

**CONFIDENTIAL**  
**ATTORNEY CLIENT PRIVILEGED**  
**INVESTIGATIVE REPORT**

**Client:** Santa Clara County Sheriff's Office

**Subject:** Alvaro Palma, Correctional Deputy

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**Date:** March 11, 2016



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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	SUMMARY OF FINDINGS .....	1
III.	INVESTIGATIVE PROCEDURE .....	3
	A.    Individuals Interviewed .....	3
	B.    Documentary Evidence .....	4
IV.	APPLICABLE POLICIES AND RULES .....	5
	A.    County of Santa Clara Merit System Rules .....	5
	1.    Article 11, Section A25-301 - Causes of Suspension, Demotion or Dismissal .....	5
	B.    County of Santa Clara Department of Correction Policy and Procedure Manual .....	6
	1.    Policy Number 1.05 - Code of Ethics .....	6
	2.    Policy Number 3.31 - Employee Conduct & Performance.....	7
	C.    County and Department Policies Against Harassment and Discrimination.....	8
	D.    Acknowledgement of Department of Correction Policies .....	9
	1.    Code of Ethics Policy.....	9
	2.    Standards of Performance .....	9
	3.    Chief's Policy Statement Regarding Sexual, Racial and Other Harassment or Aspersion.....	9
V.	TEXT MESSAGE EVIDENCE.....	9
	A.    Text Messages About Sheriff's Office Personnel .....	9
	B.    Text Messages About a Black Inmate That Died in Custody.....	11
	C.    Text Messages Related to Law Enforcement.....	11
VI.	INTERVIEW SUMMARIES.....	12
	A.    Interviews of Alvaro Palma .....	12
	B.    Interviews of Other Subjects.....	14
	1.    Ryan Saunders .....	14
	2.    Lance Scimeca .....	14

3.	Donald Morrissey and Rene Lucero .....	14
C.	Witness Interviews .....	14
VII.	FINDINGS & ANALYSIS .....	14
A.	Standard of Proof .....	14
B.	Credibility Findings .....	15
C.	Substantive Findings .....	16
1.	Text Messages About Sherriff's Office Personnel .....	16
2.	Text Messages About a Black Inmate That Died in Custody .....	18
3.	Text Messages Related to Law Enforcement .....	19
4.	Failure to Disassociate From Text Messaging Group or to Report Misconduct by Others .....	21
VIII.	CONCLUSION .....	21

## I. INTRODUCTION

The County of Santa Clara, through the Offices of the Sheriff and County Counsel (“County”) retained the law firm of Renne Sloan Holtzman Sakai LLP (“RSHS”) to conduct an independent investigation into allegations of misconduct made against Alvaro Palma, a Correctional Deputy with the Sheriff’s Office. It is alleged that Palma made derisive, discriminatory and disparaging comments about Sheriff’s Office personnel and inmates in text messages that he sent to a group of Sheriff’s Office employees in violation of Department policies and the County’s Merit System Rules. During the course of the investigation, it was discovered that Palma also sent text messages about law enforcement matters that could be in violation of Department and County policy, including but not limited to, text messages about the protests that occurred in Ferguson, Missouri after a black teenager was fatally shot by a white police officer and in Baltimore following the death of a black man after he was taken into police custody.

Three other employees of the Sheriff’s Office – Correctional Sergeant Lance Scimeca and correctional deputies Ryan Saunders and Rene Lucero – are alleged to have engaged in similar misconduct. A fifth employee of the Sheriff’s Office – Sergeant Donald Morrissey – is also charged with sending inappropriate text messages and failing to report to his superiors that a group of employees were exchanging text messages that violated Department and County policies, or to take any other action to stop the inappropriate text messaging. The Investigators’ findings concerning the other subject officers are addressed in separate reports.

The County became aware of the alleged misconduct on or about July 1, 2015, after a search warrant was executed for deputy Saunders’ personal cell phone as part of a criminal investigation into Saunders accessing confidential information from the Criminal Justice Information Control database to conduct searches on individuals for reasons unrelated to his official duties.

Nikki Hall, a licensed attorney employed by RSHS, and Howard Jordan and Michael Yoell, licensed private investigators working as consultants for RSHS (“the Investigators”), conducted the investigation. Hall reviewed and analyzed the text message evidence and Jordan and Yoell conducted the interviews.

## II. SUMMARY OF FINDINGS

Based on a preponderance of the evidence standard, the allegations against Palma are **SUSTAINED**.

There is sufficient evidence to find that Palma sent racially, ethnically and sexually derisive, disparaging, and discriminatory text messages about numerous Sheriff’s Office personnel to other Sheriff’s Office employees. He also sent racist text messages about an inmate that died of natural causes while in custody as well as about law enforcement matters, including but not

limited to the protests that occurred in Baltimore and Ferguson. Palma's actions violated the following Department and County policies:

- D.O.C.<sup>1</sup> Policy 3.31.IV.B – Employee Conduct (requiring employees to “maintain the integrity of their profession through complete disclosure of those who violate...rules of conduct...or who conduct themselves in a manner which tends to discredit the profession”).
- D.O.C. Policy 3.31.IV.G – Employee Conduct (requiring employees to “maintain an exemplary standard of personal integrity and ethical conduct in...relationships with other employees, inmates and the community”).
- D.O.C. Policy 3.31.IV.J.1.a – Employee Conduct/Conformance to Law (requiring compliance with County policies).
- D.O.C. Policy 3.31.IV.J.9.a – Employee Conduct/Conduct Unbecoming (prohibiting “conduct unbecoming” which includes but is not limited to harassment or discrimination).
- Santa Clara County Code of Ethical Conduct<sup>2</sup> (requiring “upholding principles of equality, fairness, and objectivity” and “treating all individuals with respect and dignity”).
- D.O.C. Policy 1.05 – Code of Ethics (imposing duty to “respect the constitutional rights of all to liberty, equality and justice” and to be “honest in thought and deed in both...personal and official life [and] exemplary in obeying the...regulations of...the department”).
- D.O.C. Policy 1.35 – Sexual Harassment Policy (prohibiting sexual harassment).
- D.O.C. Standards of Performance (prohibiting the creation of a discriminatory environment, including making disparaging utterings or writing disparaging remarks, whether or not intended as humor).
- Chief's Policy Statement Regarding Sexual, Racial and Other Harassment or Aspersions (prohibiting harassment or aspersions directed against superiors, subordinates, co-workers, inmates, or other third parties).

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<sup>1</sup> Department of Correction.

<sup>2</sup> Incorporated by reference into D.O.C. Policy 1.05.

- Santa Clara County and Board of Supervisors Policies on Harassment and Discrimination (prohibiting harassment and discrimination).
- Santa Clara County Merit System Rule A25-301(a)(1) (requiring compliance with County and Department rules).
- Santa Clara County Merit System Rule A25-301(b)(1) (prohibiting gross misconduct or conduct unbecoming which tends to discredit the County or County service).
- Santa Clara County Merit System Rule A25-301(b)(2) (prohibiting immoral conduct).

### III. INVESTIGATIVE PROCEDURE

The Investigators obtained evidence from witness interviews, Sheriff's Office records, and cell phone records obtained through a search warrant by criminal investigators in the Sheriff's Office. Evidence relied upon is listed below and included as exhibits to this report.

#### A. Individuals Interviewed

The following interviews were conducted.<sup>3</sup>

Individual	Position	Dates of Interviews
Alvaro Palma	Correctional Deputy	November 13, 2015; December 3, 2015 <sup>4</sup>
Ryan Saunders	Correctional Deputy	November 13, 2015; December 3, 2015; December 17, 2015
Lance Scimeca	Correctional Sergeant	November 13, 2015; December 4, 2015
Rene Lucero	Correctional Deputy	November 16, 2015; December 3, 2015
Donald Morrissey	Enforcement Sergeant	December 18, 2015

<sup>3</sup> The interviews were digitally recorded and copies of the recordings are included as an exhibit to this report.

<sup>4</sup> Palma was represented by Erich Knorr of the law firm Mastagni Holstedt.

Michael Fortino	Correctional Deputy	January 26, 2016
Jesus Perez	Correctional Officer	January 26, 2016
Jose Ortiz	Correctional Deputy	February 3, 2016
Charles Ramirez II	Correctional Deputy	February 10, 2016

**B. Documentary Evidence**

The Investigators reviewed and relied upon the following documentary evidence in reaching the findings discussed herein.

<b>Ex.</b>	<b>Document Description</b>
<b>1</b>	County of Santa Clara Ordinance Code, Merit System Rules, Article 11, Sec. A25-301 (Disciplinary Actions)
<b>2</b>	County of Santa Clara Department of Correction Policy Number 1.05 (Code of Ethics)
<b>3</b>	County of Santa Clara Department of Correction Policy Number 3.31 (Employee Conduct & Performance)
<b>4</b>	County of Santa Clara Department of Correction Policy Number 1.35 (Sexual Harassment)
<b>5</b>	County of Santa Clara Policy on Sexual Harassment
<b>6</b>	County of Santa Clara Board of Supervisors Policy on Sexual Harassment
<b>7</b>	County of Santa Clara Board of Supervisors Policy Against Discrimination, Harassment and Retaliation
<b>8</b>	Code of Ethics Policy Acknowledgment Form signed by Alvaro Palma on February 22, 2008
<b>9</b>	Acknowledgment of Standards of Performance signed by Alvaro Palma on February 22, 2008

<b>10</b>	Acknowledgment of Chief's Policy Statement Regarding Sexual, Racial or Other Harassment or Aspersions signed by Alvaro Palma on February 22, 2008
<b>11</b>	Training Activity Report for Alvaro Palma
<b>12</b>	Statement of Allegations against Alvaro Palma, dated September 18, 2015
<b>13</b>	Spreadsheet showing hours worked by Alvaro Palma from December 4, 2014 through June 27, 2015
<b>14</b>	Text message file produced by Verizon Wireless in response to search warrant of Ryan Saunders' cell phone (December 5, 2014 through June 12, 2015)
<b>15</b>	Text message transcript including search parameters for Ryan Saunders and Alvaro Palma <sup>5</sup>
<b>16</b>	Text message transcript including search parameters for Ryan Saunders and Lance Scimeca <sup>6</sup>
<b>17</b>	Email correspondence from Captain Frank Zacharisen to Howard Jordan, dated November 23, 2015
<b>18</b>	File containing digital recordings of interviews

#### **IV. APPLICABLE POLICIES AND RULES**

##### **A. County of Santa Clara Merit System Rules**

##### **1. Article 11, Section A25-301 – Causes of Suspension, Demotion or Dismissal**

The following list of causes is provided as a guide to both supervisors and employees as to what may constitute a proper basis for disciplinary action. It is not an all-inclusive list in that an appointing authority may institute disciplinary action for any other activity which the appointing authority deems just cause for such action.

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<sup>5</sup> The text message transcript was produced based on a parser program and database created by Captain Frank Zacharisen. (See **Ex. 17** for Zacharisen's description of the parser program and database that he created to produce the transcript.)

<sup>6</sup> *Ibid.*



(a) Causes relating to performance of duties:

(1) Violation of the County Charter, merit system rules and regulations, and written and published departmental rules and policies which do not conflict with this article.

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(b) Causes relating to personal conduct detrimental or prejudicial to public service:

(1) Guilty of gross misconduct, or conduct unbecoming a County officer or employee which tends to discredit the County or County service.

(2) Guilty of immoral conduct or a criminal act.

(Ex. 1).

**B. County of Santa Clara Department of Correction Policy and Procedure Manual**

**1. Policy Number 1.05 – Code of Ethics**

POLICY: It is the policy of the Department of Correction to enforce high standards of professional conduct [...].

PROCEDURE:

I. Code of Ethics for all Department of Correction Employees

A. The Department of Correction subscribes to the County's Code of Ethical Conduct, as copied below, and expects its employees to follow the ethical standards embodied therein.

*County of Santa Clara Code of Ethical Conduct*

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*Every employee of Santa Clara County is responsible for performing their duties in a way that maintains the trust and confidence of the public including placing the interest of the public good ahead of our own interest and working for the common good.*

*These standards of ethical conduct include:*

- *upholding principles of equality, fairness, and objectivity;*
- *treating all individuals with respect and dignity;*

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- B. Employees who fail to correct individual deficiencies or who violate these standards will be subject to disciplinary action up to and including termination.

II. Code of Ethics for Badge Employees

- A. In addition to subscribing to the County's Code of Ethical Conduct for all employees, the Department of Correction also subscribes to the Correctional Professional Code of Ethics as copied below for its badge employees and expects its badge employees to follow the ethical standards embodied therein.

*Correctional Professional Code of Ethics*

*As a Correctional Professional, my duty is to...respect the constitutional rights of all to liberty, equality and justice.*

*[...] Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. [...]*

(Ex. 2). (Emphasis in original).

**2. Policy Number 3.31 – Employee Conduct & Performance**

**POLICY:** It is the policy of the Department of Correction to require the highest level of conduct from all employees in order to promote the protection of the agency and facilitate the recruitment and retention of the highest caliber employee. All employees are expected to refrain from engaging in any activities that would adversely affect the security, safety, integrity, or reputation of the Department, the County, or its employees.

**PROCEDURE:**

IV. Employee Conduct

- B. Employees shall maintain the integrity of their profession through complete disclosure of those who violate any of these rules of conduct...or who conduct themselves in a manner which tends to discredit the profession.

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- G. The Department expects and requires that all employees maintain an exemplary standard of personal integrity and ethical conduct in their relationships with other employees, inmates, and the community.

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- J. Specific Departmental Rules

- 1. Conformance to Law:

- a. Employees are expected to adhere to Department Policies and Procedures, County Personnel Regulations, County Administrative Procedures, Executive Orders, County Merit System Rules, and all laws applicable to the general public.

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- 9. Conduct Unbecoming:

- a. An employee shall not commit any act which constitutes conduct unbecoming a Department employee. Conduct unbecoming an employee includes, but is not limited to, any criminal or dishonest act or an act of moral turpitude. Examples of conduct unbecoming include, but are not limited to, the following:

- (5) Harassment or discrimination

(Ex. 3).

- C. **County and Department Policies Against Harassment and Discrimination**

The County, its Board of Supervisors and the Department of Correction have issued policies prohibiting workplace discrimination and harassment. The stated purpose of these policies is to ensure a workplace free of discrimination and harassment based on legally protected traits, such as race, ethnicity, sex, sexual orientation and religious affiliation. The policies also describe the duty of employees to abide by and uphold the County and Department policies against discrimination and harassment. (Exs. 4 - 7).

Palma has received regular training related to the policies against harassment, most recently in August 2014. (Ex. 11).

## **D. Acknowledgement of Department of Correction Policies**

### **1. Code of Ethics Policy**

Palma signed an acknowledgment of the Department's Code of Ethics policy on February 22, 2008. (**Ex. 8**).

### **2. Standards of Performance**

On February 22, 2008, Palma signed an acknowledgment of the Department's Standards of Performance in which he acknowledged his understanding that the Chief of Correction "will discipline those employees culpable of the following misconduct: (3) Creating a discriminating environment, which includes, but is not limited to, disparaging ethnic remarks or other discriminating behavior regardless of whether it is intended as humor." (**Ex. 9**).

### **3. Chief's Policy Statement Regarding Sexual, Racial and Other Harassment or Aspersion**

On February 22, 2008, Palma signed an acknowledgment of the Chief's Policy Statement: Sexual, Racial and Other Harassment or Aspersion. By signing this document, Palma acknowledged his understanding that "behavior in violation of Department policy regarding harassment or aspersion is strictly prohibited and may subject [the employee] to disciplinary action up to and including termination, whether that behavior is directed against superiors, subordinates (including inmates), co-workers or other third-party persons." (**Ex. 10**).

## **V. TEXT MESSAGE EVIDENCE**

The text message evidence establishes that Palma made disparaging racial, ethnic and sexual comments about numerous Sheriff's Office personnel while engaging in group text messaging with Lance Scimeca and Ryan Saunders, and that he made racist comments about an inmate that died as well as about law enforcement related matters.

Palma also made countless racist, sexist and homophobic comments in the group text messages; however, examples of such comments are not included below unless they pertained to Sheriff's Office personnel, inmates or law enforcement matters. The complete transcript of text messages is attached as **Ex. 15 – 16** should one want to reference the full extent of Palma's discriminatory text messages.

### **A. Text Messages About Sheriff's Office Personnel**

Listed below are examples of disparaging comments that Palma made about co-workers and supervisors:

- When discussing going out for drinks with Scimeca and Saunders, and in response to Scimeca's reference to hanging "a darkie" and Saunders suggesting that they invite a Hispanic co-worker so that they could hang him, Palma stated, "if we're hanging [the co-worker] I'm definitely in" and "if we're not hanging Niggers im (sic) not going!" He also suggested that they "put clothespins on [the co-worker] and whip him first."
- After commenting that "niggers & work don't go hand in hand," Palma added, in reference to two black sergeants, "remember when that storm hit last month. 2 of our Sgts were nowhere to be seen!"
- He remarked that a female sergeant is a "stupid bitch" who "fits our female Sgt profile perfectly...either black lesbian or homicidal crazy bitch."
- He stated that a female colleague had "Trachea Cock Contusions" from oral sex with a black co-worker, that the female employee could "swallow a Thanksgiving turkey whole," and commented that "the surgeon general advises against throating niggers due to the dangers of TCC."<sup>7</sup>
- He referred to a female co-worker as a "whore" and stated that a male co-worker "fucked her throat."
- He remarked that another female co-worker is "classic DOC material...I bet she'll suck the hairs off your balls!"
- He stated that a comment by Scimeca "hurt more" than when a black co-worker "broke" a female co-worker's "pussy."<sup>8</sup>
- He remarked that a male sergeant and "that black broad (probably gonna be a Sgt) have the combined common sense of my 2 year old."
- He claimed that he heard a male lieutenant "blew out" a male sergeant's "ass like the grand canyon."
- He made frequent sexual references about another male co-worker including the following – stating that he did not want to play a game of "gay chicken" with the employee because "he'll clean the cum off the tile with his tongue"; stating that the employee was "gonna suck my corn hole through my schlong"; stating, "I'm going to

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<sup>7</sup> TCC is an acronym created by Palma that stands for "Trachea Cock Contusions."

<sup>8</sup> In his interview, Palma said he heard a rumor that the two employees were involved in a sexual relationship, and his reference to the male co-worker breaking the female co-worker's "pussy" was intended as a joke playing off of the stereotype that black men are well endowed.

shove my cock in his throat...but I forget he likes that”; and claiming that he had been instructed by the employee on “proper faggot medical terminology” after earlier making reference to “severe TCC Tracheal Cock Contusions” and “A.R.S. Anal Rosebud Syndrome which is a precursor to A.P.C. Acute Prolapsed Colon.”

- He called a male sergeant a “fag,” and referred to the sergeant sitting on “his purple colored 12 inch suction cup dildo” and getting “rammed with an 18 inch dildo.”
- He referred to a co-worker as a “gook.”
- He asked Scimeca and Saunders if they should get a Vietnamese co-worker’s opinion on whether Vietnamese people are the “Niggers of Asia.”
- He called “dibbs” on “making a four person tent” out of a co-worker’s “hide.”<sup>9</sup>

(Ex. 15, pp. 117 – 121, 153, 182 – 184, 313, 343 – 344, 379 – 383, 426 – 427, 494 – 498, 503 – 504, 515 – 516, 615 – 619, 900 – 901, 919, 1022 – 1023, 1059, 1067 – 1078, 1117 – 1120, 1133 – 1135, 1138 – 1139, 1273, 1310 – 1311, 1428 – 1429, 1437 – 1442, 1477 – 1483, 1497 – 1500, 1549, 1569 – 1571, 1647 – 1649; Ex. 16, pp. 166 – 167, 1371 - 1373).

## **B. Text Messages About a Black Inmate That Died in Custody**

In addition to making disparaging comments about his colleagues, Palma engaged in a text message conversation with Saunders and Scimeca about a black inmate that died of natural causes while in custody. When Saunders informed Palma and Scimeca that an inmate died, Palma wrote, “tell me...dude was a darkie!!” When Saunders replied that he was, Palma stated, “I remember the Nig...a real loss to society!” (Ex. 15, pp. 353 – 363).

## **C. Text Messages Related to Law Enforcement**

Palma also sent the following text messages related to law enforcement matters.

- When discussing the protests in Baltimore over the in-custody death of a black man, Palma stated that he would “work a month for free if they let me drive an M1 Abrahams [Abrams] right over that fucking mob” and that he would “like to hang a few in Baltimore.”

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<sup>9</sup> Palma said the co-worker is not Jewish but Palma, Scimeca and Saunders nevertheless make anti-Semitic jokes about the co-worker because he has a reputation for being “cheap.” Scimeca corroborated Palma on this point. Saunders was not asked about this issue because the Investigators did not locate anti-Semitic text messages by Saunders about this employee.

- He stated that he wanted to shoot a protester after Saunders informed him that there may be protesters marching from the Main Jail to the San Jose Police Department.<sup>10</sup>
- He commented that “overtime would plummet without any gang bangers,” making Mexicans “much more valuable than niggers.”
- In the context of a discussion about a white male killing a San Jose police officer, he texted, “let’s hang a nigger and couple Nortenos from the Chapel Roof tomorrow.”
- He suggested that he, Scimeca and Saunders change their Clash of Clans<sup>11</sup> name to “Darren Wilson...the cop that shot that nig in Ferguson.”

(Ex. 15, pp. 64 – 66, 164 – 165, 194 – 195, 1543 – 1545, 1548, 1564 - 1565; Ex. 16, pp. 1122 – 1124).

## VI. INTERVIEW SUMMARIES

The following are summaries of the interviews conducted and are not intended to be a comprehensive recounting of the statements provided by the individuals interviewed. For the full statements, refer to the interview recordings included as an exhibit to this report.

### A. Interviews of Alvaro Palma

Palma has worked for the Santa Clara County Sheriff’s Office as a Correctional Deputy for approximately seven and a half years. He is currently assigned to the Elmwood Correctional Facility.

Palma verified that his cell phone number is . Palma stated that he communicates via text messaging with some of his co-workers, including but not limited to, Scimeca and Saunders.

Palma was shown numerous examples of text messages (including all of the text messages quoted above) in which he made racially, ethnically and sexually derogatory references about Sheriff’s Office personnel, and disparaging comments about an inmate, blacks, Hispanics and the

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<sup>10</sup> According to news reports, on the day Palma sent this message, a group of demonstrators marched to San Jose Police Department headquarters to demand the firing of a San Jose police officer who sent combative tweets antagonizing the “Black Lives Matter” movement. ([http://www.mercurynews.com/news/ci\\_27166244/marchers-demand-ouster-san-jose-police-officer-phillip](http://www.mercurynews.com/news/ci_27166244/marchers-demand-ouster-san-jose-police-officer-phillip))

<sup>11</sup> Clash of Clans is a video game that Palma, Scimeca and Saunders play on their cell phones. ([https://en.wikipedia.org/wiki/Clash\\_of\\_Clans](https://en.wikipedia.org/wiki/Clash_of_Clans))

protesters in Ferguson and Baltimore. While Palma stated that he did not recall sending some of the text messages he was shown, he did not deny that he sent them. Palma stated that the text messages were “over the top” humor intended for “shock value” with no intention of harming others. Palma also said that he, Scimeca and Saunders were always trying to “one up each other.”

While Palma acknowledged that the text messages he sent containing racial epithets were clearly inappropriate, he maintained that they were just jokes and that there was “no racial intent behind it.” He also claimed that his texts about the Baltimore protesters (e.g., “*I’d like to hang a few*”) and his suggestion that he, Scimeca and Saunders change their Clash of Clans name to “*Darren Wilson...the cop that shot that nig in Ferguson*” were simply more examples of over the top humor that was not motivated by racial bias. He also stated that he was only “venting” when he sent the following text after a San Jose police officer was killed – “*let’s hang a nigger and couple Nortenos from the Chapel Roof tomorrow*”.

Palma was asked about the homosexual references he made about male co-workers and supervisors. Concerning his comment that he heard a *lieutenant “blew out” a sergeant’s “ass like the grand canyon,*” Palma stated that he does not know if the lieutenant and sergeant are gay but he has heard rumors to that effect and that they had a sexual relationship. Palma said that the sergeant he referred to as a “fag” is not gay but married to a female employee of the Sheriff’s Office.<sup>12</sup> When asked about his repeated homophobic references concerning another male co-worker, Palma stated that he does not believe the co-worker is gay. He said the co-worker pretends to be gay to make Palma and others laugh and that, as a result, they frequently joke about the co-worker being gay.<sup>13</sup>

Palma stated that he has no hatred toward any group of people. However, he acknowledged that his text messages were inappropriate and that, if they were released to the public, they would bring the Sheriff’s Office into disrepute. Palma stated that he was sorry for his comments, which he said were not intended for public viewing. Palma also noted that he believes Scimeca and Saunders are good people and he does not believe they meant any ill will by the text messages they sent.

Palma acknowledged that it would violate the Department’s harassment and discrimination policy if he were to engage in any action that singles out a particular group or person, or by intimidating, threatening or making someone feel unwelcome at work. Palma further acknowledged that derogatory remarks toward people of color or based on sexual orientation or religion is not acceptable and not something he would express in an open forum. When asked if

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<sup>12</sup> Saunders and Scimeca also stated that the sergeant is married to a woman.

<sup>13</sup> Saunders and Scimeca also stated that the co-worker pretends to be gay.



racist, homophobic or sexually charged comments are against Department policy, Palma stated that they would be if the comments were said directly to the person to whom they referred.

Palma admitted that he never spoke to anyone about getting out of the text messaging group and made no attempt to disassociate himself from the group.

## **B. Interviews of Other Subjects<sup>14</sup>**

### **1. Ryan Saunders**

Saunders stated that the texts he exchanged with Palma and Scimeca were crude and stupid attempts at humor and merely examples of “idiots” trying to “one up” each other and that there was no hate or malice involved. He also characterized the text messages as “locker room” banter.

### **2. Lance Scimeca**

Scimeca did not make any statements in his interview directly related to the inappropriate text messages sent by Palma. Scimeca instead focused on explaining the reasons he (Scimeca) sent inappropriate messages.

### **3. Donald Morrissey and Rene Lucero**

Morrissey and Lucero were not involved in the text messaging group of which Palma was a part. Therefore, they did not say anything in their interviews that was relevant to the allegations against Palma.

## **C. Witness Interviews**

The Investigators interviewed four other employees of the Sheriff’s Office (Michael Fortino, Jose Ortiz, Jesus Perez and Charles Ramirez II) who were part of a text messaging group that included Lucero, Scimeca, Morrissey, and Saunders. Because these employees were not involved in a text messaging group that included Palma, they did not make any statements in their interviews that related to the allegations against Palma.

## **VII. FINDINGS AND ANALYSIS**

### **A. Standard of Proof**

In assessing the evidence, the general civil standard of proof was applied. An incident was found to have occurred if the preponderance of the evidence obtained during the investigation

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<sup>14</sup> Only the portions of the interviews that relate to the allegations against Palma are included here.

supported that conclusion. That is, it was more likely than not that the alleged conduct happened. In reaching these determinations, the Investigators took into account the reliability and admissibility of the information provided and made credibility resolutions as appropriate. The following is a key to the terminology used in reaching the findings:

<b>SUSTAINED</b>	The investigation discloses sufficient facts to prove the allegations made in the complaint.
<b>NOT SUSTAINED</b>	The investigation discloses insufficient facts to prove or disprove the allegations made in the complaint.
<b>EXONERATED</b>	Where the acts which provided the basis for the complaint occurred, but the investigation shows such acts to be justified, lawful or proper.
<b>UNFOUNDED</b>	The investigation shows that the act or acts complained of did not occur or were misconstrued.

## **B. Credibility Findings**

Palma was interviewed by Investigators Howard Jordan and Michael Yoell.<sup>15</sup> Palma was interviewed in person giving the Investigators an opportunity to directly observe Palma's body language and mannerism. The Investigators did not find Palma to be credible.

Palma lacked candidness and humility during his interviews. Palma was disingenuous in taking accountability for the offensive content of the text messages, stating that the messages were merely "over the top" humor intended to provide "shock value" or to "one up" Scimeca and Saunders.

Palma's denial that he has racial biases was also not credible given his prevalent use of the word "nigger" in the text messages that he sent to Scimeca and Saunders. Palma's credibility was further undermined by his initial claim that he was unaware of what the word "nig nog" meant, which is known to be a term created by Scimeca to describe black people and was derived from the word "nigger." Palma initially said he thought the term referred to a "knucklehead." It was only after being shown a text message Scimeca sent in which Scimeca stated – in reference to a black inmate that died – that "the only time I want to look into a nig nog's eye is when the spark of life fades away permanently," that Palma admitted "nig nog" was a racist term.

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<sup>15</sup> Yoell conducted the first interview, and Yoell and Jordan participated in the second interview.

### **C. Substantive Findings**

For the reasons detailed below, the Investigators find that text messages Palma sent to Scimeca and Saunders violated Department and County policies. Accordingly, the allegations against Palma are SUSTAINED.

#### **1. Text Messages About Sheriff's Office Personnel**

As enumerated in Section V(A), Palma sent racially, ethnically and sexually disparaging, derisive and discriminatory text messages about a multitude of Sheriff's Office personnel, including supervisors and co-workers. For example, Palma referred to black co-workers as "niggers," referred to another co-worker as a "gook," called a female sergeant a "stupid bitch" who "fits our female Sgt. profile perfectly...either black lesbian or homicidal crazy bitch," referred to another female co-worker as a "whore," commented in graphic detail on the purported sexual relationships of co-workers and supervisors, and relayed a rumor he heard that a male lieutenant "blew out" a male sergeant's "ass like the grand canyon."

Palma's text messages were undermining not only to supervisory employees who were singled out for derision but also to the co-workers that he targeted. His comments also subjected the employees to further ridicule by Saunders and Scimeca. For example, after referring to a female co-worker as a "whore," Scimeca remarked that the employee was a "purveyor of pussy" and Saunders chimed in that the "bitch should write a book. DOC and the Cocks that Swing there." (Ex. 15, pp. 514 – 517).

The fact that Palma considered Saunders and Scimeca to be his friends and that he sent most of the text messages while off duty does not excuse his behavior where there is a clear nexus between his job and the disparaging and discriminatory comments he made about Sheriff's Office staff to other employees of the Sheriff's Office. As a correctional deputy, Palma is required, among other things, to "maintain an exemplary standard of personal integrity and ethical conduct in relationships with other employees," to uphold "principles of equality, fairness, and objectivity," to treat "all individuals with respect and dignity," to "respect the constitutional rights of all to liberty, equality and justice," to refrain from creating a discriminatory or harassing environment, and not to engage in conduct which discredits the County or County service. Palma failed to meet these standards of performance when he denigrated numerous Sheriff's Office personnel to other employees of the Sheriff's Office.

Palma's assertion that the text messages were only intended as "over the top" humor does not justify his misconduct where Department policy makes clear that creating a discriminatory environment by making disparaging remarks is a violation of policy even if the remarks were intended as humor, and given Palma's admission that if the text messages were made public they would bring the Sheriff's Office into disrepute.

As noted above, Palma made homophobic comments about a male lieutenant, two sergeants and a deputy. Palma admitted that his comment that a lieutenant “blew out” a sergeant’s “ass like the grand canyon” was prompted by a rumor he heard that the two men are gay. However, there is insufficient evidence to find that the other sergeant and deputy referred to in homophobic terms are gay. Even though there is insufficient evidence to conclude that Palma targeted these two employees due to their actual or perceived sexual orientation, his homophobic comments were inappropriate, particularly in the context of a discussion with other Sheriff’s Office employees; a discussion which included a sergeant. Similarly, Palma’s anti-Semitic references about a colleague were inappropriate and violated policy even if, as Palma claims, the employee is not actually Jewish.

For the reasons explained above, the Investigators find that Palma violated the following Department and County policies by sending racially, ethnically and sexually derogatory text messages about Sheriff’s Office personnel to other employees of the Sheriff’s Office:

- D.O.C. Policy 3.31.IV.G – Employee Conduct (requiring employees to “maintain an exemplary standard of personal integrity and ethical conduct in their relationships with other employees...”).
- D.O.C. Policy 3.31.IV.J.9.a – Employee Conduct/Conduct Unbecoming (prohibiting “conduct unbecoming” which includes but is not limited to harassment or discrimination).
- Santa Clara County Code of Ethical Conduct (requiring “upholding principles of equality, fairness, and objectivity” and “treating all individuals with respect and dignity”).
- D.O.C. Policy 1.05 – Code of Ethics (imposing duty to “respect the constitutional rights of all to liberty, equality and justice” and to be “honest in thought and deed in both...personal and official life [and] exemplary in obeying the...regulations of...the department”).
- D.O.C. Policy 1.35 – Sexual Harassment Policy (prohibiting sexual harassment).
- D.O.C. Standards of Performance (prohibiting the creation of a discriminatory environment, including making disparaging utterings or writing disparaging remarks, whether or not intended as humor).
- Chief’s Policy Statement Regarding Sexual, Racial and Other Harassment or Aspersions (prohibiting harassment or aspersions directed against superiors, subordinates, or co-workers).

- Santa Clara County and Board of Supervisors Policies on Harassment and Discrimination (prohibiting harassment and discrimination).
- Santa Clara County Merit System Rule A25-301(b)(1) (prohibiting gross misconduct or conduct unbecoming which tends to discredit the County or County service).
- Santa Clara County Merit System Rule A25-301(b)(2) (prohibiting immoral conduct).
- Santa Clara County Merit System Rule A25-301(a)(1) (requiring compliance with County and Department rules).
- D.O.C. Policy 3.31.IV.J.1.a – Employee Conduct/Conformance to Law (requiring compliance with County policies).

## **2. Text Messages About a Black Inmate That Died in Custody**

Palma participated in a text message conversation with Scimeca and Saunders in which they mocked a black inmate that died. When Saunders informed Palma of the death, Palma texted, “tell me...dude was a darkie!” and, later in the conversation, when he knew which inmate died, he stated, “I remember the Nig...a real loss to society!”

Palma’s comments about the inmate were reprehensible, racist and demonstrated an utter lack of respect for the inmate as a human being. Palma’s defense that the messages were merely intended as “shocking verbiage” is no justification given the disgraceful nature of the texts, the fact that Department policy does not exempt discriminatory comments supposedly made in jest, and Palma’s admission that if the text messages were made public they would bring the Sheriff’s Office into disrepute.

There can also be no reasonable dispute that the text messages had a clear nexus to Palma’s job as a correctional deputy which requires him to “maintain an exemplary standard of personal integrity and ethical conduct in [his] relationships [with] inmates,” to uphold “principles of equality, fairness, and objectivity,” to treat “all individuals with respect and dignity,” and not to engage in conduct which discredits the County or County service.

For the above-stated reasons, the Investigators find that Palma violated the following Department and County policies by sending the aforementioned text messages to Scimeca and Saunders:

- D.O.C. Policy 3.31.IV.G – Employee Conduct (requiring employees to “maintain an exemplary standard of personal integrity and ethical conduct in their relationships with...inmates...”).
- D.O.C. Policy 3.31.IV.J.9.a – Employee Conduct/Conduct Unbecoming (prohibiting “conduct unbecoming” which includes but is not limited to discrimination).

- Santa Clara County Code of Ethical Conduct (requiring “upholding principles of equality, fairness, and objectivity” and “treating all individuals with respect and dignity”).
- D.O.C. Standards of Performance (prohibiting the creation of a discriminatory environment, including making disparaging utterings or writing disparaging remarks, whether or not intended as humor).
- Chief’s Policy Statement Regarding Sexual, Racial and Other Harassment or Aspersions (prohibiting harassment or aspersions directed against inmates).
- Santa Clara County Merit System Rule A25-301(b)(1) (prohibiting gross misconduct or conduct unbecoming which tends to discredit the County or County service).
- Santa Clara County Merit System Rule A25-301(b)(2) (prohibiting immoral conduct).
- Santa Clara County Merit System Rule A25-301(a)(1) (requiring compliance with County and Department rules).
- D.O.C. Policy 3.31.IV.J.1.a – Employee Conduct/Conformance to Law (requiring compliance with County policies).

### **3. Text Messages Related to Law Enforcement**

As set forth above in Section V(C), Palma sent numerous racist text messages to Saunders and Scimeca about law enforcement related matters. For example, Palma derided the predominantly black protesters in Baltimore and Ferguson by stating that he would “work a month for free if they let me drive an M1...Abrams...over that fucking mob,” that he’d “like to hang a few in Baltimore,” and by suggesting that he, Saunders and Scimeca change their Clash of Clans name to “Darren Wilson...the cop that shot that nig in Ferguson.” He also declared, “I wanna shoot a protester,” in reference to demonstrators who were demanding the firing of a San Jose police officer who sent combative tweets antagonizing the “Black Lives Matter” movement. Palma even found a way to make racist comments when discussing the killing of a San Jose police officer by a *white* suspect when he texted, “let’s hang a nigger and couple Nortenos from the Chapel Roof tomorrow.” He also denigrated both blacks and Mexicans when he commented that “overtime would plummet without any gang bangers,” making Mexicans “much more valuable than niggers.”

For the reasons already explained, Palma’s defense that the text messages were intended as “over the top” humor does not excuse his misconduct, particularly given that Palma admits the messages if made public would bring the Sheriff’s Office into disrepute. Moreover, the text messages had a clear job nexus given Palma’s position as a law enforcement officer who is

expected to “maintain an exemplary standard of personal integrity and ethical conduct” in his relationship with the community, to uphold “principles of equality, fairness, and objectivity,” to treat “all individuals with respect and dignity,” to “respect the constitutional rights of all to liberty, equality and justice,” and not to engage in conduct which discredits the County or County service.

For the reasons stated above, the Investigators find that Palma violated the following Department and County policies by sending racist text messages to Sheriff’s Office employees about law enforcement matters:

- D.O.C. Policy 3.31.IV.G – Employee Conduct (requiring employees to “maintain an exemplary standard of personal integrity and ethical conduct in their relationships...with the community”).
- D.O.C. Policy 3.31.IV.J.9.a – Employee Conduct/Conduct Unbecoming (prohibiting “conduct unbecoming” which includes but is not limited to discrimination).
- Santa Clara County Code of Ethical Conduct (requiring “upholding principles of equality, fairness, and objectivity” and “treating all individuals with respect and dignity”).
- D.O.C. Policy 1.05 – Code of Ethics (imposing duty to “respect the constitutional rights of all to liberty, equality and justice” and to be “honest in thought and deed in both...personal and official life [and] exemplary in obeying the...regulations of...the department”).
- D.O.C. Standards of Performance (prohibiting the creation of a discriminatory environment, including making disparaging utterings or writing disparaging remarks, whether or not intended as humor).
- Santa Clara County Merit System Rule A25-301(b)(1) (prohibiting gross misconduct or conduct unbecoming which tends to discredit the County or County service).
- Santa Clara County Merit System Rule A25-301(b)(2) (prohibiting immoral conduct).
- Santa Clara County Merit System Rule A25-301(a)(1) (requiring compliance with County and Department rules).
- D.O.C. Policy 3.31.IV.J.1.a – Employee Conduct/Conformance to Law (requiring compliance with County policies).

#### **4. Failure to Disassociate From Text Messaging Group or to Report Misconduct by Others**

Palma not only sent highly inappropriate text messages to Sheriff's Office employees that violated Department and County policy; he also made no effort to disassociate himself from the text messaging group even though Scimeca and Saunders were sending similarly inappropriate text messages. He also failed to report to any superior that Scimeca and Saunders were sending inappropriate text messages. These failures violated the following Department and County policies:

- D.O.C. Policy 3.31.IV.B – Employee Conduct (requiring employees to “maintain the integrity of their profession through complete disclosure of those who violate...rules of conduct...or who conduct themselves in a manner which tends to discredit the profession”).
- D.O.C. Policy 3.31.IV.J.9.a – Employee Conduct/Conduct Unbecoming (prohibiting “conduct unbecoming” which includes but is not limited to discrimination).
- Santa Clara County Merit System Rule A25-301(b)(1) (prohibiting conduct unbecoming which tends to discredit the County or County service).
- Santa Clara County Merit System Rule A25-301(a)(1) (requiring compliance with County and Department rules).
- D.O.C. Policy 3.31.IV.J.1.a – Employee Conduct/Conformance to Law (requiring compliance with County policies).

#### **VIII. CONCLUSION**

This concludes the Investigators' report. The Investigators are available to answer questions that duly authorized representatives of the County may have about the findings contained herein.