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10
11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 Patricia Lopez as Personal Representative
for the Estate of Anthony Lopez; and
14 Patricia Lopez and Caesar Lopez,
15 surviving parents of Anthony Lopez,
deceased,

16 Plaintiffs,

17 vs.

18 City of Mesa; Heath Carroll; and Does 1-
19 10, inclusive,

20 Defendants.
21

Case No. 2:19-cv-04764-PHX-DLR

[*Hon. Douglas L. Reyes*]

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT ON COUNTS V, VI, VII,
and X(f-g)**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants’ motion for summary judgment (Dkt. No. 68) should be denied as to Plaintiffs’ claims against Defendant City of Mesa brought pursuant to *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694-95 (1978), which include Count V for ratification, Count VI for failure to train, and Count VII for unconstitutional custom, practice, and policy. This lawsuit arises from the use of excessive and unlawful deadly force by City of Mesa Police Department Officer Heath Carroll (“Carroll”) against Anthony Lopez (“Lopez”) on July 21, 2018. Plaintiffs have separately opposed Defendants’ motion for summary judgment on Counts I, II, II, IX, VIII, IX, X(a-e) (*see* Dkt. Nos. 67, 71), and Plaintiffs’ statement of facts pertaining to the shooting incident is contained within Plaintiffs’ opposition filed at Dkt. No. 71. On that date, Carroll fired nine shots at Lopez without warning while Lopez occupied the driver seat of a vehicle and when no person was in the path of Lopez’s vehicle. Plaintiffs incorporate, as if fully set forth herein, the Statement of Facts section and Exhibits A – N of Plaintiffs’ opposition to Defendants’ motion at Dkt. No. 67 (see Dkt. No. 71 and exhibits thereto). Plaintiffs also incorporate by reference, as if fully set forth herein, Plaintiffs’ evidence and argument in opposition to Defendants’ motion to dismiss Plaintiffs’ negligence claim (Count X). As explained in detail below, Plaintiffs’ evidence raises genuine disputes of material fact with respect to Plaintiffs’ *Monell* claims. It is well settled that summary judgment cannot be granted in the face of disputed issues of fact. The evidence shows that the City of Mesa Police Department was on notice that Carroll, who is no longer with the Department, had twenty (20) reportable use of force incidents within a nine month period.

The City of Mesa Police Department also had notice that Carroll had a reputation for dishonesty and a history of violating Mesa Police Department policy and training and engaging in misconduct and employing poor police tactics. Despite this knowledge, the Mesa Police Department failed to properly discipline, train, or terminate Carroll prior to the July 21, 2018, incident involving Lopez. Had the City of Mesa and its Police Department taken appropriate action against Carroll prior to the July 21, 2018, incident, then the shooting of Lopez could have been prevented. Therefore, taking the facts in the light most favorable to Plaintiffs, Defendants’ motion for summary judgment at Dkt. No. 68 must be denied in its

1 entirety.

2 **II. LEGAL STANDARD**

3 On a motion for summary judgment, the Court must view the evidence in the light
 4 most favorable to non-moving party. Summary judgment cannot be granted where a genuine
 5 dispute exists as to “material facts.” Fed. R. Civ. P. 56(c). A factual dispute is “genuine”
 6 where “the evidence is such that a reasonable jury could return a verdict for the nonmoving
 7 party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 258 (1986). All reasonable inferences
 8 must be drawn in the opposing party’s favor both where the underlying facts are undisputed
 9 and where they are in controversy. Importantly, even entirely circumstantial evidence is
 10 sufficient to create a triable issue of fact. *Hopkins v. Andaya*, 958 F.2d 881, 888 (9th Cir.
 11 1992). The court’s function is not to weigh the evidence and determine the truth of the matter
 12 but to determine whether there is a genuine issue for trial. *United States v. One Parcel of*
 13 *Real Prop.*, 904 F.2d 487, 491–92 (9th Cir. 1990). Further, Rule 56 must be construed “with
 14 due regard” for the rights of persons asserting claims and defenses that are adequately based
 15 in fact to have those claims and defenses tried by a jury. *Celotex Corp. v. Catrett*, 477 U.S.
 16 317, 327 (1986). Summary judgment is a drastic remedy and therefore trial courts should act
 “with caution” in granting summary judgment. *Anderson*, 477 U.S. at 255.

17 **III. STATEMENT OF FACTS**

18 As indicated in Defendants’ motion for summary judgment as to Plaintiffs’ *Monell*
 19 claims, Plaintiffs’ police practices expert, Scott DeFoe, prepared a supplemental report dated
 20 March 11, 2021, that offered opinions regarding Carroll’s history of misconduct and the City
 21 of Mesa’s failure to train and discipline Carroll. Defendants have filed excerpts of this report
 22 at Dkt. No. 68-3, and Plaintiffs are filing the full report as “Exhibit O” hereto to include the
 23 additional excerpts upon which Plaintiffs rely. Plaintiffs incorporate by reference the facts and
 24 opinions stated in Mr. DeFoe’s report filed herewith as “Exhibit O.” Plaintiffs’ expert Mr.
 25 DeFoe is qualified to opine as to Mesa Police Department’s development of policies,
 26 investigation of officer misconduct, and discipline, as the former Vice President of Security
 27 Operations at Caruso Affiliated, where he conducted Risk and Vulnerability Assessments, all
 28 facets of security training, and ongoing audits and internal investigations; as the former
 Director of Security at Universal Protection Service where he supervised eighty-four Security

1 Professionals, conducted all Bureau of Security and Investigative Services training, and
2 conducted internal investigations. [Ex. O at pp. 13-14; Ex. M (Dkt. No. 71-13) at ¶¶ 3, 4].

3 Between July 2016 to February 2017, IA Pro Alerts reported that Officer Carroll
4 engaged in over twenty reportable uses of force, which is the highest number of
5 “use-of-force” incidents among the entire Mesa Police Department. [Ex. M at ¶ 20; Ex. P at
6 8:8-21, 19:16-20:6, 24:5-21, 33:9-34:4]. In a memorandum referencing this report (Mesa
7 Arizona, Corrective Action Plan, To: Police Officer Heath Carroll, From: Lieutenant Kurt
8 Scanio, March 7, 2019), Lieutenant Scanio opined that “a failure to integrate effective
9 communication, assessments, and tactics have played an essential role in force options
10 applied.” The memorandum states:

11 You have been employed as a patrol officer since July of 2016. A
12 comprehensive historical review reflects that since February of 2017, you have
13 been involved in twenty Use of Force incidents. In many of these incidents, a
14 failure to integrate effective communication, assessments, and tactics have
15 played an essential role in force options applied. The review confirms your
16 deficiency is both repetitive and frequent.

17 Mesa’s threshold for alerts within a 12-month period are as follows: three reports for citizen
18 complaints, three for internal/departmental complaints, five for uses of force, and two for
19 vehicle accidents. A total combination of seven would trigger another set of threshold alerts.
20 [Ex. P at 19:16-20:6]. A Corrective Action Plan regarding Carroll states:

21 [Carroll has] been employed as a patrol officer since July of 2016. A
22 comprehensive historical review reflects that since February of 2017, [he has]
23 been involved in twenty Use of Force Incidents. In many of these incidents, a
24 failure to integrate effective communication, assessments, and tactics have
25 played an essential role in force options applied. The review confirms your
26 deficiency is both repetitive and frequent.” “The purpose of this memorandum is
27 to advise [Carroll] that [he has] demonstrated a need for improvement during
28 interactions with uncooperative and non-compliant subjects.

[Ex. O at pp. 5-6]. Two of the Professional Standards investigations that pre-dated the July 21,
2018, shooting of Lopez pertain to Carroll’s misconduct with respect to motor vehicle
accidents which occurred in October 2017 and January 2018. [Ex. P at 26:20-27:2, 27:8-
27:20].

1 Carroll developed a reputation amongst other Mesa Police Department Police Officers
2 and policymakers that he was untrustworthy and possibly demonstrated a lack of integrity.
3 [Ex. M at ¶ 23; Ex. P at 46:9-21]. The Mesa Police Department’s failure to take appropriate
4 action against Officer Carroll, despite the Department’s knowledge of Officer Carroll’s
5 reputation for being untrustworthy and possibly lacking integrity, shows that the City of Mesa
6 Police Department maintained a culture and environment where Officer Carroll’s misconduct
7 went unchecked. The City’s maintenance of this environment where Officer Carroll’s
8 repeated misconduct and known reputation for being untruthful and possibly lacking integrity
9 went unchallenged was a cause of the shooting of Mr. Lopez on July 21, 2018. [Ex. M at ¶
10 23]. Based on the number of IA alerts the City of Mesa Police Department should have known
11 that it was foreseeable that Carroll, based on his background and actions, could have a
12 propensity to be involved in an incident such as the Lopez shooting. [Ex. P at 10:9-17].

13 An investigation dated September 14, 2019, referenced Carroll’s untruthful conduct
14 from the time Carroll was enrolled in the training academy, two years prior to the Lopez
15 incident to the date of the investigation. [Ex. O at pp. 9; Ex. P at 45:12-20]. The allegation
16 regarding untruthfulness was that Carroll had portrayed himself as an Army Ranger and had a
17 Ranger tattoo when, in fact, Carroll had never been a Ranger, nor had he gone to Ranger
18 school. [Ex. O at pp. 10; Ex. P at 47:22-25]. This calls Carroll’s credibility into question. [Ex.
19 P at 66:20-25]. The Mesa Police Department should have conducted an investigation into this
20 “stolen valor” matter as it directly correlated to Carroll’s trustworthiness and credibility. [Ex.
21 O at pp. 10; Ex. P at 51:2-52:15]. Rather than discipline or retrain Carroll, three levels of
22 MPD command staff (lieutenant, commander, assistant chief) determined that the allegation
23 of Carroll’s untruthfulness was “not sustained.” [Ex. P at 37:13-20, 38:16-39:2, 40:1-12].

24 There is no evidence that Carroll was disciplined or retrained as a result of his frequent
25 uses of force and other misconduct that occurred prior to the shooting of Lopez. [Ex. M at ¶
26 20]. The Mesa Police Department failed to properly identify through IA Pro Alerts that Carroll
27 had a significant number of uses of force incidents during his limited tenure with the Mesa
28 Police. [Ex. M at ¶ 20]. Both Carroll and Mike Pezzelle, the detective with the second-highest
number of use of force incidents in the Mesa Police Department, fatally shot unarmed subjects
after the number of their prior use-of-force incidents was reported and known to the Mesa

1 Police Department. [Ex. P at 8:8-9:8]. The Mesa Police Department’s response to alerts
2 received from the IA Pro Alert system was more important than the fact that such a system
3 existed. [Ex. P at 18:13-25]. The issue is whether the City of Mesa adequately responded to
4 Carroll’s prior incidents based on the threshold levels of those specific alerts. [Ex. P at 18:21-
5 25].

6 In addition to there being no evidence that Carroll was disciplined or retrained result of
7 his frequent uses of force that occurred prior to the shooting of Mr. Lopez as a here is no
8 evidence that Carroll was disciplined or retrained as a result of the shooting of Mr. Lopez.
9 [Ex. M at ¶ 24]. The Mesa Police Department’s failure to properly discipline Carroll for his
10 misconduct both prior to and after the shooting of Lopez shows that the City of Mesa Police
11 Department maintained a culture and environment where Carroll’s misconduct went
12 unchallenged and unchecked, despite the Mesa Police Department having a written record of
13 Carroll’s documented violations of training and policy and other misconduct.

14 The City of Mesa ratified Carroll’s shooting of Lopez. [Ex. P at 10:23-11:4]. The
15 City’s failure to properly discipline Carroll and failure to retrain him indicate that the City of
16 Mesa condoned, or ratified, Carroll’s violations of training and policy and other misconduct.
17 [Ex. M at ¶ 21]. Additionally, there is no evidence that the Department found the shooting of
18 Lopez to be out of Department policy. [Ex. M at ¶ 24]. It is Carroll’s understanding that his
19 shooting of Lopez was not found to be out of Department policy. [Ex. B, Dkt. 71-2 at 152:12-
20 19].

21 Carroll’s use of deadly force against Lopez under this set of facts, as well as the
22 number of threshold-related incidents preceding the Lopez shooting, demonstrate that the
23 Mesa PD inadequately trained Carroll. [Ex. P at 10:3-17, 12:3-24, 15:21-16:20, 23:15-20; Ex.
24 M at ¶ 22]. The City of Mesa’s failure to provide adequate training to Carroll, as well as the
25 City’s failure to properly discipline Carroll, was a cause of Carroll’s use of force against
26 Lopez on July 21, 2018. [Ex. M at ¶ 22; Ex. P at 12:20-24]. Had Officer Carroll been properly
27 trained disciplined, or dismissed prior to this incident involving Lopez, then the shooting
28 incident could have been prevented. [Ex. P at 12:20-22].

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1 **IV. ARGUMENT**

2 Plaintiffs’ *Monell* claim is predicated on three theories—ratification, failure to train,
3 and maintenance of an unconstitutional custom, policy, or practice.

4 **A. The City of Mesa Ratified Carroll’s Shooting of Lopez (Count V)**

5 Liability under a Section 1983 *Monell* theory may attach when a final policymaker
6 ratifies a subordinate’s unconstitutional action and the basis for it. *Christie v. Iopa*, 176 F.3d
7 1231, 1239 (9th Cir. 1999); *see generally Monell*, 436 U.S. 658 (1978). “To show ratification,
8 a plaintiff must prove that the ‘authorized policymakers approve a subordinate’s decision and
9 the basis for it.’” *Sheehan v. City & Cty. of S.F.*, 743 F.3d 1211, 1232 (9th Cir. 2014)

10 (quoting *Christie*, 176 F.3d at 1239), *rev’d on other grounds*, 135 S. Ct. 1765 (2015). Taking
11 all facts in the light most favorable to Plaintiffs as the non-moving party, which this Court is
12 required to do in evaluating a motion for summary judgment, there is a genuine dispute of
13 material fact with respect to whether the City of Mesa ratified Carroll’s shooting of Lopez.

14 The City’s failure to properly discipline Carroll and failure to retrain him indicate that the City
15 of Mesa condoned, or ratified, Carroll’s violations of training and policy and other

16 misconduct. [Ex. M at ¶ 21]. Additionally, there is no evidence that the Department found the
17 shooting of Lopez to be out of Department policy, but it is undisputed that the City of Mesa
18 and its Police Department conducted an investigation into the shooting of Lopez, including
19 taking interviews of the involved officers, taking scene photos, and conducting forensic
20 analyses. Additionally, it is undisputed that no criminal charges were pressed against Carroll,
21 and is Carroll’s understanding that his shooting of Lopez was not found to be out of

22 Department policy. Therefore, the reasonable inference is that the City of Mesa’s investigation
23 into the shooting did not result in any finding that Carroll acted outside of Mesa Police

24 Department policy with respect to the use of deadly force. A reasonable jury could consider
25 the evidence and determine that the City of Mesa condoned and ratified Carroll’s shooting of
26 Lopez. This is particularly true in light of the evidence set forth above indicating that the City

27 of Mesa Police Department was on notice of Carroll’s twenty (20) use of force incidents
28 within a nine-month period. Accordingly, summary judgment should be denied as to this
claim.

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B. The City of Mesa Failed to Train Carroll (Counts VI and X)

A municipality may also be liable for the inadequacy of police training under 42 U.S.C § 1983 “where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact.” *Flores v. Cty. of Los Angeles*, 758 F.3d 1154, 1158 (9th Cir. 2014) (quoting *City of Canton v. Harris*, 489 U.S. at 388). Carroll’s use of deadly force against Lopez under this set of facts, as well as the high number of threshold-related incidents preceding the Lopez shooting as indicated above and in the attached evidence, demonstrate that the Mesa Police Department inadequately trained Carroll. The City of Mesa’s failure to provide adequate training to Carroll, as well as the City’s failure to properly discipline Carroll, was a cause of and moving force behind Carroll’s use of force against Lopez on July 21, 2018. Had Officer Carroll been properly trained disciplined, or dismissed prior to this incident involving Lopez, then the shooting incident could have been prevented. Taking the facts in the light most favorable to Plaintiffs, a reasonable jury could determine that the City of Mesa received alerts regarding twenty (20) prior threshold incidents involving Carroll, and did not take appropriate action against Carroll. A reasonable jury could also listen to the evidence regarding Carroll’s reputation for untruthfulness and misrepresentations regarding his Ranger status and determine that the City of Mesa negligently hired, negligently failed to train, and negligently retained Carroll. A reasonable jury could determine that the City of Mesa knew or should have known that Carroll was untruthful and had a propensity for violence and engaging in other misconduct, including improper police tactics and misconduct regarding the operation of vehicles, and negligently hired and retained Carroll anyway. Therefore, summary judgment should be denied as to this claim.

C. The City of Mesa Maintained an Unconstitutional Custom, Policy and Practice (Count VII)

Monell liability may also attach based on a policy of inaction that demonstrates deliberate indifference to constitutional rights. “[A] local governmental body may be liable if it has a policy of inaction, and such inaction amounts to a failure to protect constitutional rights.” *Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992) (citing *City of Canton v. Harris*, 489 U.S. at 388); *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988). “[A] custom or

1 practice can be supported by evidence of repeated constitutional violations which went
 2 uninvestigated and for which the errant municipal officers went unpunished.” *Hunter v. Cty.*
 3 *of Sacramento*, 652 DF.3d 1225, 1236 (9th Cir. 2011). To show the existence of an
 4 unconstitutional custom, practice, and/or policy, Plaintiffs need not present facts showing that
 5 similar conduct has repeatedly occurred in the past. *See Pembaur v. City of Cincinnati*, 475
 6 U.S. 469, 484 fn. 11 (1986). This standard would require a “strained” reading of Supreme
 7 Court precedent. *Id.* “[A] single instance” would be sufficient if “the unconstitutional act was
 8 taken pursuant to a municipal policy.” *Id.* (citing *Oklahoma City v. Tuttle*, 471 U.S. 808, 822-
 9 24 (1985)). Moreover, “[a] policy can be one of *action or inaction*.” *Long v. County of Los*
 10 *Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). “It is plain that municipal liability may be
 11 imposed for a single decision by municipal policymakers under appropriate
 12 circumstances.” *Pembaur*, 475 U.S. at 480.

13 There is no evidence that Carroll was disciplined or retrained as a result of his frequent
 14 uses of force that occurred prior to the shooting of Lopez. This indicates that the City of Mesa
 15 had an unconstitutional policy, custom, or practice of failing to discipline or retrain police
 16 officers who engage in repeated use-of-force incidents and an informal unconstitutional
 17 custom, practice and policy of turning a blind eye to misconduct and untruthfulness of its
 18 employees. The Mesa Police Department’s failure to properly discipline Carroll for his
 19 misconduct both prior to and after the shooting of Lopez shows that the City of Mesa Police
 20 Department maintained a culture and environment where Carroll’s misconduct went
 21 unchallenged and unchecked, despite the Mesa Police Department having a written record of
 22 Carroll’s documented violations of training and policy and other misconduct. A reasonable
 23 jury could determine that the City’s maintenance of this environment where Officer Carroll’s
 24 repeated misconduct and known reputation for being untruthful and possibly lacking integrity
 25 went unchallenged was a cause of the shooting of Mr. Lopez on July 21, 2018. Therefore,
 26 summary judgment should also be denied as to this claim.

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1 **V. CONCLUSION**

2 For each of the reasons set forth above, and taking the facts in the light most favorable
3 to Plaintiffs, Defendants’ motion for summary judgment at Dkt. No. 68 should be denied.

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5 DATED: August 12, 2021

LAW OFFICES OF DALE K. GALIPO

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By _____ /s/ *Dale K. Galipo*
Dale K. Galipo
Renee V. Masongsong
Attorneys for Plaintiffs

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
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23
24
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Exhibit B: Deposition Transcript of Heath Carroll, Filed as Dkt. No. 71-2 (relevant excerpts)

Exhibit M: Declaration of Scott DeFoe, Filed as Dkt. No. 71-13

Exhibit O: Supplemental Report of Scott DeFoe, filed concurrently herewith

Exhibit P: Deposition Transcript of Scott DeFoe (relevant excerpts)

EXHIBIT O

On-Scene Consulting

March 11, 2021

Mr. Dale K. Galipo, Esq.
21800 Burbank Boulevard, Suite 310
Woodland Hills, California 91367

Federal Rules of Civil Procedure 26 (a) (2) (B) Supplemental Report

Patricia Lopez as Personal Representative for the ESTATE OF ANTHONY LOPEZ; and PATRICIA LOPEZ and CAESAR LOPEZ, surviving parents of ANTHONY LOPEZ, deceased, Plaintiffs,

vs.

CITY OF MESA, HEATH CARROLL; and DOES 1-10, inclusive, Defendants.

Case No. CV-19-04764-PHX-DLR.

Dear Mr. Galipo,

Thank-you for retaining me to analyze and render opinions regarding the July 21, 2018, Officer-Involved Shooting of Mr. Anthony Lopez by Mesa Police Department Police Officer Heath Carroll, No. 21478, at 1198 S. Dobson Road, Mesa, Arizona 85202. Pursuant to the requirements of Rule 26, I have studied reports, photographs, Mesa Police Department Documents, Transcriptions of Digitally Recorded Depositions, and other material (as listed under Materials Reviewed) provided to me thus far regarding this case and submitted my original Rule 26 Report on November 14, 2020.

On February 26, 2021, I received additional materials in this matter and was requested to write a supplemental report if necessary, in order to refine or express additional opinions.

Please be advised that if additional documents related to this matter are provided, it may be necessary to write a supplemental report in order to refine or express additional opinions. It is also necessary to state at the beginning of this report that I do not make credibility determinations in expressing my opinions.

Scott A. DeFoe
Principal
On-Scene Consulting, LLC

On-Scene Consulting

Additional Materials Reviewed:

1. Mesa Arizona, Electronic Personnel File for Police Officer Charles H. Carroll, and Employee Performance Appraisals.
2. Mesa Arizona, Corrective Action Plan or Police Officer Heath Carroll, March 7, 2019.
3. Mesa Arizona, Written Reprimand, (Refer to Management Policy 339, Implementing Corrective Action & Discipline), for Police Officer Heath Carroll.
4. Concise Employee History, Police Officer Heath Carroll, No. 21478.
5. Mesa Police Department, Notice of Investigation/Inquiry, Command Investigation, IA File No. 2017-168, Police Officer Heath Carroll, No. 21478.
6. Mesa Police Department, Notice of Investigation/Inquiry, Command Investigation, IA File No. 2017-150, Police Officer Heath Carroll, No. 21478.
7. Mesa Police Department, Notice of Investigation/Inquiry, Command Investigation, IA No. 2018-019, Police Officer Heath Carroll, No. 21478.
8. Mesa Police Department, Officer Involved Shooting Investigation, Case No. 2019-0840014, involving Police Officer Heath Carroll, No. 21478.
9. Mesa Police Department, Self-Admission Reporting (SAR), Form Agreement, in the Disciplinary Case between Police Officer Heath Carroll, No. 21478, Superstition Patrol, PS No. 2019-211, 10/18/19.
10. Mesa Police Department Professional Standards Unit, Interoffice Memorandum, IA No. 2019-251, Police Officer Heath Carroll, No. 21478, (DR No. 2019-2570091), 12/9/19.
11. Mesa Police Department, Notice of Investigation/Inquiry, PS Investigation, PS File No. 2019-251, Police Officer Heath Carroll, No. 21478, 10/8/19.
12. Mesa Police Department, Interoffice Memorandum, Notice of Investigation, (NOI), Supplement, PS File No. 2019-251, Police Officer Heath Carroll, No. 21478, 12/18/19.

On-Scene Consulting

13. Mesa Police Department, Interoffice Memorandum, Professional Standards File No. 2019-211, Police Officer Heath Carroll, 10/18/19.

14. Mesa Police Department, Notice of Investigation/Inquiry, PS Investigation, PS File No. 2019-211, Police Officer Heath Carroll, No. 21478, 10/8/19.

15. Mesa Police Department, Interoffice Memorandum, Professional Standards File No. 2020-073, Police Officer Heath Carroll, No. 21478, 04/26/20.

16. Mesa Police Department, Notice of Investigation/Inquiry, PS Investigation, PS File No. 2020-073, Police Officer Heath Carroll, No. 21478, 04/10/20.

17. Mesa Police Department, Interoffice Memorandum, Rebuttal to Professional Standards File No. 2020-073, Police Officer Heath Carroll, No. 21478, 07/03/20.

18. Mesa Police Department, Interoffice Memorandum, Professional Standards File No. 2020-073, from Commander Bill Peters, 07/30/20.

19. Mesa Police Department, Notice of Investigation, Disposition, Command Investigation, PS File No. 2020-073, 5/31/20.

20. Mesa Police Department, Interoffice Memorandum, Professional Standards File No. 2020-073, Police Officer Heath Carroll, No. 21478, from Lieutenant Jason Coon, No. 11974, 06/11/20.

21. Mesa Police Department, Interoffice Memorandum, Professional Standards File No. 2020-073, Police Officer Heath Carroll, No. 21478, from Assistant Chief Ed Wessing, 9/2/20.

22. Mesa Police Department, Interoffice Memorandum, Inquiry Memorandum, Professional Standards File No. 2020-058, Police Officer Heath Carroll, No. 21478, from Sergeant Joshua Lee, No. 18001, 3/17/20.

23. Notice of Resignation by Mesa Police Department Police Officer Heath Carroll on 9/25/20.

24. International Association of Chiefs of Police, IACP Law Enforcement Policy Center, Early Identifications Systems, May 2020.

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Note: None of my opinions are intended to usurp the province of the jury and are not stated as ultimate issues. Rather, my opinions involve the consistency of the officers' actions with standard police practices.

Supplemental Opinions:

Supplemental Opinion Number 1

It is my opinion the Mesa Police Department failed to properly train former Police Officer Heath Carroll, No. 24178, on the following prior to July 21, 2018, Officer-Involved Shooting of Mr. Anthony Lopez by Mesa Police Department Police Officer Heath Carroll, No. 21478, at 1198 S. Dobson Road, Mesa, Arizona 85202: Shooting at or from Moving Vehicles, Vehicle Deployment Tactics, Working as a Team, Use of Available Cover and Concealment, Contact and Cover Officers, Verbal Strategies, Defusing and De-Escalation Techniques, Less Lethal Force Options (ASP Baton, Oleoresin Capsicum Spray, Taser Electronic Device, 40mm Less Lethal Launcher (Foam Rubber Baton Rounds), 870 Remington "Super Sock" Less Lethal Shotgun, Tactical Retreat, and Tactical Re-Deployment).

In addition, it is my opinion that the Mesa Police Department failed to properly discipline former Police Officer Heath Carroll, No. 24178, prior the July 21, 2018, Officer-Involved Shooting of Mr. Anthony Lopez by Mesa Police Department Police Officer Heath Carroll, No. 21478, at 1198 S. Dobson Road, Mesa, Arizona 85202.

In addition, it is my opinion that the Mesa Police Department's failure to properly discipline Officer Carroll shows that the City of Mesa Police Department maintained a culture and environment where Officer Carroll's misconduct went unchallenged and unchecked, despite the Mesa Police Department having a written record of Officer Carroll's documented violations of training and policy and other misconduct. The City's failure to properly discipline Officer Carroll and failure to retrain him indicate that the City of Mesa condoned Officer Carroll's violations of training and policy and other misconduct. It is also my opinion that the City of Mesa's failure to provide adequate training to Officer Carroll, as well as the City's failure to properly discipline Officer Carroll, was a cause of Officer Carroll's use of force against Anthony Lopez on July 21, 2018.

In addition, it is my opinion that the Mesa Police Departments failure to properly identify through IA Pro Alerts that Police Officer Heath Carroll had a significant number of uses of force incidents during his limited tenure with the Mesa Police.

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In addition, I base my opinion on Mesa Arizona, Corrective Action Plan, To: Police Officer Heath Carroll, From: Lieutenant Kurt Scanio, March 7, 2019:

ISSUE:

“The purpose of this memorandum is to advise you that you have demonstrated a need for improvement during interactions with uncooperative and non-compliant subjects. As well as concerns regarding vehicle operations during failure to yields and general code-3 driving circumstances. The following actions have been noted:

I. Communication Strategies:

- Deficiency in verbal and non-verbal efforts during potential force encounters.

II. Tactical Repositioning:

- Failure to stabilize the situation by utilizing distance, cover, and/or time.

III. Resources:

- Under-utilization of back-ups, threat assessment, and/or scene strategies to defuse situations.

IV. Driving:

- Excessive speeds and failure to adhere to FTY Policy DPM 2.3.20/2.3.5.”

GOALS:

“This Corrective Action Plan is a written plan that alerts you about issues with your performance and provides a time period to monitor and correct the performance problems. The plan outlines performance expectations, your responsibilities, and potential consequences for failing to successfully complete the plan. The Corrective Action Plan provides you an opportunity to address concerns through additional training and further corrective measures.”

BACKGROUND:

“You have been employed as a patrol officer since July of 2016. A comprehensive historical review reflects that since February of 2017, you have been involved in *twenty Use of Force incidents*. In many of these incidents, a failure to integrate effective

On-Scene Consulting

communication, assessments, and tactics have played an essential role in force options applied. The review confirms your deficiency is both repetitive and frequent.”

“There have been several incidents that have resulted in either preventable accidents or a failure to disengage during a failure to yield when a pursuit is not authorized.”

In addition, I base my opinion the International Association of Chiefs of Police, Law Enforcement Policy Center, Early Identification Systems, May 2020:

Report Review: “Supervisors should review the EIS reports to determine if any action should be taken. This review should include a consideration of the totality of the circumstances to identify if an experience or pattern of behavior warrants intervention. For example, if an officer exceeds a threshold for use of force, it would be critical to assess whether the officer is demonstrating possibly problematic behaviors in other areas, including but not limited to public complaints, sick time usage, or substandard workplace behavior, when determining the appropriate intervention. When considering the full context of the behavior subject of the threshold may have suggested. Supervisors should then meet with the employees to review their performance and encourage them to provide insight into the itemized incident and problems identified in the report. In addition, the supervisor should meet with a commander or other superior to determine if additional support or corrective action is necessary. Any decision regarding appropriate action, to include the development of an employee performance plan, should be added to the report. Whether interventions are applied or not, the employee should be monitored closely for a designated period of time.”

“After evaluating the report, the supervisor may recommend a number of possible interventions that could include but are not limited to these interventions:

- Supervisory counseling,
- Referral to a peer support program or EAP,
- Referral to a qualified mental health professional,
- Corrective action,
- Supervisory evaluation period,
- Fitness-for-duty evaluation,
- Additional training,
- Reassignment or transfer,
- Dismissal,
- No action.”

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“The decision regarding appropriate action should be sent through the chain of command through OPS to the chief executive or their designee for approval. Once approved, the corrective action should be taken, and the employee’s performance should be monitored closely.”

“EIS programs operate under the assumption that intervention, where needed, is relevant to the target behavior and has a positive impact on the employee in question with no unintended negative effects. In order for the intervention process of an EIS to be effective the agency should establish a set of guidelines to ensure the consistent delivery of assistance and corrective action.”

“There are several variations on how employee performance can be monitored. Some systems used formal reviews, evaluations, and reporting of employees’ performance by immediate supervisors for a period of several months. Other systems rarely merely on informal commitment to reviewing employees’ performance following intervention. Where appropriate, indications of employee compliance or noncompliance should be documented and kept for future references and/or evaluations.”

In addition, based on my twenty-eight-year law enforcement career, it is my opinion that Early Identification Systems/alerts are effective tools to identify potential training and performance issues that may be addressed through counseling, training, and discipline to include termination in some cases. The purpose of an IA Pro alert is to identify those employees who are involved in use of force incidents, complaints and vehicle collisions that exceed the allowable threshold established by the respective law enforcement agency. In addition, it is my opinion that the alerts should be reviewed without delay and if deemed necessary, appropriate action be taken.

Lastly, I base my opinion on my twenty-eight years of law enforcement experience where I have conducted thousands of Vehicle Stops as Primary Officer, Secondary Officer and as a Supervisor.

Supplemental Opinion Number 2

It is my opinion based on my review of the facts in this matter, Mesa Police Department Police Officer Heath Carroll, No. 24178, developed a reputation amongst other Mesa Police Department Police Officers and policymakers that he was untrustworthy and possibly demonstrated a lack of integrity. It is also my opinion that the Mesa Police Department’s failure to take appropriate action against Officer Carroll, despite the

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Department's knowledge of Officer Carroll's reputation for being untrustworthy and possibly lacking integrity, shows that the City of Mesa Police Department maintained a culture and environment where Officer Carroll's misconduct went unchecked. It is also my opinion that the City's maintenance of this environment where Officer Carroll's repeated misconduct and known reputation for being untruthful and possibly lacking integrity went unchallenged was a cause of the shooting of Anthony Lopez on July 21, 2018.

Unethical/unprofessional conduct or breaches in ethical conduct can occur in any profession. The negative effects of such behavior are particularly detrimental to the policing profession. Any indiscretion severely damages the credibility of peace officers and their agencies and compromises public trust and support. Unethical/unprofessional conduct directly affects the officer in addition to affecting the image and effectiveness of law enforcement in the community.

Consequences to the officer range from mild to severe and may include the following:

- Disciplinary action up to and including termination.
- Civil and/or criminal liability (personal and agency).
- Embarrassment to stakeholders.
- Eroding the image of the profession.
- Reinforcement of negative stereotypes.
- Reduction of effectiveness.
- Diminishing public trust and cooperation.
- Compromising officer safety.

“The Law Enforcement Code of Ethics was adopted as a uniform code of ethics to guide the peace officer. By adhering to the code, officers demonstrate to the community and to their peers that they are honorable and trustworthy.”

The Code of Ethics of any profession details the standard of conduct that identifies specific principles of desired behavior required of its practitioners. The profession of police requires its members to adhere to specific standards in order to maintain the trust and respect of those who are served. Adherence to a Code of Ethics is required to build and maintain morale, a sense of duty, effective standards of performance and community support. Peace Officers are held to higher standards than others in the community. Although policing shares ideals with other professions, only peace officers are given the authority and power to detain and arrest others and to deprive them of their liberty while

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awaiting adjudication of their offense. It is essential that officers understand the importance of professional behavior.

To embody the spirit of professionalism, ethical conduct must be a way for those in policing. To maintain the community's trust, peace officers must maintain consistently high- standards of ethical conduct. Officers must model and live as examples of the behavior that they are charged to enforce. The policing community is only strong as its weakest link. Unethical conduct affects the image and morale of the entire profession and it offends officers and society throughout the country.

In addition, I base my opinion on Mesa Police Department Professional Standards Unit, Interoffice Memorandum, IA No. 2019-251, Police Officer Heath Carroll, No. 21478, (DR No. 2019-2570091), 12/9/19:

According to Mesa Police Department Police Service Dog, (PSD), also referred to as K-9, Unit Sergeant Jason Stout, #12374, Officer Redden advised Sergeant Stout, Officer Carroll has a reputation for being untruthful.

Sergeant Stout concluded his memo, in part, as follows: *“This is my concern. The K-9 Unit is a high liability area. Handlers take into account facts being voiced over the radio, and in person, to make sound, educated, decisions on dog deployment, on leash vs. off leash searches, or whether to deploy the K-9 at all. Should Redden’s K-9 (Ringo) have located and bitten the suspect, a full review in accordance with our bite policy would have taken place. And Carroll would have fared well in any assessment myself or any other supervisor would have conducted. The facts he relayed were in accurate (sic) and could have led to a situation where other officers responding, or the suspect, could have been injured based off the inaccurate, at best, information that was relayed.”*

“The supervisor in me also finds it troubling that Redden doesn’t know whether or not to even believe what Carroll had told him based off of his perceived reputation within the department. This incident definitely does not help his reputation.”

According to Mesa Police Department K9 Officer Michael Redden, No. 15841, he told Sergeant Stout about Officer Carroll’s reputation of being untruthful. Professional Standards asked Officer Redden the basis for his statement. Officer Redden said, *“It started when he was in the academy. We had. So, we teach a portion of the academy. And the K-9 handler that was teaching the academy noticed that he was standing off to the side and he asked, ‘Hey, why is he not participating?’ And he was told that Carroll*

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was, had portrayed himself as an ex-Delta operator from the U.S. Army. So, they were trying to keep him out of the mix since he was so experienced and so squared away as a Delta operator. Um, and those rumors continued to fly around quite a bit. We heard everything from he was Delta to he claimed to be an Army Ranger. Has a Ranger tattoo. I know people confronted him about that and he confirmed, not only is he not a Ranger, but he also never went to Ranger school. So, yeah, that stolen valor stuff was floating around for a long time. And to my understanding, it was kinda just quashed. Questions were raised like, how is he (sic). Why is this floating around the department and we've confronted him and it's all not true and we're not doing anything about it kinda stuff."

Lastly, I base my opinion on my twenty-eight years of law enforcement experience where I have conducted thousands of Vehicle Stops as Primary Officer, Secondary Officer and as a Supervisor.

My Qualifications for Reviewing this Case:

My opinions are based on my education, training, and experience. Upon my graduation in June 1988 from Northeastern University in Boston with a Bachelor's Degree in Criminal Justice, I was hired as Criminal Investigator/Special Agent GS-1811. Upon completion of Criminal Investigator/Basic Agent School at the Federal Law Enforcement Training Center (FLETC), 6-Month academy, I was assigned to the Organized Crime Drug Task Force where I functioned as an agent and undercover operative. The investigations focused on targeting criminal organizations that were involved in large scale narcotic smuggling and money laundering operations.

I was assigned to the Office of the Special Agent In-Charge, in San Francisco from August 1988 until I joined the Los Angeles Police Department in November of 1989. While in the academy, I was selected by the staff to be my Recruit Class Leader. Upon my graduation from the LAPD Academy, I was assigned to 77th Division. In addition to being assigned to 77th Division, I was assigned to Northeast Division (Patrol), Northeast Division (Special Projects Unit-SPU), Northeast Division C.R.A.S.H (Gang Detail). I was selected to be transferred to Operations Central Bureau C.R.A.S.H., where I worked a plain clothes detail targeting specific gangs throughout Operations Central Bureau.

I applied and was selected to be a Police Officer III at Wilshire Area Vice where I functioned as an undercover operative targeting prostitution, gambling, bookmaking, and other Vice related offenses. While working Wilshire Vice, I was ambushed and received

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two gunshot wounds. I received the Purple Heart in 2010. Upon return from my injuries, I attended mandated Field Training Officer School and was assigned as a Field Training Officer at Wilshire Division. I trained recruits upon their graduation from the Los Angeles Police Academy in tactics, use of force, report writing, vehicle stops, calls for service, court testimony, emergency procedures, pursuit policy, accident investigations, perimeters, Department policies and procedures, and effective communication skills. While assigned as a Field Training Officer, I was involved in an In-Policy Lethal Use of Force incident, while working with a Probationary Police Officer who had recently graduated from the Los Angeles Police Academy.

I was promoted to the rank of Detective and attended Basis Detective School. Upon completion of Basic Detective School, I was assigned to Wilshire Area Narcotics, Field Enforcement Section, where I functioned in an undercover capacity.

I was promoted to the rank of Sergeant I and assigned to Hollenbeck Division. Prior to my assignment, I attended mandated Basic Supervisor School. In conjunction with Supervisor School, I was selected to attend the West Point Leadership Academy Supervisor Training. The training focused on team building, leadership, and decision making. While assigned to Hollenbeck Division, I conducted roll call training on a daily basis on numerous subject matters to include: Use of Force Options (Non-Lethal and Lethal), Tactics, Calls for Service, Calls for Service involving the Mentally Ill, Vehicle Pursuit Policy, LAPD Policies and Procedures, Use of Force Policy, Updated Legal Bulletins, Training Directives, and other Standardized Roll Call Training. I directly supervised a Watch of Officers and provided supervisory oversight during calls for service, tactical situations, perimeter tactics, containment and control issues and use of force incidents. I conducted audits, personnel investigations, Standard Based Assessments (Ratings), Use of Force Investigations, Administrative Projects, and prepared commendations for officer's field performance. While assigned to Hollenbeck Division, I was selected as the Officer-In-Charge of Hollenbeck Division's Special Enforcement Group. I directly supervised (14) Police Officers and Detectives assigned to the Unit. Our unit worked in conjunction with Hollenbeck Detectives and specifically targeted career criminals in the Division. I provided ongoing mandated Department Training as well tactical, firearms, less than lethal and search warrant tactics training to the Officers and Detectives. As a Unit, we prepared and served numerous search warrants. I provided search warrant tactical briefing and de-briefing of each warrant at the conclusion of the of the service. I completed audits, administrative projects, Use of Force Investigations, personnel complaints, and other administrative duties as deemed necessary by the Area Commanding Officer.

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During this time, I was selected to be loaned to Internal Affairs, Headquarters Section. I investigated personnel complaints that were too large in scope for a geographical Division. At the conclusion of my loan, I was selected to Management Services Division, Special Projects, Office of the Chief of Police. I completed numerous in-depth staff projects for review by the Chief of Police. In addition, I was assigned with conducting research and editing the 2000 LAPD Department Manual.

Also, during this time, I earned my Master's Degree in Public Administration from California State University, Long Beach.

I applied and was selected as a Sergeant II at 77th Division Vice. I directly supervised ten undercover officers and four uniformed officers. I provided all facets of training to the officers assigned to Vice at that time to include: Use of Force Policy, Legal Updates, Department Directives, Training Bulletins, Standardized Roll Call Training, Tactics Training, Undercover Operations training, Surveillance training, and any other training deemed necessary by my Area Commanding Officer. I conducted audits, personnel investigations, administrative projects, Use of Force Investigations, and special projects.

During this time, I was selected by the Chief of Police to be loaned to the Rampart Corruption Task Force. I conducted Use of Force audits on Specialized Units in Central and South Bureaus. I reported directly to the Office of the Chief of Police.

In 2000, I applied and was selected to Metropolitan Division K9 Platoon as a Sergeant II+1. I directly supervised (18) K9 Handlers. Metro K9 conducted K9 Operations for the entire Department covering all Patrol Divisions and Specialized Units. I provided all facets of training to the K9 Officers to include: K9 Operations, tactics, search warrant services, Mobile Field Force Options, Less than Lethal Force Options, Lethal Force Options, Department Directives, Training Bulletins, and other training dictated by the Officer-in-Charge and Commanding Officer. In addition, I taught K9 Operations at in-service training, Watch Commander School, Field Training Officer (FTO) School, and Basic Detective School. While at K9, I investigated and completed K9 contacts, personnel complaints, Use of Force Investigations. In addition, I directed and was directly involved in Use of Force incidents. I received the LAPD Medal of Valor and LAPD Police Star for two lethal use of force incidents while assigned to K9.

In 2005, I was selected as a Sergeant II+1 in Special Weapons and Tactics (SWAT). I directly supervised sixty SWAT Officers. I conducted and facilitated all facets of SWAT training to include: Weapons Training (.45 caliber, MP-5, M-4, Benelli Shotgun,

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Remington 870 Bean Bag Shotgun, .40mm, SAGE, MX-26 Taser) on a monthly basis. In addition, I facilitated and conducted training in the following training Cadres: Breacher (Explosive), Crisis Negotiation-Mental Health, MEU, SMART, Suicide Prevention, Counter-Terrorism Cadre, Climbing, Hostage Rescue, Sniper Training, Air Support Training (Fast rope, Aerial Platform Shooting). I directly supervised SWAT missions and High-Risk Search Warrant Services to include all facets (preparation, briefing, deployment, de-briefing). I was the Supervisor-in-Charge of the Crisis Negotiation Team. I provided on-going crisis negotiation training, mental health training, de-briefs, 40-hour POST Certified CNT School, and suicide prevention training. I worked in conjunction with the mental health community to provide and facilitate training with LAPD SMART, LAPD Mental Evaluation Unit (MEU), Behavioral Science Services Section (BSS), and the Didi Hirsch Suicide Prevention Training. In addition, I was assisted the West Point Military Academy with the development of their crisis negotiation curriculum.

During this time, I was selected as the sole LAPD SWAT representative to respond to Mumbai India with Counterterrorism following the terrorist attack in November 2008. I taught use of force, tactics, and SWAT deployment to 250 Mumbai Special Tactical Police Officers. Upon my return, I assisted with the development of multiple venue/multiple attacker tactics.

In June 2010, I retired from the Los Angeles Police Department with 20 years in service to pursue an opportunity in the private sector. I held supervisory positions for the last 14 years of my career. During my tenure with the LAPD, I received over 100 Commendations to include: The Medal of Valor, Purple Heart, and the Police Star.

From June 2010 through April 2013, I was the Vice President of Security Operations at Caruso Affiliated in Los Angeles, CA. My responsibilities included: Identified and conducted Risk and Vulnerability Assessments for all Caruso Affiliated Developments, projected developments/investments, and residences. Utilized strategic-level analysis from the intelligence community, law enforcement and the private sector. Ensured a coordinated ability to identify and monitor potential or actual incidents among critical infrastructure domains and all personal and professional interests of Caruso Affiliated. Mitigated expected threats. Utilized preplanned, coordinated actions in response to infrastructure warnings or incidents. Responded to hostilities. Identified and eliminated the cause, or source, of an infrastructure event by the utilization of emergency response measures to include on-site security personnel, local law enforcement, medical and fire rescue, and relevant investigative agencies. Conducted all facets of security training for

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the company and employees. Formulated Business Continuity and CEO Succession Plans for the company and all affiliated business interests. Conducted ongoing audits and internal investigations.

From June 2013 to June 2014, I was hired as a Deputy Sheriff at the Riverside Sheriff's Department where I conducted all facets of patrol service to include calls for service, self-initiated field activity, arrests, citations, and court testimony. In addition, during my tenure with the Riverside County Sheriff's Department, I was assigned to Robert Presley Detention Center (RPDC). Processed and monitored inmate population from initial intake, housing, court, transportation, and release. Conducted searches of inmate population as well as the facility on an ongoing basis. Utilized experience as a gang officer, Detective and Sergeant with LAPD to conduct interviews and interrogations of prisoners regarding a myriad of investigations. Provided information to gang detail. Functioned as a mentor to newly appointed Deputy Sheriffs as well as Supervisors. Attended and certified in RSO Supplemental Jail Operations Core Course prior to deployment at RPDC. Attended ongoing training to include: Use of Force (Lethal and Non-Lethal), Crisis Negotiation Training, Active Listening Skills Training, Report Writing, Response and Deployment to Critical Incidents, and Proper Protocols and Procedures when responding to a medical incident or suicide.

From June 2014 to March 2016, I was the Director of Security at Universal Protection Service where I supervised 84 Security Professionals at the City National Plaza. Conducted and or facilitated all Bureau of Security and Investigative Services (BSIS) training to Security Professionals. Ensured all Security Professionals were compliant with BSIS security training and licensing. Conducted the following training to Security Professionals and Tenants on an ongoing basis: Fire Life Safety, Evacuation Drills, Active Shooter, Workplace Violence, Security Procedures and Protocols, Responding to Incidents Involving the Mentally Ill, Hazardous Materials and Internal Theft. Conducted ongoing Risk and Vulnerability Assessments of the City National Plaza to include security staffing and deployment, Closed Circuit Television (CCTV), Crime Prevention through Environmental Design (CPTED), and protocols to respond and mitigate threats. Developed Security and Fire Life Safety Manuals for Security Professionals and Tenants. Coordinated all security efforts to ensure safety at Special Events. Conducted internal investigations and worked in conjunction with the Los Angeles Police Department (LAPD) and the Los Angeles Fire Department (LAFD) on an ongoing basis.

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From March 2016 to September 5, 2017, I was the Director of Security at L&R Group of Companies. Identified and conducted Risk and Vulnerability Assessments for all L&R Group of Companies developments and projected developments throughout the United States. Conducted and/or facilitated all Bureau of Security and Investigative Services (BSIS) training to Security Professionals. Ensured all Security Professionals were compliant with BSIS security training and licensing. Conducted the following training to Security Professionals and Tenants on an ongoing basis: Fire Life Safety, Evacuation Drills, Active Shooter, Workplace Violence, Security Procedures and Protocols, Responding to Incidents Involving the Mentally Ill, Hazardous Materials and Internal Theft. Conducted ongoing Risk and Vulnerability Assessments to include security staffing and deployment, Closed Circuit Television (CCTV), Crime Prevention through Environmental Design (CPTED), and protocols to respond and mitigate threats. Developed Security and Fire Life Safety Manuals for Security Professionals and Tenants. Coordinated all security efforts to ensure safety at Special Events. Conducted internal investigations and worked in conjunction with the Los Angeles Police Department (LAPD) and the Los Angeles Fire Department (LAFD) on an ongoing basis as well as respective law enforcement agencies throughout the United States on security matters.

Attached are my curriculum vitae, listing of testimony and fee schedule.

A handwritten signature in black ink, appearing to read 'SADeF', with a stylized flourish at the end.

Scott A. DeFoe

EXHIBIT P

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Patricia Lopez as Personal)
Representative for the)
Estate of Anthony Lopez;) No. CV-19-04764-PHX-DLR
and Patricia Lopez and)
Caesar Lopez, surviving)
parents of Anthony Lopez,)
deceased,)
)
)
Plaintiffs,)
)
vs.)
)
City of Mesa; Heath)
Carroll, et al.,)
Defendants.)
_____)

DEPOSITION OF SCOTT A. DEFOE
VIA ZOOM VIDEOCONFERENCE

Mesa, Arizona
June 8, 2021
2:05 o'clock, p.m.

WHITE & ASSOCIATES
932 South Stapley Drive
Mesa, Arizona 85204
(480) 464-1035

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DEPOSITION OF SCOTT A. DEFOE
VIA ZOOM VIDEOCONFERENCE

Taken by the City of Mesa Attorney's Office,
20 East Main Street, Suite 850, Mesa, Arizona, Zoom
videoconference hosted by White and Associates,
932 South Stapley Drive, Mesa, Arizona, at 2:05
o'clock, p.m., June 8, 2021, before Leisel Baker,
R.P.R., a Certified Court Reporter, No. 50217,
pursuant to the Rules of Civil Procedure.

APPEARANCES by ZOOM VIDEOCONFERENCE:

For the Plaintiffs;

Ms. Renee V. Masongsong
Law Offices of Dale K. Galipo
21800 Burbank Boulevard
Suite 130
Woodland Hills, California 91367-6479

For the Defendants City of Mesa and Heath Carroll:

Ms. Kim S. Alvarado
City of Mesa Attorney's Office
20 East Main Street
Suite 850
Mesa, Arizona 85201

Also present during the deposition was Anthony
Ramirez.

1 discovery I received thus far.

2 Q. How many times before July 21st, 2018 did
3 Carroll improperly deploy a TASER?

4 A. I don't, I don't know. Once again, I don't
5 know. Based on the -- you know, once again, I have
6 not received any IA Pro Alerts regarding an improper
7 deployment of a TASER.

8 I know there was alerts that, according
9 to what just I've referred to from Mr. Wallentine's
10 report, several use of force alerts that preceded
11 this incident of the shooting in this matter, but I
12 have not received those so I don't know.

13 I do know that, that since 2017 Mr. --
14 I mean, former Officer Carroll had over 20 use of
15 force -- reportable use of forces, according to my
16 review of the record.

17 And I do know based on my -- another
18 matter I have involving Mesa, Arizona, that Officer
19 Carroll led the entire department in alerts for a
20 period of time for IA Pro Alerts, for BlueTeam
21 Alerts, actually, but I've never received -- I've not
22 received any of those alerts indicating what actions
23 were taken, was there any counseling, discipline or
24 anything involving those alerts on those threshold
25 incidents that reportedly he was involved in.

1 Q. What's the other Mesa Police Department case
2 you're involved in?

3 A. Lane versus Arizona. It involves a former
4 detective who had the second highest number of alerts
5 only second to Officer Carroll in this matter, and
6 that was Mike Pezzelle was involved in a shooting of
7 Sariah Lane. I'm working with the Robbins & Curtin
8 law firm in that matter.

9 Q. Do you have your three reports with you
10 today?

11 A. I do, uh-huh. Yes, ma'am.

12 Q. Your 11/16/20 report at page 28, if you
13 could look at that?

14 A. Okay. I am here.

15 Q. It's Opinion No. 10.

16 This offered an opinion against the
17 City of Mesa; correct?

18 A. Yes.

19 Q. Was -- and then I received the report dated
20 3/11/21 that was entitled a Supplemental Report, and
21 that offered two supplemental opinions against the
22 City of Mesa; correct?

23 A. Yes.

24 Q. My question is, is the 3/11/21 report adding
25 to your opinion against Mesa in the 11/16/20 report

1 or is it replacing it?

2 A. It's adding it.

3 Q. Are you still opining in this case on
4 ratification?

5 A. Well, that's kind of a legal term, Counsel.
6 I have not -- what I'm saying is, based on Officer
7 Carroll's actions in this case it's apparent that he
8 did not receive adequate training.

9 And what's more important in this
10 matter is the amount of use of force incidents
11 preceding this matter, and specifically, as I
12 mentioned earlier, is the number of alerts that I've
13 not seen involving Officer Carroll that the
14 department should have known that it was foreseeable
15 that Officer Carroll, based on his background and his
16 actions, may have been involved in an incident
17 similar to this.

18 Q. Okay. And I've committed to taking up two
19 hours of your time, so I'm going to try to ask if you
20 could just answer my questions as opposed to giving
21 very long narratives that are not responsive to the
22 question.

23 Specifically as to Opinion No. 10 in
24 your 11/16/20 report, there's a sentence in here that
25 says -- you used the term "ratified the shooting,"

1 and so my question is, are you still offering the
2 opinion that the City of Mesa ratified the shooting
3 of Mr. Anthony Lopez?

4 A. Yes.

5 Q. Okay. I would like to turn to the
6 supplemental opinions that are set forth in your
7 3/11/21 report.

8 A. Okay. I'm here.

9 Q. If you're at page four, it appears to me
10 there's actually kind of two opinions set forth under
11 Supplemental Opinion No. 1, and there's a failure to
12 properly train and then a failure to properly
13 discipline are set forth in Opinion No. 1.

14 Is that -- do you see that?

15 A. Yes.

16 Q. Now, so I want to just focus right now on
17 the failure to properly train, and that looks like
18 it's that paragraph that's the first paragraph.

19 My question is, all these different, I
20 guess -- what would you call these? The topics or
21 issues that are listed in this paragraph, how would
22 you describe those things that you listed that you
23 capitalized them?

24 A. It could be categories of training or
25 training discipline, something such as that, tactics.

1 Q. So are these specific policies that you're
2 referencing?

3 A. No. They're basically -- I'm not, I'm not
4 opining that the policy in itself is inadequate.
5 What I'm opining on is that he wasn't properly
6 trained regarding the policies that existed at the
7 time.

8 Q. How do you know he wasn't properly trained
9 as to the policies that were in existence at the
10 time --

11 A. Based on his actions.

12 Q. -- the basis for that opinion.

13 A. Based on his actions, based on his actions
14 the night of the shooting in this matter.

15 In addition to that, that the number of
16 threshold-related incidents preceding this incident.
17 In addition to that, the number of use of forces,
18 reportable use of forces, which is, the amount is
19 significant.

20 And, once again, had he been properly
21 trained, I believe that it would have -- properly
22 trained, disciplined, even dismissed preceding this
23 incident that it may have prevented this incident
24 from occurring.

25 Q. Did any of the Mesa Police Department

1 may have looked at it from another matter involving
2 Mesa or not, but I don't know if it's -- or if it was
3 produced. I don't know.

4 Q. And when you say "I got it" -- "I could have
5 gotten it off-line," that means the Mesa Police
6 Department policies are available on their web site;
7 correct?

8 A. Yes, ma'am.

9 Q. I'm trying to understand your specific
10 criticism you have of Officer Carroll's training.

11 Is it that the training he received was
12 defective in some way or that he received no training
13 on the topic. What's your opinion about training?

14 A. Well, I believe the training would be
15 adequate. I'm not contesting the training he
16 received in his POST certified academy, nor am I
17 contesting the policies and procedures that are
18 outlined in my report that I obviously identified in
19 my three reports, at least on the initial report in
20 November of 2020.

21 The question I have regarding failure
22 to train, or opinion regarding failure to train is
23 based on the fact that Officer Carroll had a number
24 of use of force incidents, and including traffic
25 collisions and lost property, all things were

1) developed where he was clearly not abiding by a set
2) of rules that were obviously in place or should have
3) been in place at the Mesa Police Department, and
4) because of that I believe that there was a failure to
5) discipline, retrain, and provide, obviously, remedial
6) training. It wasn't the first time that he had
7) issues regarding cover and concealment, containment.

8) There was obviously IA Pro Alerts in
9) 2017, and I guarantee there's many more than what
10) I've reviewed in Mr. Wallentine's report because I've
11) not seen those IA, IA alerts, actually, or any IA
12) investigations associated with those alerts, or what
13) was the, what was the actual response to those
14) alerts. I have not seen any of those.

15) So based on the number of use of force
16) incidents, based on the IA Pro Alerts, I believe
17) there is clearly a failure to either retrain, provide
18) remedial training, counseling, discipline and/or up
19) to dismissal based on the number of incidents that he
20) was involved in preceding this incident.

21) Q. Okay. So if I understand you correctly,
22) you're not, you're not going to be opining that
23) there -- any particular training that was actually
24) provided by the City of Mesa to Heath Carroll was
25) defective or deficient in some way. Is that a true

1 statement?

2 A. Can you repeat that, Counsel? I missed
3 that.

4 MS. ALVARADO: Can you repeat it, Leisel,
5 because I probably can't.

6 (The question was read back by the
7 court reporter.)

8 THE WITNESS: I don't know. I don't know
9 if -- what the training was, if there was remedial
10 training, if there was counseling, discipline, notice
11 to correct deficiency.

12 So I wouldn't know based on what the
13 alert was or what the actual use of force was, or use
14 of forces were preceding this to see how they
15 addressed that particular issue or issues.

16 So I don't know if the training was
17 appropriate until I see what was provided to Officer
18 Carroll based on what the specific IA alert was.

19 Q. BY MS. ALVARADO: Okay. And let's just talk
20 about, and you mentioned this a couple of times, the
21 number of the IA alerts.

22 Your 3/11/21 report also discusses an
23 early identification system; correct?

24 A. Yes.

25 Q. And the IA Pro Alert system is a type of

1 early identification system; is that right?

2 A. Yes. It should be. They're either alerts
3 that are going to come internally, they could be
4 external complaints, they could be policy violations,
5 training violations. They can come from a myriad of
6 sources, but yes.

7 Q. Okay. Yeah, let's talk about the sources,
8 because it's your understanding that the Mesa Police
9 Department had a Professional Standards Unit during
10 the entire tenure of Heath Carroll's employment;
11 correct?

12 A. Yes.

13 Q. And then the Mesa Police Department also had
14 implemented the IA Pro Alert system during the entire
15 time of Officer Carroll's tenure; correct?

16 A. Yes. It was, it was in effect during that
17 time period, yes.

18 Q. And do you have any criticisms of the Mesa
19 Police Department's use of the IA Pro Alert system?

20 A. I'm not critical of having the system. I
21 think it's a good system. The question is when those
22 alerts occurred how quickly the department took some
23 action around those alerts, what was done in response
24 to those incidents based on the threshold levels of
25 those specific alerts.

1 Were they departmental use of force,
2 vehicle, citizen or like an overall threshold, where
3 those thresholds were and what the department did as
4 a response to those alerts, so I don't know.

5 The system in itself I don't have any
6 problem with. I'm familiar with the system.

7 Q. Do you know what were the alert thresholds
8 within the Mesa Police Department in the 2016 to 2019
9 period?

10 A. What were the categories?

11 Q. What were the alert thresholds?

12 A. You know, I don't know. I don't know what
13 the thresholds were. I was not provided with that at
14 the time. I know the categories of the alerts. I
15 don't know what the thresholds were.

16 Typically the thresholds are, you know,
17 a citizen complaint, typically if there are three in
18 a 12-month period. Departmental, that might be
19 internally, three within a 12-month period.

20 Typically there's five use of forces in
21 a 12-month period, two vehicle accidents in a
22 12-month period, and then an overall threshold, that
23 would be a compilation of all of those. If they add
24 up to more than seven would be another set of
25 threshold alerts. So that's --

1 Q. So is that --

2 A. -- typically in a --

3 Q. I didn't mean to cut you off.

4 A. No, that's fine.

5 That's my understanding of Mesa's

6 threshold alerts within a 12-month period.

7 Q. So, and that was my next question is, were
8 you talking about what your understanding of Mesa's
9 threshold alerts were or were you just talking about
10 what is the standard practice for the threshold
11 alerts when you were saying those numbers?

12 A. Those numbers are predicated on my work on
13 the Lane matter. That's what the threshold alerts
14 were for -- during that time period in that matter.
15 And that involved -- that particular matter involved
16 an April 20th, 2017 shooting and so that's what was
17 in place at the time.

18 Q. And you understand when the system does a
19 use of force alert, those are based upon use of force
20 reports; correct?

21 A. Yes. That's basically from the supervisor
22 or whoever puts that use of force into the system
23 which, once again, may create an alert depending on
24 the threshold, in this case it would be more than
25 five, or five or four.

1 Q. So the uses of force that Officer Carroll
2 could have documented and would have triggered the
3 alert system, could be some combination of those
4 other reportable uses of force, you're saying you
5 just don't know?

6 A. I don't know.

7 Q. And would you also agree that officers that
8 work certain beats and certain shifts will have
9 higher uses of force than officers who work different
10 beats and different shifts?

11 A. At times, yes.

12 Q. Prior -- let me go back to your 3/11/21
13 report. And, again, this is -- we're on page four.

14 A. Okay.

15 Q. And that is under your -- we talked about a
16 failure to train, and then you have, In addition,
17 it's my opinion that the Mesa Police Department
18 failed to properly discipline Carroll prior to the
19 7/21/18 shooting; that's correct?

20 A. Yes.

21 Q. Okay. So I want to talk about your failure
22 to discipline opinion.

23 In the next paragraph it starts the
24 same. In addition, it's my opinion that the Mesa
25 Police Department's failure to properly discipline

1 Officer Carroll, and then it goes into culture and
2 environment.

3 Do you see that paragraph?

4 A. Yes.

5 Q. Okay. My question is, you wrote in here,
6 "...despite the Mesa Police Department having a
7 written record of Officer Carroll's documented
8 violations of training and policy and other
9 misconduct."

10 My question is, what was the written
11 record of documented violations of training and
12 policy and other misconduct that warranted discipline
13 prior to July 21st, 2018?

14 A. Well, all I received thus far, there was
15 obviously what I received, but there were three
16 complaints obviously preceding this incident.

17 There was one in September 28, 2017,
18 October 15, 2017, and February 12, 2018. But in
19 conjunction with those, as I mentioned earlier that,
20 you know, he led the entire department in IA Pro
21 Alerts based on my review of another matter.

22 Q. Okay.

23 A. And --

24 Q. Okay. So in here you just discussed that he
25 had three Professional Standards investigations prior

1 to the 7/21/18 incident; correct?

2 A. Yes.

3 Q. Okay. And one of those involved an arrestee
4 complaining about the preservation of a cell phone?

5 A. Yes.

6 Q. And that allegation was not sustained;
7 correct?

8 A. That's correct.

9 Q. And that incident didn't involve the use of
10 force; true?

11 A. I don't know. I don't know if there was any
12 force, at least not on the, on the concise employ
13 history I looked at. I don't know if there was force
14 used at any time.

15 Q. Well, the --

16 A. Once again, I don't know.

17 Q. -- subject of the Professional Standards
18 investigation, he was not being, he was not being
19 investigated for the excessive use of force; correct?

20 A. It's not listed on there, no, but I don't
21 know if there was force involved in the incident.

22 Q. And then you mentioned another Professional
23 Standards incident and that was actually from October
24 2017. That was a vehicle accident?

25 A. Yes.

1 went through his training.

2 Q. So that would be sometime in early 2017;
3 correct?

4 A. Yes, sounds about right.

5 Q. And in the Lane case you said that you --
6 you said the shooting that you're reviewing occurred
7 on April 20th, 2017?

8 A. That's correct.

9 Q. So is it fair to say that you are reviewing
10 IA Pro Alerts that occurred after 4/20/2017?

11 A. No, preceding, preceding 4/20/2017, to look
12 at behavior preceding the shooting is what's most
13 critical.

14 Q. And so is it -- I'm just trying to
15 understand, are you testifying that based on your
16 work in the Lane case you believe that Officer
17 Carroll had the highest number of use of force
18 incidents in the entire Mesa Police Department from
19 the time he became a patrol officer in early 2017
20 until the shooting on 4/20/2017?

21 A. No, not specific to use of force reports.
22 There were -- obviously he had -- my understanding is
23 he had the highest IA Pro Alerts in the Mesa Police
24 Department. I don't know the specific time frame,
25 but I believe it preceded this -- I'm confident it

1 preceded the shooting in this case.

2 Q. So you're talking about the Lopez shooting
3 on 7/21/18?

4 A. Yes, ma'am.

5 Q. Okay.

6 A. So for about the 19 months or so preceding
7 the Lopez shooting, around that time frame.

8 Q. Okay. I just want to go through some of the
9 documents that are part of IA number 2019-251,
10 because that's the -- you're citing a memo from that
11 case on page nine of your report.

12 Do you see that?

13 A. Yes.

14 Q. Okay. Now, you stated here that you're
15 quoting from a report that's dated 12/9/19.

16 Do you see that?

17 A. What page are we on, ma'am?

18 Q. You're on page nine of the 3/11/21 report.

19 A. Okay. I'm here.

20 Q. Okay. So I'm not going to beat around the
21 bush. I'm just going to cut to the chase here.

22 From what I can tell from reviewing the
23 documents, the 12/9/19 report, that's your item
24 number 10 that you listed, that is authored by
25 somebody else. That's authored by a Lieutenant

1 the second paragraph of the -- of this description of
2 Professional Standards interview with Officer Redden;
3 true?

4 A. That's correct.

5 Q. And in that, in that interview, Officer
6 Redden said he had no firsthand knowledge of any
7 instances of Carroll being untruthful.

8 A. That's correct.

9 Q. Why didn't you quote from Officer Carroll's
10 interview that's set forth in the 10/31/19 report?

11 A. Regarding what part of it? Regarding the --

12 Q. Well, regarding this -- you've basically
13 stated in your Supplemental Opinion No. 2 that he had
14 developed a reputation of being untrustworthy and
15 possibly demonstrating a lack of integrity, and so --
16 and the two people you quote for that are this
17 section from Sergeant Stout and one section from
18 Officer Redden that's contained in the 10/31/19
19 Keeling report; correct?

20 A. Right. That's correct.

21 Q. And I'm wondering, why didn't you quote from
22 Officer Carroll's interview with Professional
23 Standards on those same issues?

24 A. Because, once again, it's -- it was --
25 that's why I italicized. It's not directly from me,

1 it's directly from the investigation.

2 This -- once again, situations like
3 this are almost impossible to sustain because it's
4 hearsay. But reputations on police departments, you
5 know, typically there's something to be said about
6 when people make these dispersions that not always
7 are they true, sometimes they're fiction, they're not
8 true.

9 But I believe based on, you know, a
10 number of things, not just the K-9 search but the
11 issue of stemming all the way back to the academy
12 when he wouldn't, you know, wouldn't get involved
13 based on, you know, his purported position with the
14 United States Army preceding his employment with
15 Mesa, and some other things, it just kind of -- and,
16 once again, his attitude, it seemed was, once again,
17 based on my training and experience of working in
18 police departments is that, you know, it seemed like
19 he was a guy that didn't transition well from
20 military service to public service is what I looked
21 at.

22 Q. Well, let's go back to what you just said.

23 Did Officer Redden have any direct
24 knowledge of Officer Carroll making -- or not
25 participating in this training during the academy?

1 A. Well, what he stated was -- it's hard to
2 tell based on his statement.

3 It says, "So, we teach a portion of the
4 academy. And the K-9 handler that was teaching the
5 academy noticed he was standing to the side."

6 So I don't know if Redden was present
7 during that time. I know he did state in the
8 investigation that was it rumor mill stuff, and I
9 don't know if that was rumor mill as well.

10 But what he did state was, Why is all
11 this stuff floating around the department? We
12 confronted him and it's not all true. We're not
13 doing anything about it is what Redden's statement
14 was --

15 Q. Okay.

16 A. -- so it --

17 Q. So Officer -- so you don't know whether
18 Officer Redden personally observed any of this
19 statement that's described that happened at the
20 academy; correct?

21 A. That's correct.

22 Q. And then he has also heard through the rumor
23 mill that people confronted Officer Carroll, and
24 Officer Carroll confirmed that he's not a ranger?

25 A. Right. That's what he said.

1 incident.

2 Q. And what is the appropriate action that the
3 Mesa Police Department should have taken?

4 A. For one, maybe talk to some of the folks
5 that he worked with in the past, prior supervisors,
6 you know, and, you know, to --

7 Q. And what agency?

8 A. Well, obviously with Mesa because --

9 Q. Oh, okay.

10 A. -- because this is an issue with Mesa.

11 They could have also reached out
12 because, you know, I was in the army myself so his
13 explanation regarding his military service was
14 confusing at best regarding, you know, his MOS and
15 all the other things he discussed in there.

16 It didn't make a whole lot of sense to
17 me of being an army vet, so -- and I looked at that
18 as well and, and it didn't make any sense what he was
19 stating.

20 And for him to purport that he was --
21 you know, he was a calvary scout in the military, he
22 wasn't a ranger, and if that's what he was reporting
23 that would be not true and, and it goes to questions
24 of his credibility if that was in fact proved to be
25 true.

1
2 DATED at Mesa, Arizona, this 18th day of
3 June, 2021.

4
5 Leisel Baker, RPR
6 Certified Reporter No. 50217

7 * * * * *

8
9 I CERTIFY that WHITE & ASSOCIATES, a
10 Registered Reporting Firm in the State of Arizona, has
11 complied with the ethical obligations set forth in the
12 Arizona Code of Judicial Administration
13 7-206(J)(1)(g)(1) and (2).

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