

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

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

**Subject:** René Lucero, Correctional Deputy

**Investigators:** Nikki Hall, State Bar No. 184233  
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**IA Case Number:** 2015-037

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## 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 René Lucero, a Correctional Deputy with the Sheriff’s Office. It is alleged that Lucero made derisive, discriminatory and disparaging comments about Sheriff’s Office personnel 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 Lucero also sent text messages that could be in violation of Department and County policy related to the protests that occurred in Ferguson, Missouri after a black teenager was fatally shot by a white police officer.

Three other employees of the Sheriff’s Office – Correctional Sergeant Lance Scimeca and correctional deputies Ryan Saunders and Alvaro Palma – 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 Lucero are **SUSTAINED**.

There is sufficient evidence to find that Lucero sent racially and sexually derisive, disparaging, and discriminatory text messages about numerous Sheriff’s Office personnel to other Sheriff’s Office employees. He also sent a racist text message about the protesters in Ferguson. Lucero’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...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 or other third parties).
- Santa Clara County and Board of Supervisors Policies on Harassment and Discrimination (prohibiting harassment and discrimination).

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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 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
René Lucero	Correctional Deputy	November 16, 2015; December 3, 2015 <sup>4</sup>
Alvaro Palma	Correctional Deputy	November 13, 2015; December 3, 2015
Ryan Saunders	Correctional Deputy	November 13, 2015; December 3, 2015; December 17, 2015
Lance Scimeca	Correctional Sergeant	November 13, 2015; December 4, 2015
Donald Morrissey	Enforcement Sergeant	December 18, 2015
Michael Fortino	Correctional Deputy	January 26, 2016
Jesus Perez	Correctional Officer	January 26, 2016

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

<sup>4</sup> Lucero was represented by Christina Petricca of the law firm Mastagni Holstedt.

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>	Acknowledgment of Standards of Performance signed by René Lucero on January 5, 2000
<b>9</b>	Acknowledgment of Chief's Policy Statement Regarding Sexual, Racial or Other Harassment or Aspersion signed by René Lucero on January 5, 2000
<b>10</b>	Acknowledgement of Department of Correction's Sexual Harassment Policy signed by René Lucero
<b>11</b>	Training Activity Report for René Lucero

<b>12</b>	Statement of Allegations against René Lucero, dated November 8, 2015
<b>13</b>	Spreadsheet showing hours worked by René Lucero from December 1, 2014 through June 30, 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 René Lucero <sup>5</sup>
<b>16</b>	Email correspondence from Captain Frank Zacharisen to Howard Jordan, dated November 23, 2015
<b>17</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.

(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.

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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. 16** for Zacharisen's description of the parser program and database that he created to produce the transcript.)



(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.
  
- 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, 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).

Lucero 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. Standards of Performance**

On January 5, 2000, Lucero signed an acknowledgment of the Department's Standards of Performance in which he acknowledged his understanding that the Chief of Correction "will mete out severe discipline up to and including termination of those employees culpable of the following misconduct: (3) Creating a discriminating environment including making disparaging utterings or writing disparaging ethnic remarks, whether or not intended as humor." (Exh. 8).

**2. Chief's Policy Statement Regarding Sexual, Racial and Other Harassment or Aspersions**

On January 5, 2000, Lucero signed an acknowledgment of the Chief's Policy Statement: Sexual, Racial and Other Harassment or Aspersions. By signing this document, Lucero acknowledged his understanding that "behavior in violation of Department policy regarding harassment or

aspersions 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. 9).

### 3. Sexual Harassment Policy

On or about July 14, 2000, Lucero signed a document acknowledging that he had received and read the Department’s Sexual Harassment Policy and understood that he was required to act in accordance with the provisions of the policy. (Ex. 10).

## V. TEXT MESSAGE EVIDENCE

The text message evidence establishes that Lucero made disparaging racial and sexual comments about numerous Sheriff’s Office personnel while engaging in group text messaging with five male co-workers and two male sergeants, and that he made a racist comment related to the protesters in Ferguson.<sup>6</sup>

Lucero also made other racist comments about blacks; however, examples of such racist comments are not included below unless they pertained to Sheriff’s Office personnel or the Ferguson protesters. The complete transcript of text messages is attached as Ex. 15 should one want to reference the full extent of Lucero’s discriminatory text messages.

### A. Text Messages About Sheriff’s Office Personnel

The following are the racially and sexually disparaging comments that Lucero made about co-workers and superiors in text messages sent to other Sheriff’s Office personnel:

- Lucero referred to a captain as “captain suck ass” and “cunt ass piece of shit,” and claimed that the captain was “fucking” a female civilian employee but now another male captain was “swallowing [the captain’s] jizz.”
- He described a female sergeant who is involved in a relationship with a black correctional officer as a “nigger loving retard.” He also commented on the size of the male correctional officer’s penis, called him a “nigger” and stated that the officer is “deep in [the] guts” of the female sergeant. He further claimed that the female sergeant “landed in a mental ward” and “took up drinking” following the break-up of a relationship with another male correctional officer.

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<sup>6</sup> The two sergeants in the text messaging group were Lance Scimeca (then President of the County’s Correctional Officers’ Association) and Donald Morrissey (President of the Deputy Sheriffs’ Association). The other co-workers in the messaging group were Ryan Saunders, Michael Fortino, Jose Ortiz, Jesus Perez, and Charles Ramirez II.

- He compared the size of a Hispanic co-worker's penis to "Mr. Ed."
- He referred to a male co-worker as a "nigga fo life" and claimed that he "fucked" two female co-workers.
- He described two female co-workers as "team players" for purportedly having sex with male co-workers.
- He commented about a male lieutenant "butt fucking" a male sergeant.

(Ex. 15, pp. 148, 151, 153 - 164, 166, 167, 171, 175, 178, 233 – 237, 254 – 259, 313 - 317).

### **B. Text Messages About Protesters in Ferguson**

In addition to disparaging comments about his colleagues, Lucero made a racist comment about the protesters in Ferguson. Lucero initiated a group text message by forwarding a link to a video identified as "Angry driver attacks Ferguson protester." In response to the video, Saunders commented that the protesters "don't have a clue. But fuck it...That's why we all make 6 figures...", to which Lucero responded, "Niggers with no purpose in life = Professional Winers (sic)". Scimeca then remarked that he appreciated the "nig nogs" for "keeping us gainfully employed" and Lucero responded, "Word." (*Id.*, pp. 8 – 10).

## **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 René Lucero**

Lucero is a 16 year veteran working at the Santa Clara County Sherriff's Elmwood Correctional Facility. He is currently assigned as the A team's Training Administrative officer.

Lucero confirmed that his cell phone number is \_\_\_\_\_ and said that he has had this number since approximately 2008.

Lucero described himself as a good worker who is dedicated to the Sheriff's Office. Lucero said that he has not been the subject of any form of discipline during his tenure with the Sheriff's Office. He also said that he gets along well with his co-workers and the inmates at the Elmwood Correctional Facility.

Lucero confirmed that he has been part of a group chat using the text messaging feature. The group included the following Sheriff's Office personnel – Lance Scimeca, Donald Morrissey, Ryan Saunders, Michael Fortino, Jose Ortiz, Jesus Perez, and Charles Ramirez II.

Lucero was shown examples of text messages that he sent in which he made racially and sexually derogatory comments about numerous Sheriff's Office personnel, including all of the examples quoted above. Lucero acknowledged that his texts were foolish, immature, in bad taste, and showed poor judgment on his part, but also said they were just jokes and instances of "talking smack." He also stated that the comments he made about some of his co-workers were motivated by jealousy that the co-workers were promoted to sergeant and he was not.

Lucero was also confronted with the text message he sent related to the protesters in Ferguson ("*Niggers with no purpose in life = professional winners (sic)*"). Lucero stated that the message was a joke and an instance of "talking smack."

When asked if he dislikes blacks or homosexuals, Lucero stated that he does not have any problems with either group of people. However, when confronted with the inconsistency of this statement compared to the content of his text messages, Lucero agreed that when viewed by someone outside of his text messaging group, he could be viewed as racist and homophobic.

Lucero stated that he was embarrassed and ashamed for being a part of the group text messages in which several Sheriff's Office personnel shared racist, homophobic and sexist texts with each other. Lucero said that he became involved in the group text chat because he felt a sense of belonging. When asked if he ever considered opting out of the group chat by simply deleting his co-workers from his contacts, deleting the text messages, changing his phone number or just ignoring the messages, Lucero stated that he never considered those options. He indicated that he felt peer pressured to respond to the text messages because he did not want to be viewed by the group as being weak or scared. Lucero also said that he considers Scimeca to be a bully and was concerned how Scimeca would react if he objected to the texts. He noted that Scimeca is his supervisor and is responsible for creating his work schedule and assignment at the Elmwood facility. Lucero also pointed out that two sergeants – Scimeca and Morrissey – were involved in the group text messages and they never told him to stop sending inappropriate text messages.

Lucero claimed that he spoke to Sergeant Morrissey by phone around March 2015 and told him that the group text messages were "getting out of hand." Lucero was prompted to talk to Morrissey because his involvement in the group messages was causing problems in his marriage and San Francisco police officers were being disciplined for similar behavior. According to Lucero, Morrissey acknowledged that the content of the group text messages had gotten out of control. Morrissey told Lucero that he was going to tell Scimeca to stop sending inappropriate text messages, and Morrissey later told Lucero, also by phone, that he had spoken to Scimeca about the text messages though he does not recall Morrissey telling him what Scimeca said in response. Thereafter, Lucero noticed that the volume of inappropriate text messages "slowed down a little bit" but they did not cease. He attributed this to Morrissey's request to Scimeca.

Lucero never sought to opt out of the group text or disconnect from the group after his discussion with Morrissey. Lucero admitted that he should have done more to opt out of the group text or attempt to stop members of the group from making derisive comments about co-workers,

supervisors and blacks. Lucero acknowledged that it was ultimately his responsibility to take action to opt out of the group texts.

## **B. Interviews of Other Subjects<sup>7</sup>**

### **1. Donald Morrissey**

When asked if Lucero ever approached him to ask how to get out of the text messaging group or to raise concerns about the content of the text messages that were being exchanged, Morrissey said that Lucero did not contact him and he is confident he would have remembered that if it happened. He also denied that anyone else in the text messaging group raised concerns about the text messages. Morrissey went on to say that had Lucero or any other participant in the text messaging group contacted him about wanting to opt out of the group, he would have remembered that request and taken action to ensure that they were removed from the group.

Morrissey recalled seeing a text message from Scimeca at some point which caused him to talk to Scimeca. Morrissey could not recall when that conversation occurred or what Scimeca said in a text message that caused him concern, but he believes he told Scimeca to be careful what he texted because his personal cell phone records could be subpoenaed by the Department. According to Morrissey, Scimeca didn't want to listen to his advice. Morrissey added, "I could've talked [to Scimeca] until I was blue in the face and he wouldn't have listened to anything I had to say." Morrissey further stated that he did not think being more authoritative with Scimeca would have been beneficial given that he and Scimeca are peers.

Morrissey did not recall having a conversation similar to the one he had with Scimeca with any other members of the text messaging group.

### **2. Lance Scimeca**

Scimeca denied that Morrissey, or anyone else, ever discussed the content of the group text messages with him. Scimeca claimed that if anyone in the text messaging group had told him they were offended by his texts or that they wanted out of the group chat, he would have apologized and would not have looked negatively upon the person if they chose to opt out.

### **3. Ryan Saunders**

Saunders stated that the texts he exchanged with Lucero and others were crude and stupid attempts at humor and merely examples of "idiots" trying to "one up" each other and that there

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<sup>7</sup> Only the portions of the interviews that relate to the allegations against Lucero are included here.

was no hate or malice involved. He also characterized the text messages as “locker room” banter.

**4. Alvaro Palma**

Palma did not make any statements in his interview related to the allegations against Lucero. While Palma engaged in group text messaging with Scimeca and Saunders, he was not included in the larger text messaging group of which Lucero was a part.

**C. Witness Interviews<sup>8</sup>**

The Investigators interviewed four other employees of the Sheriff’s Office who were part of a text messaging group that included Lucero, Scimeca, Morrissey, and Saunders.

**1. Michael Fortino**

Fortino claimed that it was his habit to delete the text messages he received from members of the text messaging group without reading them.

**2. Jose Ortiz**

Ortiz confirmed that he was part of the text messaging group but claimed he could not recall the specific nature of the text messages exchanged. He said that he typically deleted the text messages without reading them first. He did not recall receiving any inappropriate or offensive text messages.

**3. Jesus Perez**

Perez stated that he deleted most of the text messages he received from members of the text messaging group without reading them. He did so because there were numerous texts being sent and he did not have time to read and respond to so many text messages. Perez claimed that if he had seen any inappropriate text messages he would have tried to get out of the text messaging group because he would not want to put his career at risk.

**4. Charles Ramirez II**

Ramirez did not make any statements in his interview directly related to the allegations against Lucero.

**VII. FINDINGS AND ANALYSIS**

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<sup>8</sup> Only the portions of the interviews that relate to the allegations against Lucero are included here.



**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 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**

Lucero was interviewed by Investigators Howard Jordan and Michael Yoell.<sup>9</sup> Lucero was interviewed in person giving the Investigators an opportunity to directly observe Lucero’s body language and mannerism.

In his first interview, Lucero was forthright and accepted responsibility for his actions. He also apologized for his behavior.

However, in his second interview, Lucero was somewhat defensive and evasive when asked to explain some of his text messages. For example, Lucero initiated a text message conversation about the size of a Hispanic co-worker’s penis. In his text messages, he claimed that a female co-worker who had been involved in a sexual relationship with the male co-worker showed Lucero a photograph of the co-worker’s penis. Even though Lucero wrote in his texts that the co-worker’s penis was “like a horse” and he referred to the co-worker as “Mr. Ed,” when asked about the text messages, he initially denied that he was comparing the co-worker’s penis to a

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<sup>9</sup> The first interview was conducted by Jordan and the follow-up interview was conducted by Jordan and Yoell.

horse before eventually conceding that it could reasonably be inferred from his texts that he was drawing a comparison between the size of the co-worker's penis and a horse's penis. (Ex. 15, pp. 175, 178).

Another example of Lucero's evasiveness in his second interview had to do with a text message he sent in which he referred to a female sergeant involved with a black male correctional officer as a "nigger loving retard." (*Id.*, pp. 166, 232 – 237). Lucero initially maintained that he was referring to a female depicted in a pornographic video shared by a member of the text messaging group even when he was shown the full context of the text message conversation which indicates that the conversation had shifted from discussion of a pornographic video to a female sergeant who is in a relationship with a black co-worker.<sup>10</sup> It was only after being pressed on this issue that Lucero conceded it was possible he was referring to the female sergeant and not a woman in a porn video.

Despite instances of defensiveness and evasiveness in his second interview, Lucero still accepted responsibility for his conduct.

With respect to Lucero's claim that he raised concerns about the group text messages with Sergeant Morrissey, the Investigators found Morrissey to be credible when he denied that such a conversation occurred. Morrissey was visibly surprised when he was asked whether Lucero discussed the text messages with him. Morrissey's denial, along with his body language and demeanor, leads the Investigators to conclude that Morrissey was being honest and forthright when he said that neither Lucero nor anyone from the text messaging group contacted him about the text messages being exchanged. When assessing Morrissey's credibility versus Lucero's, the Investigators took into account that Morrissey has more to lose by falsely denying that Lucero raised concerns about the group text messages. Additionally, according to Morrissey, he did not work closely with Lucero when he was assigned to the Elmwood Facility and he has not had regular contact with anyone at Elmwood since he was transferred to the investigations unit in early 2015. Therefore, it's unlikely that Lucero would have the opportunity to discuss the group text messages with Morrissey. Furthermore, Morrissey was certain that he would have remembered if Lucero did in fact contact him to discuss the text messages. Even though the Investigators found Morrissey to be more credible than Lucero, there is insufficient evidence to conclude that Lucero was dishonest when he said that he raised concerns with Morrissey about the text messages. It's possible that Lucero was mistaken in his recollection about speaking with Morrissey.

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<sup>10</sup> Saunders stated in his first interview that the unidentified female sergeant he referred to in a text message that he sent prior to Lucero's "nigger loving regard" comment was a sergeant involved with a black correctional officer.

## C. Substantive Findings

For the reasons detailed below, the Investigators find that text messages Lucero sent to employees of the Sheriff's Office violated Department and County policies. Accordingly, the allegations against Lucero are SUSTAINED.

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

As evidenced in Section V, Lucero sent racially and sexually disparaging, derisive and discriminatory text messages about numerous Sheriff's Office personnel to a text messaging group comprised of five co-workers and two sergeants. Lucero does not dispute sending the messages.

Lucero's text messages not only undermined supervisory employees who were singled out for derision but also the co-workers who were targeted. His comments also subjected the employees to further ridicule by other members of the text messaging group, which included two sergeants. For example, Lucero initiated a text message discussion in which he claimed that a female sergeant "landed in a mental ward" after she broke up with a co-worker. (**Ex. 15**, p. 166). This prompted Scimeca and Saunders to mock the sergeant's purported suicide attempt and to call her a "cunt." (*Id.*, pp. 167 - 169).

That fact that Lucero sent the text messages quoted above when he was 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, Lucero 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. Lucero failed to meet these standards of performance when he denigrated numerous Sheriff's Office personnel to other employees of the Sheriff's Office.

Lucero's assertion that the text messages were only intended as jokes and instances of "talking smack" 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.

For the reasons explained above, the Investigators find that Lucero violated the following Department and County policies by sending racially 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...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 Protesters in Ferguson**

Lucero’s text message about the Ferguson protesters (“*Niggers with no purpose in life = Professional Winners (sic)*”), and his text agreeing with Scimeca’s comment that he appreciated

“the nig nogs for keeping us gainfully employed,” was indefensible given Lucero’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 already explained, Lucero’s defense that the text messages were intended as jokes does not excuse his misconduct.

The Investigators find that Lucero violated the following Department and County policies by sending the aforementioned text messages to a group of Sheriff’s Office employees:

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

For the reasons explained above in Section B, the Investigators find that Lucero did not report to Sergeant Morrissey the concerns he claims to have had about the group text messages that were being exchanged. Thus, Lucero 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 or to report to any superior that others in the text messaging group 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.