justifications and/or reasons for the Sheriff's Department's Taser deployments. In
14 responding to the January 2015 request, the Sheriff's Department failed to produce any such
15 records. Rather, the Sheriff's Department simply reaffirmed its response to the September 2014
16 request, in which it refused to disclose any such records — asserting that information about the
17 justifications and/or reasons for the Sheriff's Department's Taser deployments would be contained
18 in use of force reports, and claiming that use of force reports are privileged attorney-client
19 communications that contain attorney work product. *See id.*

20 36. According to its own use of force policy, the Sheriff's Department's completed use
21 of force reports are *not* privileged attorney-client communications. The Sheriff's Department's use
22 of force policy requires officers to transmit use of force reports to their commanding officers for
23 review. The policy requires commanding officers to review each completed use of force report to
24 determine whether further action or investigation is warranted, and, if he or she believes no such
25 action or investigation is warranted, to forward the completed report to the Civil Liabilities
26 Division — whose staff does not include an attorney — for processing and filing. The Sheriff's
27 Department's policy does not require officers to transmit completed use of force reports to any
28 attorney, or to consult with any attorney during or prior to the completion of the use of force forms.

1 Similarly, the Sheriff's Department's instruction sheet for its use of force form-set, as do its
2 training materials, directs officers to transmit completed use of force forms to a commanding
3 officer, but does not instruct officers to communicate the completed forms to any attorney.

4 37. Sheriff's Department officers do not complete use of force reports at the behest of
5 County Counsel to prepare for civil litigation; they complete use of force reports as part of their
6 official duties, in the ordinary course of their business as law enforcement officers. A use of force
7 report is required to be completed following every instance of Taser use as a matter of official
8 policy, not at the instruction of an attorney. Moreover, the policy does not instruct, much less
9 require, the officer completing the form to consult an attorney while doing so, but rather makes
10 clear the officer exercises his or her own discretion when completing the form, as required.

11 38. The Sheriff's Department requires its officers to prepare use of force reports
12 following every instance of Taser use for purposes other than preparing for civil litigation. As its
13 use of force policy makes clear, the Sheriff's Department utilizes use of force reports for staff
14 accountability and internal review — to enable command officers to supervise the performance of
15 their personnel, and to investigate and curtail potential misconduct.

16 39. According to its own use of force policy, the Sheriff's Department's completed use
17 of force reports are also not protected from disclosure as attorney work product. The policy
18 requires supervising officers to complete use of force report forms. It does not indicate that an
19 attorney should complete any portion of that report; neither does the use of force report form
20 indicate a need for or a place reserved for recording an attorney's notes or impressions.

21 40. The Sheriff's Department has not treated use of force reports as privileged attorney-
22 client communications or attorney work product. It has disclosed use of force reports to parties
23 other than County Counsel, such as the U.S. Marshals Service, when those parties were not
24 engaged in legal representation of the Sheriff's Department. When the ACLU asked the Sheriff's
25 Department to produce records relating to the transmission of use of force reports to entities outside
26 the Sheriff's Department, however, the Sheriff's Department claimed that no such records exist.
27 See Exhibit A, p. 2; Exhibit C, p. 2; Exhibit E, p. 2. The Sheriff's Department's refusal to produce
28 or perform a search for such records is itself a violation of the CPRA.

1 41. Other law enforcement agencies do not treat use of force reports as privileged
2 attorney-client communications or attorney work product. Many law enforcement agencies
3 publicly disclose use of force reports or statistics reflecting the information reported therein.² Some
4 have adopted policies that specifically require the public disclosure of information from use of
5 force reports documenting Taser use, once personally identifying information is removed.³

6 42. ACLU affiliates have requested and successfully obtained Taser use of force reports
7 from other law enforcement agencies that use forms substantially identical to the Taser use of force
8 form that the Sheriff's Department utilizes.⁴ Members of the news media have also obtained Taser
9 use reports from other law enforcement agencies by filing public records requests.⁵

10 43. The state of Connecticut statutorily requires law enforcement officers to complete a
11 Taser use of force report form that is substantially similar to the form that the Sheriff's Department
12 utilizes. Connecticut law requires law enforcement agencies to report information recorded in
13 those forms to the public on an annual basis. *See* Conn. Pub. Act No. 14-149.

16 ² *See, e.g.*, San Diego Sheriff's Department, Use of Force/Internal Affairs Statistical Report
17 (2014) <http://www.sdsheriff.net/documents/2014_ia_stats.pdf> (making information gathered
18 from use of force reports and internal investigations available to the public to "improve
19 organizational transparency," to inform the public about how frequently deputies use force, and to
20 "clearly show that the Sheriff holds his personnel accountable for their actions"); Las Vegas
21 Metropolitan Police Department, Non-deadly Use of Force Analysis (2012-2013)
22 <http://www.lvmpd.com/Portals/0/OIO/Non-Deadly_Use_of_Force_Report_2013_FINAL.pdf>.

23 ³ *See, e.g.*, Spokane County Sheriff's Department, Policy Manual (2015) p. 67
24 <http://www.spokanecounty.org/data/countysheriff/pdf/Current_Policy_Manual1-15-15.pdf>.

25 ⁴ *See, e.g.*, ACLU of Nebraska, Dangerously Out of Bounds: Taser Use in Nebraska (2014)
26 p. 7 <[http://www.aclunebraska.org/index.php/police-conduct/208-dangerously-out-of-bounds-](http://www.aclunebraska.org/index.php/police-conduct/208-dangerously-out-of-bounds-tasers-in-nebraska)
27 [tasers-in-nebraska](http://www.aclunebraska.org/index.php/police-conduct/208-dangerously-out-of-bounds-tasers-in-nebraska)> (listing three county sheriff's departments and seven police departments that
28 provided the ACLU of Nebraska with Taser use reports, and publishing examples of those reports);
New York Civil Liberties Union ("NYCLU"), Taking Tasers Seriously (2011) pp. 2, 10-11
<http://www.nyclu.org/files/publications/nyclu_TaserFinal.pdf> (noting that NYCLU analyzed 851
Taser incident reports from eight law enforcement agencies across the state, and providing example
of report produced by a New York police department).

⁵ *See, e.g.*, Noelle Phillips, *Denver jail's Taser use at odds with federal guidelines*, *Post*
finds, *Denver Post* (Nov. 3, 2014) (reporting on analysis of 14 Taser use reports created by Denver
Sheriff's Department's deputies, which were obtained by the *Post* through a public records
request).

1 44. Federal guidelines recommend that law enforcement agencies publicly disclose
2 information about Taser use documented in use of force reports. The 2011 PERF Guidelines
3 recommend that law enforcement agencies document every instance of Taser use, and collect
4 information about “[t]he number of [Taser] activations, the duration of each cycle, the duration
5 between activations, and . . . the duration that the subject received applications.” The PERF
6 Guidelines also recommend that law enforcement agencies collect information relevant to the
7 justifications for each Taser use, including the level of aggression encountered by the officer;
8 whether deadly force would have been justified; whether the subject possessed any weapons; and
9 the type of crime/incident the subject was involved in. The PERF Guidelines recommend that law
10 enforcement agencies periodically analyze this information, and make it “available to the public.”
11 Sheriff’s Department officers do not complete use of force reports at the behest of County Counsel
12 to prepare for civil litigation; they complete use of force reports as part of their official duties, in
13 the ordinary course of their business as law enforcement officers. They automatically complete use
14 of force reports following every instance of Taser use because Sheriff’s Department policy requires
15 them to do so — not because they are specifically instructed to do so by any attorney.

16 45. As a matter of standard practice, the vast majority of law enforcement agencies
17 across the country generate use of force reports every time an officer uses more than a minimal
18 level of force. For decades, law enforcement agencies have utilized use of force reports to maintain
19 internal accountability, to determine whether individual officers should be disciplined for
20 dangerous behavior or poor performance, and to identify problematic practices that may call for
21 retraining of officers or amendment of agency policies. Thus, use of force reports form an integral
22 part of law enforcement operations for reasons independent of civil litigation.

23 46. When the ACLU requested the Sheriff’s Department to produce records reflecting or
24 relating to the utilization or inclusion of use of force reports in any Department procedure or
25 system, however, the Sheriff’s Department claimed that no such records exist. *See Exhibit A*, p. 2;
26 *Exhibit C*, p. 1; *Exhibit F*. The Sheriff’s Department’s refusal to produce or perform a search for
27 such records is itself a violation of the CPRA. *See Gov’t Code §§ 6250 et seq.*

28 47. Moreover, the information about the Sheriff’s Department’s Taser use that was

1 sought in the September 2014 request and in the ACLU's January 2015 request — the number and
2 duration of exposures associated with Taser deployments, and the reasons and/or justifications for
3 incidents of Taser use — is contained in records other than use of force reports.

4 48. The number and duration of exposures associated with the Sheriff's Department's
5 Taser deployments are contained in records created by the Taser devices' on-board memory
6 system. As noted in the Sheriff's Department's own Taser training materials, the Taser device has
7 an internal memory that records the date, time, and duration of each discharge. That data can be
8 downloaded by the Sheriff's Department at any time. Indeed, the 2011 PERF Guidelines, the
9 model Taser policy drafted by the International Association of Chiefs of Police, and the use of force
10 policies of many law enforcement agencies across the country call on supervising officers to
11 conduct periodic audits of Taser use by comparing Taser memory data with information that
12 officers report in use of force forms. In responding to the January 2015 request, however, the
13 Sheriff's Department failed to produce or even refer to any Taser memory data. Rather, the
14 Sheriff's Department simply reaffirmed its response to the September 2014 request, in which it
15 refused to disclose information about the number and duration of exposures associated with its
16 officers' Taser deployments because such information is contained in use of force reports and is
17 therefore purportedly protected from disclosure under the attorney-client privilege and the attorney
18 work product doctrine.

19 49. The justifications and reasons for the Sheriff's Department's Taser deployments are
20 also contained in other records in the Sheriff's Department's possession. According to the Sheriff's
21 Department's use of force policy and training materials, an officer that deploys a Taser must
22 complete a report or memorandum containing a detailed description of the facts involved and the
23 underlying reasons for the decision to use that particular level of force. In responding to the
24 January 2015 request, however, the Sheriff's Department failed to produce or even refer to any
25 such reports or memoranda. It simply reaffirmed its response to the September 2014 request, in
26 which it refused to disclose any information about the justifications and/or reasons for its officers'
27 Taser deployments because such information is contained in use of force reports and is therefore
28

1 purportedly protected from disclosure under the attorney-client privilege and the attorney work
2 product doctrine.

3 50. The Sheriff's Department never produced or justified its withholding of records
4 containing Taser memory data or officer memoranda relating to Taser use. The Sheriff's
5 Department's refusal to download, produce, or perform a search for additional records, other than
6 use of force reports, that contain the requested information about the number and duration of
7 exposures and the justifications and/or reasons for Taser deployment, is itself a violation of the
8 CPRA.

9 51. The January 2015 request sought records relating to deaths associated with the use
10 of a Taser by a Sheriff's Department deputy. In responding to the January 2015 request, the
11 Sheriff's Department again failed to produce any such records. Rather, the Sheriff's Department
12 simply reaffirmed its response to the September 2014 request, in which it claimed that "there is no
13 such instances [*sic*]." Exhibit D, p. 3.

14 **Records Related to the Sheriff's Department's Taser Training Program and Policy**

15 52. In its official response to the Grand Jury's Final Report, the Sheriff's Department
16 suggested that it would make certain changes to its Taser training program and explore certain
17 proposed changes to its Taser policy. The Sheriff's Department has refused to disclose records
18 requested by the ACLU that would make it possible for the public to evaluate whether and how the
19 Sheriff's Department has revised its Taser training program and/or policy to address the problems
20 identified in the Final Report.

21 53. The September 2014 request sought records reflecting the training materials and
22 Taser policy manual used by the Sheriff's Department at the time of the Grand Jury's inquiry. The
23 September 2014 request also sought records reflecting the Taser training materials and policy
24 manual currently used by the Sheriff's Department. In its October 2014 response, the Sheriff's
25 Department agreed to produce these records. However, the materials that the Sheriff's Department
26 provided include only one version of the Sheriff's Department's training materials and policy
27 manual. The records produced by the Sheriff's Department are not sufficient to clarify whether any
28 of the provided materials are copies of materials used at the time of the Grand Jury's inquiry the

1 Sheriff's Department has since retired from use, or whether any or all of the records are copies of
2 materials the Sheriff's Department currently uses to instruct its officers on Taser use and policy.

3 54. Accordingly, the January 2015 request sought additional records relating to the
4 Taser training materials and policy manual in place at the time of the Grand Jury's inquiry, and
5 those used by the Sheriff's Department at present. In responding to the January 2015 request,
6 however, the Sheriff's Department failed to produce any additional clarifying records. The
7 Sheriff's Department simply reaffirmed its prior response to the September 2014 request.

8 55. The September 2014 request also sought records reflecting any "evaluation,
9 assessment, or review conducted in response to the Grand Jury's [F]inal [R]eport," as well as
10 "records reflecting or relating to revisions, updates, or the need for revisions or updates" to the
11 Sheriff's Department's Taser training materials and policy manual, from before the time of the
12 2012 Grand Jury inquiry to the present. In response, the Sheriff's Department simply produced two
13 training manuals that the company TASER International, Inc., released in 2013, and stated: "There
14 have been no changes to the Sheriff's Department's policies regarding the use of Tasers since
15 2009." *See* Exhibit B, pp. 1-2, Exhibit D, pp. 2-3. In its October 2014 response, the Sheriff's
16 Department failed to produce, reference, or justify the withholding of any other records reflecting
17 or relating to the need for revisions or updates to its Taser policies, or any evaluation, assessment,
18 or review it conducted in response to the Grand Jury's Final Report — even though it had stated in
19 its official response to the Final Report that it was exploring ways to improve communication
20 among deputies involved in Taser deployment to minimize the possibility of unintended,
21 unnecessary, repeat and continuous exposures.

22 56. Accordingly, the January 2015 request sought "records . . . created in response to"
23 the Grand Jury's Final Report, as well as "records reflecting or relating to revisions, updates, or the
24 need for revisions or updates" to the Sheriff's Department's Taser training materials and policy
25 manual, from before the time of the 2012 Grand Jury inquiry to the present that the Sheriff's
26 Department had failed to produce in response to the September 2014 request. *See* Exhibit A, pp. 1-
27 2. In responding to the January 2015 request, the Sheriff's Department failed to produce any
28 records. Rather, the Sheriff's Department simply reaffirmed its October 2014 response.

1 **FIRST CAUSE OF ACTION**

2 **For Violation of the California Public Records Act, Gov't Code §§ 6250 et seq. & Article I, § 3**
3 **of the California Constitution**

4 *(Petitioner ACLU v. Respondent Sheriff's Department)*

5 57. Petitioner ACLU incorporates herein by reference the allegations of paragraphs 1
6 through 56 above, as if set forth in full.

7 58. Petitioner ACLU was at all times ready to tender any required fees for the
8 identifiable public records requested. Nevertheless, the Sheriff's Department has withheld records
9 reasonably described and requested by the ACLU that are not exempt from disclosure under any
10 express provision of law.

11 59. The Sheriff's Department also failed to make a reasonable effort to conduct a
12 complete search for records responsive to the ACLU's requests. *See, e.g.*, Gov't Code § 6253.1
13 (requiring a government agency to make a reasonable effort to "assist [the ACLU] to identify
14 records and information . . . responsive to the request or to the purpose of the request"; to
15 "[d]escribe the information technology and physical location in which the records exist"; and to
16 "[p]rovide suggestions for overcoming any practical basis for denying access to the records or
17 information sought.").

18 60. The Sheriff's Department did not take any of the actions listed in the previous
19 paragraph to assist Petitioner ACLU in making an effective request, before asserting that there were
20 no records responsive to the January 2015 request. *See id.*

21 61. By refusing to provide records responsive to the ACLU's January 2015 request, the
22 Sheriff's Department has denied Petitioner ACLU access to information concerning the Sheriff's
23 Department's conduct of the people's business, and it has shielded the writings of public officials
24 and the Sheriff's Department from public scrutiny, in violation of the California Constitution. *See*
25 Cal. Const. art. 1, § 3(b)(1) ("The people have the right of access to information concerning the
26 conduct of the people's business, and therefore, the meetings of public bodies and the writings of
27 public officials and agencies shall be open to public scrutiny.").

1 62. The Sheriff's Department's refusal to release records and its inadequate search for
2 records, as evidenced by the inconsistent record productions, violate the CPRA and article I, section
3 3 of the California Constitution.

4 **PRAYER FOR RELIEF**

5 **THEREFORE**, the ACLU respectfully prays as follows:

- 6 1. That this Court issue a peremptory writ of mandate directing the Sheriff's
7 Department to disclose to Petitioner ACLU the requested records, immediately and without delay,
8 except those records that the Court determines may lawfully be withheld;
- 9 2. That the Court set times for responsive pleadings and for hearings in these
10 proceedings, if necessary, "with the object of securing a decision as to these matters at the earliest
11 possible time," as provided by Government Code section 6258.
- 12 3. That the Court enter an order awarding Petitioner ACLU its reasonable attorneys'
13 fees and costs incurred in bringing this action, as provided by Government Code section 6259; and
- 14 4. For such other and further relief as the Court deems just and proper.

15 Dated: March 26, 2015

DANIEL RYGORSKY

16
17 By:  _____

Daniel Rygorsky

18 DOMINIQUE CAAMANO

19
20 By:  _____

Dominique Caamano

21
22 ACLU FOUNDATION OF SOUTHERN CALIFORNIA
23 ADRIENNA WONG
24 BELINDA ESCOBOSA HELZER

25 By:  _____

Adrienna Wong

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27 Attorneys for Petitioner
28 ACLU OF SOUTHERN CALIFORNIA

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VERIFICATION

I, Adrienna Wong, declare:

1. I am an attorney for the ACLU of Southern California, the Petitioner in this action.

2. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE DIRECTED TO SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT ORDERING COMPLIANCE WITH THE CALIFORNIA PUBLIC RECORDS ACT. The facts stated in paragraphs 13-14, 26-29, 31-32, 34-35, 46, 50-51, and 53-56 of the Petition are within my knowledge, and I know them to be true and correct.

This verification was executed on March 25, 2015, in Los Angeles, California. I declare under penalty of perjury that the foregoing is true and correct.


ADRIENNA WONG

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VERIFICATION

I, Hector O. Villagra, declare:

1. I am Executive Director for the ACLU of Southern California, the Petitioner in this action, and I am authorized to make this verification on Petitioner's behalf.

2. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE DIRECTED TO SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT ORDERING COMPLIANCE WITH THE CALIFORNIA PUBLIC RECORDS ACT. The facts stated in paragraph 19-20 are within my knowledge, and I know them to be true and correct. I am informed and believe that the facts alleged in paragraphs 1-12, 15-18, 21-25, 30, 33, 36-45, 47-49, 52, and 57-62 of the Petition are true and correct, and on that basis I allege them to be true.

This verification was executed on March 23, 2015, in Los Angeles, California. I declare under penalty of perjury that the foregoing is true and correct.



HECTOR O. VILLAGRA