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**Issued Date:** JUNE 15, 2024

**From:** Director Gino Betts, Jr.   
Office of Police Accountability

**Case Number:** 2023OPA-0537

## **Allegations of Misconduct & Director's Findings**

### **Named Employee #1**

- 1. Allegation #1:** 8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)  
**Finding:** Not Sustained - Unfounded
- 2. Allegation #2:** 5.001 – Standards and Duties, 5.001-POL-10. Employees Will Strive to be Professional  
**Finding:** Allegation Removed
- 3. Allegation #3:** 5.001 – Standards and Duties, 5.001-POL-5. Employees Complete Work in a Timely Manner  
**Finding:** Not Sustained - Lawful and Proper
- 4. Allegation #4:** 6.010 – Arrests, 6.010-POL-1. Sworn Employees Must Have Probable Cause That a Subject has Committed a Crime in Order to Effect an Arrest  
**Finding:** Not Sustained - Training Referral

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**This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections may be written in the first person.**

### **Executive Summary:**

Named Employee #1 (NE#1) detained the Complainant in an alley for allegedly smoking fentanyl. NE#1 ran the Complainant's name in a database and found a warrant that NE#1 believed applied to the Complainant. A struggle ensued when NE#1 attempted to arrest the Complainant for that warrant. It was alleged that NE#1 applied unauthorized force and lacked probable cause for the arrest. It was also alleged that NE#1 was unprofessional and that NE#1 wrote an untimely report about the incident.

## **Administrative Note:**

On June 10, 2024, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

## **Summary of Investigation:**

### **A. OPA Complaint**

On December 18, 2023, Witness Supervisor #1 (WS#1)—a sergeant—submitted an OPA complaint, writing that officers, believing the Complainant had a warrant, arrested the Complainant during a narcotics stop. WS#1 wrote that the warrant was valid but applied to a different person with features similar to the Complainant's. WS#1 wrote that officers used type II force after the Complainant assaulted them. Type II is force that causes, or is reasonably expected to cause, physical injury greater than transitory pain but less than great or substantial bodily harm. SPD Interim Policy 8.050 (effective May 19, 2023). Type II force includes a punch or kick with less than type III injury. SPD Interim Policy 8.400-POL-1 (effective April 24, 2023). WS#1 wrote that the Complainant alleged his arrest was improper and that officers applied unauthorized force.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), in-car video (ICV), police reports, use of force reports, Washington Crime Information Center (WACIC) entry, Department of Licensing (DOL) return, and photographs. OPA interviewed a witness (Community Member #1 or CM#1), NE#1, and WO#1. The Complainant's attorney declined OPA's request to interview the Complainant.

### **B. Computer-Aided Dispatch Call Report**

On December 17, 2023, at 12:45 PM, CAD call remarks noted, "NARC[OTICS] STOP."

### **C. Body-Worn Video (BWV) and In-Car Video (ICV)**

BWV and ICV captured the following:

NE#1 and WO#1 entered an alley where the Complainant was located. NE#1 identified himself and told the Complainant he was not free to leave for smoking fentanyl, which NE#1 refuted. The Complainant insisted it was tobacco. NE#1 asked for the Complainant's name and birthdate, which the Complainant provided. NE#1 instructed the Complainant to stay with WO#1. NE#1 entered his patrol car and ran the Complainant's information on his computer. NE#1's use of force report documented that NE#1 ran the Complainant's name in SPD's database, which returned 33 "near hit" WACIC entries. NE#1 wrote that he suspected the Complainant was a warrant suspect. NE#1 radioed dispatch, requesting verification of "SPD info." NE#1 reapproached the Complainant, who said he had a prior felony for assaulting a police officer. NE#1 instructed the Complainant to wait while dispatch verified his information. Dispatch later radioed NE#1. NE#1's police report documented that NE#1 received warrant verification from dispatch. NE#1 told the Complainant he was under arrest based on a warrant for failing to register as a sex offender.

NE#1 and WO#1 positioned the Complainant's hands behind his back. WO#1 removed a backpack from the Complainant's back. The Complainant abruptly turned around, faced NE#1 and WO#1, and appeared to strike NE#1's upper chest and face area using his left arm. NE#1 punched the Complainant's face.

The Complainant grabbed NE#1's shoulder (blue arrow) and WO#1's face (red arrow):



WO#1's police report documented, "[The Complainant] struck me in the left ear with his right hand and then held onto my left ear throughout the fight. [The Complainant] refused to let go of me and caused substantial lasting pain to my ear."

NE#1 punched the Complainant's face twice. The Complainant maintained his grip on NE#1 and WO#1. NE#1 uppercut the Complainant's face:



The Complainant released his grip on NE#1 but arm-wrapped WO#1, whose head was lowered. NE#1 kned the Complainant's left torso four times, propelling WO#1 and the Complainant toward the right wall.

The Complainant maintained his grip on WO#1. NE#1 punched the Complainant's face twice, then kned the Complainant's left torso:



NE#1 arm wrapped the Complainant's upper back. NE#1 and WO#1 maneuvered the Complainant to the ground on his back. WO#1 went to the ground next to the Complainant's right side while NE#1 was on top of the Complainant. NE#1 applied his knee against the Complainant and punched him twice. The Complainant repeatedly shouted, "Don't call me a sex offender!" NE#1 elbowed the Complainant's face twice as the Complainant appeared to raise his left arm defensively and grabbed NE#1's neck with his right hand (green arrow):



NE#1 brushed away the Complainant's arm. NE#1 punched the Complainant. NE#1 and WO#1 held him on top of the Complainant. The Complainant denied being a sex offender and asked what he did. NE#1 told the Complainant to "shut up." Two backing officers arrived, and the officers rolled the Complainant onto his stomach and handcuffed him. The Complainant said, "You got the wrong guy." Officers positioned the Complainant on his side. The Complainant said he did not want to be called a pedophile. An officer replied that the Complainant had a warrant. The Complainant said, "I didn't even know that. I just made a mistake. Fuck! I shouldn't have attacked you guys. It's the wrong guy."

An officer escorted the Complainant to the front of a patrol car and Mirandized him. The Complainant said he became upset when he heard he failed to register as a sex offender, so he grabbed the officer's mic and badge to prove his innocence. The Complainant said the officer started beating him to death. The Complainant denied hitting the officer, saying he only pushed the officer away. The Complainant said he intended to hold NE#1 and WO#1, not hurt them.

WS#1 responded to the scene and screened the Complainant's arrest with NE#1. WS#1 later interviewed the Complainant in his holding cell. WS#1 said the warrant was verified. The Complainant said he was the wrong person. The Complainant said he did not want to go to jail for a warrant misidentification, so he grabbed one officer's mic and pushed another officer away. The Complainant said the officers beat him up. The Complainant said he was "pissed" that he was identified as a sex offender, so he resisted arrest and fought the officers for his innocence.

#### **D. Police Reports**

NE#1's and WO#1's police reports were consistent with the events captured on BWV and ICV. NE#1's and WO#1's police reports indicated that the fire department treated both officers at the scene, and they were later treated at a hospital. Additionally, WO#1's documented injuries included pain and redness under his right eye, severe pain and redness to his left ear, bruising and cuts to his left elbow, bruising under his right bicep, skinned and bruised knees, pain in his left ear lasting over four days, headaches, and neck pain.

#### **E. Use of Force Reports**

##### **1. Named Employee #1 (NE#1)**

NE#1's type II use of force report described the Complainant as agitated and methamphetamine intoxicated. NE#1 wrote that, based on his training and experience, methamphetamine-intoxicated people could be dangerous and unpredictable and possess enhanced strength and increased pain tolerance. NE#1 wrote that he saw 33 WACIC entries after he ran the Complainant's name and determined that most "near hit" entries were unassociated with the Complainant. NE#1 wrote that a WACIC entry with a nearly identical name had the same birth month and year as the Complainant, and they had similar physical features. OPA notes that the first and middle names were identical. The last names were identical except the Complainant's last name had an additional two letters at the end. NE#1 wrote that dispatch verified the warrant, leading NE#1 to believe the Complainant was the warrant suspect. NE#1 described his alertness

level as elevated when the Complainant announced he had gone to prison for assaulting an officer and indicated a desire to avoid jail, signaling that the Complainant could be combative.

NE#1 described his force application. NE#1 wrote that the Complainant, after facing NE#1 and WO#1, “quickly and aggressively” struck NE#1, causing NE#1 to raise his arm to defend himself. NE#1 wrote that the Complainant grabbed the collar of NE#1’s vest and attempted to pull NE#1 while the Complainant struck WO#1’s ear. NE#1 wrote that the Complainant arm wrapped WO#1’s back, giving the Complainant a “dangerous position of advantage” by allowing him to continue assaulting WO#1. NE#1 wrote that after he punched the Complainant three times, the Complainant held the officers and attempted to pull NE#1. NE#1 wrote that he uppercut the Complainant, who then released NE#1 but held WO#1. NE#1 wrote that he knee-struck the Complainant five times and punched him two more times because the Complainant “actively assaulted” WO#1 against the wall. NE#1 wrote that the Complainant continued holding WO#1 despite the Complainant’s posture being broken down.

NE#1 wrote that he used his body weight to take down the Complainant. He also wrote that he applied his knee against the Complainant’s stomach to control him, but the Complainant actively resisted, grabbed NE#1’s leg, and attempted to stand. NE#1 wrote that, in response, he punched the Complainant’s face twice. The complainant grabbed and squeezed NE#1’s throat, prompting NE#1 to elbow strike the Complainant’s face twice. OPA notes this series of events was not fully captured by video due to body positioning and the angle of the camera. ICV clearly captured the Complainant grabbing NE#1’s throat after NE#1 elbowed the Complainant’s face twice, but it was possible—but not conclusive—the Complainant started grabbing NE#1’s throat at some point before NE#1 elbowed the Complainant. NE#1 wrote that the Complainant continued pushing against NE#1 and grabbing towards NE#1’s face, prompting NE#1 to punch the Complainant’s face once more. NE#1 wrote that the Complainant said, “Okay, I’m done.”

## **2. Witness Officer #1 (WO#1)**

WO#1’s type II use of force report described the Complainant as fidgety and agitated. WO#1 wrote that the Complainant displayed flight indicators, so WO#1 positioned himself to prevent any flight. WO#1 described his force application. WO#1 wrote that the Complainant struck NE#1 using his left hand and struck and grabbed WO#1’s ear using his right hand. WO#1 wrote that he could not take down the Complainant when the Complainant hunched over, pulled WO#1 down, and grabbed WO#1’s ear. WO#1 wrote that NE#1’s SPD-trained punches and knee strikes broke down the Complainant’s structure, allowing them to take down the Complainant. WO#1 wrote that the Complainant, on the ground, “continued to push and pull” at NE#1 and WO#1 and grabbed NE#1’s throat. WO#1 wrote that the Complainant ignored orders and resisted arrest.

## **F. Washington Crime Information Center (WACIC) Entry and Department of Licensing (DOL) Return**

The warrant suspect’s information, obtained via WACIC, and the Complainant’s information, obtained via the Department of Licensing (DOL), were listed as follows:

## **Warrant Suspect's Information (WACIC)**

- [First name, middle name, and last name]
- Date of birth: [Month, Day, Year]
- Height: 5 feet 7 inches
- Weight: 120 pounds
- Eye color: Brown

## **Complainant's Information (DOL)**

- [First name identical, middle name identical, and last name similar – the Complainant's last name had two more letters at the end]
- Date of birth: [Month identical, Year identical – Day was twelve days later]
- Height: 5 feet 11 inches
- Weight: 164 pounds
- Eye color: Brown

## **G. OPA Interviews**

### **1. Community Member #1 (CM#1)**

On December 29, 2023, OPA interviewed CM#1, who said she witnessed the incident. CM#1 said she saw the Complainant strike NE#1's face, and then NE#1 punched the Complainant's face. CM#1 believed NE#1 justifiably punched the Complainant. However, CM#1 believed NE#1 may have applied excessive force when he continued punching and knee-striking the Complainant because the Complainant did not appear to fight back actively. CM#1 also believed the number of strikes was excessive.

### **2. Named Employee #1 (NE#1)**

On February 7, 2024, OPA interviewed NE#1. NE#1 said he had probable cause to arrest the Complainant for openly consuming fentanyl and a verified warrant. NE#1 said the Complainant used a broken pen to inhale vapor from foil. NE#1 said the Complainant later admitted to consuming narcotics. NE#1 said he reviewed 10 to 15 entries out of 33 "near hit" NACIC entries and located a warrant he believed applied to the Complainant based on similar names, birthdates, and physical features. NE#1 later clarified he reviewed all entries—most of which did not apply to the Complainant. NE#1 said he verified the warrant and reapproached the Complainant for an arrest. NE#1 said he later learned the warrant applied to a different person.

NE#1's described force application was consistent with the abovementioned evidence. NE#1 said his SPD-trained strikes were responses to the Complainant's assault against the officers. NE#1 said the Complainant's arm wrap placed WO#1 in an "extremely vulnerable position" by affording the Complainant an opportunity to strangle WO#1, strike WO#1's head, or take down WO#1 to access WO#1's gear. NE#1 said he repeatedly struck the Complainant due to WO#1's vulnerability. NE#1 said the Complainant continued assaulting WO#1 by grabbing and pulling WO#1 despite NE#1's strikes. NE#1 said the Complainant, while on the ground, pressed his knee against NE#1 to push NE#1 off, which NE#1 believed to be an attempt to create distance

for continued fighting. NE#1 said the Complainant was combative while on the ground and grabbed NE#1's radio. NE#1 said he modulated his force when the Complainant stopped assaulting the officers.

NE#1 said the Complainant was booked for third-degree assault and resisting arrest, not narcotics, since the evidence was not collected.

### **3. Witness Officer #1 (WO#1)**

On February 23, 2024, OPA interviewed WO#1. WO#1 believed there was probable cause to arrest the Complainant for narcotics, though he denied seeing narcotics. WO#1 said he saw drug paraphernalia. WO#1's statements about the force application were consistent with his type II use of force report and the events captured on ICV and BWV.

### **4. Named Employee #1 (NE#1) – Reinterview**

On May 21, 2024, OPA reinterviewed NE#1. NE#1 clarified how he compared the Complainant's physical features against the warrant suspect's features. NE#1 said the physical features were different but comparable. NE#1 said height differences of several inches were unnoticeable unless someone was close to his height or taller. NE#1 described his height as 6 feet 4 inches. NE#1 denied knowing the Complainant's height and had no way to compare it against someone else's height since the Complainant was alone. NE#1 said people's weight often fluctuated. NE#1 said he focused on the names and birthdates. NE#1 believed the warrant suspect's information closely resembled the Complainant's features.

NE#1 denied recalling whether he reviewed the Complainant's DOL return. He also denied comparing the Complainant's DOL return against the warrant suspect's information but acknowledged he should have done so because he believed he would have noticed differences. NE#1 claimed he would have noticed the differences and released the Complainant if the Complainant had surrendered peacefully.

NE#1 clarified that the Complainant's arrest was based on the warrant, though probable cause for the warrant converted to probable cause for third-degree assault during the Complainant's arrest. NE#1 acknowledged that the Complainant was detained—not arrested—for openly consuming narcotics because the Complainant did not have a "bookable" amount of narcotics to be jailed. NE#1 also noted that the alley where the Complainant was openly consuming narcotics was nowhere near a school or anyone else, which created a public safety risk. NE#1 said he would have identified and released the Complainant absent the warrant.

NE#1 clarified his force application, consistent with his force statements at his prior OPA interview. NE#1 expressed concern that the Complainant could have accessed WO#1's firearm. NE#1 said the Complainant grabbed NE#1's vest and mic, which the Complainant could have used as an impact weapon.

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### **Analysis and Conclusions:**

## **Named Employee #1 – Allegation #1**

### **8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)**

The Complainant alleged that NE#1 applied unauthorized force during the Complainant's arrest.

Officers will only use objectively reasonable, necessary, and proportional force to the threat or urgency of the situation to achieve a law enforcement objective while protecting the life and safety of all persons. SPD Interim Policy 8.200(1) (effective April 24, 2023). Reasonability must consider that officers are often forced to make split-second decisions about the force necessary in a particular situation in tense, uncertain, dynamic, and rapidly evolving circumstances. *Id.* The question is whether the officers' actions were objectively reasonable considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* Several factors should be weighed when evaluating reasonableness. *See id.* Force is necessary under the totality of the circumstances when there is no reasonably effective alternative to using physical or deadly force, and the type and amount of physical or deadly force used is a reasonable and proportional response to effect the legal purpose intended or to protect against the threat posed to the officer or others. SPD Interim Policy 8.050 (effective May 19, 2023). A proportional use of force must reflect the totality of circumstances surrounding the situation, including the nature and immediacy of any threats posed to officers and others. *Id.* Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force. *Id.*

NE#1's force application was objectively reasonable, necessary, and proportional. First, NE#1's force application was objectively reasonable since the Complainant fought the officers. ICV captured the Complainant assaulting the officers, and the Complainant admitted multiple times—at the incident location and in his holding cell—that he fought them. Notably, the Complainant initiated the assault by abruptly turning around during handcuffing and striking the officers. Additionally, NE#1's multiple punches and knee strikes were objectively reasonable as the Complainant refused to release WO#1 from an arm wrap, exposing WO#1 to further assaults like being strangled or taken down. Although NE#1's strikes while the Complainant was on the ground represent a somewhat closer call, NE#1's force application was, more likely than not, objectively reasonable. NE#1 and WO#1 articulated, and ICV did not dispute, that the Complainant resisted, grabbed NE#1's leg and radio, pressed his knee against NE#1 to push NE#1 off, and attempted to stand. The Complainant also grabbed and squeezed NE#1's throat, demonstrating the Complainant's continued combativeness. NE#1's strikes were also consistent with SPD training. SPD's Force Review Board concluded that NE#1's "physical force to subdue the subject [was] consistent with SPD-trained techniques." Second, NE#1's force application was necessary since there was no reasonably effective alternative to force. Verbal commands were ineffective and infeasible as the Complainant intended to fight to avoid arrest. NE#1's strikes were necessary to protect WO#1, whom the Complainant placed in an "extremely vulnerable position." Third, NE#1's force application was proportional, given the threat the Complainant posed due to his noncompliance and assaults. Overall, a preponderance of the evidence indicates that NE#1's force application was objectively reasonable, necessary, and proportional under the circumstances.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #1 – Allegation #2**

***5.001 – Standards and Duties, 5.001-POL-10. Employees Will Strive to be Professional***

It was alleged that NE#1 was unprofessional.

SPD employees must “strive to be professional.” SPD Policy 5.001-POL-10. Further, “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers,” whether on or off duty. *Id.* Employees will avoid unnecessary escalation of events, even if those events do not end in reportable uses of force. *Id.* Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language derogatory, contemptuous, or disrespectful toward anyone. *Id.*

OPA’s classification notice for this allegation did not specify what behavior allegedly violated SPD’s professionalism policy. During NE#1’s interview, OPA questioned NE#1 about telling the Complainant to “shut up” shortly after the struggle concluded. This comment, while perhaps rude, occurred after the Complainant assaulted both NE#1 and WO#1 with enough force to require both officers to receive medical treatment. Moreover, OPA does not recommend any other sustained findings in this case. Under the totality of the circumstances, this allegation should not have been classified. Accordingly, OPA is removing this allegation.

Recommended Finding: **Allegation Removed**

**Named Employee #1 – Allegation #3**

***5.001 – Standards and Duties, 5.001-POL-5. Employees Complete Work in a Timely Manner***

It was alleged that NE#1 wrote an untimely report about the incident.

Absent exigent circumstances or supervisory approval, employees will complete all required duties and official reports before going off duty. SPD Policy 5.001-POL-5.

Due to personal reasons, NE#1 went on supervisory-approved leave on the same day as the incident. NE#1 completed his type II use of force report on January 8, 2024—within 30 days, that use of force reports must be written. Exigent circumstances and supervisory approval permitted NE#1 to write his report after going off duty.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

**Named Employee #1 – Allegation #4**

***6.010 – Arrests, 6.010-POL-1. Sworn Employees Must Have Probable Cause That a Subject has Committed a Crime in Order to Effect an Arrest***

The Complainant alleged that NE#1 lacked probable cause for the Complainant’s arrest.

Sworn employees must have probable cause to believe a subject committed a crime when effecting an arrest. SPD Policy 6.010-POL-1. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient to support a reasonable belief that an offense has been or is being committed. See *State v. Fricks*, 91 Wash.2d 391, 588 P.2d 1328 (1979); *State v. Gluck*, 83 Wash.2d 424, 426–27, 518 P.2d 703 (1974).

Here, NE#1 had probable cause to arrest the Complainant but still made errors that OPA finds require further training

NE#1 had probable cause to arrest the Complainant for openly consuming narcotics. NE#1 documented observing the Complainant in an alley using a hollow pen tube to inhale the vapor from a substance on tin foil. The Complainant then inconsistently stated he was smoking marijuana or tobacco. The Complainant also told the officer that they should focus on arresting people who “watch pornography” instead of worrying about “a little bit of drugs.” NE#1 also documented observing drug residue and paraphernalia after approaching the Complainant. These facts, among others, were objectively sufficient for NE#1 to reasonably believe the Complainant knowingly possessed a controlled substance or used a controlled substance in a public place. See RCW 69.50.4013(1)(a)-(b). On the date of the incident, December 17, 2023, NE#1 was permitted to arrest the Complainant for public consumption of narcotics. See SPD Interim Policy 15.155 – Narcotics Possession and Public Use (effective 10/20/2023). See also SMC 12A.09.020 (adopting RCW sections). Although NE#1 intended to arrest the Complainant for a warrant, not openly consuming narcotics, this distinction is not relevant for determining probable cause. NE#1's subjective intent to exercise discretion concerning the narcotics did not eliminate objective probable cause. This has been a bedrock principle of federal and Washington State false arrest law for at least two decades. See *Devenpeck v. Alford*, 543 U.S. 146 (2004) (Washington State Patrol officer's mistaken arrest of suspect for one crime was still reasonable because there was objectively probable cause to believe the suspect was involved in a different crime); Washington Pattern Jury Instruction 342.09 (citing *Devenpeck* as well as *State v. Pulfrey*, 154 Wn.2d 517 (2005) and *State v. Reding*, 119 Wn.2d 685 (1992)). For these reasons, NE#1's arrest of the Complainant was supported by probable cause.

However, OPA recognizes NE#1 did not intend to arrest the Complainant for openly consuming narcotics. Instead, he planned to arrest the Complainant for a warrant that—ultimately—applied to a different person. The Complainant became escalated after being incorrectly accused of a crime—failing to register as a sex offender—with highly offensive implications. This situation could have been avoided had NE#1 exercised greater diligence. The differences between the Complainant and the subject of the warrant were notable. Nearly every characteristic showed differences: the Complainant's last name is two letters longer, the Complainant is 12 days younger, the Complainant is four inches taller, and the Complainant is 44 pounds heavier. These differences should have caused NE#1 to take additional steps to confirm whether NE#1 was the subject of the warrant.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review methods for verifying the subject's identities in the field (such as photographs and mobile fingerprint readers), and provide any further retraining and appropriate counseling. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**