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December 4, 2018

Chief Jorge Cisneros
Anaheim Police Department
425 South Harbor
Anaheim, CA 92805

Re: Custodial Death on March 10, 2018
Death of Inmate Christopher Eisinger
District Attorney Investigations Case # 18-010
Anaheim Police Department Case # 18-32460
Orange County Crime Laboratory Case # 18-01303

Dear Chief Cisneros,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusion in connection with the above-listed incident involving the March 10, 2018, custodial death of 35-year-old inmate Christopher Eisinger.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Christopher Eisinger. In this letter, the OCDA describes the investigative methodology employed, evidence examined, witnesses interviewed, facts discovered and the legal principles applied to determine whether criminal culpability exists on the part of any Anaheim Police Department (APD) personnel.

On March 10, 2018, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Hoag Hospital where Eisinger died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed 12 witnesses, as well as obtained and reviewed reports from the APD and Orange County Crime Laboratory (OCCL), incident scene photographs, the footage of numerous Body Worn Cameras and other relevant materials.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this event and impartially reviewed all evidence and applicable legal standards. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of APD personnel or any other person under the supervision of the APD. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating custodial deaths within Orange County when an individual dies while in custody. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units.

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Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, scene processing, evidence collection and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide, TARGET/Gangs, and Special Prosecutions Units review fatal and non-fatal officer-involved shootings and custodial death cases to determine whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the Senior Assistant District Attorney supervising the Felony Operations II Division of the OCDA, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE

The OCDA recognizes releasing video and audio evidence of officer-involved shooting and custodial death incidents can assist the public in understanding how and why these incidents occur, increase accountability, and build public trust in law enforcement. Consistent with the OCDA's written policy in connection with the release of video and audio evidence relating to officer-involved shooting and custodial death incidents where it is legally appropriate to do so, the OCDA is releasing to the public video/audio evidence in connection with this case. The relevant video/audio evidence is available on the OCDA webpage <http://orangecountyda.org/reports/videoandaudio/default.asp>.

FACTS

On March 2, 2018, at approximately 12:01 a.m., officers from APD responded to a report of an auto burglary. Upon arrival, Sergeant Enriquez observed the suspect, Eisinger, attempting to open the side gate of a nearby residence. Eisinger closely matched the description of the auto-burglary suspect and was holding what appeared to be a metal pipe. Sergeant Enriquez activated the police vehicle's overhead red and blue lights, exited with his handgun drawn, and yelled, "Stop police, stop!" Eisinger dropped the metal object and began running away from Sergeant Enriquez. Officer Warner arrived, parked his marked police vehicle and began to chase Eisinger, who was running away from the scene. At the entrance of a residential driveway, Officer Warner reached out and grabbed for Eisinger. Eisinger avoided Officer Warner and continued toward the residential home. Eisinger then turned toward the porch, spun around, faced Officer Warner and fell back on the porch. Officer Warner placed a knee on Eisinger's sternum and ordered him to "Stay down."

Officers Junittla and Marcos arrived and saw Eisinger "violently" resisting the officers who were attempting to restrain him. Officer Warner yelled at Eisinger "Police officer, stop resisting." Eisinger replied, "Just shoot me." Officer Warner then assured Eisinger he would not be shot.

After approximately one minute of Eisinger fighting with the officers who were attempting to place him in handcuffs, Officer Morgan secured a handcuff on Eisinger's right wrist. Sergeant Enriquez then gave the order for Eisinger to roll over, but he continued to resist. At one point, Eisinger grabbed Officer Warner's Taser and Taser holster. Officer Warner gave commands to Eisinger to "Stop resisting, and let go of my Taser." Eisinger responded "Then give it to me." Officer Warner again told Eisinger "You're under arrest. Stop resisting." Eisinger then responded "Sorry, it's so fun." Eisinger then proceeded to kick the officers, including Officer Montalvan who fell back and lost control of Eisinger's legs.

Eisinger continued to resist the officers, growled, screamed, grunted and rambled continuously. Sergeant Enriquez determined Eisinger was exerting unusual strength and was possibly under the influence of some type of drug. After five minutes of resisting the officers, Eisinger became quiet. At this point he was sweating profusely but had no visible trauma to his face or head. Eisinger then became unresponsive and appeared unconscious. Eisinger had a faint pulse and appeared to be breathing with perspiration around his mouth.

Officer Warner broadcasted via the police radio an additional request for paramedics. Anaheim Fire Department (AFD) arrived less than five minutes later and found Eisinger unconscious. Paramedics observed Eisinger had stopped breathing

and appeared to have no pulse. Eisinger was laid on his back and chest compressions were initiated. An oropharyngeal airway was inserted and oxygen was provided via an airway-bag valve mask. Automated External Defibrillator pads were placed on Eisinger's upper torso. Within one minute of CPR being initiated Eisinger's pulse returned.

Eisinger was immediately transported to West Anaheim Medical Center. Eisinger was admitted into the hospital in critical condition. Eisinger was soon transported to Hoag Hospital due to the deteriorating condition of his health. Eisinger was diagnosed with right orbital edema, fractured left zygomatic arch, and a sphenoid sinus fracture.

On March 10, 2018, at approximately 10:43 a.m., the attending physician pronounced Eisinger deceased.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- (1) Party Popper Confetti Tube
- (1) Methamphetamine Pipe
- Suspected Methamphetamine .160 grams

AUTOPSY

On March 14, 2018, Forensic Pathologist Dr. Ellis of the Orange County Coroner's Office conducted an autopsy on the body of Eisinger. Following the autopsy, Dr. Ellis indicated her preliminary examination revealed the following:

- No visible skull fractures
- Significant swelling of brain
- Small hematoma near right eye
- Optic nerves intact
- No orbital fractures
- Small bleed at the base of the skull, right side
- No neck or throat injury
- Heart slightly enlarged
- 70-75% coronary occlusion

Dr. Ellis found no signs of trauma (cuts, bruises or welts), other than swelling above the right eye, consistent with a physical altercation. She initially found no identifiable fatal trauma. After analysis of the toxicological results and examination of the micro slides, the cause of death was determined to be a sudden cardiac arrest due to occlusive coronary atherosclerosis and effects of methamphetamine. The manner of death was determined to be accidental.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Christopher Eisinger's postmortem blood yielded the following results:

<i>DRUG</i>	<i>Results and Interpretations</i>
Acetone	15.7 ± 1.9 mg/dL
Methamphetamine	<0.13 mg/L

BACKGROUND INFORMATION

Christopher Eisinger had a State of California Criminal History record that revealed arrest for the following violations:

- Vehicular Manslaughter with Gross Negligence
- Possession of Marijuana for Sale
- Sell / Furnish Marijuana
- Spousal Battery
- Possession of Controlled Substance in Prison

- Possession of Unlawful Paraphernalia
- Obstruct a Public Officer
- Under the Influence of a Controlled Substance
- Possession of a Controlled Substance
- Violation of Probation
- Obstruct / Resist Executive Officer
- Battery
- Provide False Information to Peace Officer
- Attempt to Remove the Firearm of a Police Officer
- Assault on a Police Officer
- Battery on a Police Officer

THE LAW

Homicide is the killing of one human being by another. Murder, voluntary manslaughter, and involuntary manslaughter are types of homicide. To prove a person is guilty of murder, the following must be proven:

- a. The person committed an act that caused the death of another human being;
- b. When the person acted, he/she had a state of mind called malice aforethought; and
- c. He/she killed without lawful excuse or justification.

There are two kinds of malice aforethought: express malice and implied malice. Express malice is when the person unlawfully intended to kill. Implied malice requires that a person intentionally committed an act, the natural and probable consequences of the act were dangerous to human life, at the time he/she acted he/she knew his/her act was dangerous to human life, and he/she deliberately acted with conscious disregard for human life.

A person can also commit murder by his/her failure to perform a legal duty, if the following conditions exist:

- a. The killing is unlawful (*i.e.*, without lawful excuse or justification);
- b. The death is caused by an intentional failure to act in a situation where a person is under a duty to act;
- c. The failure to act is dangerous to human life; and
- d. The failure to act is deliberately performed with knowledge of the danger to, and with conscious disregard for, human life.

A person can also commit involuntary manslaughter by failing to perform a legal duty, if the following conditions exist:

- a. The person had a legal duty to the decedent;
- b. The person failed to perform that legal duty;
- c. The person's failure was criminally negligent; and
- d. The person's failure caused the death of the decedent.

In *Giraldo v. California Dept. of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231, 250-251, the court held that there is a "special relationship" between jailer and prisoner:

"The most important consideration 'in establishing duty is foreseeability.' It is manifestly foreseeable than an inmate may be at risk of harm.... Prisoners are vulnerable. And dependent. Moreover, the relationship between them is protective by nature, such that the jailer has control over the prisoner, who is deprived of the normal opportunity to protect himself from harm inflicted by others. This, we conclude, is the epitome of a special relationship, imposing a duty of care on a jailer owed to a prisoner, and we today add California to the list of jurisdictions recognizing a special relationship between jailer and prisoner."

California Government Code 845.6 codifies that the special relationship that exists in a custodial setting gives rise to a legal duty, as follows:

"A public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care."

Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when he acts in a reckless way that creates a high risk of death or great bodily injury and a reasonable person would have known that acting in that way would create such a risk. In other words, a person acts with criminal negligence when the way he/she acts is so different from how an ordinarily careful person would act in the same situation that his/her act amounts to disregard for human life or indifference to the consequences of that act.

An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor; however, it does not need to be the only factor that causes the death.

LEGAL ANALYSIS

There is no evidence whatsoever in the present case of express or implied malice on the part of any APD personnel or any other individuals under the supervision of the APD. We must therefore analyze this situation for potential homicide liability under the theory of failing to perform a legal duty. Although the APD owed Eisinger a duty of care, the evidence does not support a finding this duty was in any way breached -- either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter).

On March 2, 2018 when Eisinger became unresponsive to APD officers, Paramedics were dispatched immediately. Eisinger was given expedient life-saving procedures and care. Eisinger was transported to West Anaheim Medical Center to ensure he received all necessary and appropriate medical attention. When staff noticed Eisinger's health continued to deteriorate, they acted diligently and performed life-saving procedures. Eisinger's sudden cardiac arrest appears to have resulted from complications associated with heavy drug intake.

The officers interviewed stated there were no punches, kicks, batons, Tasers, or other weapons used on Eisinger. There is no physical or documentary evidence to suggest otherwise. There is no evidence, therefore, to support a finding that any APD personnel or any individual under the supervision of the APD failed to perform a legal duty.

CONCLUSION

Based on all the evidence provided to and reviewed by the OCDA, and pursuant to applicable legal principles, it is our conclusion there is no evidence to support a finding of criminal culpability on the part of any APD personnel or any individual under the supervision of the APD. The evidence shows Eisinger died as a result of his decision to exert himself while suffering from hypertrophy and dilation of the heart, recent and chronic substance abuse, and a myriad of associated health problems.

Accordingly, the OCDA is closing its inquiry into this incident.

Respectfully submitted,



JENNIFER WALKER
Senior Deputy District Attorney
Homicide Unit



Read and Approved by **EBRAHIM BAYTIEH**
Senior Assistant District Attorney
Felony Operations II