BEFORE THE HEARING OFFICER
CIVIL SERVICE COMMISSION
CITY AND COUNTY OF DENVER, COLORADO
CASE No. 18 CSC 04

In the matter of:

Kevin Edling (P95025), Lieutenant in the Classified Service of the Denver Police Department,
Petitioner-Appellee.

HEARING OFFICER'S RULING

The Denver Deputy Director of Safety (DDOS), Jess Vigil, issued a Departmental Order of
Disciplinary Action against the Appellee/Petitioner (Appellee) on June 12, 2018 for a violation of
an appeal of the DDOS' decision on June 25, 2018.

An appellate hearing was held on October 23 and 24, 2018. Officer Carrie Clein;
Appellee/Petitioner's Attorney, Brian Reynolds; and Assistant City Attorney for the City and
County of Denver ("Appellant"), Richard A. Stubbs attended both days of the hearing. The
Appellee was absent, by choice, for part of the first day of the hearing.

I. Procedure

The parties stipulated to the admission of all exhibits. This included Appellant’s exhibits 1-b
through 1-oo, and 2-6, and Appellee’s exhibit 7. The parties agreed to remove Exhibits 1a and 1-
d(4).

Witnesses testifying at the hearing were as follows:

1. Commander Mike Battista, Denver Police Department Commander of the Conduct
   Review Division
2. Corporal Mark Moore
3. Sergeant Kevin Kirby

4. Sergeant Tony Martinez

5. The Appellee

The Hearing Officer reviewed five police body camera videos during witness testimony. The parties presented the videos numerous times and at varying speeds. This hearing officer also requested that parts of videos be replayed or stopped at specific points for review. The videos reviewed during the hearing were exhibit 1-z (Sergeant Kevin Kirby), 1-aa (Corporal Mark Moore), 1-bb (Officer Peltier), 1-cc (Officer Jarrod Tinnin) and 1-dd (Sergeant Josh Valerio).

On October 24, 2018, the Appellant indicated that the names in exhibit 1-v should have been redacted. The parties stipulated to replacing the original exhibit 1-v with a redacted version.

After the hearing and in preparation for this decision, this Hearing Officer reviewed the exhibits, to include the body camera videos, all pleadings and the three pads of notes she took during the hearing.

II. Issues

The Appellee raised the following issues:

1. The DDOS made findings that were inconsistent with the Denver Police Department Operations Manual and Denver Police Department Rules and Regulations.

2. The factual findings of the DDOS were inconsistent with the police cam videos of the incident, and therefore not supported by the weight of the evidence.

3. Even if supported by the evidence, the decision of the DDOS is contrary to what a reasonable person would conclude from the record as a whole.

4. The decision of the DDOS was arbitrary and capricious, violates the equitable principle of fundamental fairness and exceeded his authority.
5. The discipline imposed by the DDOS was excessive, disproportionate and inconsistent with The Denver Police Department Discipline Handbook.

6. The DDOS failed to consider mitigating circumstances as required by The Denver Police Department Discipline Handbook.

III. Findings of Fact

Based on the evidence presented, the Hearing Officer makes the following factual findings. On April 28, 2017, the Appellee was the Lieutenant in charge of District 6. On that date at around 0900, the Appellee heard radio traffic regarding a stolen car. Detectives from the Metro Auto Task force had spotted a stolen car earlier in the day but had lost sight of the vehicle. At approximately 0900, Sergeant Sconse, a member of the Metro Auto Task Force, spotted the stolen vehicle parked in the Stout Street alley around the 2100 block of California. The Stout street alley runs directly behind Urban Peak, a facility that services homeless youth and young adults in the Denver area. Sergeant Sconse reported that two suspects occupied the stolen vehicle.

The Appellee directed uniformed street officers and motorcycle officers to assist in the contact of the stolen vehicle. Sergeant Sconse, who was not in uniform, asked if he could take down the suspect at gun point. The Appellant told him “to make the call”.

The Appellee responded to the scene in the alley. When he arrived, he saw bicycle officers peddling away from Urban Peak chasing a suspect. At that point, nobody had been arrested. The Appellee got out of his vehicle. He checked on Sergeant Sconse and started to walk around the area.

The Appellee received a radio call for help in the alley. He headed back to Sergeant Sconse. A crowd of 10-20 individuals had begun to form at the scene in the alley. The crowd was agitated. Bicycle officers were using their bicycles as barriers against the crowd. Several individuals were
yelling at the officers.

A short distance from the stolen car, officers were trying to arrest one of the individuals from the crowd. A second individual from the crowd attempted to interfere. The individual who officers were trying to arrest ran out of the alley and around the corner along the side of the Urban Peak building. He headed towards the front door of Urban Peak. Officers pursued him. The Appellee and Corporal Moore walked out of the alley and in the direction of the chase. The Appellee’s radio went off with an alert tone. This signified a “code 10”, which means officers in need of help.

Several individuals were standing around the area of the front door of Urban Peak, which was located on the corner. Two of the officers chasing the individual took the individual down on a large patch of dirt/grass on the side of the Urban Peak building between a tree and the street. This was located near the entrance. An individual, running by the scene of the arrest, punched one of the officers, Sergeant Conover, in the back of the head. More parties started running up towards the area around the front door of Urban Peak.

A few individuals gathered on the dirt/grass next to the right of the arrest and near the sidewalk. One of these individuals was an “unidentified male” (UM) dressed in a hoodie. He was carrying a back pack and a skateboard.

Sergeant Kirby, a motorcycle officer, responded to the area around the front door of Urban Peak. He picked up a backpack he saw lying on the ground. UM started to yell at him about picking up the backpack. Sergeant Kirby and another officer stepped between the officers making the arrest and the individuals on the dirt/grass, to include UM.

Sergeant Kirby focused on UM because he perceived this action to be aggressive. In addition, UM could have used the skateboard he was carrying as a weapon. UM was about 5 to 6 feet away from the scene of the arrest. Sergeant Kirby yelled “back up” several times at UM in a very loud and commanding voice. UM refused. Sergeant Kirby moved forward, almost coming chest to
A female staff member from Urban Peak got between Sergeant Kirby and UM. Sergeant Kirby testified that this is what he hoped would happen. He wanted the workers at Urban Peak to help control their residents.

UM backed up onto the sidewalk in front of Urban Peak. Another young, white male in a maroon hoody yelled loudly that UM didn’t do anything. Officer Kirby did not arrest UM or the young man in the maroon hoody. He resumed his position on the dirt/grass.

The Appellee arrived at the front part of the Urban Peak building just as Sergeant Kirby yelled at UM to “back up”. He also saw two officers taking a suspect down. As the Appellee was walking up the sidewalk, a fourth “code 10” alert went off. He put his hand on his radio.

Another young, white male got in between the female staff member and UM. A young, African American male was standing on UM’s left side and holding on to UM’s shoulder. UM dropped his backpack and skateboard. The white male put his arms around UM, moving him backward. UM’s feet were one in front of the other. UM’s balance was on his back leg. The African American male released his grip on UM’s shoulder but turned his head towards UM speaking to him. What was said is unknown.

UM struggled to try to get released from the white male. UM twisted towards his right, his right hand coming up to shoulder level. UM’s right fingers were bent at the second joint and his thumb is straight up by his fingers. The fingers do not touch the palm. UM did not attempt to hit, punch or kick the white male.

At the same time Sergeant Mark Valerio and Officer Jarrod Tinnin arrived at Urban Peak. They rode their motorcycles up onto the sidewalk in front of the entrance. One of the officers sounded his horn, which was extremely loud. Sergeant Valerio stopped his motorcycle about 5 feet in front of UM and the white male holding him. Officer Tinnin stopped his motorcycle to the right of
Sergeant Valerio and a little further back. Corporal Moore was standing just to the right of Officer Tinnin on or near the sidewalk. The Appellant took out his pepper spray and shook it. He yelled “back up” at UM.

UM broke free of the white male, who continued to hold on to his right shoulder. He came forward, still pulling away from the white male. He transferred his weight to his front leg, taking a step forward, in the direction of Sergeant Valerio.

UM continued to push the white male out of the way. His right hand dropped down to his waist, the fingers remaining in the same position. The white male was still holding on to his right shoulder. Simultaneously UM looked up and appeared to see Sergeant Valerio. UM then looked to his left. The Appellee came around Corporal Moore with his left hand extended forward and his right holding his pepper spray. The Appellee put his left hand on UM’s chest, brought his right hand up and deployed his pepper spray. The Appellee hit in the face with the pepper spray. The white male holding UM also got hit by the off spray.

The entire incident, from the time Sergeant Kirby pushed UM back to the time the Appellee deployed his pepper spray, took less than a minute.

IV. Conclusions of Law

Denver Civil Service Rule 12 § 9(B)(1)(a) states that:

Hearing Officers shall not substitute their judgement for that of the Executive Director of Safety concerning policy considerations underlying the discipline, to include the interpretation of Departmental Rules and Regulations, and may only reverse or modify the Manager’s decision concerning policy considerations when it is shown to be clearly erroneous. Hearing Officers shall not substitute their judgement for that of the Executive Director of Safety in determining the appropriate level of penalty to be imposed for a
sustained violation, ad may only modify the disciplinary penalty when it is shown to be clearly erroneous.”

The burden of proving that the DDOS was clearly erroneous lies with the officer seeking the reversal of the order. Choice Johnson v. Civil Service Commission of the City and County of Denver, 417 P. 3d 963 (Colo. App. 2018). A Hearing Officer may deem a “Departmental Order of Disciplinary Action” to be “clearly erroneous” under the following circumstances:

“i. The decision, although supported by the evidence, is contrary to what a reasonable person would conclude from the record as a whole;

ii. If the Manager fails to follow the applicable Departmental guidelines, rules or regulations, an applicable matrix or its associated guidelines, and absent such failure the discipline imposed would not have resulted; or

iii. If the Manager otherwise exceeds his authority.” Denver Civil Service Rule 1259(B)(1)(c).

Were the findings of the DDOS inconsistent with the Denver Police Department Operations Manual and Denver Police Department Rules and Regulations?

In Graham v. Connor, 490 U.S. 386, 109 S.Ct.1865, 104 L.Ed. 2d 443 (1989), the United States Supreme Court determined that use of excessive, non-deadly force by law enforcement officers fell under the provisions of the Fourth Amendment. The Fourth Amendment guarantees citizens the right “to be secure in their persons...against unreasonable seizures” of the person. “The ‘reasonableness’ of a particular seizure depends not only on when it is made, but also on how it is carried out.” Graham, infra. At 395, referencing Tennessee v. Garner, 471 U.S., 105 S.Ct.169 (1985), 7-8. “Determining whether the force used to effect a particular seizure is ‘reasonable’
under the Fourth Amendment requires a careful balancing of the ‘nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake.” Graham, supra. at 396, citing Garner, infra. at 8, quoting United States v. Place, 462 U.S., 703 (1983).

The standard set forth in Graham requires that an “...officers’ actions must be ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, ad its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.” Graham, supra., 387.

Graham sets forth the minimum standard by which the reasonable use of force in law enforcement is to be evaluated. However, individual Police Departments are free to adopt a policy that applies more stringent standards than the baseline constitutional standard. Johnson, supra., 972, referring to Turney v. Denver Civil Service Commission of the City and County of Denver, 222 P. 3d 343 (Colo.App. 2009), 350; Harris v. City of Colorado Springs, 867 P. 2d 217, 219 (Colo. App. 1993), 219. The Denver Police Department adopted a more stringent policy. Their policy is codified in Denver Police Department RR-304 (Respondent Exhibit 2) and Denver Police Department Operations Manual 105.1 (Respondent’s Exhibit 3).

Part of that policy concerns the use of chemical agents, such as the OC spray used here. The use of chemical agents is specifically governed by Denver Police Department Operations 105.1(6)(b). In addition, the Denver Police Department Crowd Control Manual (to be applied to spontaneous event management per Denver Police Department Directive re: Denver Police Department Crowed Control Management dated October 19, 2011, Exhibit 5 p.5-1) talks about the use of force in crowd control situation. It indicates that chemical agents should not be used in
situations where crowd behavior involves physical intimidation, verbal non-compliance or passive resistance. (Exhibit 5 p. 5-17)

The appellee cites the use of force standard set forth in C.R.S. § 18-1-707 as being controlling in this case. That standard applies to the criminal law and exempts users of force from criminal liability in some circumstances. The Denver Police Department, however, adopted a more stringent use of force policy, which they are entitled to do. Further, C.R.S. § 18-1-707 is inapplicable because it applies to situations where a suspect is being arrested or trying to escape. UM was neither being arrested or trying to escape. Therefore, this hearing officer does not find C.R.S. § 18-1-707 applicable in this situation.

The DDOS found that the Appellee violated the Denver Police Department RR-306 by using the standards set forth in the Denver Police Department Operations Manual 105.1 and 105.3(6). He clearly sets this out in the “Departmental Order of Disciplinary Action”. (Exhibit 1-w, p. 3-4). These rules and policies govern the use of force by the Denver Police Department and must be used by the DDOS to evaluate use of force claims. After setting out the standard in the “Departmental Order of Disciplinary Action” (Exhibit 1-w, infra.), the DDOS clearly discusses the facts in terms of their applicability to the standards.

The DDOS was not “clearly erroneous” in his application of the Denver Police Department Operations Manual and Denver Police Department Rules and Regulations when evaluating this situation. Nor is there any evidence to support the claim that his evaluation was inconsistent with those rules. The DDOS applied the appropriate rules and policies to the claim of excessive use of force.

Were the factual findings of the DDOS inconsistent with the police cam videos of the incident, and therefore not supported by the weight of the evidence?
The DDOS found that “At the time the OC spray was deployed, UM posed no credible threat to anyone.” He found that UM did not raise his hands in a “threatening” manner just prior to the deployment of the pepper spray. The DDOS found that “The BWC footage... does not support Lieutenant Edling’s claims.”

This Hearing Officer watched the police videos in detail. In fact, a majority of the hearing was based on the video evidence, as are this Hearing Officer’s factual findings above. While this Hearing Officer found that going frame by frame helped identify some detail, it skewed what was occurring from a “totality of the circumstances” viewpoint. Reviewing each video continuously and considering the videos as a whole helped gain some perspective.

In looking at the videos, this Hearing Officer makes the following significant observations:

1. Sergeant Kirby yelled “back up”, and shove UM back.
2. A female staff member got between Sergeant Kirby and UM. UM did not try to get around her.
3. Another young, white male got in between the female staff member and UM.
4. A young, African American male stood on UM’s left side and held on to UM’s shoulder.
5. UM dropped his backpack and skateboard.
6. The white male put his arms around UM, moving him backward.
7. A struggle ensued. UM is tried to break free of the white male, but he did not hit or kick to do so.
8. As a result of the struggle, UM’s right hand went up, and then came back to his waist as he broke free.
9. It is reasonable to assume that, from a distance, UM’s hand might have looked like
it was in a fist.

10. UM’s right hand never changed position.

11. To regain his balance, UM took a step forward.

12. UM appeared to see the motorcycle officers.

13. UM immediately turned his head to his left, where the Appellee approached with pepper spray.

This hearing officer agrees with the DDQS that “The BWC footage...does not support Lieutenant Edling’s claims.” UM’s raised his right hand, but it was not raised as a threat. UM raised his hand because of the struggle he was having with the white male. Likewise, UM took a step forward in the direction of the motorcycle officer to regain his balance after his left side broke free from the white males’ right hand and he turned around. Based on these facts, it is not reasonable to assume that UM’s actions posed a threat. Neither the raising of UM’s hand nor the taking of a step forward were aggressive acts towards law enforcement.

This Hearing Officer finds that the DDOS’ findings are not inconsistent with the videos, and that his findings were supported by the weight of the evidence. Therefore, the DDOS was not clearly erroneous.

*Even if supported by the evidence, was the decision of the DDOS is contrary to what a reasonable person would conclude from the record as a whole?*

The situation that ultimately developed in this case was unusual. Sergeant Martinez testified that they “don’t get too many calls like this.” and that the two suspects in the stolen car “kicked up a hornet’s nest.” The Appellee testified that he had only one other situation like this one. The crime scene here quickly expanded to three separate locations. The code 10 alert tone kept going
off and District 6 was running out of officers to assist. Four arrests were made, two of which involved a member of the crowd.

It is very clear that the Appellee, as the Lieutenant in charge, had a lot to deal with in this stressful, rapidly evolving situation. While watching and listening to the videos during the hearing, the Appellee stated that his “blood pressure raised twenty points just hearing the tone.” While this Hearing Officer is sympathetic to the situation in which the Appellee found himself, she also recognizes that it is during these unique situations that policies and procedures become more important. Police department policies, procedures and rules have been designed and enacted to guide law enforcement officers, especially in the worst of situations.

The Appellee arrived at the scene in front of Urban Peak just as Sergeant Kirby was yelled at UM to “get back”. He saw nothing prior to that time. As the Appellee approached the scene, he also observed officers taking down a suspect. The alert tone went off once if not twice and, as the Lieutenant in charge, the Appellee needed to pay attention. This Hearing Officer concludes from these facts that the Appellee’s attention was not entirely focused on the situation with UM.

The position and conduct of other officers on scene supports a finding that the Appellee violated department policy. Corporal Moore ended up to the right of Officer Tinnin, when Officer Tinnin and Sergeant Valerio drove up to the scene. Sergeant Valerio and Officer Tinnin were on their motorcycles directly in front of UM. Sergeant Valerio was about five feet away from UM. Corporal Moore did not appear to feel it was necessary to take any action against UM, as he took no action. After riding their motorcycles up to the situation with UM, neither Sergeant Valerio or Officer Jarrod took any action. All three officers were in a better situation to see and evaluate the situation than the Appellee. The video and testimony both show that several other officers were closer to UM. In fact, the Appellee had to go around Corporal Moore to get to UM to deploy his pepper spray.
The Appellee asserts that Sergeant Valerio pulled his motorcycle too close to UM, and that he was not safe. Based on that and UM’s actions, the Appellee felt it necessary to deploy his pepper spray to prevent an injury to Sergeant Valerio. The Appellee further testified that this incident was really Sergeant Valerio fault, as he put himself in danger. This Hearing Officer does not agree with the Appellee’s logic.

The Appellee testified that the motorcycle officers rode up to UM as a show of force, which is a technique used in crowd control. While Sergeant Valerio may have pulled up too close to UM, that was Sergeant Valerio’s action and not the action of UM. Further, the Appellee did not give Sergeant Valerio and Officer Tinlin a chance to control the situation. Even if the motorcycle officers ultimately needed assistance, Corporal Moore was standing right next to them. The Appellee acted too quickly. It is likely that the sounding of the loud horn and the presence of the officers on their motorcycles would have de-escalated the situation, as it was intended to do.

UM did not act in a manner that would indicate he intended to injure himself or a third party. UM was not using violent or harmful action against the white male. He was not threatening or attempting physical harm or attempting to interfere with an arrest. From the record before this Hearing Officer, it appears that UM dropped his backpack and skateboard because of the white male’s actions rather than because of the officer’s actions. Even if these acts are considered “posturing”, those acts were not directed at an officer. Further, it is not reasonable to conclude that when UM raised his right hand and ultimately stepped forward, that he was doing so as an act of aggression.

Sergeant Kirby testified that in his interaction with UM, he would classify UM’s level of resistance as vacillating between “psychological intimidation” and “verbal non-compliance” as defined by Denver Police Department Operations Manual 105.1 (4)(b)(1), and (2) Commander Battista concurred with those classification. Sergeant Martinez, the officer who did the initial use

This Hearing Officer agrees that UM’s behavior at various times during the entire incident vacillates between “psychological intimidation” and “verbal non-compliance” as defined by Denver Police Department Operations Manual 105.1 (4)(b)(1) and (2). This Hearing Officer also agrees that “defensive resistance”, as defined by Denver Police Department Operations Manual 105.1 (4)(b)(4), does not describe UM’s actions. This Hearing Officer specifically finds that UM’s behavior does not constitute “active aggression” as defined by Denver Police Department Operations Manual 105.1 (4)(b)(1)(5).

The Denver Police Department Operations Manual, 105.1 (4)(b)(1)(5) defines active aggression as follows:

Active Aggression-A threat or overt act of an assault, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to a person is imminent.

UM’s actions did not constitute a “threat or overt act of an assault”. UM’s actions were part of a non-violent struggle with the white male, and not directed at a law enforcement officer. Thus, UM’s actions do not reasonably indicate that an assault was imminent. Further, UM was being physically restrained by the white male, who was still holding on to his right shoulder at the time the Appellee deployed the pepper spray.

The “Denver Police Department Crowd Management Matrix” indicates that a chemical agent
should not be used on parties engaging in psychological intimidation, verbal non-compliance or passive resistance (Exhibit 5, p. 5-17). Further, there has been no articulated reason why the Appellee needed to deploy his pepper spray to de-escalate the situation with UM. The use of the pepper spray in this situation was not appropriate.

Sergeant Martinez testified that the use of pepper spray was effective. While true, the effectiveness of the spray has little to do with the question of the propriety of its use. This Hearing Officer perceived that Sergeant Martinez employed an “ends justified” analysis because he considered the spray’s effectiveness to help determine whether the Appellee’s action was “objectively reasonable”. Based on the policies and procedures of the Denver Police Department and the law, however, the ends do not justify the means. The use of force must be evaluated upon the “totality of the circumstances” that the officer faced at the time. Whether the remedy worked is not irrelevant.

This Hearing Officer finds that Sergeant Martinez’s evaluation of the situation was not “reasonable”. Even if this Hearing Officer were to find that Sergeant Martinez’s conclusion was reasonable, there was no evidence presented indicating that Commander Batista, Chief White and the DDOS were “unreasonable” in their evaluations and conclusions.

*Was the decision of the DDOS arbitrary and capricious, in violation of the equitable principles of fundamental fairness and in excess of his authority.*

There is nothing in the evidence to suggest that the decision of the DDOS was arbitrary and capricious, in violation of the equitable principles of fundamental fairness and in excess of his authority. The DDOS relied on the facts and applied the appropriate standards set forth by the Denver Police Department.
Was the discipline imposed by the DDOS excessive, disproportionate or inconsistent with The Denver Police Department Discipline Handbook?

The Appellee presented no evidence regarding the disproportionality of the penalty imposed, and thus failed to meet his burden. The DDOS applied the correct Conduct Category to the Appellee’s use of force and applied discipline well within the presumptive range. Thus, this Hearing Officer finds that the discipline imposed by the DDOS was not excessive, disproportionate or inconsistent with the Denver Police Department Discipline Handbook.

Did the DDOS fail to consider mitigating circumstances as required by The Denver Police Department Discipline Handbook?

The Appellee’s record is exemplary. He has been awarded many commendations during his career. He has only received written reprimands, and those have been largely related to his driving. This is the Appellee’s first disciplinary action. In addition, the Appellee is a military policeman who has been deployed during his employment with the Denver Police Department. This Hearing Officer has no doubt that he was and continues to be an excellent police officer. His record is the kind of record one would expect to see from someone who has been promoted to the rank of Lieutenant.

With elevated rank comes elevated expectations and responsibilities. As the DDOS stated in the Departmental Order of Disciplinary Action, “As a command officer, he should lead by example. His actions here sent the wrong message to the officers under his command.” (Exhibit 1-w, p. 6). This Hearing Officer agrees with this statement. The Appellee’s elevated rank puts...
him in the position of not just a leader, but a commander of men and women. He must be circumspect in his actions as they may affect the men and women in his command. Therefore, the DDOS was not unreasonable in finding there were "...no significant aggravating or mitigating factors in this case that would justify a penalty outside of the presumptive range." (Exhibit 1-w, p. 6). Further, Pinder v. Vigil, 14CSC02A (Civil Serv. Commissioners 4/14/15), 11 states that:

_The fact that the EDOS may not have considered everything the appellant believes to be a mitigating factor or the EDOS failed to mitigate the discipline even though the mitigating factors were present does not make the EDOS’s disciplinary decision clearly erroneous._

This Hearing Officer finds that there is no indication the DDOS failed to consider the Appellee’s record, and that the DDOS’ failure to use the Appellee’s record to mitigate the sentence was not “clearly erroneous”.

**V. Order**

This Hearing Officer concludes that the DDOS was not clearly erroneous in his findings, nor was he clearly erroneous in his application of penalty. Therefore, the Order of the DDOS is affirmed.

DATED: November 27, 2018

By:

Carrie H. Clein, Hearing Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of November 2018, a true and correct copy of the
foregoing **Order** was served by email transmittal addressed to the following:

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