

**ADMINISTRATIVE INVESTIGATION**

**PREPARED FOR THE**

**BANNING POLICE DEPARTMENT**

**IA # 2018-02**

**July 19, 2018**

**CONFIDENTIAL**

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# SECTION 1

## **INTRODUCTION AND SUMMARY**

### INTRODUCTION

RCS Investigations and Consulting was retained by the Banning Police Department to conduct an administrative investigation with respect to allegations of possible misconduct involving Sergeant Michael Bennett, [REDACTED]. The investigation was initiated after Anthony Valdivia filed a claim against the City of Banning on February 16, 2018. In his claim, Valdivia alleged on August 23, 2017, at approximately 5:40 p.m., the named officers used unnecessary force and arrested him without cause in front of his residence located at [REDACTED] Street, Banning, California.

It was further alleged that Sergeant Bennett conducted a use of force investigation into the incident, which was biased.

Based on the initial information, RCS Investigators deemed Sergeant Bennett, [REDACTED] and [REDACTED] subject employees and identified the following possible allegations of misconduct:

#### Sergeant Bennett

##### **Allegation "1" –** [REDACTED]

##### **Allegation "2" –** [REDACTED]

**Allegation "3" –** It was alleged that Sergeant Bennett demonstrated unsatisfactory performance when he conducted an impartial "Use of Force" administrative investigation on August 23, 2017.

During the course of the investigation, RCS Investigators identified the following additional allegation of misconduct against Sergeant Bennett:

##### **Allegation "4" –** [REDACTED]

#### Officer [REDACTED]

##### **Allegation "1" –** [REDACTED]

Allegation "2" - [REDACTED]

Allegation "3" - [REDACTED]

Detective [REDACTED]

Allegation "1" - [REDACTED]

Allegation "2" - [REDACTED]

Various materials were reviewed during the administrative investigation including policy sections, police reports, memorandums, incident history reports, and audio recordings. Additionally, interviews were conducted with several employees as part of the work product of the investigation.

## SUMMARY

The Banning Police Department has policies in place that were established in-part as an equitable and uniform procedure for dealing with personnel matters. RCS Investigators reviewed and considered the following *Banning Police Department Policy Manual* sections as part of the work product of this investigation:

### **Policy 100 Law Enforcement Authority**

#### 100.2 PEACE OFFICER POWERS

Sworn members of this department shall be considered peace officers pursuant to Penal Code § 830.1. The authority of any such peace officer extends to any place in the State of California, as follows:

(a) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision which employs the peace officer; or

#### 100.3 CONSTITUTIONAL REQUIREMENTS

All employees shall observe and comply with every person's clearly established rights under the United States and California Constitutions.

### **Policy 300 Use of Force**

#### 300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

### 300.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly force - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.

Force - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed or restrained.

### 300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving. Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

#### 300.3.1 USE OF FORCE TO EFFECT AN ARREST

Any peace officer may use reasonable force to effect an arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance (Penal Code § 835).

### 300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- (a) Immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The effects of drugs or alcohol.
- (e) Subject's mental state or capacity.
- (f) Proximity of weapons or dangerous improvised devices.
- (g) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (h) The availability of other options and their possible effectiveness.
- (i) Seriousness of the suspected offense or reason for contact with the individual.
- (j) Training and experience of the officer.
- (k) Potential for injury to officers, suspects and others.
- (l) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (m) The risk and reasonably foreseeable consequences of escape.
- (n) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (p) Prior contacts with the subject or awareness of any propensity for violence.
- (q) Any other exigent circumstances.

### 300.7 SUPERVISOR RESPONSIBILITY

A supervisor shall respond to an incident in which there has been a reported application of force; the supervisor is expected to:

(a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.

(b) Ensure that any injured parties are examined and treated.

(c) When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/ her Miranda rights, the following shall apply:

1. The content of the interview should not be summarized or included in any related criminal charges.

2. The interview shall be documented in a department information report. The supervisor shall then notify their Division Lieutenant that an information report has been taken, along with the reports file number.

3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.

(d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.

(e) Identify any witnesses not already included in related reports.

(f) Review and approve all related reports.

(g) Determine if there is any indication that the subject may pursue civil litigation. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.

(h) Evaluate the circumstances surrounding the incident and should the supervisor suspect that any application of force was not within policy they shall contact their Division Lieutenant as soon as possible.

(i) Ensure all recorded media (Audio & Video), related to the Use of Force, is downloaded and booked into evidence under the initial crime report.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

### **Policy 309 Electronic Control Device Guidelines**

#### 309.4 VERBAL AND VISUAL WARNINGS

A verbal warning of the intended use of the TASER device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to:

(a) Provide the individual with a reasonable opportunity to voluntarily comply.



(b) Provide other officers and individuals with a warning that the TASER device may be deployed.

If, after a verbal warning, an individual is unwilling to voluntarily comply with an officer's lawful orders and it appears both reasonable and feasible under the circumstances, the officer may, but is not required to, display the electrical arc (provided that a cartridge has not been loaded into the device), or the laser in a further attempt to gain compliance prior to the application of the TASER device. The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair his/her vision.

The fact that a verbal or other warning was given or the reasons it was not given shall be documented by the officer deploying the Taser device in the related report.

### **Policy 338 Conduct**

#### **338.3 CONDUCT WHICH MAY RESULT IN DISCIPLINE**

The following list of causes for disciplinary action constitutes a portion of the disciplinary standards of this department. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to efficient department service:

##### **338.3.2 CONDUCT**

(k) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department.

##### **338.3.5 PERFORMANCE**

(g) Failure to take reasonable action while on-duty and when required by law, statute, resolution or approved department practices or procedures.

##### **338.3.5 PERFORMANCE**

(u) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.

##### **338.3.5 PERFORMANCE**

(aa) Any other on-duty or off-duty conduct which any employee knows or reasonably should know is unbecoming a member of the Department or which is contrary to good order, efficiency or morale, or which tends to reflect unfavorably upon the Department or its members.

### **Policy 450 Use of Audio Recording**

#### **450.5 ACTIVATION OF THE AUDIO RECORDER**

Members should activate the recorder during all enforcement stops and field interrogation situations and any other time the member reasonably believes that a recording of an on-duty contact may be useful. Once started, recordings should continue without interruption until the contact ends, if feasible.

At no time is a member expected to jeopardize his/her safety in order to activate a recorder or change the recording media. However, the recorder should be activated in required situations as soon as practicable.

The Banning Police Department Manual sections are included as **Exhibit "A"** in this report.

RCS Investigators were initially provided with documents including a 'Claim for Money or Damages' against the City of Banning and related arrest reports for Anthony Valdivia.

RCS Investigators reviewed a "Claim for Money or Damages against the City of Banning" received by the City on February 16, 2018. The claim contained in-part the following verbatim information:

1. Name and Post Office address of Claimant:

Name of Claimant: Anthony Valdivia (Father); [REDACTED] (minor); [REDACTED] (minor)  
Post Office Address: [REDACTED], Banning CA 92220

4. The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted.

Date of Occurrence: 8/23/17                      Time of Occurrence: Dusk

Location [REDACTED] Banning CA 92220 (My family Home)

Circumstances giving rise to this claim:

See attached 2 page synopsis. (I do not pretend to be an attorney, so I do not know what this fact pattern should assert but I do know right from wrong, and it is that I explain:

6. The name or names of the public employee or employees causing the injury, damage, or loss, if known.

Sgt. Bennett, and Officers Felix and Dusenberry (sic)

9. The name, address and telephone number of any witness(es) to the occurrence or transaction which give rise to the claim asserted:

My neighbors witnessed (sic) some or all of the matter; police officers interviewed them, but I am told that the officers were aggressive and bias (sic) for their fellow officers. I believe the incident report No. is 17-2809

*"GOVERNMENT TORT CLAIM*

*On August 23, 2017 my son, [REDACTED] then 8-years-old, called 911. From what I can gather, he did it on a dare by his older brother. I and my wife were not in the home at the time the call was made. But, I was present at the home when squads (sic) cars drove past my address,*

*The police cars came back and officers approached me speaking of a hang up 911 call. I was trying to figure out what was going on, if a call had indeed been made from our home, I asked my son, [REDACTED] who was in the house if he had called 911 and when he said he thought so, an officer demanded in a loud harsh voice that my son come outside to him. My son was obviously scared. And, I turned to the officer and told him-not to speak to my child in the harsh tone he used. That is when things went south.*

*The officers had no reason to use force on me, no reason to think that force was necessary, yet they did, repeatedly. The officers had no reason to prevent me from speaking with my young son, no reason to become angry and certainly not use force on me just because I requested that the officer not use a harsh tone against my scared son...To add insult to my family and injuries, I was arrested for a charge of Penal Code 148, which is a misdemeanor that is imprisonable for up to one year ..."*

The Claim for Money or Damages against the City of Banning is included as **Exhibit "B"** in this report.

RCS Investigators reviewed Banning Police Department CAD Incident Report #1708230085. The CAD report contained in-part the following verbatim information:

Location

Incident Type

911 – 911 HANG UP

Date

08/23/17

Primary Unit

P27

Source

9-1-1 CALI

Caller Address

Caller Phone

Disposition

Arrest

Case Number

17-2809

Incident Times

Received 17:39:13

Created 17:40:11

Dispatched 17:47:51

En Route 17:48:09

On Scene 17:52:28

Closed 23:20:34

Revd-Closed 5:41:21

Incident Comments

HANG UP//NEG ANS ON CB

Service Class: VOIP

TIME	#	EVENT
17:53:05	11	P26 MAKING CONT WITH ONE IN THE FRONT
17:54:20	12	S9 10-33
17:54:20	13	S9 PHYSICAL
17:56:46	16	S9 I IN CUST

RCS Investigators noted that although the CAD report indicated that P27 was the Primary Unit, P26 was the unit which was dispatched.

The CAD Incident Report is included as **Exhibit "C"** in this report.

RCS Investigators reviewed Banning Police Department Report #17-2809. The report contained in-part the following verbatim information:

<i>Offenses</i>	<i>Description</i>
148(A) PC	Obstruct Public Officer

*Witness*

[REDACTED]

*Address*

[REDACTED] Banning, CA 92220

<i>Suspect Arrested</i>	<i>Action Taken</i>	<i>Charges</i>
Valdivia, Anthony	CITATION ISSUED	148(A) PC

<i>Prepared By</i>	<i>Approved By</i>	<i>Date</i>
U456 -- Felix, Alberto	U383 -- Bennett, Michael	10/10/2017

*Witness*

[REDACTED]

*Residence Address*

[REDACTED]

*Residence Phone*

[REDACTED]

*Witness*

[REDACTED]

*Residence Address*

[REDACTED]

*Residence Phone*

[REDACTED]

*Mentioned*

[REDACTED]

*Residence Address*

[REDACTED] Banning

*Residence Phone*

[REDACTED]

Mentioned

Residence Address

Banning, CA 92220

Residence Phone

**ASSIGNMENT:**

On 8-23-17 at 1747 hours, I was dispatched to [REDACTED] Street, in the City of Banning, County of Riverside, regarding a 911 hang up. Banning Dispatch advised there was no answer on the call back.

**INVESTIGATION:**

I arrived on scene and made contact with an adult male in front of the residence later identified as Anthony Valdivia. I advised Valdivia the reason for the contact. I activated my audio recorder at that time. Valdivia's son was at the front living room window. The window was open and he was speaking through the screen. The window was approximately 40 feet away from where Valdivia was contacted. Due to the distance I told his son "Come here." Valdivia immediately responded in an aggressive tone, "Don't yell at him." I advised Valdivia that I did not yell at him. All that was said was "Come here." I requested to speak to his son when Valdivia became upset. Valdivia refused to let officers speak to his son. Valdivia was given a verbal command to step to the front of the property so officers could speak to his son. It was still unknown why 911 was dialed. It appeared that Valdivia was attempting to stop officers from investigating further.

Sgt. Bennett attempted to grab Valdivia's arm to direct him towards the front of the residence when Valdivia aggressively moved his arm away from Sgt. Bennett and stood in a bladed fighting stance. Valdivia was cursing at officers. Valdivia was making comments towards officers. Valdivia said "Fucking punks, that's all you are." Valdivia made that comment approximately 3-4 times. Sgt. Bennett and I each grabbed an arm of Valdivia and walked him to the curb. We asked Valdivia to have a seat and he refused. Valdivia was directed to the ground. While on the ground Valdivia attempted to stand up and began resisting and pulling away. Sgt. Bennett and I, utilized distraction strikes to overcome resistance and prevent escape. Valdivia continued to resist by tightening his arms and refusing to comply. I gave Valdivia several commands to stop resisting. Valdivia continued to keep his arms near his front torso and not allow officers to handcuff him. Valdivia was taken into custody.

Prepared By:  
U456 - FELIX, ALBEETO

Date:  
08/23/2017

Approved by:  
U383 BENNETT, MICHAEL 10/10/2017

**SUPPLEMENTAL REPORT:**

On Wednesday, August 23, 2017, at 1747 hours, I responded to assist Officer Felix on a 9-1-1 hang-up call at [REDACTED] Street. As I arrived, I could see officer Felix was speaking with a male subject, later identified as Anthony Valdivia, in the front yard of the location. As I approached Officer Felix and Valdivia, I heard Officer Felix ask a young juvenile inside the residence of the location to "come here."

Valdivia became upset with Officer Felix and stated, "Don't fucking talk to my son like that." Officer Felix responded and told Valdivia to calm down and that he only stated "come here" to the juvenile. Valdivia responded by saying we needed to leave his property.

At this point, I intervened and asked Valdivia to calm down. Valdivia was agitated and told me I could not tell him what to do. Based on Valdivia's aggression and not knowing exactly what may have happened inside the residence that caused someone to call 9-1-1 in the first place and believing Valdivia was trying to distract Officer's from going inside the residence. I asked Valdivia to go sit on the curb that was about fifteen feet away so we could go make sure nobody was injured inside the residence. Valdivia told me he wasn't going to go sit down. I told Valdivia he did not have a choice at this point and again directed him to go sit on the curb. Based off Valdivia's actions and being agitated, I grabbed him by his right arm and he pulled away from me. Once Valdivia pulled away from me, he bladed his body in a boxer like stance and said he was not going to sit down. I grabbed Valdivia a second time by his right arm and put him in a rear wrist lock and Officer Felix grabbed Valdivia's left arm.

Valdivia then began yelling that he had an injury to his left arm and told us not to grab him; however, Valdivia seemed to become more agitated and began resisting us by not allowing us to walk him to the curb. As we escorted Valdivia over to the curb I asked him to sit down, but he refused several times. Valdivia then pulled away from the grasp of Officer Felix and I and turned towards me. I then grabbed Valdivia by both of his shoulder and pulled him down to the ground onto his buttocks. Once Valdivia was on the ground, he immediately rolled over to his hands and knees. Valdivia then into a fetal like position and held his hands under his body to prevent Officer Felix and me from grabbing his hands.

I began giving verbal commands for Valdivia to show his hands and he would not comply. Not gaining any cooperation from Valdivia with verbal commands, I used my right knee and struck Valdivia in the left ribcage area in an attempt to gain control of his hands; however, the knee strike did not affect Valdivia. Valdivia was now in a seated position and I was yelling for him to get on his stomach, but he refused all the while still not allowing Officer Felix or me to gain control of his hands. I then used an open palm strike to the left side Valdivia face with my right hand, which had no affect (sic) on Valdivia.

I then removed my Taser and turned it on. I told Valdivia I was going to use the Taser if he did not give me his hands. Valdivia then rolled to his right side of his body, while I was on the left side of his body. I placed my left knee on Valdivia's neck/head to prevent him from getting up and trying to get him to lay flat on his stomach. I again told Valdivia to remove his hands, but he failed to comply. I could hear Valdivia yelling out that his arm was hurt and he couldn't pull his arms out. I stood up from Valdivia and pulled him to his stomach, but he got back onto all fours. I again told Valdivia to remove his hands and he again refused. I then gave two additional knee strikes to Valdivia left rib cage area that were affective (sic) and he went flat on the ground. I was able to grab Valdivia's left arm and place it behind his back. Officer Felix was then able to gain control of Valdivia's right arm and he was placed him under arrest for 148 (a) PC-Obstruction...

I then spoke to several neighbors who were standing across the street from the incident. I asked if anyone had witnessed the incident. As I spoke to the neighbors, nobody witnessed the incident from start to finish. Several of the neighbors stated that they did observe the altercation as it was concluding; however, they did not have all the facts surrounding why the altercation with Valdivia took place in the first place.

*I audio recorded the statements of the neighbors and later booked them into an evidence locker at the Banning Police Department. The following neighbors spoken to identified themselves as [REDACTED] from [REDACTED] Street, [REDACTED] from [REDACTED] Street, [REDACTED] from [REDACTED] Street.*

*Prepared By: U383 – BENNETT, MICHAEL      Date: 08/24/2017      Approved by: U383 BENNETT, MICHAEL      Date: 10/10/2017*

The entire Banning Police Department report is included as **Exhibit “D”** in this report.

RCS Investigators reviewed ‘Banning Police Department Notice to Appear’ #118128 and noted it was issued to Anthony Valdivia on August 23, 2017. The notice to appear directed Valdivia to appear at the Banning Justice Center on or before October 3, 2017 at 7:30 a.m. for the charge of 148 (A) (1) P.C. – Obstruction of a police officer.

A copy of the notice to appear is included as **Exhibit “E”** in this report.

RCS Investigators reviewed a Riverside County Superior Court ‘Declaration in Support of Arrest Warrant.’ The declaration in support of arrest warrant contained in-part the following verbatim information:

**PEOPLE OF THE STATE OF CALIFORNIA**

**VS.**

**DEFENDANT: Anthony Valdivia**

**CASE NUMBER:  
17-2809**

**DECLARATION IN SUPPORT OF ARREST WARRANT**

*The undersigned, A. Felix declares that he/she is a officer (title) employed by the City of Banning in the County of Riverside; That he/she has investigated a reported crime of 148(a) PC. That he/she, on information and belief, alleges and states the following to be true:*

*On 8-23-17 at 1747 hours, I was dispatched to [REDACTED] in the City of Banning, County of Riverside, regarding a 911 hang up to a residence. On arrival, I made contact with Anthony Valdivia. I advised Valdivia the reason for the contact. Valdivia's son advised his father that he dialed 911 from a bedroom window that was open. I requested to speak to let officers speak to his son. Valdivia was given a verbal command to step to the front of the property so officers could speak to his son. Valdivia refused. Sgt. Bennett attempted to grab Valdivia's arm to direct him towards the front of the residence when Valdivia aggressively moved his arm away from Sgt. Bennett and stood in a bladed fighting stance. Valdivia was cursing at officers.*

Sgt. Bennett and I each grabbed an arm of Valdivia and walked him to the front curb. We asked Valdivia to have a seat and he refused. Valdivia was directed to the ground. While on the ground Valdivia attempted to stand up. Sgt. Bennett and I, utilized distraction strikes to overcome resistance and prevent escape. Valdivia was taken into custody.

A copy of the declaration is included as **Exhibit "F"** in this report.

RCS Investigators reviewed a Riverside County Sheriff's Department Receiving form dated August 23, 2017. The Receiving form contained in-part the following verbatim information:

**DEFENDANT INFORMATION**

Last name, F, M Valdivia, Anthony

**ARREST INFORMATION**

Arresting Agency Banning PD  
Arrest Location ██████████ St

Agency Case Number 17-2809

Arresting Officer/I.D. # A. Felix #U456

Transporting Officer/I.D. # A. Felix #U456

**BOOKING CHARGES**

Charges	M/F	Narrative	Court Warrant #	Bail
148(A) (1) PC	M	OBSTRUCT POLICE OFFICER		

The Riverside County Sheriff's Department Receiving Sheet is included as **Exhibit "G"** in this report.

RCS Investigators reviewed a 'San Geronio Memorial Hospital Medical Evaluation by Peace Officer' form. The medical evaluation form contained in-part the following verbatim information:

*This is to certify that: Anthony Valdivia ("arrestee"). DOB 12-29-67*

*Has been lawfully arrested for an allegedly committed by the arrestee.*

By \_\_\_\_\_ Date 08-23-17 Time 1835  
*Signature of Peace Officer*

By Officer Deusenberry Badge # U457  
*Printed name of Peace Officer*

**STATEMENT OF PHYSICIAN**

*Upon the request of Officer Deusenberry I have evaluated Anthony Valdivia  
*(Arrestee)*  
and have provided the above named officer with a copy of my written evaluation of the arrestee.*



PLEASE CHECK APPROPRIATE BOX

X - I have determined the arrestee IS medically safe to detain and incarcerate.

A copy of the document is included as **Exhibit "H"** in this report.

RCS Investigators reviewed a 'San Gorgonio Memorial Hospital Discharge Instructions' form. The hospital discharge form contained in-part the following verbatim information:

William Diez, PA      *Patient: ANTHONY VALDIVIA*  
*DOB: 12/29/1967*

*Discharge Instructions*



**JAIL CLEARANCE**

The 'San Gorgonio Memorial Hospital Discharge Instructions' form is included as **Exhibit "I"** in this report.

RCS Investigators reviewed a 'Banning Police Department Use of Force Memorandum' for case #17-2809. The use of force memorandum was addressed to Chief Diaz via the chain of command from Staff Sergeant Mike Bennett. The memorandum contained in-part the following verbatim information:

(a) Basic Facts:

*On Wednesday, August 23, 2017, at 1747 hours, I responded to assist Officer Felix on a 9-1-1 hang-up call at [REDACTED] Street. As I arrived, I could see office Felix was speaking with a male subject, later identified as Anthony Valdivia, in the front yard of the location. As I approached Officer Felix and Valdivia, I heard Officer Felix ask a young juvenile inside the residence of the location to "come here". Valdivia became upset with Officer Felix and stated, "Don't fucking talk to my son like that." Officer Felix responded and to calm down and that he only stated "come here" to the juvenile. Valdivia responded by saying we needed to leave his property.*

*At this point, I intervened and asked Valdivia to calm down. Valdivia was agitated and told me I could not to tell him what to do. Based on Valdivia's aggression and not knowing exactly what may have happened inside the residence that caused someone to call 9-1-1 in the first place. I believed Valdivia was trying to distract Officer's from going inside the residence. I asked Valdivia to go sit on the curb that was about fifteen feet away so we could go make sure nobody was injured inside the residence. Valdivia told me he wasn't going to go sit down. I told Valdivia he did not have a choice at this point and again directed him to go sit on the curb. Based off Valdivia's actions and being agitated, I grabbed him by his right arm and he pulled away from me. Once Valdivia pulled away from me, he bladed his body in a boxer like stance and said he was not going to sit down. I grabbed Valdivia a second time by his right arm and put him in a rear wrist lock and Officer Felix grabbed Valdivia's left arm.*

Valdivia then began yelling that he had an injury to his left arm and told us not to grab him; however, Valdivia seemed to become more agitated and began resisting us by not allowing us to walk him to the curb. As we escorted Valdivia over to the curb I asked him to sit down, but he refused several times. Valdivia then pulled away from the grasp of Officer Felix and me and turned towards me. I then grabbed Valdivia by both of his shoulder and pulled him down to the ground onto his buttocks. Once Valdivia was on the ground, he immediately rolled over to his hands and knees. Valdivia then got into a fetal like position and held his hands under his body to prevent Officer Felix and me from grabbing his hands.

(c) Witnesses:

I spoke to several neighbors who were standing across the street from where the incident occurred. I asked if anyone had witnessed the incident. As I spoke to the neighbors, nobody witnessed the incident from start to finish. Several of the neighbors stated that they did observe the altercation as it was concluding; however, they did not have all the facts surrounding why the altercation with Valdivia took place in the first place.

I audio recorded the statements of the neighbors and later booked them into an evidence locker at the Banning Police Department. I also attached the statements for your review. The following neighbors were interviewed and identified as [REDACTED] from [REDACTED] Street, [REDACTED] from [REDACTED] Street, [REDACTED] from [REDACTED] Street.

(d) Suspect Statement:

I spoke to Valdivia in an interview room in at the Banning Police Department. While speaking to Valdivia, he told me he had a tendon re-attachment surgery. I explained to Valdivia why officers originally arrived at his residence. Anthony told me when officers arrived he had just exited his residence to his front yard to leave for baseball practice. He then observed two "cop cars" and believed they were at the location for a neighbors residence. He said an office explained to him that there was a 9-1-1 hang up at the location. Valdivia then stated an officer yelled at his son saying, "Get out here". Valdivia stated he told the officer to not talk to his son like that.

Valdivia then stated that he told his son to come outside and the son complied. Valdivia said he asked him if he called 9-1-1 and his so replied by saying he had. Valdivia said at this point, the officer told him that he was "resisting arrest and they started beating the shit out of me". Valdivia said he began yelling not to twist his arm because he had just had surgery.

Valdivia said another officer started kicking him in his head and another officer was twisting his arm. Valdivia said he asked officers to look at his scare while this was happening and his only concern was that he had just had surgery. He said the more he said his arm hurt the more officer beat on him. Valdivia stated that he heard officers telling him to get on his stomach; however, he stated he couldn't. He said he couldn't get on his stomach so an officer "kneed" him in his head. He said officers were telling him he was resisting arrest and he said he was just telling officer he had surgery.

*Furthermore, Valdivia stated he never heard officers tell him to go sit on the curb and he knew that to be a "fact". During my interview with Valdivia, he became agitated and argumentative with me.*

The Use of Force Memorandum is included as **Exhibit "J"** in this report.

RCS Investigators reviewed Officer Felix's On-Scene audio recording.

The transcript and (CD) are included as **Exhibit K"** in this report.

RCS Investigators reviewed Sergeant Bennett's Taser video/audio recording. The recording was shaky and the audio was nearly imperceptible due to distortion.

The video/audio recording (CD) is included as **Exhibit "L"** in this report.

RCS Investigators reviewed Sergeant Bennett's on-scene recorded interviews [17-2809-004 (Two Tracks) (CD).] RCS Investigators noted it was the recording of witness statements at the scene, as well as an administrative interview of Anthony Valdivia by Bennett.

RCS Investigators reviewed the audio recording of the witness interviews conducted by Sergeant Bennett at the scene. The audio recording was negatively impacted by the sound of sirens and from fire department vehicles responding to the location. Due to the formatting of the original recording, RCS Investigators had to make a second recording in order to have it transcribed. The original audio, re-recorded audio and transcripts contained repeated instances of being "unintelligible."

The audio recorded CD and transcript of the witness interviews are included as **Exhibit "M"** in this report.

### **Interview of Anthony Valdivia**

Sergeant Bennett indicated in his use of force memorandum that he interviewed Anthony Valdivia; however, there was no date or time indicated as to when it occurred. Bennett's interview of Valdivia was transcribed and included as **Exhibit "N"** in this report.

RCS Investigators reviewed Sergeant Bennett's audio recordings [17-2809-005 (Three Tracks) (CD).] Investigators noted the recording contained witness statements: Bennett's administrative interview of Anthony Valdivia; and Officer Felix's on-scene digital audio recording. The recording was included as **Exhibit "O"** in this report.

RCS Investigators reviewed Officer Felix's after incident audio recording, which included his conversation with [REDACTED]. The recording is included as **Exhibit "P"** in this report.

Beginning on April 16, 2018, RCS Investigators began calling Anthony Valdivia at the telephone numbers contained within the Banning Police Department arrest and booking reports. After several attempts on different days, RCS Investigators received no return calls from Valdivia.

On April 19, 2018, RCS Investigator Langston contacted Lieutenant Vincent Avila and requested additional known phone numbers for Anthony Valdivia. At the same time, a certified letter was sent to Valdivia's residence in order to schedule an interview with him. Avila later drove to Valdivia's residence and obtained a current telephone number from him.

A copy of the certified letter that was sent to Anthony Valdivia is included as **Exhibit "Q"** in this report.

RCS Investigator Langston made telephonic contact with Anthony Valdivia and scheduled a meeting at his residence on April 25, 2018 at 10:00 a.m.

On April 23, 2018, Anthony Valdivia contacted RCS Investigator Langston and said he wanted to send a series of written questions, before consenting to an interview. After Investigator Langston answered Valdivia's questions, he agreed to meet on April 25, 2018. On that date, Investigator Langston drove to Valdivia's residence in the City of Banning; however, he was not home and did not respond to any telephone messages that were left for him.

On April 25, 2018, RCS Investigator Langston interviewed [REDACTED] in the City of Banning. RCS Investigators also attempted to make direct contact with [REDACTED], [REDACTED] and [REDACTED], who were identified as possible witnesses to the arrest involving Anthony Valdivia; however, none of them were home at the time. Prior to leaving the area on April 25, 2018, RCS Investigator Langston made telephonic contact with Anthony Valdivia, who said he had to work that day and forgot to call and cancel the appointment. A subsequent telephone interview was scheduled with Valdivia for April 28, 2018 at 6:00 p.m.

RCS Investigator Langston took six photographs of the outside of Anthony Valdivia's residence and the surrounding area. The photographs are included as **Exhibit "R"** in this report.

On April 28, 2018, RCS Investigator Langston attempted to interview Anthony Valdivia; however, he did not answer the telephone or return any calls.

RCS Investigators received a certified letter on May 3, 2018, from Anthony Valdivia with questions regarding the investigation. The letter was originally dated April 23, 2018.

The certified letter was included as **Exhibit "S"** in this report.

RCS Investigators conducted subject employee interviews with Sergeant Bennett, [REDACTED] and [REDACTED].

Administrative investigation notification letters were issued to the subject employees and included as **Exhibit "T"** in this report.

#### **Interview of [REDACTED]**

On April 25, 2018, RCS Investigator Langston conducted an interview with [REDACTED]. The interview was recorded and a transcript is included as **Exhibit "U"** in this report. The following is a brief synopsis of the interview.

██████████ said she lived at ██████████ Street, Banning, for approximately four years. ██████████ said she was at home on August 23, 2017 and observed the Banning Police Department arrive and park by a vacant house just north of Anthony Valdivia's residence. ██████████ said she walked to the edge of her property to see what was taking place, believing there was possibly an issue at the vacant house. ██████████ said two officers exited their vehicles and began walking towards Valdivia's residence. ██████████ said Valdivia exited his residence, as he was preparing for baseball practice. ██████████ also stated the younger of Valdivia's sons was still in the house, while the older son waited in the truck.

██████████ said the officers indicated they were responding to a 9-1-1 call and Anthony Valdivia did not seem to know what was taking place. ██████████ added that Valdivia's son, ██████████ was looking out the front door and the officers called him over. She said Valdivia told the officers to hold on, because he wanted to first ascertain what was taking place. ██████████ said the officers were kind of intimidating and she believed one of them stated, 'Can we talk to him' or 'we need to talk with him.' ██████████ confirmed Valdivia's son, ██████████ was originally standing near a window and then walked to the front door when the officers arrived.

██████████ reiterated that Anthony Valdivia told the officers to 'hold-on' a second and not talk to his son that way, because they were scaring him. ██████████ said when Valdivia turned around to talk to his son, the officers grabbed him from behind and told him to lay on the ground. ██████████ said the officers were trying to force Valdivia to the ground, at which time she climbed over her fence to contact Valdivia's son, ██████████ who was crying. ██████████ further stated the officers told Valdivia to place his arms behind his back; however, he told them he was unable to do so.

██████████ said Anthony Valdivia informed the officers that he could not place his arms behind his back, due to a recent surgery and they did not care. ██████████ said she also informed the officers that Valdivia recently had surgery. ██████████ stated she never observed anything to suggest that Valdivia was trying to pull away or was physically resisting the officers.

██████████ said she was not aware of the technical issues; however, in her opinion there was no reason for Anthony Valdivia to have been arrested. She also stated that officers utilized punches and knees on Valdivia, while he was on the ground with his arms underneath his body. ██████████ said the officers eventually had Valdivia sitting upright on the curb, before a third officer arrived and placed him into a patrol unit. ██████████ believed Anthony Valdivia became verbally hostile with the officers, after they had him seated on the curb.

██████████ said she was subsequently interviewed by Sergeant Bennett; however, he would ask a question and when answered would respond by stating, 'Well do you mean this.' ██████████ said Bennett tried to repeat what she already spoke about in a different manner and she responded by stating, 'No, that's not what I mean...this is what I meant.'

#### **Interview of Sergeant Michael Bennett**

On May 9, 2018, RCS Investigator Langston conducted an interview with Sergeant Bennett. Bennett was provided a copy of his rights pursuant to the Public Safety Officers Procedural Bill of Rights and was represented by Attorney Mike McCoy.

Sergeant Bennett was admonished to answer all questions completely and truthfully and was given a compulsory order to do so. The interview was recorded and a copy of the transcript is included as **Exhibit "V"** in this report. The following is a synopsis of the interview.

Sergeant Bennett recalled working an evening shift from 4 p.m. through 4 a.m. on August 23, 2017, and believed his call sign at the time was 'Sam-9'; however, he was not sure since they recently changed. Bennett said he was dispatched to a 9-1-1 hang-up call at [REDACTED] Street, Banning on August 23, 2017 at approximately 5:40 p.m. Bennett said when he arrived, Officer Felix was already on-scene and speaking to Anthony Valdivia in the front yard. Bennett said as he approached, it appeared as though Valdivia was upset and exchanging words with Felix.

Sergeant Bennett was asked about their department policy relating to the use of digital recorders. Bennett said the policy was 'shall' as far as the use of the digital recorder was concerned [policy actually states 'should']. Bennett said he did not activate the recorder, because Valdivia was already agitated and he decided to intervene. Bennett said Officer Felix was trying to inform Valdivia why they were at the location. Bennett indicated he tried to intervene and Valdivia said something similar to: 'Get off my property, leave me alone; leave me the fuck alone' to Felix.

Sergeant Bennett said Officer Felix diverted his attention to a young boy that was in the house and told him to 'come here.' Bennett said that comment escalated the event and he explained to Anthony Valdivia they were at the location for a 9-1-1 call and wanted to make sure everyone was okay and then they would leave. Bennett said when Felix told the young boy to 'come here', Valdivia became really agitated and said, 'Get the fuck out of here' or 'get off my property.'

Sergeant Bennett said it was his recollection that Officer Felix told the young boy to 'come outside' or 'come here.' He said Felix did not ask Anthony Valdivia if he could speak with the child and directed him to walk outside, which was what appeared to set Valdivia off. Bennett was asked if he gave any directives at the time and he said he told Valdivia to walk to the curb and sit down; however, he refused. Bennett said Valdivia was very upset, his voice began to escalate and he was posturing. Bennett said he did not understand why Valdivia was acting out in that manner. Bennett indicated when Valdivia refused to sit down, he grabbed his right arm to walk him to the curb. He said Valdivia pulled away and 'balled-up' his fists in front of his stomach and took a 'boxer' stance.

Sergeant Bennett said he and Officer Felix both grabbed Anthony Valdivia's arms and he broke free from their grasp. Bennett said he then grabbed Valdivia's shoulder and turned him towards the curb. Bennett was asked if Valdivia said anything about having medical problems and he confirmed he did. Bennett said Valdivia mentioned something about having had shoulder or bicep surgery or something to that effect.

Sergeant Bennett said Anthony Valdivia's statement did not deter him from using force, because of officer safety concerns and the fact that people are not always truthful under those circumstances. Bennett continued to describe the subsequent actions by Valdivia and the attempts made by officers to control him, all of which are included in the attached interview transcripts.

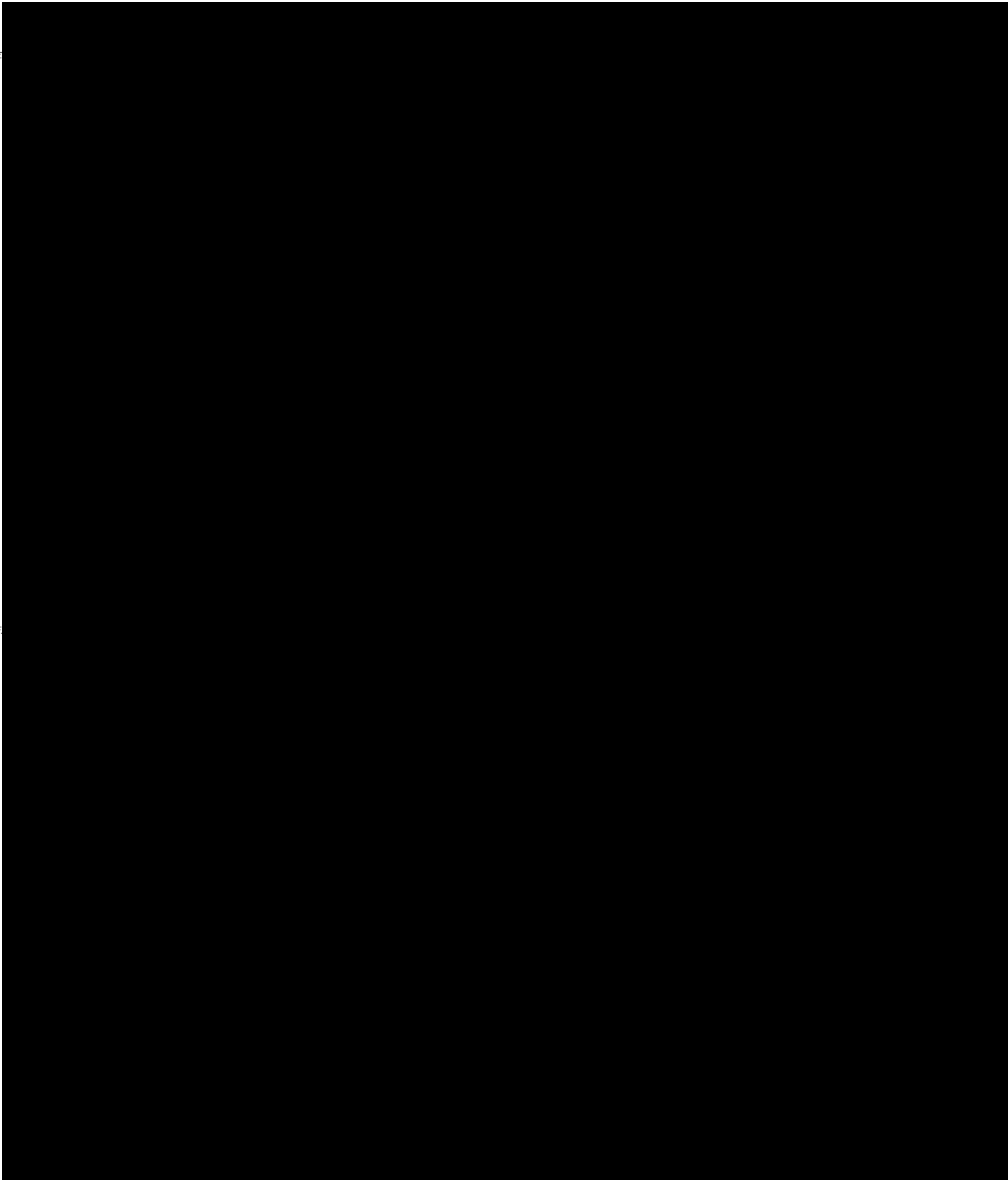
Sergeant Bennett said he subsequently interviewed four or five neighbors, who were possible witnesses to the incident. Bennett said he also interviewed Anthony Valdivia as part of the use of force review and completed a "Use of Force" memorandum. Bennett said he advised the chief of police about the use of force at the time. Bennett confirmed there was a delay in turning in the use of force memorandum, because he went off on medical leave for more than a month immediately after the incident occurred. Bennett also stated Officer Felix's digital recording of the incident appeared to be missing the part where he was trying to intervene with Valdivia, prior to the incident becoming physical. Bennett said the recorders would sometimes go into a pause mode if they were "bumped." The entire interview with Bennett was transcribed and included as an exhibit in this report.

Interview of [REDACTED]

[REDACTED]

Interview of [REDACTED]

[REDACTED]





## SECTION 2

### CONCLUSIONS AND FINDINGS

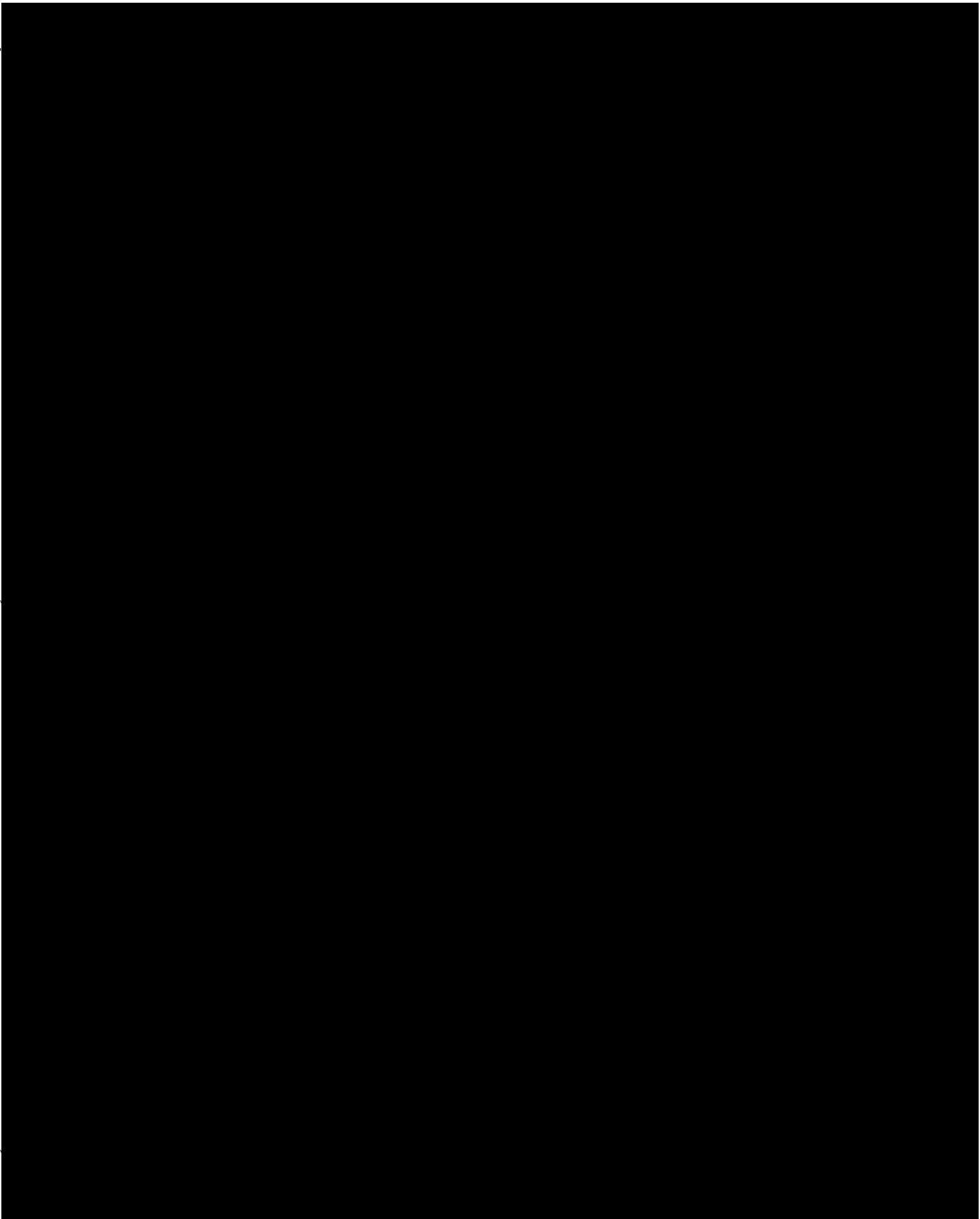
Sergeant Michael Bennett

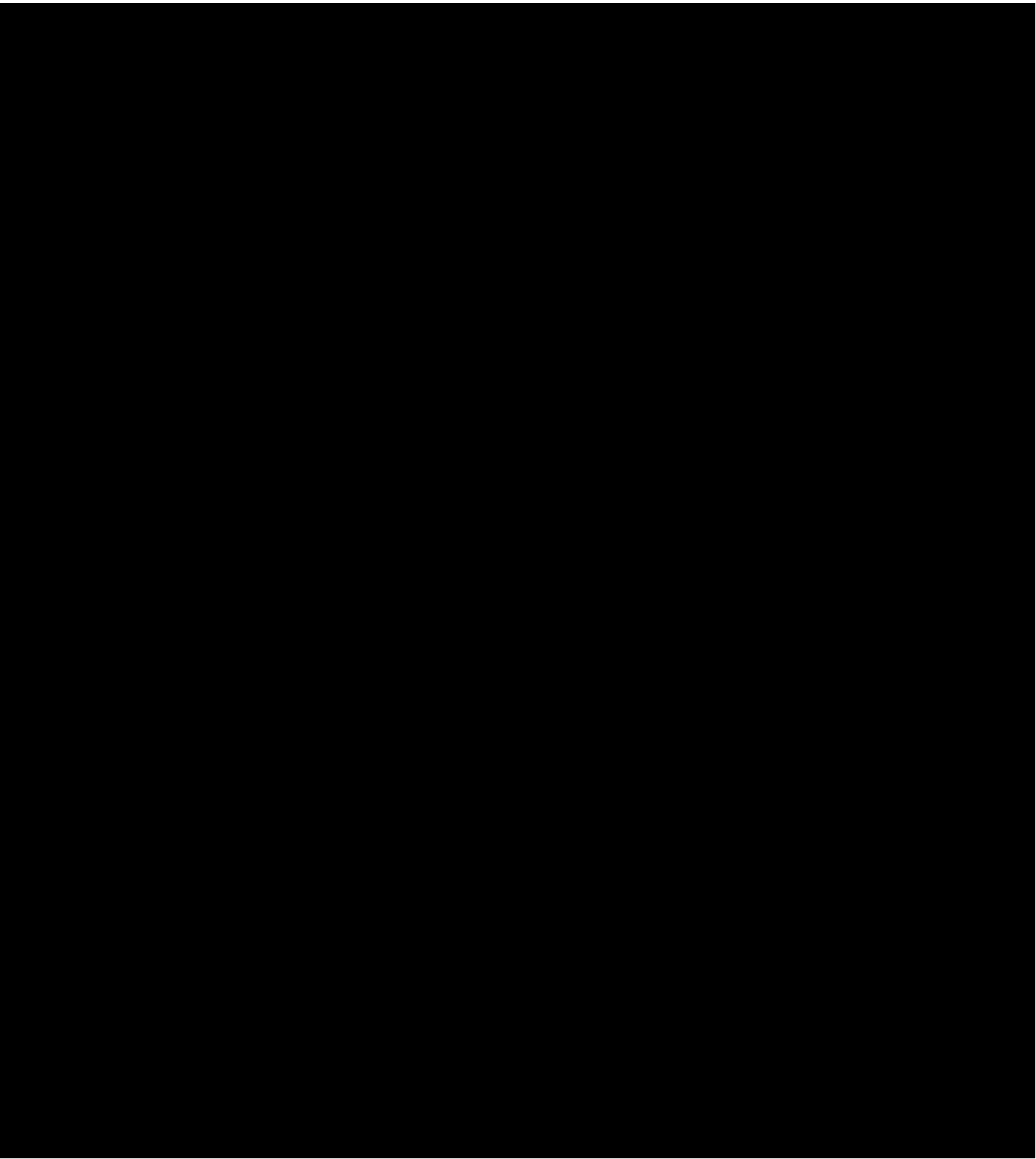
This administrative investigation was initiated after Anthony Valdivia filed a claim against the City of Banning on February 16, 2018. Valdivia alleged in his claim that on August 23, 2017, at approximately 5:40 p.m., Sergeant Bennett, [REDACTED] and [REDACTED] used unnecessary force and arrested him without cause in front of his residence. Valdivia further alleged that Sergeant Bennett conducted his own administrative investigation that was biased and he was aggressive with witnesses.

#### Allegation "1"

[REDACTED]

[REDACTED]





**Based on the above information, Allegation "1" against Sergeant Bennett is EXONERATED.**

Allegation "2"

[REDACTED]

[REDACTED]

Based on the above information, Allegation "2" against Sergeant Bennett is EXONERATED.

## Allegation "3"

It was alleged that Sergeant Bennett demonstrated unsatisfactory work performance when he conducted an impartial 'Use of Force' administrative investigation on August 23, 2017.

### CONCLUSIONS AND FINDINGS

In his claim against the City of Banning, Anthony Valdivia wrote the following:

*My neighbors witnessed (sic) some or all of the matter, police officers interviewed them, but I am told that the officers were aggressive and bias (sic) for their fellow officers.*

While at the arrest scene on August 23, 2017, Sergeant Bennett began conducting interviews of neighbors who may have witnessed the incident involving Anthony Valdivia. The first neighbor interviewed by Bennett was [REDACTED] and rather than obtain an impartial statement from him as to what he observed, Bennett engaged in a verbal exchange. The verbal exchange included in-part the following conversation between Bennett and [REDACTED]:

*So with what you did, observe, [REDACTED] you think the force that was used by the officers was reasonable. [REDACTED] replied, 'If it was me on the ground like that, I'd say no. I think that was excessive if I'm tellin' you I can't move my arm and you guys are still tryin' to force my arm back, if any other guy ripped his arm from under where he was....pushing on it so he couldn't move it and then twisted his arm.....and he's like I don't care. That was a, that was a ....I mean the guy.....*

*Sergeant Bennett subsequently responded by stating, 'I'm just trying to give you a background. We're here on a 911 and they heard yelling in the background. All right ..... we're met immediately with this....all right, and when.....to get the hell away - well, we need to make sure nobody got hurt inside the house, right.*

Aside from engaging [REDACTED] and attempting to justify the actions of officers, Sergeant Bennett provided [REDACTED] with information that was inaccurate when he stated there was yelling heard in the background on the 9-1-1 call.

Later during their exchange, Sergeant Bennett asked [REDACTED] if he had video or an audio tape of the incident involving Anthony Valdivia and further stated:

*But the thing is - the 8<sup>th</sup> Circuit of Appeals two weeks ago made it against the law for people to video and audio police.*

While the 8<sup>th</sup> Circuit Court of Appeals did make a ruling in August 2017, it had no bearing on Sergeant Bennett's responsibility to conduct an impartial interview of [REDACTED].

Sergeant Bennett also interviewed [REDACTED] and his wife, [REDACTED] during which time he engaged them, rather than simply taking impartial statements. Bennett asked both [REDACTED] if they thought the officers' actions were appropriate and in both instances they provided answers suggesting they were not. As he previously had with [REDACTED] Bennett attempted to justify the officers' actions with both [REDACTED] Bennett also provided [REDACTED] with the same inaccurate information related to the 9-1-1 call by stating someone was heard yelling in the background.

Later, when Sergeant Bennett interviewed Anthony Valdivia, he provided inaccurate information by stating:

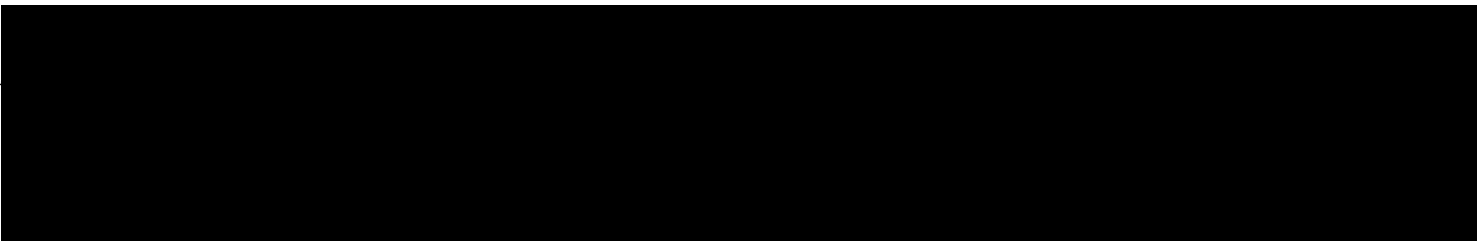
*.....There was no, they tried to call back, they hung up. Originally when they called, there was possibly some yelling or something in the background, maybe and then, they tried to call back and there was no answer.*

Lastly, instead of conducting an impartial administrative interview of Anthony Valdivia related to the use of force incident, Sergeant Bennett attempted to justify their actions, which provoked an outburst from Valdivia.

RCS Investigators concluded Sergeant Bennett demonstrated unsatisfactory work performance when he conducted an impartial use of force administration investigation. **As such, Allegation "3" against Sergeant Bennett is SUSTAINED.**

#### **Allegation "4"**





**Based on the above information, Allegation "4" against Sergeant Bennett is EXONERATED.**

## SECTION 2

### CONCLUSIONS AND FINDINGS

[REDACTED]

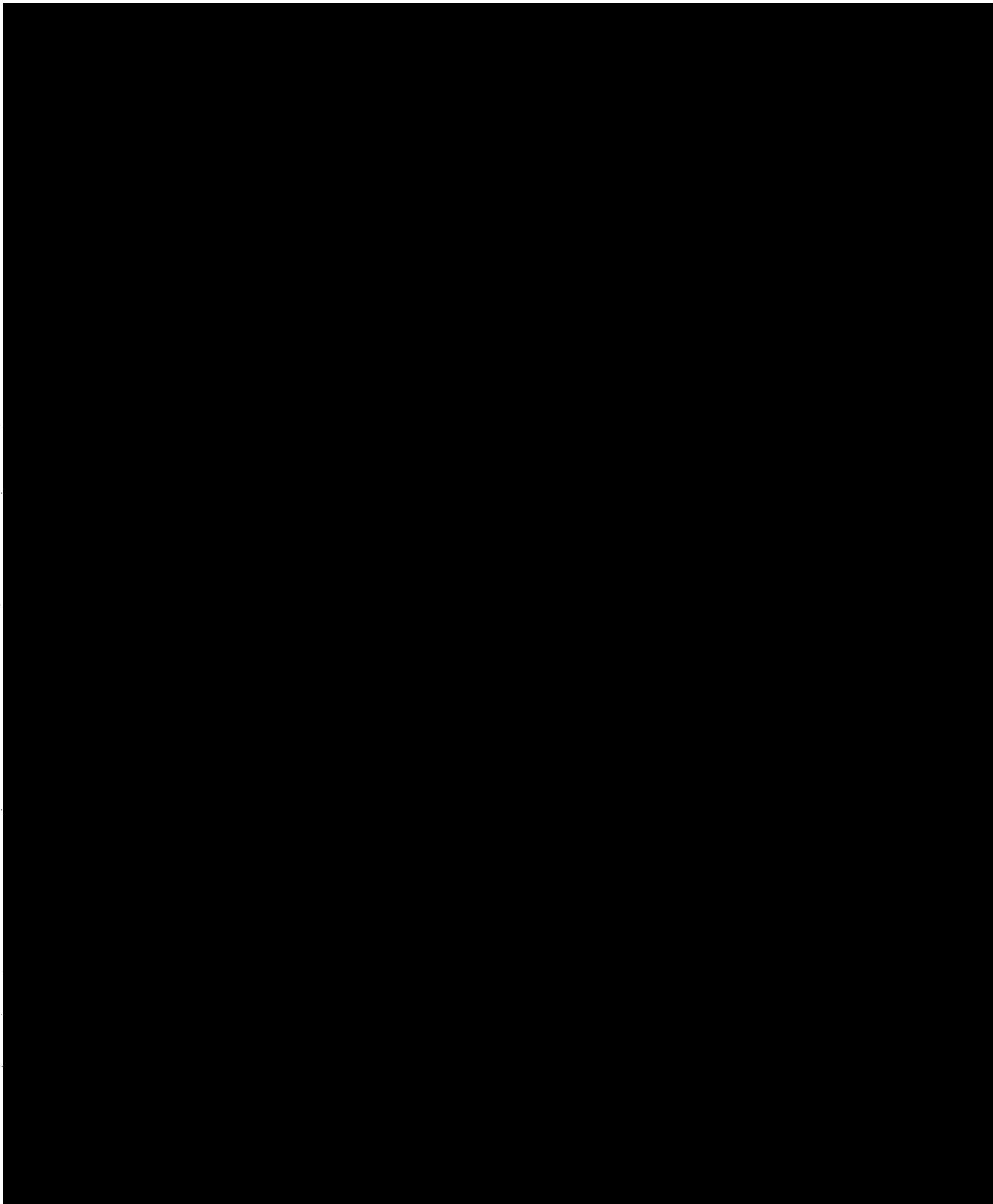
This administrative investigation was initiated after Anthony Valdivia filed a claim against the City of Banning on February 16, 2018. Valdivia alleged in his claim that on August 23, 2017, at approximately 5:40 p.m., Sergeant Bennett, [REDACTED] used unnecessary force and arrested him without cause in front of his residence.

#### Allegation "1"

[REDACTED]

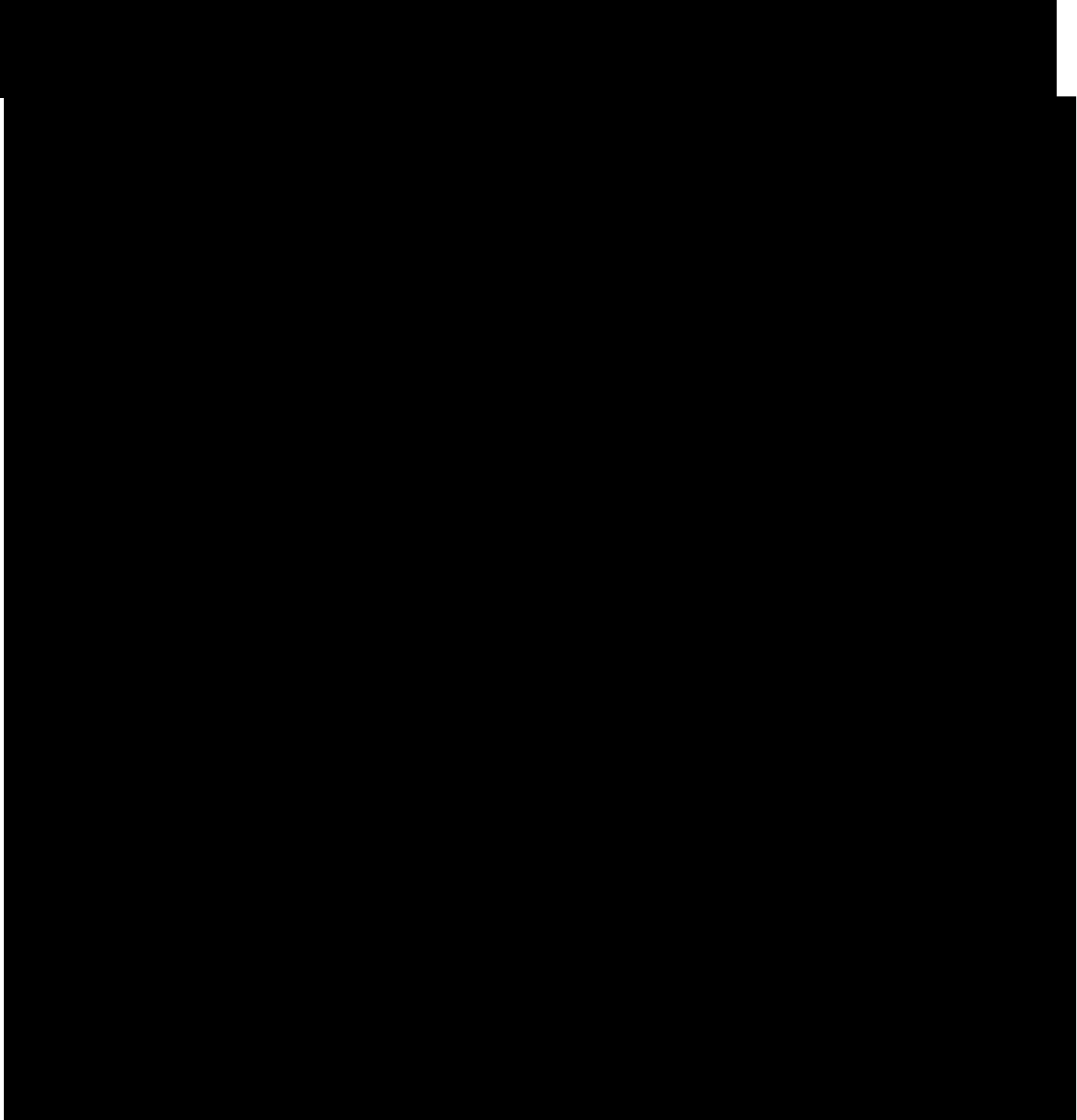
[REDACTED]





Based on the above information, Allegation "1" against [REDACTED] is EXONERATED.

Allegation "2"

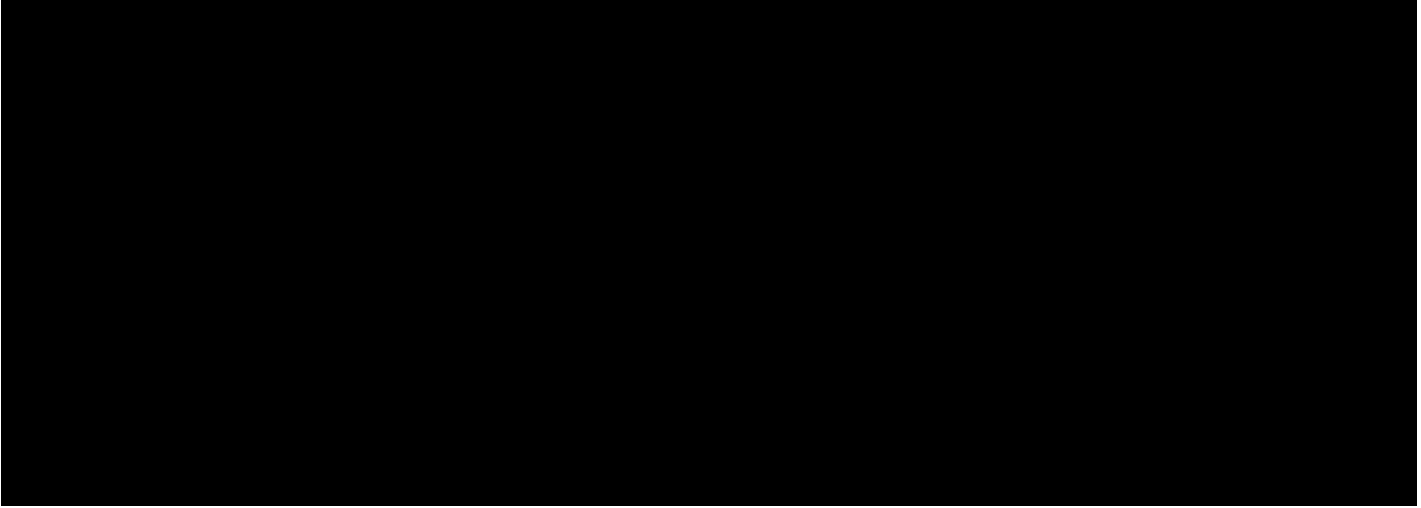


Based on the above information, Allegation "2" against [REDACTED] is EXONERATED.

Allegation "3"

[Redacted]

[Redacted]



Based on the above information, Allegation "3" against [REDACTED] is NOT SUSTAINED.

## SECTION 2

### CONCLUSIONS AND FINDINGS

[REDACTED]

This administrative investigation was initiated by the City of Banning Police Department after Anthony Valdivia filed a claim against the City of Banning on February 16, 2018. Valdivia alleged in his claim that on August 23, 2017, at approximately 5:40 p.m., Sergeant Bennett, [REDACTED] [REDACTED] used unnecessary force against him and arrested him without cause in front of his residence. Valdivia further alleged that Sergeant Bennett conducted his own administrative investigation, which was biased and that he was aggressive with witnesses.

#### Allegation "1"

[REDACTED]

#### CONCLUSIONS AND FINDINGS

[REDACTED] Based on the information Allegation "1" against [REDACTED] [REDACTED] is UNFOUNDED.

#### Allegation "2"

[REDACTED]

#### CONCLUSIONS AND FINDINGS

[REDACTED] Based on the information Allegation "2" against [REDACTED] [REDACTED] is UNFOUNDED.