CCRB INVESTIGATIVE RECOMMENDATION

Investigator:	Team:	CCRB Case #:	☐ Force ☐ Discourt. ☐ U.S.
Miriam Lynch	Squad #09	201507565	☑ Abuse ☐ O.L. ☐ Injury

Incident Date(s)	Location of Incident:	18 Mo. SOL	Precinct:
Thursday, 09/03/2015 6:00 PM	§ 87(2)(b)	3/3/2017	40

Date/Time CV Reported	CV Reported At:	How CV Reported:	Date/Time Received at CCRB
Sun, 09/06/2015 2:59 PM	CCRB	Call Processing System	Sun, 09/06/2015 2:59 PM

Complainant/Victim	Type	Home Address
[redacted]	[redacted]	[redacted]

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Staple	14749	943844	PSA 7
2. POM Pablo Flores	30849	953866	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A . POM Daniel Staple	Abuse: PO Daniel Staple stopped § 87(2)(b)	A . Exonerated
B . POM Pablo Flores	Abuse: PO Pablo Flores stopped § 87(2)(b)	B . Exonerated
C . POM Pablo Flores	Abuse: PO Pablo Flores entered and searched § 87(2)(b)	C . Unsubstantiated
D . POM Daniel Staple	Abuse: PO Daniel Staple entered and searched § 87(2)(b)	D . Unsubstantiated
§ 87(4-b) § 87(2)(g)	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

Case Summary

On September 3, 2015, at approximately 3:00 p.m. § 87(2)(b) was with his brother § 87(2)(b) in front of § 87(2)(b) in the Bronx, a NYCHA building where § 87(2)(b) lives. § 87(2)(b) approached the front entrance of the building first, and he was stopped by PO Daniel Staple and PO Pablo Flores, both of PSA 7, **(Allegation A** and **Allegation B)**. PO Staple is the Field Intelligence Officer of PSA 7, and he had been looking for § 87(2)(b) in relation to an investigation into security cameras at § 87(2)(b) being defaced. PO Staple asked § 87(2)(b) if he could go into § 87(2)(b) s apartment, § 87(2)(b) § 87(2)(b) s address is listed on his identification as § 87(2)(b). § 87(2)(b) gave PO Staple permission to enter the apartment. PO Staple and PO Flores then entered the apartment, briefly looked for § 87(2)(b) and left **(Allegation C** and **Allegation D)**. § 87(2)(b) claimed that when he returned to his apartment, he saw that drawers in his apartment that had been opened.

§ 87(2)(g)

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Video of the stop of § 87(2)(b) was obtained from NYCHA video surveillance (B.R. 1).

201507565_20151207_0831_DM.mp4

Mediation, Civil and Criminal Histories

- This case was sent to the Mediation Unit on December 8, 2015, but was returned to the Investigations Division on December 31, 2015, because § 87(2)(b) decided that he did not want to have this case mediated.
- On January 21, 2016, a FOIL request for a Notice of Claim for § 87(2)(b) and § 87(2)(b) was returned with negative results (B.R. 2).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the second CCRB complaint filed by § 87(2)(b) § 87(2)(b)
- This is the first CCRB complaint involving § 87(2)(b) (B.R. 5).
- PO Staple has been a member of service for nine years. Six prior CCRB complaints have been filed against him. He has been the subject of 15 prior allegations (B.R. 6). § 87(2)(g)
  - One allegation, a chokehold in case 201405681, has been substantiated.
- PO Flores has been a member of service for three years. This is the first CCRB complaint filed against him (B.R. 7).

Potential Issues

- A verified statement was not obtained from § 87(2)(b) because § 87(2)(b) withdrew from the case the day after he provided a phone statement and accepted mediation (B.R. 8).

Findings and Recommendations

Allegations Not Pleaded:

§ 87(2)(g)

Allegation A –Abuse of Authority: PO Daniel Staple stopped § 87(2)(b)

Allegation B –Abuse of Authority: PO Pablo Flores stopped § 87(2)(b)

It is undisputed that PO Staple and PO Flores stopped § 87(2)(b) as he was walking into § 87(2)(b). § 87(2)(b) stated that PO Staple was holding paperwork when he stopped § 87(2)(b) § 87(2)(b) initially stated during a telephone statement that he was not present for this stop, but during his CCRB interview, he confirmed that he witnessed it from a distance of 100 feet (B.R. 9). § 87(2)(b) stated that he was stopped by PO Staple and PO Flores as he was walking into § 87(2)(b) to retrieve an item from his brother's apartment (B.R. 10).

PO Staple stated that he was conducting an open investigation in connection to security cameras in the building being spray-painted. He had been seeking the suspect in this investigation, § 87(2)(b) for a whole month prior to this incident. He received information that § 87(2)(b) was at § 87(2)(b), and picked up PO Flores to accompany him to the building. PO Staple testified that he saw § 87(2)(b) and stopped him, because he matched the photograph of § 87(2)(b) PO Flores stated that PO Staple took him to § 87(2)(b), so that he could look for § 87(2)(b) who lived there, and who had allegedly been spray-painting cameras in the building (B.R. 11). PO Flores stated that he stopped § 87(2)(b) because he matched the individual in the photograph, identified by the investigation as § 87(2)(b) whom PO Staple said was a suspect in the spray-painting (B.R. 12).

Video of the incident obtained from NYCHA shows PO Flores and PO Staple stopping § 87(2)(b) in the lobby of § 87(2)(b) (B.R. 1). PO Staple is holding a "Crime Analysis Folder."

People v. DeBour, 40 N.Y.2d 201 (1976) requires officers to have reasonable suspicion that an individual has engaged, or is about to engage in criminality before they stop him (B.R. 13).

PO Staple had already sought § 87(2)(b) in connection with this investigation on several occasions. § 87(2)(b) acknowledged that he and his brother look very similar, which is further confirmed by the NYCHA video, which demonstrates the resemblance (B. R. 1 and B.R. 14). § 87(2)(g)

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§ 87(2)(g) . It is therefore recommended that **Allegations A** and **B** be closed as **exonerated**.

Allegation C-Abuse of Authority: PO Daniel Staple entered and searched § 87(2)(b) .

Allegation D-Abuse of Authority: PO Pablo Flores entered and searched § 87(2)(g) .

§ 87(2)(b) was not present for the entry of his apartment, but alleged that when he returned to the apartment, he saw that several drawers had been opened (B.R. 9). In an unsworn statement about the incident which he later withdrew, § 87(2)(b) stated that he does not live in the apartment, but that he receives mail there, and lists the apartment as his permanent address on his identification. § 87(2)(b) stated that PO Staple told him that he may start an investigation into his job § 87(2)(b) if he did not cooperate with the investigation by allowing the officers to enter and search the apartment. According to § 87(2)(b) s phone statement, he allowed the officers into the apartment after PO Staple made that statement, and told the officers to go in. § 87(2)(b) stated that after the officers entered the apartment, they went into § 87(2)(b) s bedroom, and opened up his bedroom closet. They did not search anywhere else (B.R. 10).

PO Staple stated that he simply asked § 87(2)(b) if he could go into the apartment, and § 87(2)(b) replied that he could. PO Staple stated that though § 87(2)(b) said that he did not live there, he had keys to the apartment, and it was listed as his residence on his identification (B.R. 11). PO Flores corroborated that § 87(2)(b) gave verbal permission for the officers to go into the apartment after being asked by PO Staple. PO Flores, however, stated that § 87(2)(b) said that he lived at the location. In addition, PO Flores saw § 87(2)(b) retrieve a piece of mail from a mailbox at § 87(2)(b) , which further caused him to believe that § 87(2)(b) lived in the apartment (B.R. 12). The officers stated that § 87(2)(b) calmly consented to letting the officers into the apartment (B.R. 11 and B.R. 12).

NYCHA video does not show any part of the entry, and did not have audio to corroborate either account of their conversation. The NYCHA video does, however, show § 87(2)(b) retrieving mail from a mailbox in the lobby of § 87(2)(b) (B.R. 1).

§ 87(2)(g)

§ 87(2)(g) It is therefore recommended that **Allegations C** and **D** be closed as **unsubstantiated**.

§ 87(4-b), § 87(2)(g) [redacted].

Squad #9

Investigator: _____ _____ _____
Signature Print Date

Squad Leader: _____ _____ _____
Title/Signature Print Date

Reviewer: _____ _____ _____
Title/Signature Print Date