

MISC2017-0004

**WELD COUNTY SHERIFF'S OFFICE
SUPERVISORS INQUIRY**

Name of complaint: Longmont Police Department
Sergeant Garrett Boden, Professional Standards
303-651-8513

Received by: Sgt. Mark Pollard (WC0137)
Date received: 6/12/17
Time Received: 1300 hours
Date Assigned: 6/12/17
Personnel Complained About: Officer Michael Marquardt (LPD)
Officer Billy Sawyer (LDP)
Sergeant Andy Feaster (LPD)

Investigator Assigned: Mark Pollard
Rank: Sergeant
Employee ID Number: WC0137
Assignment: Internal Affairs

Allegations/Complaint:

On 5/10/17 K9 Officers Marquardt and Sawyer assisted Longmont Housing Authority staff in compliance searches of tenant residences at The Suites Housing Complex, 2000 Sunset Way, Longmont. It is alleged that such K9 searches were conducted without the voluntary or informed consent of the residents of 8 apartment units, resulting in an illegal search of a dwelling in violation of the 4th Amendment protections against unreasonable search and seizure.

The Longmont Police Department (LPD) requested an 3rd party investigation to ensure objectivity and transparency to ensure public confidence the allegations were investigated thoroughly. LPD Sgt. Garrett Boden had already initiated an Administrative Review of the incident in question, but had not completed it prior to the assignment of this investigation to the Weld County Sheriff's Office Internal Affairs Unit. Review of Sgt. Boden's investigative product was found to meet current and accepted standards and practices for administrative review, as such his efforts were not duplicated but assimilated as parts of the whole in this investigation. Individuals initially interviewed by Sgt. Boden were re-contacted to provide an opportunity to add, subtract, or confirm their previous statements.

MISC2017-0004

Facts:

Timeline leading up to 5/10/17 Searches at The Suites (see attached documentation):

- In late 2016, The Briarwood housing units, serving clients of Boulder County Probation and managed by the Longmont Housing Authority, were searched during normal tenant inspections in conjunction with Longmont Police presence including K9 searches. As the residents of the Briarwood were clients of Boulder County Probation, there is less expectation of privacy and law enforcement searches without a warrant are a condition of program participation.
- The Suites, 2000 Sunset Way is an 81 Unit Apartment Complex managed by the Longmont Housing Authority, serving low income individuals and individuals receiving government subsidies for reasons including medical conditions, mental health conditions, substance abuse history, and other governmental programs assisting at risk populations. The Suites, with the Longmont Housing Authority, offering many programs to assist this population.
- On 4/2/17 there was a drug overdose that resulted in death at The Suites (LPD Case #17-2729). This death caused a significant concern over drug use at The Suites prompting concerns by the residents that one or two units were supplying or dealing meth and/or heroin. On 4/7/17 Krystal Erazo contacted Officer Esteban Lopez via e-mail, the primary officer attached to #17-2729, explaining this concern and listing [REDACTED] and [REDACTED] as "targets of concern."
- On 4/7/17 Krystal Erazo contacted Officer Michael Marquardt asking "do you still have interest in having your K9 come by the Suites? It's working well at Briarwood. We'd love to have you."
- On 4/17/17 Officer Marquardt replied to Ms. Erazo, offering 4/26/17 or 5/10/17 as possible dates, noting that these dates would allow both K9 teams to be present.
- On 4/18/17 Ms. Erazo and Alma Collins, the On-site Supportive Services Manager confirmed that 5/10/17 would work.
- On 4/24/17 Alma Collins posted letters to residents notifying of monthly inspections to occur on 5/9/17. Nowhere in this letter does it mention the presence or use of police officers or K9 dogs for searches.
- On 5/10/17, in coordination with Krystal Erazo and Alma Collins of the Longmont Housing Authority, Officers Michael Marquardt and Billy Sawyer conducted K9 searches of eight apartment units at the Suites, units # [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. It is alleged by the original complainant that no consent was given by the residents to search the units by Police or Police K9s, and no warrants were provided.

The Suites Resident Interviews (see recorded and attached interviews and log of contact attempts):

In most cases, initial interviews were conducted with the following residents by Sgt. Boden of

MISC2017-0004

the Longmont Police Department. Independent contact was made to the involved residents by Weld County Detective Dave Porter to ensure each resident was given the opportunity to be heard and place their statement on the record as part of the 3rd party investigation. Specific to the incident on 5/10/17, Sgt. Boden was able to make contact with six of the nine involved residents prior to Detective Porter being assigned this task.

██████████ (Unit # ██████████) – Mr. ██████████ reported that he had heard there would be dogs training in response to the suspected drug problem at The Suites complex. Mr. ██████████ reported that he “volunteered for a K9 search,” explaining that training is an important thing. Mr. ██████████ initially could not recall if the Officer on scene explained if the search was voluntary, but then stated the Officer said the search was mandatory, but he “had no desire” to refuse. Mr. ██████████ reported that the Officer didn’t advise him he wouldn’t be charged, nor did he recall any consent form he was asked to sign. In the follow-up contact with Detective Porter on 6/15/17, Mr. ██████████ reported he was provide an opportunity to tell his side of story with Sgt. Bode, and this interview with Sgt. Bode was accurate and complete.

██████████ (Unit # ██████████) – Ms. ██████████ reported she had received notice of monthly inspections for May, but they did not include any information about using K9 dogs, but acknowledged it was a good idea. Specific to 5/10/17, Ms. ██████████ stated “I was baked that morning and had to be woken up” after her nap, and was told by Alma to go into the hallway, “I need to bring in the dog.” Ms. ██████████ reported that she was not asked for permission by Krystal, Alma, or the Officer to search her home, explaining “they just walked in.” Ms. ██████████ stated this was “not very fair...they should need a search warrant” or permission. Ms. ██████████ reported she felt awake and aware of this interaction and “felt like I could have said no, but I wouldn’t have,” and reiterated she was never given the opportunity to give permission, or told by the Officer she would not be charged if they found anything.

In the follow-up contact with Detective Porter on 6/15/17, Ms. ██████████ informed him she had retained an attorney and would not answer any more questions. On 6/22/17, Detective Porter met with Ms. ██████████ in the presence of her attorney, Rebecca Wallace. Ms. ██████████ reported she had spoken with Sgt. Boden previously, but was not certain she was able to say all that she wanted to say. ██████████

██████████ Ms. ██████████ confirmed to Detective Porter that Alma and the other LHA staff told her she needed to step out of the apartment while the LPD Officers searched it, referring the search to K9 training. Ms. ██████████ also reported the K9 officers did not speak to her as they walked inside, reiterating to Detective Porter the LHA or LPD did not have her consent to search her unit.

██████████ (Unit # ██████████) – Mr. ██████████ reported that he had seen the May notice of inspections, but it did not include any information regarding the K9 Searches. Mr. ██████████ reported that on 5/10/17 he opened the door to see Krystal and an Officer and his K9. Mr. ██████████ reported he was told by Alma or Krystal “we’re here for your inspection, and if you don’t mind we’ve got a dog

MISC2017-0004

here in training." Mr. [REDACTED] reported he was not asked for permission and initially asserted his rights stating "you can't come in," but then did give permission for the search after he argued with Krystal. Mr. [REDACTED] explained that Krystal stated something to the effect of "we'll have you out of here," leading him to believe he would be evicted if he didn't allow the dog inside. Mr. [REDACTED] acknowledged he knew he could refuse the K9 search, but "in the back of [his] mind" knew he could be evicted if he didn't allow it. Mr. [REDACTED] explained he felt pressured to give permission. As to the June notice of inspection, Mr. [REDACTED] reported he didn't mind that the K9 dogs would be there, as he had "nothing to hide" and expressed a desire to just let him know. Mr. [REDACTED] also expressed some concerns that his unit was not picked at random, but that he was being profiled "by the way I look."

In the follow-up contact with Detective Porter on 6/19/17, Mr. [REDACTED] reported he had been allowed to tell his story to Sgt. Boden with LPD, but when on to explain the LHA threatened to evict him if he did not submit to the search. Mr. [REDACTED] also reported to Detective Porter both the LHA and LPD had attempted to force their way into his unit, with an LPD officer putting his foot in the door. Mr. [REDACTED] explained he did not believe the housing agreement made him subject to search and seizure, and explained two weeks after the search and the dog "alerted" on his toilet he was called to down to the LHA office and was offered a voucher to move to another complex.

[REDACTED] [REDACTED] (Unit # [REDACTED]) -- Mr. [REDACTED] reported he was contacted at his door by Alma and an Officer with his K9 and asked to step outside of his apartment for inspection. Mr. [REDACTED] reported he asked for a way to say no but "apparently not, or I would have said 'fuck off.'" Mr. [REDACTED] explained that he felt like he was busted or something, but was told by the Officer that they weren't looking for weed. Mr. [REDACTED] stated "Alma said to come out, what choice do you have with a police officer and dog looking at you?" Mr. [REDACTED] reported the officer didn't ask to come in and didn't feel like he could say no, explaining that he had seen other residents kicked out before. Mr. [REDACTED] didn't specifically state that refusing inspections or refusing to allow the K9 search would get him kicked out, but his concern that others have been kicked out of The Suites previously was noted.

In the follow-up contact with Detective Porter on 6/22/17 with his attorney Rebecca Wallace present, Mr. [REDACTED] reported he wanted the LHA and LPD out of his house, LHA and LPD did not ask for consent to search. Mr. [REDACTED] further reported he did not feel he could say no to the LPD assisted inspections, and was nervous due to his past involvements with the law.

[REDACTED] and [REDACTED] [REDACTED] (Unit # [REDACTED]) -- On 5/10/17 [REDACTED] was home when she responded to a knock on her door and Krystal and Alma, with two Officers and one K9 were at her door. [REDACTED] reported that Krystal said the dog was in training and asked to come in, to which she replied no. [REDACTED] reported that Krystal said they have to come in. [REDACTED] then stated "they pressured me to let them come in," referring to Krystal and Alma. [REDACTED] reported that the Officer did not ask her if he and the dog could come in, but did tell her if he found anything she would not be charged or arrested. [REDACTED] reported she felt she could say no, and

MISC2017-0004

did, but then Krystal continued and she let them inside. At this time, [REDACTED] reported she left the apartment to find her husband, [REDACTED], who on the property grounds somewhere to tell him about the search. When she returned with [REDACTED], [REDACTED] reported Krystal, Alma, and the Officer with K9 were outside of her apartment with the door open. [REDACTED] reported the management asked her to open a drawer, so she went inside and did so, but explained the Officer stayed outside. [REDACTED] reported the Officer didn't explain why they were there, but he didn't think anything of it as it didn't really bother him, but [REDACTED] stated she was mad because the cops were in her home without a warrant.

In her statement made to 9News on 6/5/17, [REDACTED] stated "We have inspections to see if our place was clean, I opened the door and saw two cops and a K9, I refused to let the cops in but the owner said I had to. I had to step outside while they searched my place." In the follow-up attempts to contact by Detective Porter, [REDACTED] and [REDACTED] would not answer phone calls or answer the door. Multiple attempts were made with no success.

[REDACTED] (Unit # [REDACTED]) - Not initially contacted by Sgt. Boden, Detective Porter made contact with Mr. [REDACTED] in person. Mr. [REDACTED] reported that one of the other residents of the Suites told him the LPD had come into her apartment after refusing entry, reporting this individual had been on the news. Mr. [REDACTED] reported his unit had been inspected by the LHA on 6/6/17, and there had not been any police with the LHA staff. Mr. [REDACTED] was aware there had been LHA inspections in early May in which LPD Officers were used to inspect a unit when the resident was not home, but did not know which unit or the identity of the resident. As for these inspections in early May, Mr. [REDACTED] reported his unit was not searched and was never asked if LPD K9s could search his unit, nor was he presented with a consent form. Mr. [REDACTED] reported if asked, he felt like he could say no to the LHA and the LPD K9 Officers.

[REDACTED] (Unit # [REDACTED]) - Not initially contacted by Sgt. Boden, Ms. [REDACTED] was contacted by Detective Porter in person. In an initial contact, Ms. [REDACTED] reported "you people never had any consent to go in my apartment." After some other nonspecific statements, Ms. [REDACTED] communicated she had retained an attorney and would answer questions later with her attorney present. On 6/22/17, in the company of Ms. [REDACTED] attorney Rebecca Wallace, Ms. [REDACTED] reported she had been made aware of the May inspections by letter, but the letter did not mention LPD K9s. Ms. [REDACTED] explained that her unit was ready for inspection, but she left the facility to run errands until approximately 1200 hours. Upon her return, she found Alma and Krystal were standing outside her door, and when she approached her door she saw an LPD Officer and K9 in her living room. Ms. [REDACTED] reports Alma and Krystal told her the dog was training. Ms. [REDACTED] reported she was not aware the search was happening in her absence and was not asked permission for the LHA or the LPD to enter her unit, or provided a consent form. Ms. [REDACTED] reported she did not feel she could say no to the K9 search as they were already in her apartment.

[REDACTED] (Unit # [REDACTED]) - Not initially contacted by Sgt. Boden, Detective Porter made contact with Mr. [REDACTED] in person. Mr. [REDACTED] reported that he was contacted in April for upcoming unit

MISC2017-0004

inspections and his unit was inspected by the LHA staff as well as a LPD K9. Mr. [REDACTED] reported he felt "kind of crunchy," and that this did not make him feel good about the situation. Mr. [REDACTED] explained he did not remember the LHA or LPD asking for permission to inspect his unit, but did remember the K9s were involved in "police training" while at the Suites. Mr. [REDACTED] reported he did not sign a consent form, but did not feel as if he could so no to the LHA or LPD because he was living in government housing. Mr. [REDACTED] acknowledged the K9 searches were good for training, but it felt like a "setup" for the residents and could have been communicated better.

Krystal Winship Erazo (Director of Operations for Longmont Housing Authority) Interview from 6/9/17 with Sgt. Boden (recorded):

Ms. Erazo explained that she had met Officer Mike Marquardt when conducting searches at the Briarwood, and had talked with him about using K9s for searches at the Suites. Ms. Erazo was in contact with Officer Marquardt via e-mail correspondence, and coordinated a time K9s could walk along during monthly inspections at the Suites. Ms. Erazo explained the purpose was to help maintain the safety of community, specifically the Suites' residences. Ms. Erazo reported that at the community meeting on 4/26/17, Crime Free Officers Aerne and Kennedy were present and had fielded a question from a resident if a K9 could come to give the residents' piece of mind.

Ms. Erazo confirmed that she was present during each unit search and was at the door for each resident contact. Ms. Erazo explained that she would knock on the unit door and say they were here for the monthly inspection and had invited the officers with them today to make sure the building is safe, also sharing that today was also the officer's training day and it is helpful that they are there too. Ms. Erazo reported that the officer, sometimes Mike and sometimes Billy (Officer Billy Sawyer), would be at the back of the hall and stated it "was not intimidating, as much as saying an officer at the door is not intimidating."

Ms. Erazo reported that in each interaction, after her advisement of the unit inspection, Billy or Mike would have a separate conversation with the resident explaining they were invited by the Longmont Housing Authority and needed permission to enter their residence. Ms. Erazo further explained they would not be making arrests or "to get you in trouble." Ms. Erazo described this interaction by the officers as relaxed and the officer's body language as "passive," noting they only used their first names without their titles.

Ms. Erazo reported that some of the residents were nervous, but the general response was "yeah sure, no problem, or begrudgingly, or you know, wow, thanks..." Ms. Erazo then explained the contact with [REDACTED], with Billy and Rudi (Officer Sawyer's K9), describing that as they opened the unit door to billowing smoke, the "dog was going crazy." Ms. Erazo explained she did her standard introduction with [REDACTED] and then stated "I think they even did their own introductions," referring to Billy and Mike. Ms. Erazo then reported that initially [REDACTED] had said "no I don't want you guys to come in to my apartment," when Ms. Erazo explained to her

MISC2017-0004

that "we have to do our unit check, they're only here to make sure things are safe, you're not going to be in trouble." Ms. Erazo reported she remember an Officer saying several times "you're not going to be in trouble."

Ms. Erazo reported that the Officers then talked to [REDACTED] some more, explaining why they were there, what they're going to do, what they're not going to do, and then [REDACTED] said "yeah, that's okay." Ms. Erazo reported they asked if she used drugs and "Billy actually seamed visibly nervous, he said if there are needles in there I don't want my dog to get hurt." At this point [REDACTED] reported "no we don't do drugs." Ms. Erazo then stated that [REDACTED] said "it's okay" and she gave consent, as Ms. Erazo explaining that this consent was not intimidating or coerced. Ms. Erazo reiterated that [REDACTED] "totally gave us consent," regarding the searches.

As Billy was searching the unit with his K9, Ms. Erazo reported she was in the hallway talking when [REDACTED], [REDACTED] husband, arrives outside the unit and asks what's going on "looking really freaked out." Ms. Erazo then reported Billy came out and said the K9 alerted to the bedroom, but said he "couldn't touch anything." Ms. Erazo didn't remember if Billy and the K9 went back into the apartment, but said she didn't think he went back in, but she went back in again to look around.

Ms. Erazo then described an interaction between [REDACTED] and [REDACTED] that appeared to be controlling in nature, which required some verbal intervention from the officers. Ms. Erazo reported that the interaction with [REDACTED] and [REDACTED] was the most difficult interaction of the day, and it didn't surprise her that [REDACTED] went on 9News and gave contradictory information, as contradictory statements from [REDACTED] were consistent throughout the entire interaction. Related to her statements used by 9News that "if someone has nothing to hide it sparks curiosity," Ms. Erazo reported 9News cut her off mid-sentence as she went on to say "just because it sparks curiosity in me doesn't mean I'm going to enter without consent... we respect their wishes, it's their decision." Ms. Erazo stated "it never once crossed my mind that we were infringing on anybody's rights."

Ms. Erazo was able to provide the unit numbers that were searched on 5/10/17, but didn't have any written records of the interactions or concrete order the searches were conducted. Ms. Erazo explained that it is not common practice to use police K9s to search Longmont Authority Housing, but they are used at the Briarwood, a facility that houses Boulder Probation clients. Ms. Erazo explained the news is saying they were conducting warrantless searches, but clarified that "no, we did not have warrants, but no they were not searches, they were monthly unit checks that were notices in partnership with community officers that were there to ensure safety." Ms. Erazo also reiterated again they had consent and were not intimidating, explaining "I am very confident we did nothing wrong, I can't be confident we didn't do anything illegal because I am not aware of what their obligations are, it's not my job to know what the police officer's job is." Ms. Erazo stated to the interviewer that she is "required to make sure there are not drugs in the unit, that's my obligation."

Krystal Winship Erazo (Director of Operations for Longmont Housing Authority) Interview from 6/15/17 with Sgt. Pollard (recorded):

Ms. Krystal Winship Erazo affirmed her interview with Sgt. Boden from LPD, and confirmed that in her e-mail exchanges with Officer Marquardt prior to 5/10/17, she was aware that residents would need to give consent for the Officers and their K9s to enter the units. Past these e-mails arranging the date for the searches, Ms. Erazo did not have many conversations with Officer Marquardt prior to the day of the searches when Officer Marquardt provided a "real brief, informal" kind of conversation prior to conducting unit checks. Ms. Erazo reported she didn't remember specific language, but understood "if somebody really didn't want them in their units, that's cool..." but then went on to say "I don't remember having that part of the conversation." Ms. Erazo did remember discussing that if anything was found by the K9s, LPD would not be making any arrests, seizing any evidence, but were just there to walk their dogs through.

Related to individual unit contacts, Ms. Erazo reports the officers repeatedly communicated to the residents they were not there to make arrests or take anything, but they were there at the request of the Housing Authority because of the concerns of drugs issues on the property. Ms. Erazo explained that for each unit she would knock on the door, explain she was doing unit inspections, the LHA had invited the police and police K9 dog, would introduce the dog, and "we've asked them to be here because we're concerned, and they're here to help us out." Ms. Erazo confirmed she did explain to the residents that the K9s were also here for training, it was kind of field-experience for the dogs, and they were doing us a favor by helping to make sure that our community was safe." It was Ms. Erazo's recollection that either Officer Marquardt or Sawyer would introduce themselves with each individual resident by their first name only, explaining to the resident something to the effect of "we're here, Longmont Housing Authority invited us. We'd like to walk our dog through your unit. You know, we won't come in unless you say it's okay. We're not here to get anybody in trouble. We won't be making any arrests today." Ms. Erazo described the officer/resident interactions as "respectful...super chill...really informal...Really passive," reporting it was "not intimidating at all, I mean as intimidating as officers can be, I mean I understand that."

Ms. Erazo acknowledged that the residents were aware they cannot refuse the inspections as they are condition of their lease, but explained the officers had a separate conversation with the resident and the separate "roles are defined." Ms. Erazo confirmed in this separate conversation the officer explained the resident could say no, stating "the officers explained it, we're not going to come in unless it's okay with you." Ms. Erazo explained most residents were okay with searches, saying to the effect of "yeah, no problem." When asked if anyone had issues with the K9s being present, Ms. Erazo one tenant, Mr. [REDACTED], was concerned about marijuana but was told by Ms. Erazo "don't worry about it, they're not trained for marijuana," but later in the interview reported Mr. [REDACTED] unit alerted for marijuana. Ms. Erazo explained that the only other tenant who raised concerns was [REDACTED].

Ms. Erazo explained "I wouldn't even say [REDACTED] really argued" about entry of the K9, specifying "I mean we had a conversation and then we explained and then she was fine." Ms. Erazo reported this interaction with [REDACTED] was clear in her memory, as it was the most difficult interaction. Ms. Erazo reported Alma Collins handled this interaction, as she was more familiar with [REDACTED]. Initially there were questions to [REDACTED] about smoking in her apartment, and then moved into the general inspection advisement and introduced the police, noting both Officer Marquardt and Officer Sawyer were present for this exchange, but only Officer Sawyer's K9. Ms. Erazo reported that when the door was opened, Officer Sawyer's K9 "started reacting immediately" and had to be restrained or held back by Officer Sawyer from encroaching towards the door, but never barked.

Ms. Erazo reported this conversation with [REDACTED] was more in-depth than the other unit contacts; where it was explained to her "we don't have to go it...it's totally up to you..." Ms. Erazo reported [REDACTED] appeared nervous but explained in the course of the conversation it was okay for them to go in and state [REDACTED] "completely gave consent." Ms. Erazo reported Officer Sawyer expressed concern for his K9s safety and asked [REDACTED] about needles or sharps that might hurt his dog before entering; further explaining "We're not here to get any, anybody in trouble today. We're not making any arrests. We won't take anything out of your apartment. It's your choice." After this advisement by Officer Sawyer, Ms. Erazo reports [REDACTED] said "its okay."

Ms. Erazo was asked if [REDACTED] had said "no, I don't want them in my apartment" as she had reported to 9News, and more consistent with her initial interview with Sgt. Boden Ms. Erazo then reported "at the very beginning, her very first response was like, ah, I don't really want them to go into our apartment... And so, initially, yes. I don't believe we coerced her. I don't believe we intimidated her. If anything, it was like super-duper soft and making sure that she was okay with everything." It was after this consent to search from [REDACTED] was given to Ms. Erazo when Officer Sawyer was more "adamant, like, really. But it wasn't about her consent. It was about protecting his dog. I mean, I'm sure it was about the consent, too, but like I remember that clearly."

Ms. Erazo then reported there had been another tenant on the 3rd Floor who had shown some hesitancy to the inspection, and when he answered the door the resident initially stated "No. You're not coming' in here. You're not coming' in here." Ms. Erazo in response said "Well, we are coming' in there. We've invited the police along with us, you know, why not? Like what's the big deal? You know, you said 'Well can I have some time? Can you come back later?'" When the resident asked for them to come back, Ms. Erazo reported she said "We can come back in a few minutes. Go ahead and get dressed or whatever you're going to do." Ms. Erazo explained the resident didn't want her specifically to enter his unit, but then did let Alma conduct the unit inspection and consented to have the K9 run through his unit. Ms. Erazo explained "We had a conversation, um, I don't believe it was coercion. I don't believe it was intimidation. It,

MISC2017-0004

um, I have no idea what they're doing in that unit. But I am pretty darn sure it's not legal, um, and the dogs hit on the toilet when they went in."

Due to the nature of the population at the Suites, specific to needing supportive services in government housing, Ms. Erazo was asked if the residents understood they could say no to the police and K9 searches, to which she replied "they were told they could... I would completely expect some of them to be, um, to have reservations. But I also have no doubt that they know what we're there to do. And that's to help them." When asked if Ms. Erazo had anything else to add, she stated "I really can't apologize for anything because I don't feel like we've done anything wrong. I don't, I honestly don't think the officers did anything wrong. The only thing I did wrong is to accept an interview that was going to be spliced and spun, um, and bring on all of this, um, fear."

Krystal Winship Erazo (Director of Operations for Longmont Housing Authority) Interview by phone from 6/27/17 with Sgt. Pollard (recorded):

As Ms. [REDACTED] allegation the LHA and LDP K9 was in her apartment without her knowledge was not known prior to the initial interviews, a follow-up interview by phone was conducted on 6/27/17. Specific to Ms. [REDACTED] claim, Ms. Erazo stated "I don't believe that's true," explaining that she did remember Ms. [REDACTED] was not home after she knocked on the door and did let herself into the apartment consistent with past practice. Ms. Erazo reported the entire unit appeared to be full of personal items and she didn't walk much past the threshold of the door, but she did not recall the LPD and K9 enter the unit. Ms. Erazo reported that at this point her memories were all starting to blend together and could not recall which Officer was with her at the door, or what order the units were searched in, but did not think the K9 searched Ms. [REDACTED] unit.

When asked if any other units were accessed when the resident was not at home, Ms. Erazo initially didn't think so, but when asked about Mr. [REDACTED]'s unit, [REDACTED], Ms. Erazo recalled "he was one of the fellas that we were, you know, we, we did go into his unit and there was, there were no concerns, it was very clean, there were no lease violation concerns. Um, and I did have the officers go in there because it was, that was one of the guys that I had, um, sent to the police with his name, date of birth and we were, the rumors were that he was dealing meth on site and so that was one I was really wanting to get some clarity on." Ms. Erazo reported Mr. [REDACTED] was not at home and she and Alma inspected his unit and found it be very clean and in good shape, and after they exited she waved the Officer and K9 in to conduct a search.

Ms. Erazo explained that she didn't remember a specific conversation with the officer, or the identity of the officer, but did remember explaining that this was one of the gentlemen that we were most concerned about, that he has a history of distribution, that he, but all the rumors reported that, that way but it looked good... Ms. Erazo couldn't remember the exact wording to the K9 Officer, but stated "I don't know what that action was. It was, I mean I think the

MISC2017-0004

understanding was that yes, I wanted them to enter and do the walk through." Ms. Erazo confirmed Mr. [REDACTED] was not home and "so we did go into his unit without his being there. And I, I didn't, I mean I, I do not believe that we were doing anything wrong. I felt like we invited the officers there, they were there on our behalf, it was to make sure that there weren't any drugs ..."

Alma Collins (On-site Supportive Services Manager of The Suites, Longmont Housing Authority) Interview from 6/9/17 with Sgt. Boden (recorded):

Ms. Collins reported that there is a history of drug issues, alleged and confirmed, at the Suites and have had a lot of police contact with Longmont Police Personnel. Specifically, Crime Free Officers Sarah Aerne and David Kennedy have had significant positive contact with the residence of the Suites. Ms. Collins confirmed that she had written the April Notice for the May monthly inspections at the direction of her Supervisor, Krystal Winship Erazo, and that it was determined the notice would not include the information that K9s were coming. Ms. Collins did report that at the April Community Meeting with the residents, Officer Aerne had said they were "going to have K9s."

Ms. Collins understood that Krystal had reached out to LPD based on her prior experience at Briarwood, and clarified that she was not in on the logistical process in getting the LPD K9s for the monthly inspections. On 5/10/17, Ms. Collins reports that she asked both Krystal and Officer Marquardt together, if "we're allowed to do this," and states both replied "yes, as long as the landlord has invited the K9 and you guys are doing your inspection." Ms. Collins asserts that not until 6/5/17 was she made clear to her that resident could refuse. Ms. Collins reports it was never stated to her that residents couldn't refuse, but it was also never stated to her by Krystal or Officer Marquardt that residents could refuse.

Ms. Collins reported that Krystal explained using the K9s was mutually beneficial, the Suites could determine if there are substances in the building and the police would appreciate the opportunity to train in the building. Ms. Collins acknowledged that this display and use of K9 would be good to show the residents action was being taken and feel safer. Ms. Collins saw this as an opportunity to either confirm or deny the rumors that there were drugs on the property.

Ms. Collins reported that in each unit, "either Krystal, myself, or the officer asked if they could come in with the K9," but acknowledged not all three were present at each door for each contact. Ms. Collins reported no resident was told they could refuse. Ms. Collins reported she stayed in the hallway during the K9 searches, and that she has never seen the use of K9s for monthly inspections in her three years at the Suites.

Alma Collins (On-site Supportive Services Manager of The Suites, Longmont Housing Authority) Interview from 6/15/17 with Sgt. Pollard (recorded):

Ms. Alma Collins is a Social Worker assigned to The Suites by the Longmont Housing Unit

MISC2017-0004

authority and manages the casework associated with the tenants or the Suites who need supportive services. Ms. Collins confirmed the use of K9's had been coordinated by Krystal with the LPD K9 officers to both verify there was or wasn't drugs in the building, addressing resident concerns, and that the K9 Officers appreciated the opportunity to train their dogs. As per the specific process, Ms. Collins reports she did question how this would work and if the K9 were allowed in, but both Krystal and Officer Marquardt had told her "yes, as long as the, you know, the landlord has invited the canines so we can be here." Ms. Collins confirmed it was her understanding that the residents could not say no, and were required to submit to the K9 Search as part of the regular inspection.

Ms. Collins affirmed she was present for all the units inspected with the K9, and described the officers (Billy or Mike) "were off to the side" approximately 5-8 ft., but visible when the resident opened the door and within earshot of the door. Ms. Collins explained that she and Krystal would make initial contact at the door, with Krystal explaining the K9s were there with them, but did not recall any explanation to the residents that refuse the K9 search by Krystal or the officers. Ms. Collins did remember the officers explaining they were not there in a "law enforcement capacity, they were not there to arrest anyone or get anybody in trouble. Ms. Collins also explained "I do not recall, um, anyone stating, um, to any resident that, you know, they could refuse. I also don't recall anyone stating to them, you know, outright that they could not refuse."

Ms. Collins described of the eight units searched, two residents had reservations about the K9s entering the units. Ms. Collins described Mr. [REDACTED] wife was in bed and had two small dogs to arrange for, asking why the dogs were there, when Krystal explained that "they're accompanying us." Ms. Collins didn't believe Mr. [REDACTED] had provided any denial of entry or communication that he didn't want the dogs there, but that "he wasn't happy."

In the second resident that hesitated, [REDACTED], Ms. Collins reported "when she opened the door she stated, um, you know, the, the dog, they're not coming in here. I don't like police, I don't want police in here. Um, and, at that time, you know, Crystal had a conversation with her, um, you know, just stating that, um, you know, it sort of made her suspicious that she didn't want police in there." Referring to Krystal, "I don't remember exactly what the conversation was, but she did eventually, um, persuade [REDACTED] to let the officer go in. Um, but, you know, she, she definitely initially refused, um, and, you know, and then eventually she did consent. Um, I don't believe that Krystal ever said to her you have to let them in, um, but you know, there was definitely some pressure." Prior to [REDACTED] eventual consent, Ms. Collins reported the officers had previously explained she would not be charged with anything and they were not there to cause any trouble, but the officers didn't apply any other techniques, pressures, or other attempts of coercion.

Regarding [REDACTED] knowledge of the incident, Ms. Collins stated "I believe she understood what she was consenting to, but I don't believe she understood that she could say no," especially as Ms. Collins herself didn't fully understand the tenants could refuse. Ms. Collins explained

MISC2017-0004

that the tenants ability to refuse the K9 search was not properly communicated to the residents, nor was the right to refuse the K9 search properly communicated to her.

Outside Mr. [REDACTED] and Ms. [REDACTED], Ms. Collins didn't report any issues with the other units, explaining the residents were surprised, but "none of them stated they didn't want the K9s in."

Alma Collins (On-site Supportive Services Manager of The Suites, Longmont Housing Authority): Interview by phone from 6/27/17 with Sgt. Pollard (recorded):

As Ms. [REDACTED] allegation the LHA and LDP K9 was in her apartment without her knowledge was not known prior to the initial interviews, a follow-up interview by phone was conducted on 6/27/17. Specific to Ms. [REDACTED] allegation, Ms. Collins stated "I had forgotten that she wasn't there but yeah, that's right, that's correct," further explaining "so when we do apartment inspections, um, the resident doesn't have to be there, um, because we notice them and let them know when it's going to be, um, so if they're not there; you know, we go in and do the inspection and, um, and, yeah, so we, we went in and did her inspection and the K9 officer went in with the dog." Ms. Collins reported that Ms. [REDACTED] was not there in the apartment to give permission or consent to enter her unit. Ms. Collins reported that while Krystal didn't provide any verbal statement to the Officer and K9; there was a element of approval, explaining "I think it was more of a kind of wave of the hand."

When asked if any other units were inspected and searched by the Officers and K9s with residents who weren't home, Ms. Collins reported that Mr. [REDACTED] in # [REDACTED] was not present. Ms. Collins reported that she was unsure of the order, whether the officer when in first or not, but did affirm that the Officer and the K9 did search Mr. [REDACTED] unit. Ms. Collins again didn't recall any specific exchange between Krystal and the Officer, explaining "there wasn't really like a big, you know, a, a conversation about, um, you know, what do we do if someone's not home. There was just sort of an assumption all the way around that they were going to go in." Ms. Collins reaffirmed that at this time she was unaware the residents could refuse the K9 search and clarified that Mr. [REDACTED] was not home and had no opportunity to provide consent or refusal to the K9 search.

Officer Billy Sawyer (LPD) In-house Incident Report from 6/9/17 (attached):

Narrative: On 05/10/17, I, Ofc Sawyer, went to 2000 Sunset Way to meet with Ofc Marquardt (who was already on scene) to assist with possible K9 sniffs of apartments. Prior to this date, on 11/23/16, Ofc Marquardt, Sgt Feaster, and I had a quarterly meeting at Chub Burger in Longmont where we discussed the direction of the K9 unit and needs based on priority. During this meeting, Ofc Marquardt mentioned doing K9 sniffs at 2000 Sunset Way at the request of the Longmont Housing Authority. Sometime later, Ofc Marquardt asked me if I could do sniffs at 2000 Sunset Way on a specific date but I was unable to make it. do not recall the date of this conversation or the date I was asked to meet and assist Longmont Housing Authority. On 04/

MISC2017-0004

13/17 at approximately 2015 hrs, I assisted Ofc Marquardt with a call for service at 2000 Sunset Way in reference to people selling narcotics in the parking lot from a white truck. I am assigned an unmarked patrol car and was driving through the parking lot when a tenant began to follow me and be somewhat aggressive with her driving. She eventually parked and got out of her car and started yelling at me to get out of her parking lot or she would call the police. I activated my lights and said "I am the police." She continued to yell at me to leave as I exited my patrol car and approached her in full uniform. The female calmed down and spoke to me about drug problems in and around the building. She was very irate and advised people are working hard to get their lives together and didn't need this stuff going on around them. She advised that the tenants were going to start taking things into their own hands if no one could help them. I told her we have received complaints and would start monitoring the area to assist. I told her to call the police and not to get involved. I told her that driving and acting the way she was towards a violent drug dealer could be bad and to please contact police. An email from Ofc Aerne on 04/17/17 spoke of drug related problems at 2000 Sunset Way. She specifically talked about residents in apartments [REDACTED] and [REDACTED]. The resident of [REDACTED], [REDACTED], was reported to own a light gray or white pickup truck. This information was consistent with the drug complaint on 04/13/17. Ofc Marquardt notified me that we would be assisting with potential K9 sniffs at 2000 Sunset Way on May 10th, 2017 at the beginning of our training day. I arrived late due to a prior engagement. I arrived at approximately 11:30 am. I notified Ofc Marquardt that I was on scene and waited in the lobby. Ofc Marquardt told me he was almost done. While waiting in the lobby, I spoke with several different residents. These residents told me they were very happy that police were there and they were having a lot of problems with drugs in the building lately. I knew that information has been passed on to the Interdiction Unit about drug activity in and around the building. Ofc Marquardt exited the building and we discussed what was going on. Ofc Marquardt advised we are there to assist the Longmont Housing Authority. The agents of the Housing Authority would be knocking on doors and doing their compliance checks. Consent would be requested to enter the apartment with a K9 and do a fast sniff. We were not going to search the apartments ourselves and would not enter without consent. I retrieved my K9 partner Rudi from my patrol car. Rudi is trained and certified to locate and source illegal narcotics odor at a very high degree of accuracy. We entered the building and spoke with Krystal Erazo who advised she received information and has concerns about certain tenants using/dealing illegal narcotics. The goal was to go to apartments [REDACTED] and [REDACTED]. I recall entering one of the apartments and doing a sniff at the tenants consent. Rudi did not show any indication of illegal narcotics. While Krystal and her fellow employee knocked, I kept Rudi and myself a little ways down the hall. We went to another floor where Krystal and her fellow employee knocked on the door. I waited with Rudi near the next set of apartment doors. They made contact with [REDACTED]. They spoke with her about the reason for the visit and compliance check. I could not clearly hear all of the conversation. I was focused on making sure no one exited an apartment with another animal or snuck up on us from the hallway. Ofc Marquardt entered the apartment and did a fast safety check to make sure the K9 could not get into anything that may harm him. I was told I was clear to enter the apartment. As I walked past [REDACTED], I asked if she was sure it was ok that I entered her apartment. [REDACTED] nodded yes with an up and down head motion and said yes. I entered the

MISC2017-0004

apartment. Rudi's behavior instantly changed and he began to search for illegal narcotics. Rudi quickly pulled into the bedroom and sniffed very intensely on a dresser near the foot of the bed and on the area of the night stand. Rudi alerted to the area near the night stand. I exited the apartment and stood across the hall with Rudi. I told Krystal about the alert and advised I was not going to search the apartment. I told [REDACTED] about the alert. [REDACTED] advised she didn't use drugs. Krystal spoke with [REDACTED] about quickly glancing in the area that the K9 alerted. [REDACTED] walked Krystal into the apartment and they were only in there for a minute or so before exiting. I told [REDACTED] that she wasn't in trouble and I just wanted to figure out why Rudi would alert in her apartment. I told her that there was no enforcement action being taken by the police. I asked her what she has used previously and she said crack cocaine. [REDACTED] then admitted to recent use of crack cocaine (within last couple days). I told [REDACTED] that I have never found crack cocaine in Longmont and she told me she goes to the Denver area to pick it up. I talked briefly about the Angel Initiative for treatment but during our conversation, her husband decided he had enough. Her husband grabbed her by the arm, stood in front of her, and told her to shut up. [REDACTED] continued to try to speak with me but her husband was very forceful with trying to keep [REDACTED] from talking. Her husband told her that when he said it was time for her to stop talking that she needed to listen. Her husband looked at me and said that he was in charge of her. I told him to take his hands off of her immediately. He told me it was his wife and he could do what he wanted. I told him that he was not in control of her, she is her own person, and that if he puts his hands on her again that he was going to jail. It was obvious that he was likely a very abusive and controlling husband and that domestic violence may be happening behind closed doors. I told her not to let him treat her like that or put hands on her. Her husband was clearly high on what appeared to be methamphetamine. His eyes were bloodshot, he was fidgety, and his pupils were dilated. He admitted to not sleeping almost at all. He said he has been awake for a few days. This is common with the use of methamphetamine. Krystal and her fellow employee spoke with [REDACTED] a little bit more before we left. We went to apartment [REDACTED] where staff knocked on the door as I stayed down the hall with K9 Rudi. I heard them talk about the compliance check and notification of police on scene. I heard staff explain consent. I heard a male say it was ok but asked if they could finish with other apartments and come back later. Staff told the male that his apartment was the last inspection for the day. He agreed to exit his apartment. He closed his apartment door and exited a few minutes later with a female and two dogs. The male, [REDACTED], asked if he could watch while police were in his apartment and was told yes. I walked Rudi into the apartment and he showed interest in the area around the toilet but did not alert. Rudi and I quickly exited the apartment. I thanked [REDACTED] as I walked by with K9 Rudi. I took Rudi downstairs and put him in my patrol car. I then met with Ofc Marquardt, Krystal, and her fellow employee in the break room. They voiced their concerns for the residents that were trying to get their lives together but had to deal with the drug problem in the building. They discussed how a lot of money was being spent to make the apartments very nice for the tenants. They appeared sincere about their concerns for the tenants in the building. They hoped that the presence of the police was enough to deter crime and drugs in the building.

Officer Billy Sawyer (LPD) K9 Deployment Log from 6/9/17 (attached):

MISC2017-0004

Officer Sawyer did not enter a training log to document activities on 5/10/17. On 6/9/17, Officer Sawyer did enter a K9 Deployment Log, with the narrative section the same as his in-house incident report also dated from 6/9/17. Of note on the deployment log is the box titled "Consent," which is marked "N/A." Review of Officer Sawyer's deployment logs show the "N/A" notation is a consistent factor in logging deployments of his K9.

Review on Officer Sawyer's Deployment logs, specifically related to the Briarwood searches on 3/30/17, demonstrate a more contemporaneous documentation with more specific detail, to include unit numbers and the identifying information of the resident in the unit his K9 alerted to. (see attached).

Officer Michael Marquardt (LPD) In-house Incident Report from 6/9/17 (attached):

On, or around October 31, 2016, I, Officer Marquardt, was at 1227 Kim bark St, Longmont, CO and was approached by Krystal Winship Erazo who identified herself as the Director of Operations for Longmont Housing Authority. Krystal stated they get drug complaints at one of their properties, 2000 Sunset Way ("Suites"), Longmont, CO. Krystal requested our K-9 Unit to assist them during monthly compliance checks. We spoke about working under her authority and we could not deploy the dogs the same way as done by Boulder Probation at the Briarwood Apts. I gave her my card for future contact. After that meeting, Krystal reached out to me a few times requesting K-9 assistance but an actual date and time did not work out.

On November 23, 2016, the K-9 Unit met for a quarterly meeting, K-9 Sgt. Feaster, Ofc. B. Sawyer, and I were in attendance. During this meeting I informed everyone that Krystal had recently approached me about concerns of drug use and requested K-9 assistance at the Suites.

On April 12, 2017, Krystal sent me an email subject "FW: Suites death 4/2. She asked about having K-9 at the Suites. Krystal's email included information about a heroin overdose and the impact it's had on their residents. Krystal also received information about residents dealing meth and heroin. I communicated with Krystal multiple times and a date of May 10, 2017 at 1100 hours was set which was our normal training day. After a time was set, I spoke with Ofc. Sawyer about Krystal's request during a training day. Ofc. Sawyer and I discussed that we would be working off consent to enter the residence at the request of Krystal.

On May 9, 2017, Krystal sent me a confirmation email about her request. Krystal stated she was aware the resident may need to grant us access. I confirmed her email and stated we were working off her authority.

On May 10, 2017, around 1100 hours, I arrived and met with Krystal and Alma Collins who introduced herself as the site manager of the Suites. Krystal and Alma stated they posted the inspections and requested K-9 to accompany them on up to eight (8) apartments. I explained

MISC2017-0004

again with Alma present that we were only working within their authority and rights. I advised Krystal and Alma that the K-9 team needed consent to enter a residence and anyone could refuse. I further advised that if a resident granted consent to enter the residence, they would be able to watch the search from the door and withdraw their consent at any time. Additionally, I advised that we would not open or move anything inside the residence. The K-9 would go in on lead and only move around the open areas. If a K-9 alerted to the odor of narcotics, we would not touch anything and exit the apartment. I advised that we were not present to enforce any criminal laws and even if we could plainly see narcotics or paraphernalia we would not seize anything or place an individual under arrest. We would only notify Krystal about an alert at which point we would move away with the K-9 and Krystal could speak with the tenant. We further made arrangements for a tenant to turn in any drugs or paraphernalia without criminal repercussions and we would accept it as found property and properly have it destroyed. I spoke with Krystal and Alma about a new program called the Angel Initiative through the city. I recommended the program to them as an option to help their residents with addiction problems and recovery.

Alma and Krystal walked me to the first apartment on their list. They knocked on the door and spoke with the tenant about the Landlord compliance check. Krystal explained to the tenant she invited the police to assist and asked for voluntary entry and he could object to the police entering. The tenant was excited to have the police presence and thanked me for my service. I explained I would go get my K-9 and quickly clear his room and exit. I informed the resident that this was not criminal enforcement and nothing would be touched or opened. He allowed me to quickly look inside his apartment for any dog hazards. I returned to my vehicle and retrieved K-9 Vetti. We moved back up to his room and Krystal or Alma held the door open for the tenant. All the apartments were the same with an open kitchen living room area, 1 bedroom, and 1 bathroom. Before I entered, I asked the tenant again if he was ok to search his home with the K-9 and he said yes. All the doors were open and I quickly moved through the apartment only going to areas open and accessible. We were in and out quickly. There was no alert by K-9 Vetti and no environmental issues. We did not seize any items or place the male under arrest. Further the male did not surrender any narcotics or paraphernalia voluntarily.

Before moving on to the next room, we talked about how to safely move the K-9 team through the building. There were people eating downstairs in one of the common areas and lots of movement with people and their personal dogs near the entrance. Krystal and Alma stated they would continue to contact the tenants and ask for consent for me to enter and they could refuse. I would wait a few doors away down the hall with Vetti in a lying down position. We used this system for the remainder of the rooms. The tenant would voluntarily exit their apartment while either Krystal or Alma would complete their inspection. All of the tenants gave Krystal consent for me to enter. If the tenant was by the door after consent was given, I would ask again if they were ok for the K-9 to enter their residence. No one objected. All of the searches were quick in and out of any open areas, I estimated the K-9 was inside each residence less than 1 minute. I did not open or move any items and the door was held open each time. There was no alert to narcotics and no environmental issues. Ofc. Sawyer arrived while we were half way through and

MISC2017-0004

I was taking K-9 Vetti back to the vehicle. spoke with Ofc. Sawyer again and he understood the need for voluntary consent and that we would not do any criminal enforcement. Any alert, he would notify Krystal but complete no search and would not seize anything. Ofc. Sawyer retrieved his K-9 Rudi, Krystal and Alma took Ofc. Sawyer, Rudi, and I to their next room. Since there were more people actively walking around, Ofc. Sawyer stayed down the hall and I tried to make sure no one accidentally interfered with Rudi and all other dogs were on a leash. Krystal and Alma talked with residents again just like before.

During one contact, a female did ask why the police were here. It was explained we were not doing criminal enforcement and she could watch the whole thing. I explained that the involvement of the police was voluntary and she did not have to let us into the residence. The female allowed Ofc. Sawyer to enter and I held the door open so she could see in. Ofc. Sawyer exited and talked to Krystal about an alert. Sometime during the interaction a male walked up and appeared to be the female's boyfriend. I do not know if he was a leased tenant. Krystal and Ofc. Sawyer spoke with the female who I heard admit she used to use crack cocaine. The female told Ofc. Sawyer she would go to Denver to purchase the narcotics. Krystal and the female went inside the apartment for a few minutes. When they exited the male party started to become controlling over the female. The male touched her arm and it seemed like he was trying to pull her back from talking to Ofc. Sawyer. The male made a comment about sometimes he just needed to get her back under control. Ofc. Sawyer spoke up and let the female know that the unknown male did not control her and she was free to speak. The male appeared to tense up as if he was getting ready to argue but did calm down. Krystal spoke with the female about following up later. We did not seize any items or place the female under arrest. Further the female did not surrender any narcotics or paraphernalia voluntarily.

We moved to the last room of the day. The male answered and immediately appeared defensive and wanted to know why the police were with them. Krystal and I explained why we were there and it was not for criminal enforcement. While talking with the male, another resident came down the hall walking their dog. I quickly moved over between K-9 Rudi and help everyone move around each other safely. When I moved back with Krystal, the male was asking to have about having 5 minutes to organize his belongings and collect his dogs before consenting to the search. He closed his door and came back out a few minutes later with his dogs and a female, at which point he consented to a search of his residence. The male and female moved across the hall by the elevator and I held the door open so they could see inside. Ofc. Sawyer and K-9 Rudi went into the room and quickly came out and spoke with Krystal. The residents returned inside. We did not seize any items or place the male under arrest. Further the male did not surrender any narcotics or paraphernalia voluntarily.

During this training exercise, we did not seize any items or place any tenants under arrest. Further, no tenant surrendered any narcotics or paraphernalia voluntarily.

As part of keeping their identifying information private, and because this was not a criminal

MISC2017-0004

investigation, I did not separately document the room number or the tenant's personal information. Krystal and Alma documented items pertaining to each resident. I documented the training in K-9 Vetti's training logs without identifying the individual tenant involved.

We provided no further assistance on this day.

Officer Michael Marquardt (LPD) K9 Training Log from 5/10/17 for 1100 hours (attached):

3- Narc- Combined

1100

Suites

Working on environmental distractions from rooms with lots of fresh odor and different smells. The rooms had been occupied immediately before deployment so human odor was strong. No specific working issues caused by the distractions. All of the rooms were unknowns for narcotics but Vetti did not alert on any items.

Officer Sarah Aerne (LPD) interview from 6/15/17 (recorded):

Officer Sarah Aerne is the Officer in charge of the Crime Free Officer program, which coordinates and communicates with the housing community, facilitating between owners, residents, and corporations. Officer Aerne explained in her role has been interacting with the Suites management and residents on and off since its inception approximately 3-4 years. Officer Aerne reported there is a history of police contact due to the nature of housing and changes to legal marijuana and how that has changed over the years. Officer Aerne explained she has interacted with the Longmont Housing Authority to advise on Tenant/Management issues when it comes to landlord/tenant law.

Officer Aerne explained that she and her partner, Officer Dave Kennedy, have been working with the Suites on quality of life issues and in addressing safety and security concerns presented by the residents of the Suites and the Longmont Housing Authority, specifically related to drug use, alleged drug distribution, and a heroin overdose death in early April of 2017. Officer Aerne explained that because of these concerns, there had been discussion by the LHA with the K9 unit for about six months, but this was not made to her in March or April of 2017.

Officer Aerne was present at the community meeting at the Suites on 4/26/17 where residents had discussed their requests to have K9s come and address the drug issues. At this meeting, which was described as heated and intense, Officer Aerne was told by Alma or Krystal the LHA was actively coordinating with the K9 unit. Officer Aerne reported that Alma would send a letter of notice to residents, notifying them LDP K9s would be working with the LHA sometime in the future. Officer Aerne reported that this was the extent of her knowledge, and she was not specifically aware of the coordination and logistics of use of K9s, did not actively participate in arranging the K9 unit, and was not present during the searches or aware of the specific actions of the K9s on 5/10/17. Officer Aerne explained the first time she became aware of any concerns or

MISC2017-0004

complaints regarding the searches was when it hit the media in early June. To the best of her knowledge, Officer Aerne was aware it had happened after the fact, but had not been contacted with any complaints by tenants or management in the almost month between the searches and the media attention.

From the Crime Free Officer perspective, Officer Aerne explained that the use of K9s in coordination with the LHA was good for the community. Officer Aerne articulated that without knowing the specifics in how the K9s were used, the concepts was acceptable in her mind to show that the community and residents that the management is listening and cares and is working collaboratively to address the issues at hand.

Generally related to Longmont Police Department search and consent policy or standard operating procedures (SOP), Officer Aerne explained that most contacts with tenants starts at the unit door with a knock and talk but was clear she could not enter a unit unless invited, "I have to have consent to come in, period." Officer Aerne reported the LPD had specific written and documented policies related to search and consent and could be referenced in the electronic policy manual accessible to all LPD Officers at their desks or Vehicle MDTs. Officer Aerne articulated that in many cases, specifically non-criminal contacts, such consent to enter is give verbally, and wouldn't necessarily be documented in a report, but when specific to a criminal report such consent would be documented in the criminal report or CAD notes. Officer Aerne also explained that when speaking to a resident they are typically "yeah, absolutely, come on in" but "if someone's hesitant you're not going to push it, I mean it's not worth our jobs. It's not worth violating anyone's rights. You're going to just say, hey, thank you very much, and you're going to figure out another way; and if that has to be a search warrant, then that's what we do. Most of the time people say, absolutely, come on in, um, you can check in any place you want, and obviously that's, that's another story, but, um, you know, say you're looking' for someone, yeah, come on in. That, that's pretty clear that they're that's voluntary and they are allowing you to, and there's no one forcing them to say yes."

Officer Aerne explained the LPD "goes the extra mile" in documentation, explaining "everyone writes a warrant here," and how formal written consent forms weren't necessarily encouraged, articulating the standard was to write warrants. While the type of consent gathered is situationally dependent, Officer Aerne reported there are formal written consent forms available to officers and while they are not normally used because the standard of warrants if "imbedded in the culture here." Officer Aerne explained she had received in-service training in Legal Updates annually, to include Search and Seizure updates in the last quarter of 2016.

Officer David Kennedy (LPD) interview from 6/20/17 (recorded):

Officer David Kennedy reported that in his role as Crime Free Officer is to work with management, owners, and residents in over 200 properties within Longmont, shared between himself and Officer Sarah Aerne. Officer Kennedy explained the properties are divided up

MISC2017-0004

equally, and as Officer Aerne is the primary assigned to the Suites, his interactions with the Suites is somewhat limited. Despite this, Officer Kennedy reported that Officer Aerne had requested he attend the Suites community meeting on 4/26/17 as it might be a "heated meeting" revolving around the recent overdose death. It was on this day he became aware the LDP K9 unit would be working with the LHA "someday into the future," but was unaware of real plans what was going to be done.

Officer Kennedy explained he had no role in arranging the K9 unit's participation with inspections at the suites and wasn't aware it had happened until he saw it on the media. Even after Officer Kennedy was made aware through the media, his knowledge was limited to what was discussed on the news, specifically the notice letter and what it did and didn't say, and that while conducting resident inspections and brought along the LPD K9s. Officer Kennedy specifically stated "now what actually took place, you know, at the door, I have no idea" as he wasn't on scene.

Generally related to Longmont Police Department search and consent policy or standard operating procedures (SOP), Officer Kennedy stated "it's normal procedure in something like this to – you know, especially if you don't have any specific information as to what's going on there, we would need to get a written statement. Written consent form signed by that person to come in." Officer Kennedy explained the consent form advises the party of their right to refuse and that it is standard practice at the LPD to use the written consent form "when you've got the time to do it, we should be filling the out."

Officer Kennedy further articulated that when moving a criminal case through Boulder County, "you're going to end up in a motions hearing. Because that's one of the first things that defense attorneys are going to try to go after is your reason to be past that threshold to begin with, so, it's a lot harder to um lose that motion if you have this in court. And I think that's kind of why it's become that standard. Because that's what's expected over the years." Officer Kennedy explained that in his 14 years with the LPD the accepted standard practice is to gain consent to enter premises by video, audio, or written form.

When asked if there was an LPD policy or SOP that outlines searches and gaining consent to search, Officer Kennedy replied "yeah, we do have an SOP on it," and explained it discussed the legal guidelines of consent verses warrants and the legal reasons to gain access to a premises or property. Officer Kennedy reported he had received his last in-service training on legal issues, updates, and search in seizure within the last twelve months.

Sergeant Andy Feaster (LPD) interview from 6/20/17 (recorded):

Sergeant Andy Feaster reported he is currently a day shift Watch Commander with multiple collateral assignments secondary to his primary role, one of which is the K9 Coordinator. In his role as the K9 Coordinator, Sgt. Feaster is responsible for the training and supervision of the K9

MISC2017-0004

Unit, insuring certifications are current, training is being conducted, follow-up on K9 apprehension, K9 bites, and ensuring resources are provided. One of the other responsibilities Sgt. Feaster also explained was coordinating the use of K9s when another entity requests the use of the unit. Sgt. Feaster explained he is not currently a K9 handler, has no personal experience as a K9 handler, and currently supervises two K9 handlers, Officer Marquardt and Officer Sawyer.

Sgt. Feaster reported K9 unit training is not done in-house, but the LPD K9 unit trains three days a month with Ft. Collins PD's K9 unit. It was explained LDP will have one training day per month on their own. On this training day, it is expected the handler conducts dope work, tracking, obedience, apprehension, but Sgt. Feaster acknowledged "unfortunately as of late I haven't been able to, to get to the training days as, as much as I want for sure, um, that when you've got other responsibilities it's very difficult to do that."

While on duty, K9 handlers are expected to assist patrol operations as normal, but when another entity within LPD is requesting K9 assistance, Sgt. Feaster explained he would be contacted to coordinate planned events, or the on-duty watch commander would be contacted to address more imminent deployments. Most often, Sgt. Feaster would be contacted for off-duty use of K9s related to LDP work, but it is not required. However, Sgt. Feaster explained that when a non-LPD entity requested K9 services, such as a school or the housing authority, it was his expectation the request be run through the K9 handler and "the handler needs to discuss it with me." Sgt. Feaster acknowledged that the nature of Law Enforcement doesn't always allow for this type of communication flow, but reiterated that "it's my expectation and my guys know that if it's something outside the course of normal patrol work that they normally do, uh, or outside the normal training day, the request such as what you just, uh, suggested would need to be discussed as a unit or certainly with me." When such a request is made, Sgt. Feaster would typically initiate a "planning session before anything happened... all the information would be on the table. If there were unanswered that I had, uh, nothing's going to happen until the questions are answered." Sgt. Feaster explained that Officer Marquardt is particularly focused on communicating and being on the "same page," and would certainly discuss the issue as a group before moving forward.

Specific to his knowledge of the searches at the Suites on 5/10/17, Sgt. Feaster reported that the idea of K9 services being used with the LHA at the Suites was brought up at the 4th quarter K9 Unit, in approximately November of 2016, but no formal discussion, assigned date, or deployment was discussed. Sgt. Feaster stated the topic at this meeting was brief, and stated "there was no planning to it. I gave no authorization for them to go forth and do anything. Uh, if anything, I told them that well, we need to gather the information and then we need to discuss what we're going to, how we're going to, this is going to be something that we're going to run so to speak. We're not going to be told what we're going to do, um, and, uh, we left it at that. Uh, there was no, anything about, okay, we're doing this next week. We're doing this 2 months from now. We're doing this 6 months from now. There was no discussion about that. It's one of those things where we need to gather information if we're going to have, definitely going to be on

MISC2017-0004

the same page about this kind of stuff. It's outside the course of our normal work kind of stuff, um, and then that was it."

Sgt. Feaster stated he did not become aware the K9 searches had been completed at the Suites until 6/5/17, when he was asked by the PIO, Commander Post who was getting requests for information from the media. Sgt. Feaster referred Commander Post back to Officer Marquardt, explaining "I don't know the answers to the questions you're askin', um, but this is Marquardt's realm. This is Marquardt's world. Um, I trust that he, he's, he's very knowledgeable when it comes to CRS and case law," acknowledging Officer Marquardt was more knowledgeable in this area than he is.

Sgt. Feaster explain that in previous instances they had walked the open public and common areas at the request of apartment managers, but "we've never knocked on doors. That's not our practice." While he is unclear if it was discussed, as this conversation was not lengthy at the quarterly meeting, Sgt. Feaster was clear his expectations would have been "If anything, I told them specifically, one, we don't go in peoples' apartments no matter what."

Sgt. Feaster acknowledged that while he is responsible for reviewing K9 training and deployment Logs, "I do the best I can...I wouldn't say its regular." Sgt. Feaster had reviewed Officer Sawyer's log that was entered on 6/9/17, and indicated there were some specificity issues with the documentation, that it was vague in details, and the log didn't articulate consent was confirmed or indicate if consent was given to the housing authority staff or the Officer on scene. Sgt. Feaster acknowledged the log should have been completed much sooner than it was, stating "I recognize that, and we as an agency recognize that we can't get all our paperwork done in a timely fashion, but if that is in fact the date that he wrote it, June 9th, that's rather unacceptable in my mind, if this occurred on May 10th."

When asked to explain LDP expectation and specifically K9 unit expectations regarding possible criminal activity in an apartment unit and how it would look, Sgt. Feaster explained "A knock and talk. I would expect them to leave the dog in the car, uh, do it without the Housing Authority representative with them, um, and do a regular knock and talk, and it's an information gathering situation. Um, and treat it as such. They're told to go away, they go away. If somebody's willing to talk to them, and, and they talk, then great. If, if they ask for consent to enter, um, it's pounded in their head at Longmont PD pretty hard that we need written consent to do these kind of things. It's the best course of action. And I have no idea if any of that occurred in this situation. But it's, it's always been pounded in their head that whatever situation when we have the opportunity to get written consent, we get it."

Sgt. Feaster explained the written consent forms are readily available and "it's my expectation certainly that our K-9 units have those kind of things available because of the nature of their job." Sgt. Feaster was able to articulate recent annual training on legal issues, and over the course of his 15 years of service "we've been told we need to tell people that they have the right to refuse in

MISC2017-0004

those situations, as well. And so my general practice as an officer, and I don't do as much as a sergeant now because I'm not in contact with people all the time, but when the opportunity presents itself, is do I have your consent to search your place, your person, your whatever, they say yes, I, I follow that up with a, a, I need you to understand that you have the right to refuse that and tell me no. You don't have to allow me to do this. Uh, they just lay it out there. And, uh, more times than not, I, they still get their consent and if we have the opportunity, we fill out the form and, and go from there."

Sgt. Feaster acknowledge verbal consent may be the only process available, but with audio, video, and the articulation of verbal consent in your criminal reports there should be no reason consent wasn't offered by the party in question. When asked if a documented LPD policy or SOP existed, Sgt. Feaster stated "I'm sure there is...I'm sure it's somewhere." While Sgt. Feaster could not provide the reference number to the SOP, he was clear to add even "without that, even if it's not, it's made very clear that this is how we practice in our agency."

Sgt. Feaster clarified that standard practices of effecting consent for all LPD officers was not different when working with K9 officers and stated "but I put more importance on it because of the specialization of what they can do and the resource tool if you will, the four-legged friend that we have employed for us. Um, I hold, I hold those guys to maybe a higher standard because it's a specialized assignment. It's a high, high visibility that's sometimes perceived as a high liability."

Officer Michael Marquardt (LPD) interview from 6/20/17 (recorded):

Officer Michael Marquardt is currently assigned as K9 handler, whose primary responsibilities include regular patrol duties but prioritizes calls for service that would warrant K9 services, such as tracking, narcotics sniffs, building searches, and SWAT deployments. Officer Marquardt reported approximately seven years as a Longmont Police Officer, with a little more than two years as a K9 handler. Officer Marquardt explained that when facilitating K9 services with another entity or agency, he as the individual K9 handler would arrange and manage this activity as long as it was within the Longmont city limits, further articulating that and K9 activities outside of the city limits would require the approval from a supervisor. Officer Marquardt expressed his understanding that working with the Longmont Housing Authority at the Suites was within the city limits and would not need further approval.

Officer Marquardt reported that he had been approached by Krystal (Winship-Erazo) regarding the use of LPD K9s at the Suites, having worked with them during searches in coordination with Boulder County Probation at the Briarwood Apartments. Officer Marquardt reports the had advise Krystal that K9s "couldn't do searches like we do at the Briarwood," explaining Krystal was interested a K9 presence due to complaints or drugs at the Suites. Officer Marquardt was able to articulate that when searching the Briarwood complex, the residents had fewer privacy protections due to the probation status, but this would not be the case at the Suites. Officer

MISC2017-0004

Marquardt reported that Sgt. Feaster, the K9 Coordinator, was made aware of this request from the LHA at the K9 Unit quarterly meeting in November of 2016. Officer Marquardt described Sgt. Feaster's interactions on this subject as limited, stating "he didn't really have a lot of thoughts on it," explaining Sgt. Feaster never provided specific encouragement or support of the idea, but never disapproved either.

Officer Marquardt specified the purpose of the K9 Searches at the Suites on 5/10/17 was primarily "environmental training, to expose the dogs to new smells and people and see how they react." Secondly, Officer Marquardt explained that Krystal has expressed some concerns of safety on the property and using the K9s would "show support that, in a non-enforcement role that the police are there to help." Officer Marquardt explained "that we weren't there to take any enforcement action and really open up kind of a line of communication between, um, everyone." Officer Marquardt clarified that while he was acting within the scope of his authority as a police officer, he was not there to enforce specific known criminal activity, make any arrests, or seize property.

Officer Marquardt reported he was aware the unit inspections conducted by the LHA were mandatory, but also specified the K9s sniffs would be part of the K9 training and would be voluntary for the residents. When asked to specify his previous written statement that he was "working within their authority and rights," Officer Marquardt stated "meaning as the police department we couldn't bring additional rights. Like we couldn't force our way in just because we're the police. That the tenants still had the same rights that they've always had." Officer Marquardt reported that the issue of consent had been discussed with Krystal, "we talked about the compliance of them; um, of what they do, their compliance part and we would stay separate so they could talk with them and then explain that we're there as a completely separate, voluntary and that the people could refuse to let us in." Officer Marquardt reported that consent was given to both the Suites Staff (Krystal and Alma Collins), and the K9 Officer.

Officer Marquardt reported he searched three units with his K9, and in the first unit Krystal would make the initial contact and explain why the K9 was there and would enter the unit to conduct the inspection after consent was gained. After the inspection was over, Officer Marquardt explained that he did not have a separate conversation with the tenants, but consent was explained by and given to Krystal and Alma as he waited a few doors down with his K9. When asked if Officer Marquardt could hear consent being provided to Krystal and Alma, he stated "I couldn't hear all their conversation." When asked if he could not hear all of the conversation, how could he be clear that consent was given for him and his canine to enter the unit, Officer Marquardt replied "I was going off of Krystal and Alma." Officer Marquardt reported he was not aware of any tenant that declined consent for LPD K9s to enter the unit and conduct a search.

After the inspections a few searches were completed with Krystal and Alma, Officer Sawyer and his K9 arrived on scene. Officer Marquardt reported he explained to Officer Sawyer the process

MISC2017-0004

of initiating contact at the door while waiting a few doors down. Officer Marquardt reported he stayed close to Officer Sawyer for the remainder of the unit searches, and when asked how much of the conversations he could hear between LHA staff and the resident, Officer Marquardt stated "some of them I could hear parts." When asked if he could hear LHA staff explain the resident needed to separately authorize the entry of the K9, Officer Marquardt stated "I don't know exactly what all I heard," but understood the tenants contacted had provided consent for the K9s to search the units. Officer Marquardt explained that after the unit inspection was completed by LHA staff, either he or Officer Sawyer would ask the tenant "if it was okay if the dog went in and they would say yes." Officer Marquardt, in his articulation, explained this was not a separate formal conversation, just a follow-up okay for the dog to enter. When asked if the tenant was advised they could refuse, Officer Marquardt replied yes and explained this notification was made through Alma and Krystal. Ask if he heard this notification of refusal by LHA staff, Officer Marquardt acknowledged he "couldn't always hear them," but no one declined consent or entry of the K9s.

Specific to the allegation made by resident [REDACTED] that she did not want the officers or K9s to enter, Officer Marquardt reported "we had consent to go in." Officer Marquardt was able to articulate specific interactions with [REDACTED] and her husband [REDACTED], mostly after the searches were completed, but when asked to specify what he heard at initial contact and when consent was given he stated "I didn't hear all of it." Officer Marquardt did clarify that after the unit inspection was completed by LHA staff, [REDACTED] did give consent to either Officer Sawyer or himself to run the K9 through her apartment.

When asked to articulate LPD Policy or SOP on searches and gaining consent, Officer Marquardt was able to articulate he needed either a warrant, consent, or another exception. When asked if there was a specific LPD Policy or SOP outlining searches and consent guidelines, Officer Marquardt stated "I believe so," explaining his understanding was consent needed to be given either verbally or written. Officer Marquardt was familiar with the written consent form, and had utilized it before, but when asked if its use was standard operating procedure he replied "not necessarily." Officer Marquardt explained that the consent form was typically used in criminal investigations, or consent was documented in a criminal report.

Officer Marquardt was unsure of the last time he received formal training in Search or Seizure, and did not recall the last LPD in-service that covered these subjects.

When Officer Marquardt was asked, knowing what he knows now, if he would do anything different, he replied "I would do the written consent... So you don't have to worry about people coming back saying that we didn't do something."

Officer Michael Marquardt (LPD) follow-up interview from 6/27/17 (recorded):

As Ms. [REDACTED] allegation the LHA and LDP K9 were in her apartment without her knowledge

MISC2017-0004

was not known prior to the initial interviews, a follow-up interview was conducted on 6/27/17. Specific to Ms. [REDACTED] allegation, when asked directly if he had entered unit # [REDACTED], or any other unit with his K9, when the resident was not at home, Officer Marquardt replied "not to my knowledge." Officer Marquardt confirmed that in his presence each unit contacted by LHA staff had a resident answer the door, explaining "I wasn't at each individual door, and I don't know who the actual each resident was. That's that was Crystal and Alma's responsibility to, to make sure the resident was there." When asked a second time for clarification that he did not enter a unit by himself or with his K9, without the knowledge or presence of the resident or tenant of that specific unit, Officer Marquardt stated "That's fine, yes."

Officer Marquardt denied entering any unit without the resident present and denied any recollection of any resident finding him and/or his K9 in their unit and/or expressing surprise. Officer Marquardt denied that any resident confronted him about searching their unit or having the LPD and K9 in their unit without their knowledge.

Officer Billy Sawyer (LPD) interview from 6/21/17 (recorded):

Officer Billy Sawyer reported that he is currently assigned as K9 handler, whose primary responsibilities include regular patrol duties but prioritizes calls for service that would warrant K9 services, such as tracking, article searches, narcotics sniffs, building searches, and SWAT deployments. Officer Sawyer reported approximately four and a half years as a Longmont Police Officer with another four and a half years law enforcement experience in Florida. Officer Sawyer explained in his nine years as a police officer he's had only a little more than two years as a K9 handler with LPD. Officer Sawyer explained that his K9 duties were typically applied within the Longmont city limits, and if called for services outside of city limits he would need authorization from the watch commander. Officer Sawyer articulated that if it's inside the city "we just handle it ourselves," which includes non-law enforcement entities, such as schools or building searches for non-criminal related activities.

Officer Sawyer was first made aware of the request for K9 searches last year, when Officer Marquardt had been approached by the LHA due to drug complaints, and this issue was brought up during the K9 Unit 4th quarter meeting on November 23rd. At this meeting, Officer Sawyer acknowledged Sgt. Feaster was aware of the idea, but could not recall if any details were discussed. Officer Sawyer reported that his involvement with K9 searches at the Suites on 5/10/17 was organized through Officer Marquardt and he was not directly involved in the logistics or facilitation of the assist.

Specific to the searches at the Suites on 5/10/17, Officer Sawyer explained the purpose was "good for us, I mean for the dogs themselves. We can't replicate real life things, um, without going through real life, smells and everything like that, but also the deterrence, and then maybe just a little bit of the presence of the police and us being able to speak with people and let them know that maybe we're not just here for enforcement action and that we can help them if they'll

MISC2017-0004

come to us." Officer Sawyer articulated that by using the dog in realistic environment was to have some positive interactions between the public and law enforcement. When on scene, Officer Sawyer reported he had discussed with Officer Marquardt they would be searching the units and "going into apartments once consent was, um, obtained, or if consent was obtained," and that if anything was found they would be making no arrest, no seizures, no getting people in trouble, just making the LHA staff aware of the alert.

When Officer Sawyer arrived on scene, he did conduct a quick briefing/pass on with Officer Marquardt, and based on this understanding he believed "that they would be, they as in the Longmont Housing Authority, Krystal, who I hadn't met even to this moment, um, and another worker, I guess part of the Longmont Housing Authority, would be knocking on doors kind of doing compliance checks and then obtaining consent to come inside with us." Further, Officer Sawyer explained that Officer Marquardt had "specifically told me that, um, he had had very specific conversations with Krystal as far as what needed to be asked and said in order for the consent to be valid." Officer Sawyer described the initial contact with the tenant was made by LHA staff, while he stayed back with the dog, approximately 10-20 ft., and reported "I could only hear bits and pieces of conversations... I don't recall much from the first one at all," explaining he was more focused on his surroundings with his K9, with Officer Marquardt between him and the LHA staff at the resident's door.

When asked if he could verify if consent was given for the K9 search, Officer Sawyer stated "I never heard anybody... argue" and "I never heard anyone insinuate the that they didn't want us in their apartment." Officer Sawyer confirmed that each tenant provided to consent to search, and that consent was provided to the LHA staff, and in the first unit searched by Officer Sawyer there was no other independent communication regarding consent to search with the K9. During the second unit searched by Officer Sawyer, [REDACTED] unit, after consent was obtained by the LHA staff, Officer Sawyer reports he asked her "are you sure it's okay that, you know, we come inside, and she went like this with her head up and down and she said yes, and kind of went like this towards the door with her head pointed towards the door at the same time." Officer Sawyer reports he did not hear or see [REDACTED] provide any hesitation or denial of entry.

In the third and last search conducted by Officer Sawyer, he explained a similar process, holding back away from the door while the LHA staff makes contact and obtained consent for the K9s to enter. Officer Sawyer reported that the resident, Mr. [REDACTED], didn't provide any hesitation or denial to search, but had asked for five minutes to get ready. Officer Sawyer reported there was no separate interaction with Mr. [REDACTED] regarding consent, just that he had asked to watch and consent to search was obtained by LHA staff and not directly to him.

At the time of searches, Officer Sawyer reported he was not aware the separate inspections of the units conducted by the LHA were mandatory. When asked if this new information changed anything for him, Officer Sawyer stated "if they're still just going to ask consent, um, and let them know that they have the right to tell us no, um, whether we're with them or not, they can

MISC2017-0004

still tell us no and we would've walked away because our goal wasn't to get anybody in trouble, you know what I mean. If anybody would've told us to pound sand or whatever, we don't want to deal with the police, that's perfectly fine. That's well within their right to do so. It's not going to hurt my feelings..."

In his interactions with the residents, and in what he could overhear from the LHA and resident interactions, when asked if the residents were made aware they could refuse the K9 searches, Officer Sawyer replied "I didn't get to hear all, all of it with everything because I was, you know what I mean, too far away for, for every bit of it..." When asked if he heard if LHA staff advised each resident they had the right to refuse the K9 searches, Officer Sawyer stated "I did not."

When asked to articulate LPD Policy or SOP on searches and gaining consent, Officer Sawyer was aware a search of a home or premises could be made with consent, verbal or written, and with a warrant. When asked if there is a documented LPD policy that can be referenced, Officer Sawyer stated "I believe that there is a policy." Officer Sawyer was able to adequately explain exigency and warrantless exceptions to motor vehicles and burglary in progress calls and explained how verbal consent was typically obtained. Officer Sawyer explained that obtaining verbal consent is standard practice, and depending on the severity of the criminal allegation, written consent might be filled out, criminal incidents that involve "serious trouble." Officer Sawyer was familiar with the LPD written consent form, acknowledging that he had filled one out on shift in his current work week, but was not aware of any specific LPD policy or SOP that dictated when the form had to be used.

Officer Sawyer could not recall the last time he received formal training in Search or Seizure, and did not recall the last LPD in-service that covered these subjects.

When discussing his K9 Deployment log, and as to why his log from 5/10/17 wasn't entered until 6/9/17, as opposed to other logs, Officer Sawyer relates the entire deployment more in tune with training and a deployment, stating: "...it was nothing to me because we didn't, the intention wasn't, like I said, absolutely nothing with the canines, nothing with the police, it was just an environmental exposure. We got to talk to some, I mean we got to sit down and talk with [REDACTED] afterwards, um, and kind of work a little bit outside of law enforcement... it didn't even, it wasn't like a real deployment to me. I mean, the dog alerted and I didn't search the room, you know what I mean."

When Officer Sawyer was asked, knowing what he knows now, if he would do anything different, he replied "I don't know. I've, we were there to help people. Sometimes it's nice to get outside of that, that capacity where we're always looking to, you know, I mean just we deal with the 1 percent every day. Um, that's almost all we deal with. It's nice to get out and even deal with that 1 percent but on a different level and help them out. So, I mean I spend a lot of time doing that anyways, trying to steer people in a different direction. I've always done that my entire career, and I thought it was a good opportunity to open the door and work with people honestly."

Officer Billy Sawyer (LPD) follow-up interview from 6/27/17 (recorded):

As Ms. [REDACTED] allegation the LHA and LDP K9 were in her apartment without her knowledge was not known prior to the initial interviews, a follow-up interview was conducted on 6/27/17. Specific to Ms. [REDACTED] allegation, when asked directly if he had entered unit # [REDACTED], or any other unit with his K9, when the resident was not at home, Officer Sawyer replied "No and I didn't, I never went on the second floor." Officer Sawyer confirmed that in his presence each unit contacted by LHA staff had a resident answer on site, explaining "I don't recall there, the ones that I went to they were, um, the residents were there." Officer Sawyer clarified that in each unit he observed LHA staff contact by knocking on the door the resident was home.

When asked if he was provided access to a unit when the resident was not home, Officer Sawyer replied "No." Officer Sawyer explained that if Ms. [REDACTED] was alleging she returned home 1200 hours, he did not arrive at the Suites until 1130 hours, and would have still been in the parking lot when this search was alleged to have occurred. When asked why Ms. [REDACTED] would be making this allegation, Officer Sawyer replied "I'll assume to jump on the, the train right now of possibly trying to sue LPD. That would be my guess."

Longmont PD Consent to Search Form (attached):

Although not found in policy or Standard Operating Procedures, the consensus among the five Longmont PD Officers interviewed is the standard consent to search form is readily available and in use. While there is some discrepancy as to the exact procedure in its utilization, it was known to LPD Officers and is to be used to in some situations to document consent to search, as is practical in the fluid environment in law enforcement.

CR _____

CONSENT TO SEARCH

I, _____, having been informed of my constitutional right not to have a search made of the premises hereinafter mentioned without a search warrant, of my right to consult an attorney before giving my consent, and of my right to refuse to consent to a search, hereby authorize _____ and _____, peace officers of the County of Boulder _____ Weld _____ State of Colorado to conduct a complete search of _____

These agents are authorized by me to remove any letters, papers, materials, or other items or property, which they may deem necessary for use in any future criminal prosecution. I understand that I may terminate this consent at any time during this search.

I am giving this written permission to the above named officers, voluntarily and without threats or promises of any kind.

Signed: _____

Witnesses: _____

MISC2017-0004

Longmont PD In-Service Training – Search and Seizure from December 2016 (attached):

Annual in-service training regarding Legal Updates and Legal Training was provided to Officer Marquardt on 12/14/16 and to Officer Sawyer on 12/4/16. The December 2016 classes were “Search and Seizure Case Law” and “Case Law and Legal Updates” (see attached PDF files).

Direct from Search and Seizure Case Law taught by Eric Stewart, the following information was provided: “A police officer does not need any level of suspicion before requesting consent to search the person, effects, vehicle, residence, or any other property of the consenter. According to *United States v. Perrin*, 45 F.3rd 869, 875 (4th Cir., 1995), “A defendant who voluntarily consents to a search waives his Fourth Amendment rights, and the police officer may conduct the search without probable cause or a warrant.” According to *People v. Morales* (Colo. 1997), if a person voluntarily consents to a search, the search will be upheld in court.

According to *Schneckloth v. Bustamonte* (1973), the officer(s) are not required to advise the consenter that he or she has the right to refuse consent. *However, Colorado law states that officers must advise the consenter of his or her right to refuse consent.*” (emphasis added – Mr. Stewart then follows with the specific statute CRS 16-3-310 verbatim – enumerated in the next section).

Officer Marquardt attended the County Sheriff’s of Colorado “Practical Search and Seizure: The Effective Application of Case Law in Law Enforcement” class in February of 2015 (see attached certificate).

Longmont Police Department Policies and Standard Operating Procedures Review (see attached Policy Index and Index for SOP Manual – referred policies or SOPs are attached in their entirety):

Longmont PD provided access to their electronic Policy and Standard Operating Procedure (SOP) Manual, found on the Departments internal server, which is continuously accessible to all employees. Review of the Manual indexes found no specific policy or SOP directly related to premises searches, the process of obtaining voluntary consent, or how such consent is documented. Below are the policies or SOPs relevant to the incident at hand resulting from the physical review and a keyword search of “consent.”

SOP 102 – Protective Custody and Charging of Intoxicated Persons:

H.1. – Officers first attempt to obtain consent prior to entering the private property.

SOP 107 – Attempt to Locate:

3.B - Department members conducting ATL’s on private property for the purposes of taking offenders into custody on probable cause **shall not enter** the premises to make an arrest unless: In hot pursuit of a suspect for a crime that permits a jail sentence; exigent circumstances exist for a crime whose penalty permits a jail sentence; or when someone with the right of access and use of the premises consents to the entry.

MISC2017-0004

3.C - Members furthering an on-going investigation and/or conducting a general knock and talk contact shall follow the rules of criminal procedure with regards to arrest without warrants.

SOP 207 – Field Interviews:

Contacts (Consensual Interviews)

- 1.A - Contacts are not considered "seizures" because they involve minimal restrictions upon a person's freedom of movement. They involve a face to face meeting between a person and an officer in which the officer does not use his authority (express or implied) or physical force to restrict the person's freedom of movement.
- 1.B - An officer may contact any person for any reason. A contact does not require even reasonable suspicion for its justification.
- 1.C - Whenever the person contacted feels he that he is not free to leave, the contact is considered a stop that must be based on reasonable suspicion.

SOP 214 – K-9 Unit:

C.1. – K-9 teams are assigned to the Patrol Operations Section and are under the overall supervision of the K-9 Commander.

D.2 - K-9 teams provide specialized law enforcement patrol service which may consist of, but is not limited to, the following:

- f. Providing public relations appearances and demonstrations.
- g. Providing service at any time the K-9 handler determines the K-9 can be effectively utilized.
- h. Rendering assistance to outside jurisdictions with the approval of the on-duty watch commander.

D.3 - It is recognized that situations may arise that do not fall within the provisions within this Standard Operating Procedure (SOP). In such cases, a standard of objective reasonableness shall be used to review the decision to use a K-9 team in view of the totality of the circumstances.

J. – The on-duty Watch Commander or the K-9 Unit Coordinator must approve all requests for on or off-duty K-9 assistance from outside agencies, subject to the following provisions:

- K-9 teams shall not be used for any assignment that is not consistent with this Standard Operating Procedure.
- The K-9 handler has the ultimate authority to decide whether the K-9 is to be used for a specific assignment.

S. – K9 Coordinator Responsibilities

- Reviewing K-9 deployment reports to ensure compliance with this Standard Operating Procedure and to identify training issues and other needs of the K-9 program.
- Maintaining accurate records to document K-9 activities.
- Ensuring all K-9 related activities have been properly scheduled, including continuous weekly training.
- Evaluating K-9 team performance and providing recommendations on program development to the K-9 Commander.
- In cooperation with a K-9 trainer, plan ongoing K-9 training and maintain accurate K-9 training record

SOP 224 – Outside Agency Assists:

The department makes every effort to assist any agency requesting reasonable assistance of any kind. Law enforcement agencies are given priority. Whenever the request requires an officer to leave the City of Longmont, prior approval of the watch commander or a field supervisor must be obtained, except in cases of an emergency. In emergency cases, the watch commander or field supervisor must be notified as soon as possible.

SOP 301 – Preliminary and Follow-up Investigations:

B.1. – While conducting any investigation, members must diligently protect the constitutional rights of all persons with whom they contact, specifically those rights concerning self-incrimination, legal counsel, search

MISC2017-0004

and seizure, and due process.

D.1.r – Conduct searches and collection of non-testimonial evidence through court ordered warrants or consent of persons involved;

Policy 301 – Code of Conduct:

E. – **Unbecoming Conduct** - members are to use reasonable judgment and refrain from conduct which reflects unfavorably on the department. This type of conduct includes that which:

1. brings the department into disrepute,
2. discredits the public service, or
3. reflects discredit upon the individual as a member of the department.

I.2 – Members are not to take police action which they know, or should know, is not in accordance with the law.

J – **Adherence to Laws** - Members are to obey the laws of the United States of America and of any state or local jurisdiction.

Colorado Revised Statutes and Colorado Peace Officer's Handbook:

Absent specific policies or SOPs, LPD refers to “the rules of criminal procedure” as the guideline for action by its members. The following statutes and advisements from the Officer's Field Manual are relevant to the incident at hand.

CRS 16-3-310-1– Oral advisement and consent prior to search of a vehicle or a person during police contact.

(a) Prior to conducting a consensual search of a person who is not under arrest, the person's effects, or a vehicle, a peace officer shall comply with paragraph (b) of this subsection (1).

(b) A peace officer may conduct a consensual search only after articulating the following factors to, and subsequently receiving consent from, the person subject to the search or the person with the apparent or actual authority to provide permission to search the vehicle or effects. The factors are:

- (I) The person is being asked to voluntarily consent to search; and
- (II) The person has the right to refuse the request to search.

(c) After providing the advisement required in paragraph (b) of this subsection (1), a peace officer may conduct the requested search only if the person subject to the search voluntarily provides verbal or written consent. Other evidence of knowing and voluntary consent may be acceptable, if the person is unable to provide written or verbal consent.

(3) If a defendant moves to suppress any evidence obtained in the course of the search, the court shall consider the failure to comply with the requirements of the section as a factor in determining the voluntariness of the consent.

3-200. Consent Searches – Criminal Procedure Guidelines and Officer Field Manual:

Consent to search an area – whether the area is in a building, on privately own land or in a

MISC2017-0004

motor vehicle, is unnecessary when a searched is authorized under any other guideline. Consent should be used with the knowledge that it is often subject to question after the fact...you should always attempt to obtain consent in writing because that will help you later in court if the consent is attacked or denied. Likewise, you should always get expressed consent rather than merely implied consent or acquiescence to your request.”

3-201. *Right to Refuse Consent – Criminal Procedure Guidelines and Officer Field Manual:* “...Persons not under arrest must be informed of their right to refuse consent prior to consensual search of their persons, the person’s effects, or a vehicle.”

Author’s note – this advisement, consistent with CRS 16-3-310, is specific to searches of persons and vehicles. However, clearly established law has placed the expectation of privacy attached to a home or residence equal to or greater than a person’s vehicle or effects.

3-203. *Consent Must Be Voluntary – Criminal Procedure Guidelines and Officer Field Manual:* “Courts will look at the totality of the circumstances to decide if consent was voluntarily given...to determine whether consent was given voluntarily (i.e. knowingly and intelligently) courts will consider all of the following factors:

1. Whether defendant was informed of his right to refuse consent;
2. Whether defendant was in custody and method and length of the detention prior to giving consent;
3. Conduct of the officer (did the officer make promises or use tactics to overcome defendant’s will?);
4. Defendants characteristics (the youth, education, intelligence of the person...)...

The court will analyze all of the above factors to determine whether the defendant’s will was overborne or his capacity for self-determination critically impaired.”

3-205. *Power to Consent – Criminal Procedure Guidelines and Officer Field Manual:* “You must take care to ensure that the person who gives you consent has the **power and authority** to consent to the search to a search of that location. This is sometimes difficult to ascertain because the power to consent to a search of property is not governed by normal property or agency law concepts. As a rule of thumb, the right of consent is governed more by the right of access and use than by ownership of the property...”

“More specifically, you can obtain consent from 1. The homeowner to search the home... On the other you will be unable to obtain a valid consent from 1. A landlord to search a tenant’s apartment or storage area.”

Constitution of Colorado, Article II, Section Seven – “The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures; and no warrant to search

MISC2017-0004

any place or seize any person or things shall be issued without describing the place to be searched, or the person or thing to be seized, as near as may be, nor without probable cause, supported by oath or affirmation reduced in writing.”

Constitution of the United States, Fourth Amendment – “The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.”

Summary:

On 5/10/17 Longmont Police Department K9 Officers Marquardt and Sawyer assisted Longmont Housing Authority staff in compliance searches of tenant residences at the Suites Housing Complex, 2000 Sunset Way, Longmont. On 6/5/17, it was alleged by a resident of the Suites that the K9 searches were conducted without the voluntary or informed consent of the residents of eight apartment units.

Searches on 5/10/17: Having previously observed and worked alongside Longmont Police Department (LPD) K9 Officers in the searches of the Briarwood Apartments in conjunction with Boulder County Probation, Longmont Housing Authority (LHA) Director of Operations Krystal Winship-Erazo contacted Officer Mike Marquardt to assess the possibility of using LPD K9 resources at another LHA property, the Suites. Ms. Erazo and Officer Marquardt eventually coordinated the date of May 10th, 2017 to conduct the K9 sniffs and searches of eight (8) units, some of which were alleged to possess and/or distribute narcotics. With the understanding that while operating within the city limits of Longmont he would not need further approval from the on-duty supervisor or K9 coordinator, Officer Marquardt arranged for himself and fellow K9 Officer Billy Sawyer to assist the LHA with a K9 presence and consent searches separate from the mandatory unit inspections. E-mail documentation supports Ms. Erazo’s understanding that residents “may need to grant access to the units” for the K9s to enter the units, but no specific definitions or explanations of this voluntary consent was documented in their communication.

On 5/10/17, in coordination with Krystal Erazo and Alma Collins of the Longmont Housing Authority, Officers Michael Marquardt and Billy Sawyer conducted K9 searches of multiple apartment units at the Suites at the invitation and authority of the LHA. In each resident contact, Ms. Erazo, with on-site Supportive Services Manager Alma Collins and either Officer Marquardt or Sawyer, would knock on the unit door and explain they were there for the monthly inspection and had invited the officers and K9s with them today. It was explained by Ms. Erazo to each resident the police were invited to make sure the building is safe and also to provide training to the LPD K9s. Ms. Erazo reported that some of the residents were nervous, but the general response was “yeah sure, no problem, or begrudgingly, or you know, wow, thanks...” Ms. Erazo reported the officer, sometimes Officer Marquardt or sometimes Officer Sawyer, would be at the back of the hall and stated it “was not intimidating, as much as saying an officer at the door is not intimidating,” but reported each resident gave consent for the LPD K9 to enter their unit. Ms.

MISC2017-0004

Erazo reported that in each interaction, after her advisement of the unit inspection, Officer Marquardt or Officer Sawyer would have a separate conversation with the resident explaining they were invited by the Longmont Housing Authority and needed permission to enter their residence.

While there is some dispute as to the number of units searched by LPD K9s, as proper documentation was not kept by the LHA or LPD members of the names, unit numbers, personnel involved, or order in which the searches were conducted, it is understood Officers Michael Marquardt and Billy Sawyer in combination conducted K9 searches of eight apartment units at the Suites, units # [REDACTED], and # [REDACTED], after the mandatory LHA unit inspection were completed by Ms. Erazo and Ms. Collins.

Not until a resident complaint was made to the Longmont City Council and subsequent media coverage of the alleged warrantless searches on 6/5/17, were any LDP members outside of Officer Marquardt and Officer Sawyer aware LPD K9 searches at the Suites had occurred. With limited knowledge of LPD activity specific to the Suites on 5/10/17, an Administrative Review of the incident was initiated by the LPD Professional Standards Unit Sergeant Garrett Boden. Sgt. Boden conducted initial interviews with LHA staff members and multiple residents prior to the request of a third-party agency to investigate the allegations at the request of the Longmont Chief of Public Safety.

[REDACTED] - [REDACTED] reported that she was not asked for permission by Krystal, Alma, or the Officer to search her home, explaining "they just walked in." Ms. [REDACTED] "felt like I could have said no, but I wouldn't have," and reiterated she was never given the opportunity to give consent.

[REDACTED] - [REDACTED] reported his unit was not searched and was never asked if LPD K9s could search his unit, nor was he presented with a consent form. Mr. [REDACTED] reported if asked, he felt like he could say no to the LHA and the LPD K9 Officers.

[REDACTED] - [REDACTED] reported that he "volunteered for a K9 search," explaining that training is an important thing. Mr. [REDACTED] initially could not recall if the Officer on scene explained if the search was voluntary, but then stated the Officer said the search was mandatory, but he "had no desire" to refuse.

[REDACTED] - [REDACTED] reports she left the facility to run errands until approximately 1200 hours. Upon her return, Ms. [REDACTED] found Alma and Krystal were standing outside her door, and when she approached her door she saw an LPD Officer and K9 in her living room. Ms. [REDACTED] reports Alma and Krystal told her the dog was training. Ms. [REDACTED] reported she was not aware the search was happening in her absence and was not asked permission for the LHA or the LPD to enter her unit, or provided a consent form. Ms. [REDACTED] reported she did not feel she could say no to the K9 search as they were already in her apartment.

MISC2017-0004

[REDACTED] - [REDACTED] reported he wanted the LHA and LPD out of his house, and the LHA or LPD did not ask for consent to search. Mr. [REDACTED] further reported he did not feel he could say no to the LPD assisted inspections, and was nervous due to his past involvements with the law and feared being evicted if he refused.

[REDACTED] - [REDACTED] reported he was not asked for permission and initially asserted his rights stating "you can't come in," but then did give permission for the search after he argued with Ms. Erazo. Mr. [REDACTED] explained that Ms. Erazo stated something to the effect of "we'll have you out of here," leading him to believe he would be evicted if he didn't allow the dog inside. Mr. [REDACTED] acknowledged he knew he could refuse the K9 search, but "in the back of [his] mind" knew he could be evicted if he didn't allow it. Mr. [REDACTED] explained he felt pressured to give permission. Mr. [REDACTED] reported he did not believe the housing agreement made him subject to search and seizure, and explained two weeks after the search and the dog "alerted" on his toilet he was called - down to the LHA office and was offered a voucher to move to another complex.

[REDACTED] - [REDACTED] reported his unit was inspected by the LHA staff as well as a LPD K9. Mr. [REDACTED] explained he did not remember the LHA or LPD asking for permission to inspect his unit, but did remember the K9s were involved in "police training" while at the Suites. Mr. [REDACTED] reported he did not sign a consent form, but did not feel as if he could say no to the LHA or LPD because he was living in government housing.

[REDACTED] -- In her statement made to 9News on 6/5/17, Ms. [REDACTED] stated "We have inspections to see if our place was clean, I opened the door and saw two cops and a K9. I refused to let the cops in but the owner said I had to. I had to step outside while they searched my place." In her statement to Sgt. Boden, [REDACTED] reported Ms. Erazo told her the K9 was in training and asked to come in, to which she replied no. Ms. [REDACTED] reported Ms. Erazo said they have to come in and "they pressured me to let them come in," referring to the LHA staff. Ms. [REDACTED] reported that the Officer did not ask her if he and the dog could come in and reported she felt she could say no, and did, but then Ms. Erazo let the K9 officer inside.

On 5/10/17, Ms. Erazo recalled a short and informal conversation regarding consent, understanding "if somebody really didn't want them in their units, that's cool..." but didn't specifically remember "having that part of the conversation." Ms. Collins recalls Officer Marquardt and Ms. Erazo explained that "as long as the landlord has invited the K9 and you guys are doing your inspection," the officer and the K9 could enter. It was Ms. Erazo's recollection that either Officer Marquardt or Sawyer would introduce themselves with each individual resident, explaining to the resident something to the effect of "we're here, Longmont Housing Authority invited us. We'd like to walk our dog through your unit. You know, we won't come in unless you say it's okay," while Ms. Collins reports it was never stated to her that residents couldn't refuse, but it was also never stated to her by Ms. Erazo or Officer Marquardt that residents could refuse. Ms. Collins herself, explained she did not adequately understand the residents could refuse until 6/5/17 when this was explained in an e-mail exchange with Ms.

Erazo.

Officer Marquardt's written statement referred to the LHA and explains he was "working within their authority and rights," while in his interview he articulated "we talked about the compliance of them, um, of what they do, their compliance part and we would stay separate so they could talk with them and then explain that we're there as a completely separate, voluntary and that the people could refuse to let us in." Officer Marquardt explained the LHA staff would make contact with the resident and gain consent while he waited a few doors down with his K9. Officer Marquardt explained that when Officer Sawyer arrived on scene, he explained to him the need for voluntary consent and described Officer Sawyer maintaining the same distance back from the door while the LHA staff made contact and gained consent for the K9 to search the units. Officer Sawyer confirmed this process, acknowledging he was back away from the door approximately 10-20 feet while the LHA staff "would be knocking on the doors kind of doing compliance checks and the obtaining consent to come inside with us."

When asked if they could hear the resident's consent for the K9 search being provided to the LHA staff, Officer Marquardt reported "I couldn't hear all their conversation," while Officer Sawyer reported "I could only hear bits and pieces of conversations" and didn't "recall much from the first one at all." When asked to verify if consent was given for the K9 search, Officer Marquardt stated "I was going off Krystal and Alma," while Officer Sawyer stated "I never heard anybody argue" and "I never heard anyone insinuate that they didn't want us in their apartment." After Officer Sawyer had arrived to assist, Officer Marquardt was still on scene and with Officer Sawyer back away from the door and when asked how much of the LHA interactions he would hear with the residents, he reiterated "some of them I could hear parts" and "I don't know exactly what I heard," but understood the residents contacted had provided consent for the K9s to search the unit.

In regards to the general process established for contact with the residents, Ms. Erazo and Ms. Collins report the officer, either Marquardt or Sawyer, would stay back away from the door while initial contact for the unit inspection and request for consent was obtained for the LPD K9 search, and then a separate conversation would take place between the resident and the Officer seeking consent. Officers Marquardt and Sawyer explained this second interaction, if it occurred with each resident, was not a formal conversation or explanation of consent, but as simple as asking if it was okay to bring the dog into the unit, but did not articulate the search was voluntary and the resident had the right to refuse. Both Officers Marquardt and Sawyer report no resident declined consent or entry of the K9s.

Resident [REDACTED] [REDACTED] alleged he initially denied entry by saying "you can't come in here," and was pressured to allow the police and K9 into his unit by LHA staff, to include the LHA and LPD attempting to forcing their way into his unit and an officer putting his foot in the door. In Mr. [REDACTED] initial contact with Sgt. Boden on 6/9/17, he did report a verbal conversation with LHA staff, but did not report any physical acts of pressure or coercion by the LHA or LPD. Ms.

Erazo reports Mr. [REDACTED] did not object to the K9 search, but did ask for a few minutes to prepare his unit and secure his two dogs. Ms. Erazo described this exchange as confrontational, but not forceful or physical. Ms. Collins described that Mr. [REDACTED] wife was in bed and had two small dogs to arrange for, asking why the dogs were there, when Ms. Erazo explained that "they're accompanying us." Ms. Collins didn't believe Mr. [REDACTED] had provided any denial of entry or communication that he didn't want the dogs there, but that "he wasn't happy." In his written statement, Officer Sawyer documented this exchange in description but not in name, describing "The male answered and immediately appeared defensive and wanted to know why the police were with them. Krystal and I explained why we were there... the male was asking to have about having 5 minutes to organize his belongings and collect his dogs before consenting to the search. He closed his door and came back out a few minutes later with his dogs and a female, at which point he consented to a search of his residence." Officer Sawyer documented "we went to apartment [REDACTED] where staff knocked on the door as I stayed down the hall with K9 Rudi. I heard them talk about the compliance check and notification of police on scene. I heard staff explain consent. I heard a male say it was ok but asked if they could finish with other apartments and come back later. Staff told the male that his apartment was the last inspection for the day. He agreed to exit his apartment. He closed his apartment door and exited a few minutes later with a female and two dogs. The male, [REDACTED], asked if he could watch while police were in his apartment and was told yes." In the specific allegation of forceful entry, Mr. [REDACTED] report is not consistent with the recollection of the LHA and LPD staff on scene.

Ms. [REDACTED] made allegation to the media that she had initially denied entry to the K9s stating "I refused to let the cops in but the owner said I had to" and was pressured to let the police search her residence by LHA staff. Ms. Erazo acknowledged "that initially [REDACTED] had said "no I don't want you guys to come in to my apartment," and explained to her that "we have to do our unit check, they're only here to make sure things are safe, you're not going to be in trouble." Ms. Erazo reported Officer Sawyer talked to her and Ms. [REDACTED] said "yeah that's okay" giving consent. Ms. Erazo denied this consent was coerced, while Ms. Collins reported when Ms. [REDACTED] opened the door she stated "they're not coming in here. I don't like police, I don't want police in here." Ms. Collins explained Ms. Erazo had a conversation with Ms. [REDACTED] it was suspicious that she didn't want police in there and while Ms. [REDACTED] did eventually consent to the K9 search, "there was definitely some pressure." While there was pressure applied by Ms. Erazo, Ms. Collins reported the officers didn't apply any techniques, pressures, or other attempts of coercion. Ms. Collins reported "I believe [Ms. [REDACTED]] understood what she was consenting to, but I don't believe she understood that she could say no," especially as Ms. Collins herself didn't fully understand the tenants could refuse. Ms. Collins reiterated the tenant's ability or right to refuse the K9 search was not properly communicated.

Officer Marquardt did articulate specific interactions with Ms. [REDACTED] after the searches were completed, but when asked to specify what he heard at initial contact and when consent was given he stated "I didn't hear all of it." Officer Marquardt did clarify that after the unit inspection was completed by LHA staff, Ms. [REDACTED] did give consent to run the K9 through her

MISC2017-0004

apartment. In Officer Sawyer's written statement, he describes the LHA staff making contact with Ms. [REDACTED], writing "I could not clearly hear all of the conversation. I was focused on making sure no one exited an apartment with another animal or snuck up on us from the hallway. Ofc Marquardt entered the apartment and did a fast safety check to make sure the K9 could not get into anything that may harm him. I was told I was clear to enter the apartment. As I walked past [REDACTED], I asked if she was sure it was ok that I entered her apartment. [REDACTED] nodded yes with an up and down head motion and said yes." In his interview, Officer Sawyer confirms that after consent was obtained by the LHA staff, Officer Sawyer reports he asked her "are you sure it's okay that, you know, we come inside, and she went like this with her head up and down and she said yes, and kind of went like this towards the door with her head pointed towards the door at the same time." Officer Sawyer reports he did not hear or see [REDACTED] provide any hesitation or denial of entry.

Of note, Ms. [REDACTED] reported to LHA staff she was on probation. Per Ms. Collins' e-mail from 5/10/17 outlining the inspection results (attached), Ms. Collins reports "dog alerted to substance in bedroom, [REDACTED] and [REDACTED] deny; had conversation with them, alerted her PO, will follow up with K-9 next month..." While probation status by Ms. [REDACTED] would be relevant to consent if known by the officers at the time, but this knowledge was not articulated by either Officer Marquardt or Sawyer.

Ms. [REDACTED] allegation the LHA and LDP K9 was in her apartment without her knowledge. Ms. Erazo reported "I don't believe that's true," explaining she did remember Ms. [REDACTED] was not home when she knocked and did let herself into the apartment to conduct the unit inspection but did not have the Officers search the unit with the K9. Ms. Erazo reported that at this point her memories were all starting to blend together and could not recall which Officer was with her at the door, or what order the units were searched in, but did not think the K9 searched Ms. [REDACTED] unit. Asked about Ms. [REDACTED] allegations, Ms. Collins stated "I had forgotten that she wasn't there but yeah, that's right, that's correct," explaining "we went in and did her inspection and the K9 officer went in with the dog." Ms. Collins confirmed that Ms. [REDACTED] was not there in the apartment to give permission or consent to enter her unit. Ms. Collins reported that while Krystal didn't provide any verbal statement to the Officer and K9, there was an element of approval, explaining "I think it was more of a kind of wave of the hand."

When asked if any other units were accessed when the resident was not at home, Ms. Erazo initially didn't think so, but when asked about Mr. [REDACTED] unit specifically, Ms. Erazo recalled "he was one of the fellas that we were, you know, we, we did go into his unit and there was..." and she "...did have the officers go in there because it was, that was one of the guys that I had, um, sent to the police with his name, date of birth and we were, the rumors were that he was dealing meth on site and so that was one I was really wanting to get some clarity on." Ms. Erazo reported Mr. [REDACTED] was not at home and she and Alma inspected his unit and found it be very clean and in good shape, and after they exited she waved the Officer and K9 in to conduct a search. Ms. Erazo explained that she didn't remember a specific conversation with the officer, or

MISC2017-0004

the identity of the officer, but did "remember explaining that this was one of the gentlemen that we were most concerned about..." Ms. Erazo couldn't remember the exact wording to the K9 Officer, but stated "I don't know what that action was. It was, I mean I think the understanding was that yes, I wanted them to enter and do the walk through." Ms. Erazo confirmed Mr. [REDACTED] was not home and "so we did go into his unit without his being there. And I, I didn't, I mean I, I do not believe that we were doing anything wrong. I felt like we invited the officers there, they were there on our behalf, it was to make sure that there weren't any drugs ..."

Ms. Collins confirmed that Mr. [REDACTED] in # [REDACTED] was not present. Ms. Collins reported that she was unsure of the order, whether the officer when in first or not, but did affirm that the Officer and the K9 did search Mr. [REDACTED] unit. Ms. Collins again didn't recall any specific exchange between Krystal and the Officer, explaining "there wasn't really like a big, you know, a, a conversation about, um, you know, what do we do if someone's not home. There was just sort of an assumption all the way around that they were going to go in." Ms. Collins reaffirmed that at this time she was unaware the residents could refuse the K9 search and clarified that Mr. [REDACTED] was not home and had no opportunity to provide consent or refusal to the K9 search.

When asked directly if he had entered unit # [REDACTED], or any other unit with his K9, when the resident was not at home, Officer Marquardt replied "not to my knowledge." When asked a second time for clarification that he did not enter a unit by himself or with his K9, without the knowledge or presence of the resident or tenant of that specific unit, Officer Marquardt stated "That's fine, yes." Officer Marquardt denied entering any unit without the resident present and denied any recollection of any resident finding him and/or his K9 in their unit and/or expressing surprise. When asked the same questions regarding Ms. [REDACTED], Officer Sawyer replied "No and I didn't, I never went on the second floor." Officer Sawyer confirmed that in his presence each unit contacted by LHA staff had a resident answer on site, explaining "I don't recall there, the ones that I went to they were, um, the residents were there." When asked if he was provided access to a unit when the resident was not home, Officer Sawyer replied "No." Officer Sawyer explained that if Ms. [REDACTED] was alleging she returned home 1200 hours, he did not arrive at the Suites until 1130 hours, and would have still been in the parking lot or lobby when this search was alleged to have occurred.

Policy and SOP Review: After the initial collection phase of the investigation was complete, a review was conducted to match the substantiated conduct of the LPD Officers on scene to compliance with of LPD Policies and Standard Operating Procedures.

LPD K9 SOP-214 outlines the use of K9s, requiring the approval of the K9 Coordinator or on-duty commander for use to outside jurisdictions, but acknowledges the K9 handler has the "ultimate authority to decide whether the K9 is to be used for a specific assignment" and the "standard of objective reasonableness shall be used to review the decision to use a K9 team in view of the totality of circumstances." SOP-214 also establishes the K9 Coordinators responsibility in "reviewing K9 deployment reports to ensure compliance with this SOP" and

MISC2017-0004

"maintaining accurate records to document K9 activities."

Although not found in policy or Standard Operating Procedures, the established practice of the Longmont Police Department to establish voluntary consent is verbal consent documented in the criminal report or CAD notes or use of the standard consent to search form, which is readily available and in use. While there is a consensus to the practice, the LPD does not have a documented and specific policy addressing how consent to search should be obtained or documented. Multiple SOPs address the need to obtain consent prior to search, there is no enumeration to agency expectations or standards, leaving members with the general advisements to "follow the rules of criminal procedures" and "diligently protect the constitutional rights of all persons."

LPD Code of Conduct-Policy 301 establishes the expectation that members are to "use reasonable judgement" and "are not to take police action which they know, or should know, is not in accordance with the law."

Training: Absent clear Policies or SOPs directing consent procedures, LPD members are reliant on in-service training, the understanding of best practices, and the knowledge of clearly established law. LPD as an agency provided recent, relevant, and specific in-service training on Search and Seizure law in December of 2016, at which both Officers Marquardt and Sawyer were present. This training specifically addressed state and federal caselaw addressing consent searches, and referenced verbatim CRS 16-3-310-1, "Oral advisement and consent prior to search." Again, absent documented policies or SOP, LPD members are responsible to ensure their actions are consistent with prior training, experience, and best practices established by the state of Colorado.

Supervision of K9 Unit: Sergeant Andy Feaster, the K9 Coordinator for LPD, had been previously aware of the request as far back as November of 2016, but was not made aware of any substantive coordination or planning as to the purpose and scope of the searches that occurred on 5/10/17, nor had he provided approval or authorization. Sgt. Feaster was not involved in the planning, arrangement, or facilitation of K9 training related to 5/10/17 and acknowledged due to his other responsibilities had not been in regular attendance at K9 trainings or provided regular review of K9 training and deployment logs.

Reporting, Credibility, and Integrity: Neither Officers Marquardt nor Sawyer completed detailed or adequately specific documentation within a timely manner subsequent to the K9 Searches at the Suites on 5/10/17. Officer Marquardt's training log was not entered until 6/9/17, while Officer Sawyer's deployment log was entered on 6/9/17. Officers Marquardt and Sawyer reported the search of only three units each, for a total of six, while the totality of reporting demonstrates eight units were searched. As no specific records were kept by LHA or LPD staff as to which officers searched which units, the limited available documentation and investigation has not reconciled this gap in information. While Officers Marquardt and Sawyer could

MISC2017-0004

remember some events with clarity but “could not recall” others, this disconnect is not abnormal when addressing cold events, specifically when such events are not documented in reasonable timeframes. During the interviews with LHA or LPD staff, there were no observed or articulated acts of attempts at deception or dishonesty. However, the lack of detail and communications inconsistent with the seriousness of the alleged conduct, coupled with the observed lack of awareness by Officers Marquardt and Sawyer of the ramifications of the alleged conduct expose a concern of commitment to forthrightness that could not be adequately addressed in this investigative action.

The lack of contemporaneous and specific reporting and/or recording of the K9 searches by residents, LHA Staff, and LPD members is specifically concerning, as it limits its accuracy, usefulness, and effects the credibility of the information. Predominately, the reports by the involved residents has remained consistent in general terms, but specific recollections were collected more than five weeks after the events in question from all involved. While some specifics are not substantiated and the order and assignment of events are not conclusive, the base facts regarding the level of voluntary consent communicated and obtained by the eight units and residents involved maintain consistency and credibility.

Findings:

By their own admission, Officers Marquardt and Sawyer assisted the Longmont Housing Authority, a non-law enforcement agency, in participation of K9 Searches without prior approval of the K9 Coordinator or on-duty watch commander. As K9 handlers are provided the “ultimate authority” to determine how their K9s are used, Officers Marquardt and Sawyer are in violation of SOP-214. Further, as Sgt. Andy Feaster maintains the role and responsibility as the K9 Coordinator, charged with reviewing K9 deployments to ensure with compliance with standard operating procedure. Sgt. Feaster acknowledged he was unaware of the K9 deployment at the Suites on 5/10/17 did not regularly review K9 deployment logs.

The allegation that Longmont Police Officer Michael Marquardt violated SOP-214 by providing K9 services at the Suites on 5/10/17 without supervisor approval is **SUSTAINED**.

The allegation that Longmont Police Officer Billy Sawyer violated SOP-214 by providing K9 services at the Suites on 5/10/17 without supervisor approval is **SUSTAINED**.

The allegation that Longmont Police Sergeant Andy Feaster violated SOP-214 by failing to adequately supervise K9 services, training, and documentation stemming from the incidents at the Suites on 5/10/17, is **SUSTAINED**.

Based on the statements and interviews with LHA Staff and Officers Marquardt and Sawyer, while “consent” was discussed the responsibility of effectively communicating voluntary consent and obtaining that consent was seceded from the lawful authority and responsibility of the

MISC2017-0004

Longmont Police Department to the civilian staff of the Longmont Housing Authority. As Officer Sawyer and Officer Marquardt acknowledge, they relied on the LHA staff to obtain consent for Law Enforcement K9 searches and further acknowledge they could not adequately hear or articulate how that consent was communicated to residents and obtained by LHA staff, any voluntary consent obtained was inconsistent with clearly established law, state statute, and best practices of law enforcement's application of the 4th Amendment protections against unreasonable search and seizure. This described and substantiated conduct is in violation of Longmont Police Department Policy 301 – Code of Conduct – in taking “police action they know, or should know, is not in accordance with the law.”

The allegation that Longmont Police Officer Michael Marquardt conducted at least three premises searches at the Suites on 5/10/17 without a warrant, warrant exception, or valid voluntary consent is **SUSTAINED**.

The allegation that Longmont Police Officer Billy Sawyer conducted at least three premises searches at the Suites on 5/10/17 without a warrant, warrant exception, or valid voluntary consent is **SUSTAINED**.

While the above sustained policy violations demonstrate conduct inconsistent with 4th Amendment protections, no finding of a civil rights violation was made, as such findings are the domain of the Courts of review as the established checks and balances to executive powers.

Findings of this investigation were forwarded to Weld County Sheriff Steve Reams, Weld County Undersheriff Donnie Patch, Longmont Chief of Public Safety Michael Butler, and Longmont Police Internal Affairs Sergeant Garrett Boden.

Mark Pollard