



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL

648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

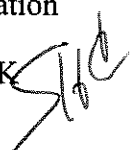
MARY C. WICKHAM
County Counsel

September 20, 2018

TELEPHONE
(213) 974-1762
FACSIMILE
(213) 626-7446
TDD
(213) 633-0901
E-MAIL
sestabrook@counsel.lacounty.gov

TO: CELIA ZAVALA
Acting Executive Officer
Board of Supervisors

Attention: Agenda Preparation

FROM: STEVEN H. ESTABROOK 
Litigation Cost Manager
Executive Office

RE: **Item for the Board of Supervisors' Agenda**
County Claims Board Recommendation
Michael Cones v. County of Los Angeles
United States District Court Case No. CV 14-08281

Attached is the Agenda entry for the Los Angeles County Claims Board's recommendation regarding the above-referenced matter. Also attached are the Case Summary and Summary Corrective Action Plan to be made available to the public.

It is requested that this recommendation, the Case Summary, and Summary Corrective Action Plan be placed on the Board of Supervisors' agenda.

SHE:scr

Attachment

Board Agenda

MISCELLANEOUS COMMUNICATIONS

Los Angeles County Claims Board's recommendation: Authorize settlement of the matter entitled Michael Cones v. County of Los Angeles, United States District Court Case No. CV 14-08281 in the amount of \$400,000 and instruct the Auditor-Controller to draw a warrant to implement this settlement from the Sheriff's Department's budget.

This lawsuit alleges the Sheriff's Department violated Plaintiff's federal civil rights and falsely arrested him.

CASE SUMMARY

INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	Michael Cones v. County of Los Angeles, et al.
CASE NUMBER	CV 14-08281
COURT	United States District Court
DATE FILED	October 24, 2014
COUNTY DEPARTMENT	Sheriff's Department
PROPOSED SETTLEMENT AMOUNT	\$ 400,000
ATTORNEY FOR PLAINTIFF	Milton C. Grimes, Esq.
COUNTY COUNSEL ATTORNEY	Millicent L. Rolon Principal Deputy County Counsel
NATURE OF CASE	<p>This is a recommendation to settle for \$400,000, a lawsuit filed by Michael Cones against the Sheriff's Department alleging false arrest and federal civil rights violations.</p> <p>Given the risks and uncertainties of litigation, a reasonable settlement at this time will avoid further litigation costs. Therefore, a full and final settlement of the case in the amount of \$400,000 is recommended.</p>
PAID ATTORNEY FEES, TO DATE	\$ 194,555
PAID COSTS, TO DATE	\$ 53,991

Case Name: Michael Cones v. County of Los Angeles, et al.



Summary Corrective Action Plan

The intent of this form is to assist departments in writing a corrective action plan summary for attachment to the settlement documents developed for the Board of Supervisors and/or the County of Los Angeles Claims Board. The summary should be a specific overview of the claims/lawsuits' identified root causes and corrective actions (status, time frame, and responsible party). This summary does not replace the Corrective Action Plan form. If there is a question related to confidentiality, please consult County Counsel.

Date of incident/event:	November 16, 2012
Briefly provide a description of the incident/event:	<p><u>Michael Cones v. County of Los Angeles, et al.</u> Summary Corrective Action Plan 2018-009</p> <p>On November 16, 2012, at approximately 9:30 p.m., three detectives from Operation Safe Streets (OSS) Bureau were working as partners and traveling together in an unmarked, gray, Crown Victoria detective vehicle. They were wearing jeans, raid jackets with yellow Sheriff's Department shoulder patches, and external ballistic vests that identified them as deputy sheriffs while they conducted a gang suppression operation in an unincorporated area of Los Angeles. One of the detectives received a cell phone calls from another OSS detective relaying information from a resident that several gang members from the "76 East Coast Crips" street gang were at the corner of 81st Street and Parmalee Avenue and two of them had firearms.</p> <p>Upon their arrival at the location, the detectives encountered a group of seven to nine male adults standing at the northwest corner of 81st Street and Parmalee Avenue. One of the males alerted the group by yelling, "It's the cops!" The group immediately separated and the men ran away in different directions. At least one men was seen pulling a pistol from his waistband as he moved.</p> <p>The first detective (driver) stopped the vehicle, angled towards the curb, with the headlights pointed towards the man with a gun. The second detective (front passenger) and third detective (rear passenger side) exited the vehicle with their guns drawn.</p> <p>Two males, standing about 20 feet from the detectives, started shooting at the detectives. One gunman was firing at the detectives from behind a tree as another was firing from behind a parked car. Several of the fired rounds hit the detective's vehicle shattering glass and hitting the vehicle's body.</p> <p>The second or third round fired struck the first detective in the abdomen below his body armor. The first detective knew he had been shot as he described, "I felt – felt like someone had punched me in the stomach, took my air out." The first detective returned fire, shooting two or three rounds through the windshield at the shooters.</p> <p>The third detective had been outside the detective's vehicle when the gunfire erupted. The third detective quickly dove back into the rear seat of the vehicle and stayed down, in an attempt to avoid being struck by gunfire.</p>

	<p>The second detective sat back in the passenger side front seat and returned fire from the open passenger door. After firing two to three rounds the second detective yelled out that his gun had jammed. The second detective leaned forward toward his floorboard, in an attempt to avoid getting hit by gunfire, as he worked on clearing his weapon.</p> <p>A gunman that was actively shooting at the passenger side of the detective's vehicle and using a tree for cover. The first detective put his hand on the second detective's back and fired two to three rounds over his partners back towards the man that was actively firing at them. The second detective successfully cleared his weapon and returned fire at the man that began moving and was actively advancing towards them as he continued to shoot into the passenger side of their vehicle.</p> <p>The first detective yelled that he had been hit and that they needed to get out of the kill zone. The first detective put the vehicle in gear and quickly drove forward and down the street. As they drove away, one of the shooters ran alongside their vehicle and continued to shoot four to five shots into the passenger side of their vehicle. The second detective returned fire at the shooter as they tried to get to a safe distance.</p> <p>The first and second detectives had seen the third detective not moving as he laid in the back seat and feared that he had been shot or killed.</p> <p>When they got to Zamora Avenue, the first detective stopped their damaged vehicle and found three men were still advancing towards them. At least one of the advancing suspects continued to fire at the detectives from behind cover as he continued to advance. The second detective got out of the vehicle and sought cover behind a parked car. The first and second detectives returned fire at the shooter.</p> <p>The third detective got out of the back seat and ran to available cover to engage the advancing suspects. The third detective heard shots coming from the advancing suspects and heard bullet strikes hitting around him. The third detective intended to shoot at the advancing suspects and found his firearm was also malfunctioning.</p> <p>The second detective got out of the vehicle and after an exchange of gunfire, the shooter and additional advancing suspects turned and fled, concluding the gun battle.</p> <p>Even though he was shot, the first detective broadcasted information regarding the attack. The third detective then took over radio traffic and arranged a containment for the suspects and medical assistance for the first detective. The second detective triaged the first detective and began providing battlefield first aid. Century Station deputies responded, set up a containment, and initiated a tactical operation to search for the suspects.</p> <p>While searching the area for the shooting suspects, a Department air unit identified the plaintiff as a person that matched the general description of the outstanding shooting suspects. Two patrol deputy sheriffs made contact with the plaintiff as he was inside the locked and gated front yard of his residence. The plaintiff refused to cooperate with the patrol deputies and refused to come out of his yard. A special weapons team was called to assist. Upon arrival of the special weapons team, the plaintiff cooperated and submitted to being detained pending a field show-up identification.</p>
--	--

	<p>The plaintiff and another suspect were both transported separately to the command post where a field show-up was conducted. As the search continued, three additional suspects were found and detained within the containment. The second and third detectives were later transported to the three detainees' locations to conduct a field show-up.</p> <p>The second and third detective individually identified four of the five detained persons, including the plaintiff, as the suspects involved in the shooting. The plaintiff was arrested and charged with attempted murder of a peace officer and intentional discharge of a firearm which caused great bodily injury.</p> <p>The first detective was admitted to a local hospital where he received emergency surgery and treatment for a gunshot wound to his abdomen. After eight months of recovery, the first detective returned to work. He is currently working in full duty capacity, without restrictions.</p> <p>One of the suspects sustained a gunshot wound to his head. He was provided medical treatment and a bullet fragment was removed from between his scalp and his skull.</p> <p>At a preliminary hearing, the plaintiff was held to answer. After 11 months in custody, the Los Angeles County District Attorney's Office dismissed the charges against the plaintiff citing there was insufficient evidence to meet the, "beyond a reasonable doubt" standard that the plaintiff was one of the shooters in this incident. The two remaining suspects were convicted for assault with a deadly weapon on a peace officer and were sentenced to state prison.</p>
--	---

1. Briefly describe the root cause(s) of the claim/lawsuit:

A Department root cause in this incident was the allegation that the plaintiff was improperly moved from the front yard of his residence, which was approximately one block from the shooting scene, to the command post for a field identification show-up.

A non-Department root cause in this incident was the plaintiff was arrested because he was positively identified in a field identification show-up on the night of the incident, by two separate detectives, as a suspect that had shot at the detectives.

2. Briefly describe recommended corrective actions:

(Include each corrective action, due date, responsible party, and any disciplinary actions if appropriate)

Criminal Investigation

This incident was investigated by the Sheriff's Department's Homicide Bureau to determine if any criminal misconduct occurred.

The results of their investigations were presented to the Los Angeles County District Attorney's Office.

On April 23, 2013, the Los Angeles County District Attorney's Office's Justice System Integrity Division concluded the detectives involved in the shooting acted in lawful self-defense and defense of themselves and each other.

Administrative Investigation

This incident was investigated by representatives of the Sheriff's Department's Internal Affairs Bureau to determine if any administrative misconduct occurred before, during, or after this incident. The results of the investigation were presented to the Executive Force Review Committee (EFRC) for adjudication.

On April 17, 2014, the EFRC determined the tactics and use of deadly force were within Department policy.

Fourth Amendment - Search and Seizure

The Plaintiff was one of five people detained near the shooting scene because there was reasonable suspicion to believe they were involved in the shooting. The first and second detectives individually identified four of the detainees, including the plaintiff, during individualized field identification show-ups.

Initially, the plaintiff and another detainee were transported from their detained locations to the command post. In case law, the general rule for a field identification show-up is to have the victim or witness transported to the suspect's location. However, there are three exceptions to the general rule; (1) probable cause to arrest; (2) consent; (3) impracticability.

In this case, the plaintiff and the other detainee were transported to the detective witnesses for safety reasons. At the time of their field show-up, there were still outstanding suspects who had shot at the detectives and could continue to pose a life threatening danger to the detectives. The courts have permitted the transportation of a suspect to a witness in similar circumstances.

Additionally, detaining potential suspects for an unreasonable amount of time could be considered an undue restriction of their freedom and a violation of their United States Constitutional Fourth Amendment rights.

After the plaintiff and the other detainee were transported to the command post for a field identification show-up, three additional suspects were detained near the shooting scene. At that time, the OSS detective handling the field identification show-ups determined transportation of the detainees to the suspects posed less of a danger to the detectives and more practical for the field show-ups. Therefore, that is what occurred.

Department executives reviewed the circumstances regarding the movement of the plaintiff and the other detainee to the command post to conduct a field show-up to determine if any misconduct occurred. Upon careful review, the OSS Bureau and Detective Division executives determined the actions were justified, lawful, and within Department policy.

County of Los Angeles
Summary Corrective Action Plan

3. Are the corrective actions addressing Department-wide system issues?

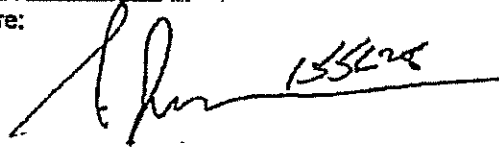
- Yes – The corrective actions address Department-wide system issues.
 No – The corrective actions are only applicable to the affected parties.

Los Angeles County Sheriff's Department

Name: (Risk Management Coordinator)

Scott E. Johnson, Captain
Risk Management Bureau

Signature:



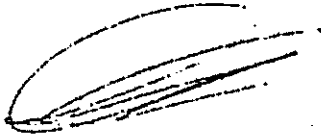
Date:

6-26-18

Name: (Department Head)

Alicia E. Ault, Chief
Professional Standards and Training Division

Signature:



Date:

7/2/18

Chief Executive Office Risk Management Inspector General USE ONLY

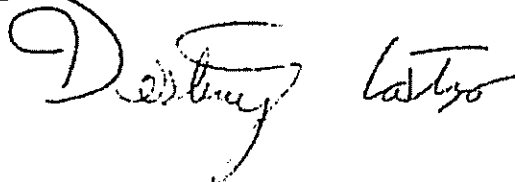
Are the corrective actions applicable to other departments within the County?

- Yes, the corrective actions potentially have County-wide applicability.
 No, the corrective actions are applicable only to this Department.

Name: (Risk Management Inspector General)

Destiny Castro

Signature:



Date:

7/2/2018