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*CONFIDENTIAL INVESTIGATIVE REPORT  
REGARDING ALLEGATIONS AGAINST PHILLIP  
MOLINA, THE CITY TREASURER,  
PREPARED FOR THE CITY OF OXNARD*

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*Attorney Work Product Privilege  
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## **I. Introduction**

On August 27, 2019, Atkinson, Andelson, Loya, Ruud & Romo, by and through Jorge J. Luna (“Investigator”) began an independent investigation for the City of Oxnard (“City”). The investigation stemmed from several complaints made by various individuals and departments against Phillip Molina, the City Treasurer. At the investigation’s inception, the Investigator met with several individuals that the City selected in order to obtain information regarding the nature of the allegations against Mr. Molina. On August 27 through 29, 2019, the Investigator met with the Chief Financial Officer (“CFO”); the Assistant City Manager (“Asst. City Manager”); the Deputy City Manager (“Deputy CM”); the Assistant Chief Financial Officer (“Asst. CFO”); the Assistant Chief of Police #1 (“Asst. COP #1”); the Assistant Chief of Police #2 (“Asst. COP #2”); the Public Works Director (“PW Director”); and City Manager’s Office Employee #1 (“CMO Employee #1”), to discuss their respective concerns, as well as those of their departments.

After these interviews were completed, the Investigator met with the Human Resources Director (“HR Director”), and the Assistant City Attorney (“Asst. City Attorney”), to discuss the investigation’s scope. At that time, the HR Director and the Asst. City Attorney instructed the Investigator to limit the investigation to the allegations raised by the Finance Department (i.e., the CFO and the Asst. CFO), the Public Works Department (i.e., the PW Director), and CMO Employee #1 related to the Dallas Cowboys’ Training Camp that occurred early in the Summer 2019.

In accordance with this scope of work, the Investigator began to interview witnesses that he selected related to the allegations. On September 12, 2019, the Investigator interviewed Treasurer’s Office Employee #4 (“TOE #4”). During the course of TOE #4’s interview, she raised concerns regarding comments that Mr. Molina allegedly made in the workplace that TOE #4 found objectionable and potentially harassing. The Investigator subsequently met with the HR Director and the Asst. City Attorney to advise them of TOE #4’s allegations concerning inappropriate comments in the workplace. At the conclusion of that meeting, the HR Director and the Asst. City Attorney instructed the Investigator to add these allegations to the scope of this investigation.

After the investigation began, there were concerns that Mr. Molina was interfering with the investigation or otherwise violating directives given to him as part of his Notification of Investigation. The HR Director and the Asst. City Attorney approved the Investigator’s request to add these allegations to the scope of this investigation.

This Confidential Investigative Report (“Report”) summarizes relevant information and provides factual findings regarding the various allegations. The Report addresses the allegations in reverse order by beginning with the allegations concerning Mr. Molina’s interference with the investigation and violation of directives contained in his Notification of Investigation. The Report then addresses TOE #4’s allegations concerning inappropriate comments in the workplace. Finally, the Report addresses CMO Employee #1’s claims concerning the Dallas Cowboys’ Training Camp; Finance Department’ complaints; and the Public Works Department’s complaints, respectively.

## II. Summary of Findings

This section summarizes the overarching factual findings for the reader's convenience. The remainder of the Report details the information and analyses supporting each finding, as well as the underlying factual findings that led to the conclusion.

After a thorough review of the information, including witness interviews and documents, the Investigator makes the following overarching findings using the preponderance of the evidence standard of proof:

- By a preponderance of the evidence, the Investigator finds that Mr. Molina interfered with the investigation by communicating with the Assistant Chief Financial Officer after being directed not to do so, by meeting with the members of his department to discuss this investigation after being directed not to do so, and by circulating an email regarding this and another investigation into his alleged conduct.
- By a preponderance of the evidence, the Investigator finds that Mr. Molina made inappropriate comments concerning female employees' appearance/attire, stereotypical female roles, and sexual innuendo in the workplace that violated the City's Sexual Harassment policy contained in its Personnel Rules and Regulations.
- By a preponderance of the evidence, the Investigator finds that Mr. Molina did accuse and improperly investigate City Manager's Office Employee #1 for theft in connection with a perceived shortfall in parking lot money related to the Dallas Cowboys' Training Camp held in the Summer of 2019, and that Mr. Molina's conduct violated the City's Personnel Rules and Regulations and fell outside his duties as outlined by the City Attorney's Office.
- By a preponderance of the evidence, the Investigator finds that Mr. Molina engaged in "keyboard warfare" by using misleading emails that were blind copied to various individuals, including members of the public, and that were designed to enhance his own image at the Public Works Department's expense, which violated the City's Personnel Rules and Regulations.
- By a preponderance of the evidence, the Investigator finds that Mr. Molina did not exceed the scope of his position as City Treasurer by engaging in a review of the accounts payable register of checks and holding those checks, including checks requested by the Public Works Department, that he determined lacked sufficient funding or supporting documentation.
- By a preponderance of the evidence, the Investigator finds that Mr. Molina engaged in "keyboard warfare" by using misleading emails that were blind copied to various individuals, including members of the public, and that were designed to enhance his own image at the Finance Department's expense, which violated the City's Personnel Rules and Regulations.

- By a preponderance of the evidence, the Investigator finds that Mr. Molina did not exceed the scope of his position as City Treasurer by engaging in a review of the accounts payable register of checks and holding those checks, including checks requested by the Finance Department, that he determined lacked sufficient funding or supporting documentation.
- By a preponderance of the evidence, the Investigator finds that Mr. Molina exceeded the scope of his position as City Treasurer by weighing in on procurements.
- By a preponderance of the evidence, the Investigator finds that Mr. Molina exceeded the scope of his position as City Treasurer by injecting himself into general accounting issues that are the Finance Department’s exclusive responsibility.

### **III. Investigative Methodology**

#### **A. Scope of the Investigation**

The following complaints constitute the scope of this investigation:

1. Interference with the Investigation
  - a. Did Mr. Molina interfere with this investigation by
    - (1) communicating with the Assistant Chief Financial Officer after being directed not to do so,
    - (2) by meeting with the members of his department to discuss this investigation after being directed not to do so, or
    - (3) by circulating an email discussing this and another investigation into his alleged conduct?
2. Treasurer’s Office Employee #4’s Complaint
  - a. Did Mr. Molina make inappropriate<sup>1</sup> comments in the workplace that employees found objectionable and harassing?
3. City Manager’s Office Employee #1’s Complaint
  - a. Did Mr. Molina act improperly<sup>2</sup> when he investigated a perceived shortfall in parking lot money related to the Dallas Cowboys’ Training Camp held in the Summer 2019?

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<sup>1</sup> For purposes of this Report, “inappropriate” means that the comments at issue violated the City’s Personnel Rules and Regulations.

4. Public Works Department Complaints

- a. Did Mr. Molina engage in “keyboard warfare”<sup>3</sup> by using misleading emails that were blind copied to various individuals, including members of the public, and that were designed to enhance his own image at the Public Works Department’s expense? If so, did this conduct violate the City’s Personnel Rules and Regulations?
- b. Did Mr. Molina exceed the scope of his position as City Treasurer by engaging in a review of the accounts payable register of checks and holding those checks, including checks requested by the Public Works Department, that he determined lacked sufficient funding or supporting documentation?

5. Finance Department Complaints

- a. Did Mr. Molina engage in “keyboard warfare” by using misleading emails that were blind copied to various individuals, including members of the public, and that were designed to enhance his own image at the Finance Department’s expense? If so, did this conduct violate the City’s Personnel Rules and Regulations?
- b. Did Mr. Molina exceed the scope of his position as City Treasurer by engaging in a review of the accounts payable register of checks and holding those checks that he determined lack sufficient funding or supporting documentation?
- c. Did Mr. Molina exceed the scope of his position as City Treasurer by weighing in on procurements?
- d. Did Mr. Molina exceed the scope of his position as City Treasurer by injecting himself into general accounting issues that are the Finance Department’s exclusive responsibility?

**B. Evidentiary Standard**

The Investigator reviewed, compared and analyzed information under a preponderance of the evidence standard to determine whether the allegations were with or without merit.

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<sup>2</sup> For purposes of this Report, “improperly” means that the conduct at issue violated the City’s Personnel Rules and Regulations or exceeded the City Treasurer’s duties as outlined in Exhibit C. The Investigator is not making a determination regarding the accuracy of Exhibit C; instead, he is accepting that the City Treasurer’s duties are as outlined in that memorandum.

<sup>3</sup> This phrase was used by Asst. COP #1 during his interview to describe Mr. Molina’s use of emails. He defined that concept as follows: “Historically, he has demonstrated that he will have a one-on-one conversation with someone, and following their encounter, will send [an] email to a wide distribution of “bcc’ed” persons, recapping their contact on his terms and from his side of the story. These emails are typically cast with a negative slant toward others, and are often self-aggrandizing. . . . His emails re known for mischaracterizing matters, accusing staff, questioning integrity and character of staff, or grandstanding. His emails are often patronizing and condescending.” That is how the phrase is being used in this Report.

“Preponderance of the evidence,” for purposes of this Report, means that the evidence on one side outweighs, or is more than, the evidence on the other side. This is a qualitative, not quantitative, standard of proof.

In this Report, the Investigator makes factual findings only. The Investigator used a legal analysis in reaching the factual findings in this Report.<sup>4</sup> The conclusions in this Report are drawn from the totality of the information and a thorough analysis of all the facts, and where necessary, credibility determinations are made.<sup>5</sup>

The Investigator’s analysis of a witness’ credibility, if necessary, is based on a number of tangible and intangible factors, and consideration was given to direct and circumstantial evidence. Factors that the Investigator considered in determining credibility include, but are not necessarily limited to: the extent of a person’s ability to perceive, to recollect, or to communicate accurately; the extent of a person’s opportunity to perceive any matter; the existence or nonexistence of a bias, interest, or other motive; consistent or inconsistent statements; the existence or nonexistence and corroboration of any fact provided by a person; any admission; and demeanor. See EEOC Enforcement Guidance: Vicarious Employer Responsibility for Unlawful Harassment, No. 915.20, p. 10 (June 18, 1999); and Fair Employment and Housing Workplace Harassment Guide for California Employers (May 2017).

In this particular case, to the extent that a credibility assessment was required, that analysis is contained in the section addressing the particular allegation at issue.

### C. Documents Reviewed

The Investigator reviewed the following relevant documents as part of this investigation<sup>6</sup>:

<b>Exhibit</b>	<b>Description</b>
A	Notification of Investigation dated September 10, 2019 from the City Manager, to Phillip Molina, City Treasurer
B	October 16, 2019 Memo from the City Manager, to Phillip Molina with the identified subject “Temporary Suspension of Administrative Duties of City Treasurer”
C	January 26, 2017 Memo from then-Assistant City Attorney, to then-Assistant City Manager with the identified subject “Duties of City Treasurer,” including the referenced attachments

<sup>4</sup> Although the Investigator used a legal analysis in reaching the factual findings in this Report, he did not reach legal or policy findings. Instead, the factual findings are intended to facilitate the rendering of legal advice by the employer’s counsel.

<sup>5</sup> The Investigator gave appropriate weight to information that might be considered hearsay in legal proceedings.

<sup>6</sup> The Investigator received documents in addition to those listed in this Report, but the Investigator only relied on and used those identified in this Report for purposes of his analysis and findings.

D	June 28, 2017 letter from Liebert, Cassidy Whitmore to then-Chief Financial Officer, the Human Resources Director, and the City Attorney regarding “Analysis regarding the City of Oxnard’s Accounts Payable Finance Procedure”
E	City of Oxnard Personnel Rules and Regulations, Effective July 18, 2017
F	Packet of emails provided by the Chief Financial Officer, to demonstrate Phillip Molina’s practice of blind copying private citizens on internal email communications with the Finance Department and the Finance Department’s substantive responses to Mr. Molina’s accusations and inquiries
G	Series of emails provided by the Assistant Chief Financial Officer, regarding a \$5.6 million draw down from a bond that resulted in Phillip Molina making accusations of impropriety by the Finance Department
H	Email string dated June 1, 2018, provided by Assistant Chief of Police #2, to demonstrate Phillip Molina’s practice of blind copying individuals on sensitive communications in order to promote himself at the expense of other City representatives
I	Written Statement and series of emails provided by Assistant Chief of Police #1 regarding the Dallas Cowboys’ Training Camp allegations by City Manager’s Office Employee #1
J	Series of emails provided by Assistant Chief of Police #1, to demonstrate Phillip Molina’s practice of blind copying individuals on internal communications and his sharing of privileged and confidential information with the public
K	Series of emails provided by the Public Works Director, in support of her allegations concerning Phillip Molina
L	April 9, 2010 Confidential Memo from then-Police Commander, to Assistant Chief of Police #1, containing “detailed information about the security procedures used in the Oxnard City Treasurer’s Office to safeguard employees and funds”
M	Series of emails provided by the Purchasing Manager, to demonstrate Phillip Molina’s involvement in procurements that did not involve his department
N	City Council of the City of Oxnard Resolution No. 15243 establishing “Financial Management Policies”
O	City Council of the City of Oxnard Resolution No. 15105 adopting a “Debt Management Policy and Taking Related Actions”
P	September 6, 2019 email from Phillip Molina to the Human Resources Director, re “Voya”

Q	Series of emails provided by the IT Director/Chief Information Officer, to demonstrate Phillip Molina’s sharing confidential information related to the ERP procurement
R	September 30, 2019 email string between Phillip Molina and a Councilmember, re “City Treasurer invested \$18,000,000 today”
S	June 4 – 7, 2019 email string between Phillip Molina and the Assistant Public Works Director, showing Mr. Molina’s involvement in the new golf course contract
T	September 11, 2019 email from Phillip Molina to the Assistant Public Works Director re “Meeting to Discuss American Golf Corporation”
U	October 2, 2019 email from Phillip Molina to Treasurer’s Office Employee #2 re “Why is your elected City Treasurer prevented from using his official city email?”
V	July 30, 2019 email from Phillip Molina to City Manager’s Office Employee #1 re “Proper processing of ticket sales at Cowboys Event”
W	String of emails provided by the Public Works Director re “No money remaining”
X	December 20, 2017 Memorandum from then-Assistant City Manager to Department Directors re “Approval of City of Oxnard Administrative Policy No. 18.4.6, Mass Mailings and the ‘All’ E-mail List”
Y	November 2, 2017 Memorandum from the City Attorney to Phillip Molina re “City Policy and Ralph M. Brown Act re Use of City Email System”
Z	December 4, 2018 Letter from the City Manager to Phil Molina re “Letter of Reprimand”
AA	String of emails between the Deputy City Manager and Phillip Molina re “Confidential”

In addition to the above-listed documents, transcriptions of each interview conducted by the Investigator are collectively attached as Exhibit BB.

#### **D. Witnesses**

The Investigator interviewed the following witnesses in person for this investigation.<sup>7</sup> The name of each witness, his or her position with the City, and the date(s) of each interview are listed below. The witnesses are listed in alphabetical order by each witness’ last name.

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<sup>7</sup> The Investigator notes that before each interview began, each witness was advised of the following: 1) the interview is being recorded; 2) the Investigator is an attorney, but is not an advocate for any party; 3) the Investigator’s role is to gather information and make factual findings regarding the alleged conduct; 4) the witness’ role is to respond fully and truthfully to the Investigator’s questions; 5) the witness should maintain confidentiality



<b>Title</b>	<b>Date(s) of Interview</b>
Finance Department Employee #1	September 23, 2019
Treasurer's Office Employee #1	October 8, 2019
Assistant City Treasurer/Revenue Accounting Manager	September 13, 2019 and October 8, 2019
Finance Department Employee #2	September 9, 2019
Assistant Chief of Police #1	August 28, 2019
Purchasing Manager	September 9, 2019
IT Director/Chief Information Officer	September 16, 2019
Finance Department Employee #3	September 23, 2019
Treasurer's Office Employee #2	October 9, 2019
Treasurer's Office Employee #3	October 7, 2019
Treasurer's Office Employee #4	September 12, 2019 and October 8, 2019
Treasurer's Office Employee #5	October 9, 2019
Public Works Director	August 28, 2019
Treasurer's Office Employee #6	September 12, 2019 and September 24, 2019
Assistant City Manager	August 27, 2019
Treasurer's Office Employee #7	October 7, 2019
Treasurer's Office Employee #8	September 13, 2019 and October 7, 2019
City Manager's Office Employee #1	August 29, 2019
Cultural and Community Services Director	September 17, 2019

of the questions asked and responses provided; 6) the Investigator will maintain confidentiality, but cannot guarantee absolute confidentiality; 7) the witness should not be subjected to retaliation for participating in the investigation; and 8) the witness must not retaliate against any participant in the investigation. After the Investigator advised the witness of the above information, the Investigator asked whether the witness had any procedural questions.

Deputy City Manager	August 27, 2019
Community Development Employee #1	September 24, 2019
Treasurer's Office Employee #9	September 12, 2019 and September 24, 2019
City Treasurer	November 12, 2019 <sup>8</sup>
Treasury Supervisor	September 13, 2019 and October 7, 2019
Treasurer's Office Employee #10	October 9, 2019
City Manager	October 9, 2019
Treasurer's Office Employee #11	October 9, 2019 and October 30, 2019 (telephonic)
Treasurer's Office Employee #12	October 9, 2019
Finance Department Employee #4	September 11, 2019
Chief Financial Officer	August 27, 2019
Treasurer's Office Employee #13	October 9, 2019
Treasurer's Office Employee #14	October 9, 2019
Public Works Employee #1	October 7, 2019
Police Department Commander	September 11, 2019
Assistant Chief of Police #2	August 28, 2019
Treasurer's Office Employee #15	October 9, 2019
Finance Department Employee #5	September 12, 2019
Assistant Chief Financial Officer	August 27, 2019
Treasurer's Office Employee #16	October 8, 2019
Controller/Senior Manager Internal Control	September 9, 2019

<sup>8</sup> The Investigator tried to schedule a second interview session with Mr. Molina, and actually scheduled a second session in December 2019. However, Mr. Molina, by and through his counsel Andrew Covner, advised the City and the Investigator that Mr. Molina would not appear for a second interview session despite the City's directive for him to appear.

This Report does not include all information provided by a witness or contained in a document. Instead, this Report assesses the relevant information as it pertains to the specific alleged conduct. For the reader's ease of reference, the Report is divided by allegation, with a summary of pertinent facts for each witness contained therein. Additionally, where appropriate and to expedite efficiency, the Investigator combined witness summaries where the underlying information was substantially similar.

### **E. Independence**

Independence is a critical component in every investigation, including this investigation. The City and its representatives allowed the Investigator complete discretion to conduct the investigation as he determined to be necessary. The Investigator was given complete access to all requested witnesses and documents, with the exception of Mr. Molina's refusal to appear for a second interview session.

## **IV. Findings and Associated Analysis**

In reaching the findings, the Investigator carefully considered the perspectives, observations, and information from all interviewees. In resolving factual disputes, the Investigator used credibility factors including, but not limited to, motivations of parties and witnesses, corroborating or lack of corroborating evidence, plausibility of events, consistent and inconsistent evidence, material omissions, proximity in time, comparator factors, and articulated rationale for actions or decisions.

### **A. Did Mr. Molina interfere with this investigation by communicating with the Assistant Chief Financial Officer after being directed not to do so, by meeting with the members of his department to discuss this investigation after being directed not to do so, or by circulating an email that included details about this and another investigation into his alleged conduct?**

#### **1. Finding**

By a preponderance of the evidence, the Investigator finds that Mr. Molina interfered with the investigation in three respects. First, he interfered by communicating with the Asst. CFO after being explicitly directed not to do so in his Notification of Investigation. Second, he interfered by meeting with members of his department to discuss the investigation after being directed not to do so in his Notification of Investigation. Moreover, five members of his staff stated that they found these meetings intimidating and inappropriate. Finally, he interfered by circulating an email discussing this and another investigation into his alleged conduct. Each of these acts would reasonably impact an individual's willingness to openly participate in the investigation and to provide information related to the allegations. As such, each qualifies as an independent act of interference. Moreover, Mr. Molina's interference with the investigation affects his credibility and the weight to be given overall to his statements.

**This allegation is substantiated.**

2. Communicating with the Assistant Chief Financial Officer After Directed Not to Do So

a. Facts

(1) Documents

(A) Notification of Investigation

On September 10, 2019, the City Manager issued a memorandum to Mr. Molina notifying him of the investigation. (See Exhibit A, Notification of Investigation.) In that Notification of Investigation, the City Manager specifically directed Mr. Molina to have no contact with the Asst. CFO during the pendency of this investigation. (See Exhibit A, Notification of Investigation, page 1.) The City Manager further explained that “[s]hould you need to contact the Asst. CFO you are directed to send those inquiries to the CFO.”

(B) Temporary Suspension of Administrative Duties of City Treasurer

On October 16, 2019, the City Manager issued a memorandum to Mr. Molina advising him that his administrative duties as the City Treasurer were temporarily suspended. (See Exhibit B, Temporary Suspension of Administrative Duties of City Treasurer.) In that memorandum, the City Manager specifically advised Mr. Molina as follows:

Despite the clear directive of the September 10, 2019 notice, you [Phillip Molina] contacted [the Asst. CFO] on at least six different occasions by email either directly or by copying her. (See Exhibit B, Temporary Suspension of Administrative Duties of City Treasurer, page 1.)

(2) Witness Statement

(A) Phillip Molina

During his interview, Mr. Molina confirmed that he was advised not to communicate with either CMO Employee #1 or the Asst. CFO during the investigation. Mr. Molina also admitted that, after having received the instruction not to communicate with the Asst. CFO, he nevertheless did communicate with her.

b. Analysis

The undisputed facts, including Mr. Molina’s admissions during his interview, show that Mr. Molina knew that he was not to communicate with the Asst. CFO during the pendency of this investigation and that he nevertheless communicated with her on at least six occasions after receiving that directive. There are two reasonable conclusions that flow from these admitted facts. First, Mr. Molina demonstrated a complete disregard for the directives issued in connection with this investigation. Second, the preponderance of the evidence supports the

conclusion that his conduct would have had a negative impact on the Asst. CFO in terms of her willingness to share information related to this investigation or to otherwise fully participate. Inasmuch as Mr. Molina failed to comply with the simple instruction not to communicate with the Asst. CFO, she could reasonably fear that he would also fail to comply with the directive to refrain from any retaliation. Such conduct would likely have a chilling effect on the Asst. CFO.

3. Meeting With Members of His Department

a. Facts

(1) Document

(A) Notification of Investigation

On September 10, 2019, the City Manager issued a memorandum to Mr. Molina notifying him of the investigation. (See Exhibit A, Notification of Investigation.) In that Notification of Investigation, the City Manager specifically identified the City's expectations regarding Mr. Molina's behavior during the investigation. The Notification of Investigation specifically advised Mr. Molina, in pertinent part, as follows:

This is a confidential investigation. Aside from your representative, you must not discuss this investigation with any person who does not have a legitimate business need to know this information.

The City of Oxnard takes investigation into misconduct seriously and will not tolerate retaliation, interference or discrimination against any individual who participates in this investigation. As such you are ordered to refrain from any conduct that may be perceived as retaliation. (Exhibit A, Notification of Investigation, page 2, emphasis added.)

(2) Witnesses Statements

During their respective interviews, sixteen individuals from the Treasurer's Office, including Mr. Molina, confirmed that he held meetings with the members of his office to discuss their anticipated interviews in this investigation. Specifically, this fact was confirmed by Treasurer's Office Employee #2 ("TOE #2"), Treasurer's Office Employee #11 ("TOE #11"), Treasurer's Office Employee #8 ("TOE #8"), Assistant City Treasurer/Revenue Accounting Manager ("Asst. City Treasurer"), Treasurer's Office Employee #5 ("TOE #5"), Phillip Molina, Treasurer's Office Employee #7 ("TOE #7"), Treasurer's Office Employee #16 ("TOE #16"), Treasurer's Office Employee #15 ("TOE #15"), Treasurer's Office Employee #3 ("TOE #3"), Treasurer's Office Employee #14 ("TOE #14"), Treasurer's Office Employee #13 ("TOE #13"), Treasurer's Office Employee #10 ("TOE #10"), TOE #4, Treasurer's Office Employee #12 ("TOE #12"), and Treasurer's Office Employee #1 ("TOE #1"). At the time that Treasurer's Office Employee #6 ("TOE #6") and Treasurer's Office Employee #9 ("TOE #9") were interviewed, the Investigator was not aware that these meetings had taken place. Consequently, the Investigator did not ask either TOE #6 or TOE #9 about the meetings. However, other individuals interviewed confirmed that TOE #6 and TOE #9 also attended similar meetings. The Treasury

Supervisor is the only member of the Treasurer's Office who did not attend one of these meetings. She confirmed that she was on vacation at the time of the meetings, but she was made aware that they had taken place upon her return.

Each individual who confirmed attending the meetings, excluding Mr. Molina, gave similar descriptions of what Mr. Molina said. Mr. Molina advised them that he was aware that they had been contacted by Human Resources for an interview in connection with some type of investigation. He informed those present that, if they felt bullied, harassed or intimidated during their respective interview, they could let him know because he had or was planning to retain an attorney that could assist them. He also told them that they should tell the truth.

(A) Phillip Molina

As noted above, Mr. Molina confirmed that, after becoming aware that Human Resources was scheduling meetings with the members of his staff, he held meetings with his staff regarding the investigation. Mr. Molina also confirmed that, although he held separate meetings with smaller groups in order to keep from pulling his entire staff from the floor at the same time, he provided the same substantive information to each group.

After admitting that he discussed the pending interviews associated with this investigation, Mr. Molina explained that his intent was to calm his staff down. Mr. Molina stated:

The HR Director and one of the City Attorneys came into the department without letting me know they were coming, handed envelopes to people, without telling me that they were gonna do that – as a department head, I would've thought that they might've let me know. They scared people because a few months earlier, the City Manager had fired seven video employees and so people were scared. Are these letters – are termination letters – what's going on?

Mr. Molina admitted that none of the staff came to him indicating that they were scared. Instead, he claimed that he concluded that they were scared "because of the look in their eyes, the look in their face, concern about what's going on."

Mr. Molina confirmed that it was not his intent to intimidate the staff or to interfere with this investigation. As to this latter point, Mr. Molina repeated that "I told them to tell the truth. That's all I said. 'Please tell the truth.'"

Later in the interview, while his attorney questioned him, Mr. Molina also claimed that he also met with his staff because of a concern over scheduling as he did not want all of his customer service representatives to be pulled from the floor at the same time. In this regard, Mr. Molina stated that he was not aware that the Asst. City Treasurer was already preparing a schedule, and he denied hearing the Asst. City Treasurer discussing the schedule with Human Resources. Mr. Molina conceded that the Asst. City Treasurer has a great memory, and he was not otherwise able to explain the difference in their statements concerning his knowledge that she was preparing a schedule.

(B) Asst. City Treasurer

The Asst. City Treasurer confirmed that Mr. Molina became aware that she was scheduling the staff for interviews related to this investigation. She specifically said:

So while I was on the phone with the [Human Resources Administrative Assistant] trying to figure out the scheduling of the staff, Mr. Molina walked into my office and he saw that I had the schedule in front of me and talking to someone on the phone. So after I completed my conversation with [Human Resources Administrative Assistant] on the phone, Mr. Molina came back to my office and asked me what training are you scheduling the staff for? My response was “this is not for training. HR informed me that they need to interview everyone in the department.”

The Asst. City Treasurer, who confirmed that she attended each of these meetings with Mr. Molina, stated that, in each meeting, Mr. Molina said, “I was told that you will all be interviewed by someone in HR or HR department and I just want all of you to know that you should not be scared, you should not be nervous about it, just tell the truth and you should not be afraid of retaliation or being bullied and if you feel that way, I have a lawyer and I’ll help you straighten it out.”

(C) TOE #2

When asked for her reaction to Mr. Molina holding these meetings with his staff, TOE #2 responded as follows:

I don’t think it should have happened. I think it was unprofessional, and I’m pretty sure that was against the rules of the whole confidentiality agreement, I guess. I don’t feel like his lawyer will be there to protect us. I feel like the lawyers are to protect him. That’s what I took from that.

When asked if she was intimidated by Mr. Molina calling her into one of these meetings, TOE #2 said:

A little bit because . . . yeah, a little bit. Because that means he knows I’m coming and, you know, probably hear what I said.

When asked if Mr. Molina’s actions gave her concern regarding potential retaliation, TOE #2 commented:

Maybe not me specifically. But I mean, I think he’s going, he’s the type to retaliate, yeah. Clearly he looks like it. I get that vibe from his meeting and his email, that that’s his form of retaliation.

(D) TOE #3

At the start of her interview, TOE #3 immediately expressed concern regarding retaliation because “I’ve seen it happen.” As a basis for her concern, TOE #3 identified Mr. Molina’s meetings with staff and said:

It was intimidating. It’s kind of like, hey, we know. Like, we’re going to know whatever you say.

In further describing her reaction, TOE #3 relayed a conversation that she had with TOE #11 concerning the meetings:

I just remember passing by her [TOE #11] really quick and being like “hey, did you get called in too?” And she’s like, “yes.” She’s like “oh my God, that makes it so much more intimidating, that’s so wrong.”

(E) TOE #4

When asked about her response to Mr. Molina’s staff meetings concerning the investigation, TOE #4 said:

What I took from the meeting and what he said, honestly, it was more like he wanted us to be sure that we were aware that he had a good lawyer, but I didn’t get the impression myself that that lawyer was there to protect us. So that lawyer is his lawyer to protect him. So I think he’s a very smart man. I think he said it knowing, or putting that in our mind, kind of, be aware of what you’re saying.

As a follow up, the Investigator asked TOE #4 if she felt intimidated, to which she responded:

I did. I was upset after I left there. I was upset. And I was confused as to why he would call us into that meeting. I personally don’t feel like he was calling us to the meeting to protect us. Again, him just saying that he had a really good lawyer, it’s for his benefit, not for us.

When asked if she viewed Mr. Molina’s reference to having a lawyer as a threat, TOE #4 said:

I did, I did. And it made me feel or wonder whether I should have some type of representation because he is protecting himself. And just coming in here makes me really nervous.

In summing up this point, TOE #4 confirmed that Mr. Molina’s meeting intimidated her. She felt that there was an implied threat to watch what she said. She perceived the reference to the attorney as a warning that Mr. Molina has someone who is looking out for him.

(F) TOE #11

Similar to other witnesses, TOE #11 began her interview expressing concern over potential retaliation. In her case, she indicated that she had previously experienced retaliation from Mr.



Molina and other management personnel within the Treasurer's Office when she complained about other issues.

When asked about Mr. Molina meeting with staff in advance of their interviews, TOE #11 stated that she took it as a threat and an effort to intimidate the staff. In explaining why she interpreted his actions in this way, TOE #11 said:

Because he mentioned his lawyer. And he was saying that, he mentioned himself. That if we had anything to say about him. . . . He said, if HR asks you anything and tries to force you to say something that you don't want to say about me, then I have a really good lawyer that you can talk to.

(G) TOE #15

After confirming that Mr. Molina had advised individuals that he had an attorney, TOE #15 expressed her belief that Mr. Molina's attorney would not be to help the employees; instead, she understood that the attorney was there for Mr. Molina's benefit.

When asked if the meeting made her nervous, TOE #15 responded:

A little, just because I, I mean I didn't know what to expect. When he needed to call us up and I already had this letter. It kind of made me feel like maybe something was wrong. I don't know maybe something was going to happen.

b. Analysis

The undisputed facts, including Mr. Molina's admissions during his interview, show that Mr. Molina held meetings with the members of his staff in order to discuss their anticipated interviews in this investigation. Mr. Molina tried to deflect a connection to the investigation by claiming that these meetings were intended to calm the staff down and to ensure that the interviews were scheduled so as not to interfere with the department's operations.

With respect to the first identified basis, Mr. Molina admitted that no one expressed that they were scared after receiving the notice of the interview. Mr. Molina merely assumed that they were scared because of the "look in their eyes." The Investigator finds Mr. Molina's explanation to be unreasonable under the circumstances; therefore, he discredits it.

The second identified basis is equally unreliable. The Asst. City Treasurer stated that Mr. Molina learned of the anticipated interviews because he overheard her scheduling the witnesses with Human Resources. Mr. Molina even asked for a copy of the schedule once it was finalized. Although Mr. Molina nevertheless denied that this event took place, he concedes that the Asst. City Treasurer has a great memory. Given Mr. Molina's description of the Asst. City Treasurer's memory, as well as the fact that she has no identifiable motivation to slant her testimony against Mr. Molina, the Investigator discredited Mr. Molina's denial and found his claim that scheduling was an issue prompting the meetings to be unreliable.

In short, the preponderance of the evidence shows that these meetings were intended for the single purpose of meeting with staff in order to discuss their anticipated interviews in this investigation. Moreover, the preponderance of the evidence shows that there were at least five employees who found Mr. Molina's meetings to be intimidating or otherwise inappropriate. Whether intended or not, Mr. Molina's meetings impacted witnesses in this investigation. Consequently, he interfered with their potential statements and this investigation. Additionally, inasmuch as Mr. Molina failed to comply with the simple instruction not to interfere with this investigation, witnesses could reasonably fear that he would also fail to comply with the directive to refrain from any retaliation. Such conduct would likely have a chilling effect on their willingness to participate and share information.

4. Email Sent to Members of Staff Before Interviews

a. Facts

(1) Documents

(A) October 2, 2019 Email re "Why Is Your Elected City Treasurer Prevented from Using His Official City Email?"

On October 2, 2019, around the same time that he was meeting with staff in advance of their interviews in this investigation, Mr. Molina sent out an email with the identified subject "Why is your elected City Treasurer prevented from using his official city email?" (See Exhibit U<sup>9</sup>.) This email included information related to one other investigation involving Mr. Molina that was conducted in 2018 and involved harassment claims by two women. (See Exhibit U, paragraph 1.) The email also included multiple references to this investigation.

4. On September 10<sup>th</sup>, yes the same day I received response to my complaint, the City informed me two other city women filed an harassment complaint (not sexual) against me. These two women I have met and spoke to less than 3 times in the years I have been with the city.

\* \* \*

6. Because I sent emails, which you have been offered, that included the women who filed the last complaint, my official City email address was terminated. But those same 2 women continue to send me emails, memos and notes.

7. I am ordered to not communicate with either woman who filed the complaint against me, yet I continue to receive communication from the women.

Now anyone reading this email knows that the City has control on who can send and receive specific emails. The city has stopped my private emails from going to certain city staff. So the clear and simple question is, if the City did not want me

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<sup>9</sup> TOE #2 provided a copy of this email to the Investigator during her interview on October 8, 2019.

to keep the 2 women informed about business they needed to know, the city could have put a rejected tag on each of these two women's email address to reject my city email. Instead the City Manager chose to terminate my official city email. (See Exhibit U.)

(2) Witness Statements

In total, nineteen individuals from the Treasurer's Office, including Mr. Molina, were interviewed. However, eight of those individuals were interviewed before the Investigator became aware of this email. Consequently, those individuals (i.e., Asst. City Treasurer, TOE #3, TOE #6, TOE #7, TOE #8, TOE #9, the Treasury Supervisor, and TOE #16) were not asked about the email. Of the remaining eleven individuals, TOE #5 and TOE #10 could not recall whether they received the email as they frequently ignore emails from Mr. Molina that do not specifically relate to their job duties. With regard to Mr. Molina, the Investigator did not have the chance to question Mr. Molina regarding this particular email because Mr. Molina declined to meet with the Investigator a second time. Finally, of the remaining eight individuals, six (i.e., TOE #1, TOE #2, TOE #4, TOE #11, TOE #13, and TOE #14) confirmed receiving the email. TOE #12 and TOE #15 denied receiving the email.

With respect to the six individuals who confirmed receiving the email, TOE #2, TOE #4 and TOE #11 all indicated that they were bothered by the email.

(A) TOE #2

TOE #2 first raised this email with the Investigator as she expressed some concern regarding its content. Specifically, TOE #2 found the email problematic because of the level of the detail that it contained regarding this investigation. When asked to confirm this concern, TOE #2 said:

Yes, and the fact that he is sending it out to us, being like, I know, I think of it more as a, here you go, I know exactly what's going on.

In short, TOE #2 confirmed that she was intimidated by the email.

(B) TOE #4

In discussing this email, TOE #4 expressed her concern that Mr. Molina would be able to get information about this investigation as he had apparently done in the past. When elaborating on this concern, TOE #4 said:

Right. I don't want him to address me about it. I think that makes me uncomfortable. I don't want him to take me to the side. Even initially, after we had our very first interview, he went around, I don't remember if it was that same evening or a couple of days after, and he came directly to me and he says "I'm going to be staying after work a couple of minutes to answer any questions you might have." And I looked at him and I said "what are you talking about?" And he said "you don't know what I'm talking about?" I said "no." And he says, "okay, good then." I can only assume, I don't know for a fact that it had to do

with him knowing that some of us had already come over to HR and spoke to somebody in HR.

TOE #4 confirmed that she was concerned about the email because it demonstrated that Mr. Molina was able to get information about these investigations.

(C) TOE #11

When asked for her reaction to the email, TOE #11 said:

It made me a little nervous about coming in and talking to you guys because somehow he found out some information. I didn't know what. I knew there was some type of investigation going on, but I didn't know what it was about. But if he was able to find that out, then it made me nervous that he was going to know that whatever it is that I say here. He was going to find out. And I was somehow going to get in trouble for it.

b. Analysis

The undisputed facts, including the email itself (see Exhibit U), show that Mr. Molina sent an email containing information relating to two separate investigations, including this investigation. It is also undisputed that Mr. Molina sent this email to at least six members of his staff. Finally, it is undisputed that three of those individuals were bothered by the email and indicated that, to varying degrees, it intimidated them.

In short, the preponderance of the evidence shows that three employees found Mr. Molina's email to be intimidating or otherwise inappropriate. Whether intended or not, Mr. Molina's email impacted witnesses in this investigation. Consequently, he interfered with their potential statements and this investigation.

**B. Did Mr. Molina make inappropriate comments in the workplace?**

1. Finding

By a preponderance of the evidence, the Investigator finds that Mr. Molina made inappropriate comments in the workplace that employees found objectionable and harassing. These comments concerned female employees' appearance/attire, stereotypical female roles, and sexual innuendo. Mr. Molina admitted to making all three types of comments. The Investigator also finds that, by a preponderance of the evidence, Mr. Molina's comments violate the City's Sexual Harassment policy contained in its Personnel Rules and Regulations. (See Exhibit E, Chapter 3, Section 3.3.1 – Sexual Harassment and Section 3.3.2 – Harassment Based on Other Protected Status.)

**This allegation is substantiated.**

2. Facts

a. Documents

(1) City's Personnel Rules and Regulations

The City's Personnel Rules and Regulations, Chapter 3, Section 3.3.1 – Sexual Harassment reads, in pertinent part, as follows:

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, or other visual, verbal, or physical conduct of a sexual nature when:

\* \* \*

Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment may include a range of behaviors and may involve individuals of the same or different gender. Examples include but are not limited to:

\* \* \*

Verbal conduct including making derogatory comments, sexually explicit jokes, slurs, sexual innuendo and insults, or comments about an individual's body or dress.

\* \* \*

Sexually harassing conduct need not be motivated by sexual desire and may include nonsexual conduct motivated by the violator's hostility toward the victim's gender or towards the victim's nonconformity to gender stereotypes. (See Exhibit E, Chapter 3, Section 3.3.1 – Sexual Harassment.)

The City's Personnel Rules and Regulations, Chapter 3, Section 3.3.2 – Harassment Based on Other Protected Status reads as follows:

In addition to sexual harassment, harassment on the basis of any other Protected Status is also prohibited. Such harassment includes physical, verbal, and visual conduct when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

b. Witnesses Statements

In total, there are nineteen individuals who work in the Treasurer's Office, including Mr. Molina. All nineteen individuals were asked whether Mr. Molina made inappropriate comments in the workplace. Specifically, each individual was asked whether they either heard or had been told

that Mr. Molina made comments regarding female employee's appearance/attire, stereotypical female roles, and sexual innuendo. Of those nineteen individuals, seventeen, including Mr. Molina, confirmed that Mr. Molina made such comments repeatedly.

With respect to comments regarding female employees' appearance or attire, the following individuals confirmed hearing Mr. Molina making such comments: TOE #1, Asst. City Treasurer, TOE #3, TOE #4, TOE #6, TOE #7, TOE #8, Phillip Molina, the Treasury Supervisor, TOE #10, TOE #11, TOE #12, TOE #13, TOE #14 and TOE #16.

As it relates to comments regarding stereotypical female roles, the following individuals confirmed hearing Mr. Molina making such comments: TOE #1, Asst. City Treasurer, TOE #2, TOE #4, Phillip Molina, TOE #11, TOE #12, TOE #13, and TOE #14.

The following individuals confirmed hearing Mr. Molina make comments involving sexual innuendo<sup>10</sup>: Asst. City Treasurer, TOE #2, TOE #4, TOE #6, Phillip Molina, TOE #11, and TOE #13.

The only two individuals who indicated that they never heard Mr. Molina make any inappropriate comments are TOE #9 and TOE #15.

TOE #2, TOE #4, and TOE #11 all confirmed that they were offended by Mr. Molina's comments. TOE #1 and TOE #6 also confirmed that they had heard people express that Mr. Molina's comments offended them.

(1) Phillip Molina

Since Mr. Molina's admissions are the most reliable evidence provided, the following summary relates specifically to his admissions concerning inappropriate comments.

With regard to appearance or attire, Mr. Molina admitted to making such comments and described them as follows:

Oh, "That's a pretty blouse you're wearing." Um, "Those are pretty shoes you're wearing" or "That's a pretty dress you're wearing."

Along these same lines, Mr. Molina recalled at least one occasion where he compared a female employee to an actress. He said, "I may have. That's – I'm trying to remember. There was some movie in the – one of the ladies, I said 'you remind me of this actress. I don't know her name.' I thought I was giving her a compliment but it turns out I wasn't or whatever, so yeah, I'm – if that was Melissa McCarthy, then yes I did, and I apologize."

With respect to comments concerning stereotypical female roles, Mr. Molina admitted that he has advised female members of his staff to "go home and cook for your husband," "go home and

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<sup>10</sup> For purposes of this Report, sexual innuendo encompasses comments that are capable of a sexual interpretation regardless of Mr. Molina's underlying intention.

cook for [your] husband and [your] children,” or “go home to cook for [your] boys” on multiple occasions.

As it relates to sexual innuendo, Mr. Molina confirmed that he asked female employees in his department who would give him CPR if he were to have a heart attack.

3. Analysis

The undisputed facts, including Mr. Molina’s admissions during his interview, show that Mr. Molina made comments about the female employees’ appearance/attire, stereotypical female roles, and sexual innuendo. All three types of comments are expressly identified in the City’s sexual harassment policy as examples of harassment. Moreover, the policy does not require that anyone actually voice a formal objection to the comments for a violation to exist. Instead, the comments alone are sufficient if they are creating an intimidating, hostile, or offensive working environment, which was confirmed by TOE #2, TOE #4, TOE #11, TOE #1, and TOE #6.

In short, the preponderance of the evidence shows that Mr. Molina made inappropriate comments about female employees’ appearance/attire, stereotypical female roles, and sexual innuendo in the workplace that employees found objectionable and harassing; therefore, those comments violated the City’s Sexual Harassment policy contained in its Personnel Rules and Regulations.

**C. Did Mr. Molina act improperly when he investigated a perceived shortfall in parking lot money related to the Dallas Cowboys’ Training Camp held in the Summer of 2019?**

1. Finding

By a preponderance of the evidence, the Investigator finds that Mr. Molina did accuse and improperly investigate CMO Employee #1 for theft in connection with a perceived shortfall in parking lot money related to the Dallas Cowboys’ Training Camp held in the Summer of 2019. The Investigator also finds, by a preponderance of the evidence, that Mr. Molina’s conduct related to this incident violated the City’s Personnel Rules and Regulations. (See Exhibit E, Chapter 3, Section 3.10 – Anti-Bullying Policy.) By a preponderance of the evidence, the Investigator also finds that Mr. Molina’s conduct related to this incident fell outside his duties as outlined by the City Attorney’s Office. (See Exhibit C.)

**This allegation is substantiated.**

2. Facts

a. Documents

(1) City’s Personnel Rules and Regulations

The City’s Personnel Rules and Regulations, Chapter 3, Section 3.10 – Anti-Bullying Policy reads, in pertinent part, as follows:

### 3.10 ANTI-BULLYING POLICY

. . . the City also prohibits any form of “intimidating or bullying” in the workplace or elsewhere, such as at offsite events or work places.

#### 3.10.1 POLICY COVERAGE

. . . Bullying is the use of aggression with the intention of harming another individual. It can include any intentional written, visual, verbal, or physical act, when the act physically harms the individual or damages his or her property; has the effect of interfering with an employee’s ability to work; is severe or pervasive; and creates an intimidating or threatening event.

Bullying comes in many shapes and sizes and can take many forms including, but not limited to . . . abusive comments, . . . spreading rumors . . . . Such conduct can also occur via use of electronic or telephonic communications such as the internet, email and chatroom misuse, mobile threats by text messaging or calls, or misuse of cameras and video equipment. (See Exhibit E, Chapter 3, Section 3.10 – Anti-Bullying Policy.)

- (2) January 26, 2017 Memorandum from then-Assistant City Attorney to then-Assistant City Manager

Then-Assistant City Attorney’s January 26, 2017 memorandum to then-Assistant City Manager sets forth the City Treasurer’s duties, both the elected position and the administrative position. (See Exhibit C.) As it pertains to this particular allegation, the memorandum is important because it fails to identify among the City Treasurer’s duties investigating the possible theft of public funds or questioning employees about possible theft of public funds.

- (3) Asst. COP #1’s Written Statement Regarding the Dallas Cowboys’ Training Camp Incident

The document constitutes Asst. COP #1’s summary of the incident, which he prepared in close proximity to the actual event. The substance of that written statement will be summarized in the Witnesses Statements portion of this Fact section.

- (4) Phillip Molina’s July 30, 2019 Email to CMO Employee #1 re “Proper processing of ticket sales at Cowboys Event”

The key point contained in Mr. Molina’s email is that he confirms that he went to the site of the event with his staff and engaged in some form of review of procedures, which several witnesses described as his improper investigation. Mr. Molina specifically wrote:

After our review today it was clear that had you and the other police staff been properly instructed there would have been no questions that you would have followed the proper methods for ticket sales and reconciliations performed.



[CMO Employee #1], as me and my staff observed your performance today, it is clear that you are giving your 200% effort to do everything to make this event successful for the City of Oxnard. (See Exhibits I and V.)

- (5) Emails between Phillip Molina and the Deputy CM re Confidential

In this exchange with the Deputy CM, Mr. Molina admits to using the term “theft” in describing the situation at the Dallas Cowboys’ Training Camp. (See Exhibit AA.)

b. Witnesses Statements

In order to set the proper context for this allegation, the summaries begin with CMO Employee #1. Thereafter, the summaries are provided in alphabetical order by the witness’ last name.

- (1) CMO Employee #1

CMO Employee #1 confirmed that this was the first year that she was tasked with overseeing the revenue for the parking lots associated with the Dallas Cowboys’ Training Camp. In anticipation of this new assignment, CMO Employee #1 was provided with written information by the previous staff.

Specifically, she recalled being provided with a three-page document containing instructions on the processing of the cash. CMO Employee #1 stated that there were still items that were not provided to her, so she reached out to TOE #4 in the City Treasurer’s Office with additional questions. She reached out to TOE #4 because TOE #4 handles deposits for the City Treasurer’s Office, and she believed that TOE #4 would be able to provide her with “the bank deposit bags, the deposits, the deposit book.” CMO Employee #1 met with TOE #4 who “provided [CMO Employee #1] everything that [she] needed to—needed as far as through the City Treasurer’s rules and stuff like that.” TOE #4 also confirmed that CMO Employee #1 had all the necessary forms and was not missing anything in that regard.

CMO Employee #1 confirmed that TOE #6 and TOE #9 from the City Treasurer’s Office volunteered to help with processing the parking lot money. Both individuals were present on the event’s first day, which took place on a weekend, and helped to count the collected money. CMO Employee #1 confirmed that there was some confusion counting the money collected from the parking lot run by the Police Explorers as there were some tickets that appeared to have been sold, but that the police officer who dropped off the money pointed out were not used. As a result, CMO Employee #1 admitted that the cash collected could not be balanced with the tickets that appeared sold.

The following Monday, CMO Employee #1 was contacted by the Treasury Supervisor, who asked CMO Employee #1 to come over to the Treasurer’s Office because Mr. Molina “had some questions regarding cash that was missing.” After indicating that she would try to make it over to meet with Mr. Molina, CMO Employee #1 said that she had a conversation with the Cultural and Community Services Director (“CCS Director”), which she described as follows:

He stopped by my office and he said, “I just ran into Phil Molina and he is saying something about that there’s a mishandling of funds, you know like there’s money missing” and I shared with him that [the Treasury Supervisor] had called and that Mr. Molina wanted to meet with me. And I told [the CCS Director], I am not going to meet with him. And [the CCS Director] told me “You have to meet with him, otherwise, he’s going to make a big thing out of nothing, you know.”

CMO Employee #1 went to meet with Mr. Molina, and was surprised when Mr. Molina brought the Asst. City Treasurer, TOE #8, and the Treasury Supervisor into the meeting. CMO Employee #1 indicated that, what started as a telephone request for a meeting because Mr. Molina had a few questions, became a forty five minute “interrogation.” She said:

. . . they just kept like cross-examining me, you know, kind of like just, you know, like questioning everything and it just seemed like they wanted to hear a different answer because like Mr. Molina would ask me a question and I would answer it and then [the Asst. City Treasurer] would ask me another question and then when I was trying to explain to them, it was like, look you guys have no clue how this is being handled. . . . I said I met with your staff and we went over everything and it just seemed like he totally ignored that part; he was just trying to find something wrong with the not balancing. . . So I told them, I said I have to leave. They kept asking me more questions. So it started kind of like a repetition of the same questions, over and over again.

CMO Employee #1 also added “so during the cross-examining, I was—you know it was so—I mean I was—I walked out of there feeling like he was accusing me.” She clarified that “Mr. Molina said that he was—he had been informed by his staff that there was mishandling of funds.” CMO Employee #1 felt that Mr. Molina was acting as judge, and that she was being blamed or accused of stealing money. Later that night, CMO Employee #1 said that she saw an email that Mr. Molina sent to the City Council that “basically [told] council that there was mishandling of funds, that theft was going on.”

The next day, while at the Dallas Cowboys’ Training Camp location, CMO Employee #1 received a call from the City Manager. She said:

So anyways, that morning I want to say it was like around 10 in the morning—not 100% on the time—but I received a phone call from the City Manager and the City Manager mentioned that he had me on speaker phone and he had [a Project Manager] who works on our floor and the Deputy City Manager, and he said, “[CMO Employee #1] what is going on? I have Phil Molina that barged into my office.” Now this is what the City Manager is telling me over the phone. He said, “I have Phil Molina, who barged in here and he said that there is mishandling of funds you know that”—I don’t know if he said there’s like a red flag”—“you know I have to go out there to investigate because you know there’s money missing over”—he mentioned an amount of money that was missing and I assured the City Manager that nothing of that was happening.

Shortly after her conversation with the City Manager, CMO Employee #1 said that Mr. Molina and the Treasury Supervisor arrived at the site, and Mr. Molina “just looked at me and he had this like smirk on his face and he just said, ‘Good morning how are you doing?’” CMO Employee #1 described this initial interaction as follows:

Tuesday when that happened I was not happy with Mr. Molina and I told him, I said “I don’t want to talk to you. I don’t appreciate you sending that e-mail.” He acted like he didn’t know that I was talking about. He said, “I don’t know what you’re talking about, and I don’t know what the City Manager told you.” He changed the story around that that’s now what happened, that he didn’t go to the City Manager and that he never blamed anybody. And I told him, I said, “Look, if you’re asking me to believe you or the City Manager, I am going to believe the City Manager.” Because I had already seen an email that went out Monday night, and then here’s Tuesday morning, and he’s acting like I have no idea what’s going on. So anyway, I told him “I don’t want to talk to you because I feel like you’re accusing me.”

CMO Employee #1 then turned to the Treasury Supervisor and told her that “Your boss went into [the City Manager’s Office] accusing me of theft, because when he’s accusing staff, he’s also accusing me. She said that, in response, the Treasury Supervisor asked Mr. Molina “What did you do Phil?”

CMO Employee #1 stated that Mr. Molina continued to question her and stood extremely close to her. She described it as follows:

. . . like he wanted to intimidate me, you know, like “I’m here, I am going to investigate what you’re doing, how the money is handling and then come up with my own conclusion.”

CMO Employee #1 confirmed that she also received Mr. Molina’s email apology. She said:

So I think that’s pretty much it. I know there was another e-mail from Mr. Molina in where he was apologizing to me, and to be honest with you, I didn’t accept his apology because he—that e-mail was—it didn’t sound sincere. It was basically, he knew how I felt and he knew that I was aware of his accusations and he was trying to now cover himself by, “that’s not exactly what I said.”

In terms of the impact that Mr. Molina’s accusations and actions had on her, CMO Employee #1 said:

I don’t know what he told staff, but there was some employees that heard his portion, his side of the story, so as far as I know, I don’t know how many people received that e-mail and that was my biggest disappointment with him, that I don’t know how many people he shared that e-mail. People that shouldn’t have known, you know, that should have been—I mean if he had any issues, he should have been talking to the City Manager and to the HR Director or even the police department. But I have no way of knowing how many people received that email.

(2) Asst. City Treasurer

The Asst. City Treasurer confirmed that, the Monday following the opening of the Dallas Cowboys' Training Camp, Mr. Molina called her into a meeting with TOE #8, the Treasury Supervisor, TOE #6 and TOE #9. She recalled that TOE #6 and TOE #9 described the cash handling as disorganized and "not up to the standard" used in the Treasurer's Office. She said that TOE #6 and TOE #9 advised them that there was \$1,000 missing. She said that Mr. Molina indicated that this was something that they needed to look into. However, she indicated that no one implied that theft had occurred.

When asked why it was not strange that Mr. Molina chose to look into this issue himself, the Asst. City Treasurer responded, "when he hears of anything in the City that is amiss or does not seem to be properly handled, he likes to take it upon himself to investigate." The Asst. City Treasurer confirmed that she has never seen anything in writing that authorizes the City Treasurer or his office to conduct investigations.

The Asst. City Treasurer confirmed participating in a forty-five minute meeting in Mr. Molina's office involving CMO Employee #1, Mr. Molina, TOE #8, and the Treasury Supervisor where they discussed the Dallas Cowboys' Training Camp. She described the meeting as follows:

Mr. Molina asked her about the process that she does, and she explained to us that this is her first time to become in charge of that whole project and she's learning. So Mr. Molina said that we would like to make suggestions to you and she said, if you can help me make it a better system, yeah, let me know.

The Asst. City Treasurer stated that CMO Employee #1 did not appear upset during the course of the meeting. In fact, she recalled CMO Employee #1 asking if someone from the Treasurer's Office could help her going forward.

Although she could not recall what it said, the Asst. City Treasurer did recall Mr. Molina sending out an email the same day as this meeting wherein he "mentioned about missing money that belongs to the City." The Asst. City Treasurer indicated that she found it inappropriate for Mr. Molina to have made this issue public by copying people outside of his office.

(3) Asst. COP #1

As noted above, Asst. COP #1 provided a written statement regarding the Dallas Cowboys' Training Camp incident, which is located at the start of Exhibit I. It is summarized as follows:

Asst. COP #1 indicated that he was contacted on Tuesday, July 30, 2019, by the City Manager's Office and was told by the City Manager that Mr. Molina had come to the office claiming that theft had occurred at the Dallas Cowboys' Training Camp and that Mr. Molina was on his way to the site to investigate the matter. The City Manager asked if "someone of rank" could look into the situation. Asst. COP #1 indicated that he would handle the situation.

Asst. COP #1 asked the Police Department Commander ("PD Commander") to accompany him to the event site. He indicated that he did this because he "wanted to have a witness present for

any contact with the Treasurer.” He explained that Mr. Molina “has a reputation for being intimidating to staff members.” He further wrote:

Historically, he has demonstrated that he will have a one-on-one conversation with someone, and following their encounter, will send [an] email to a wide distribution of “bcc’ed” persons, recapping their contact on his terms and from his side of the story. These emails are typically cast with a negative slant toward others, and are often self-aggrandizing. . . . His emails re known for mischaracterizing matters, accusing staff, questioning integrity and character of staff, or grandstanding. His emails are often patronizing and condescending.

Asst. COP #1 understood that CMO Employee #1 was the designated cash handler for the parking lot money at the Dallas Cowboys’ Training Camp.

Asst. COP #1 indicated that he considered Mr. Molina’s investigation of alleged theft to be inappropriate because it would have involved the Explorers (who are overseen by the police department), Explorer Advisors (police personnel), and CMO Employee #1 since no one else had access to the money. He further wrote:

What is also important to note is that given that the Treasurer made an allegation that a crime had occurred, it was both extremely unusual and inappropriate that he would take it upon himself and rush to the site to investigate. The proper thing would have been for him to contact Police Department management, so law enforcement could handle this.

When he and the PD Commander arrived at the location, he observed the Treasury Supervisor and Mr. Molina speaking with CMO Employee #1. As he approached the group, he saw that CMO Employee #1 looked “quite upset” and was wiping her eyes as if she had been crying. He wrote: “The Treasurer, who is approximately 6’4” in height, had his back facing me; he was looking downward towards [CMO Employee #1], had his hands on his hips and appeared to be directing his speech at [CMO Employee #1].” Based on his observations, Asst. COP #1 concluded that Mr. Molina “was questioning/interviewing/interrogating an employee that would have potentially had culpability had a theft actually been substantiated.” Asst. COP #1 wrote “the optics of what was occurring was highly inappropriate” because the matter should have been turned over to the Police Department; the Treasurer had no authority to conduct a criminal investigation; the Treasurer’s actions would have negatively impacted law enforcement’s ability to pursue the case if a crime had occurred; and the sight of CMO Employee #1 crying due to Mr. Molina’s questioning.

When Asst. COP #1 joined the group, he indicated that Mr. Molina expressly used the term theft and said that no theft had occurred. Asst. COP #1 wrote that he scolded Mr. Molina for prematurely reporting theft. He indicated that Mr. Molina did not deny claiming theft; instead, Mr. Molina apologized because he did not have time to fully explain the situation to the City Manager.

Asst. COP #1 then spoke to CMO Employee #1 outside of Mr. Molina’s presence. He summarized that conversation as follows:

[CMO Employee #1] told me that the Treasurer was asking her questions when we walked up, and that she was being made to feel like she had done something wrong. She elaborated and added that on the previous day (Monday, July 29, 2019) the Treasurer summoned her to his office without providing a reason. She said that he kept her in his office for over an hour, and was questioning her in an accusatory manner. She said she felt as though she was being “cross examined” by him. As she was beginning to elaborate, the Treasurer and [the Treasury Supervisor] approached from the west, and I noticed [CMO Employee #1] appear to become more tense.

(4) TOE #4

TOE #4 indicated that her involvement in this incident was limited. She recalled meeting with CMO Employee #1 before the Dallas Cowboys’ Training Camp to give her deposit bags, deposit slips, a cash bag, and keys. TOE #4 denied training CMO Employee #1 on proper cash handling, but she did confirm that she approved the forms that CMO Employee #1 was to use and showed CMO Employee #1 how to fill out the deposit ticket, a slip and the daily deposit summary.

TOE #4 indicated that, on the Monday following the opening of the Dallas Cowboys’ Training Camp, she spoke with TOE #6 and TOE #9, who indicated that there was an issue related to the parking lot money. She said that TOE #6 “just felt that the people in charge were not necessarily familiar with the whole processing of, or even working with cash, they were not comfortable working with cash.” TOE #4 recalled Mr. Molina entering the office as she was speaking with TOE #6 and TOE #9, so she suggested that TOE #6 and TOE #9 share their concerns with Mr. Molina.

TOE #4 had no further involvement.

Although not specifically related to the Dallas Cowboys’ Training Camp, TOE #4 indicated that Mr. Molina will use his status as an elected official as a form of intimidation by reminding you that he is an elected official and that he will continue to remain as long as he is elected.

(5) TOE #6

TOE #6 confirmed that she volunteered and helped during the opening weekend for the Dallas Cowboys’ Training Camp. She specifically helped to count the money collected at the parking lots. She indicated that she had concerns regarding the procedure that was used because it resulted in difficulty reconciling the money collected with the tickets sold. She estimated that there was a \$300 difference.

The next Monday, she recalled speaking with TOE #4 and telling her that “somebody with cash handling experience” should help to make sure that it is done properly.

About an hour after her discussion with TOE #4, TOE #6 said that she was called into a meeting in Mr. Molina’s office involving Mr. Molina, the Asst. City Treasurer, TOE #8, and the Treasury Supervisor, who all questioned her about the procedure being used at the parking lots. TOE #6 was not able to respond to their questions because she did not know the procedure. Mr. Molina

asked TOE #6 to put what she told them in writing, but she declined “because I wasn’t trying to complain. I was just basically trying to get help, you know, somebody with money handling experience because I think it would be easier for them doing the deposit and helping basically everybody.” TOE #6 indicated that she felt like Mr. Molina put her on the spot with his request for a written statement because she “was just trying to get help over there because I know we wouldn’t be there.”

When asked about the reaction to her comments about the cash handling, TOE #6 responded:

I feel like they went from taking a suggestion that, I told them the volunteers should be people that know how to handle cash because that’s all it is, is handling cash, and it turned into, like I said, being in there for 20 minutes and being questioned about every step of the procedures.

\* \* \*

I believe everyone in that room kind of blew it out of proportion.

(6) TOE #8

TOE #8 confirmed that she was part of a meeting involving CMO Employee #1 where the group discussed “something about the miscount of tickets versus what it was reported.” She indicated that she was only part of this one meeting. She did not recall CMO Employee #1 becoming upset during that meeting.

Although she did not personally witness what Mr. Molina told the City Manager about the situation, TOE #8 did discuss it with the Asst. City Treasurer. She said:

I asked, you know, [the Asst. City Treasurer] and I said, cause obviously everything was going on at that time. I said, what – what’s going on. He goes – and all she – that’s when she said, I think Mr. Molina went over to the City Manager’s office and he just went in there and I think he – he used the word misappropriation and I think now things are, you know, a concern, you know.

TOE #8, who has worked with other treasurers, confirmed that she has never seen another City Treasurer conduct an investigation into perceived misappropriation of funds, nor does she consider such an investigation to be something that the Treasurer’s Office would handle.

(7) CCS Director

The CCS Director relayed a discussion that he had with Mr. Molina relating to potentially missing money at the Dallas Cowboys’ Training Camp. During that meeting, the CCS Director interpreted Mr. Molina’s comments as implying that a theft had occurred at one of the parking lots. This bothered the CCS Director as City Corps, which falls under his supervision, was assigned to one of the parking lots.

The CCS Director spoke with CMO Employee #1 after her meeting at Mr. Molina's office. In describing the meeting, he said "my understanding is that he was very mean to her and I felt if I had been there, I could have back[ed] him off of her."

(8) Deputy CM

The Deputy CM confirmed that she was meeting with the City Manager when Mr. Molina entered the office and "he basically had accused her [CMO Employee #1] of stealing money she was collecting at the – we do the Cowboys training here and she was collecting payments for parking, and according to however he gets his information, she was not collecting the right amount of money."

(9) TOE #9

TOE #9 confirmed that there was an issue reconciling the money collected with the tickets sold at the parking lot for the Dallas Cowboys' Training Camp during the first weekend. He said "it just seemed like the tickets did not match up with the money. I could be wrong, I don't know." TOE #9 indicated that neither he nor TOE #6 indicated that the money was stolen.

We just told them that it was just really chaotic and confusing, and just seemed like, like I said, like the tickets were not matching. There was one time I think, if I'm not, I mean I'm not a hundred percent sure of the amount, but just, it just seemed like the tickets and the money appeared to be somewhere in the range of like \$300 short.

(10) Phillip Molina

Mr. Molina first became aware of a situation at the Dallas Cowboys' Training Camp when TOE #6 "who volunteered to participate in handling the cash, came to me the second day that she was assigned and said she felt that there might be as much as \$1,000 difference between the cash that was counted and the cash that was actually received." Mr. Molina could not recall any additional details that TOE #6 may have provided. He also denied asking TOE #6 to provide a written statement.

Mr. Molina denied calling CMO Employee #1 to his office to discuss this discrepancy. He claimed that the only time that he met with her in his office was during a "pre-meeting" to discuss procedures.

After receiving the information from TOE #6, Mr. Molina confirmed that he went to the City Manager's Office. He indicated that he went to the office without calling ahead. He stated that he advised the City Manager and the Deputy CM "that I had received word that there was potential money lost at the Dallas Cowboys process and that I was gonna go out there to make sure that the procedures were being properly handled."

He indicated that he and the Treasury Supervisor proceeded to the site. Upon arriving, Mr. Molina said that he found CMO Employee #1 crying. She asked him why he had claimed that



she had stolen or taken money, which he indicated that he had not said. He asked the Treasury Supervisor to speak with CMO Employee #1 to try to calm her down since she was so upset.

When asked if he questioned CMO Employee #1 about the procedures being used, Mr. Molina indicated that he could not recall.

Mr. Molina confirmed that he went to the actual parking lot to observe the procedures being used. When asked if the Treasury Supervisor accompanied him, he indicated that he did not believe so, "but I'd rely on her memory."

When asked if he returned to talk to CMO Employee #1 after observing the procedures at the parking lot, Mr. Molina again stated that he had no recollection of that.

When asked if he communicated with Asst. COP #1 at the site, he could not recall anything of substance being discussed.

When asked if he sent CMO Employee #1 an apology email later that same day, Mr. Molina indicated that he could not remember. When showed the actual email (see Exhibit V), Mr. Molina confirmed that he sent it and that he was apologizing to CMO Employee #1 on behalf of the City for being given this responsibility without proper training. He explained that, if his office had been given notice, he would have ensured that CMO Employee #1 was properly trained.

When asked if he recalled discussing the issue with the CCS Director, Mr. Molina indicated "no, I don't. Not that it didn't happen. I don't recall."

Mr. Molina could not specifically recall any email exchange with Asst. COP #1 after-the-fact. (See Exhibit I.)

#### (11) Treasury Supervisor

The Treasury Supervisor first became aware of an issue when TOE #6 and TOE #9 mentioned that "the counting of the money was very unorganized because they said that the tickets didn't match the amount of the money that was accounted for."

The Treasury Supervisor recalled participating in a meeting involving Mr. Molina, the Asst. City Treasurer and TOE #6. She recalls that there was a discussion about the misappropriation of money. She specifically indicated that it was Mr. Molina who raised the issue of misappropriation.

The Treasury Supervisor recalled participating in a second meeting that included CMO Employee #1, as well as Mr. Molina, TOE #8, and the Asst. City Treasurer. The Treasury Supervisor recalled CMO Employee #1 indicating that any recommendations on how to improve the procedures would be greatly appreciated. The Treasury Supervisor stated that misappropriation was not discussed with CMO Employee #1.

That same night, the Treasury Supervisor assisted at the Dallas Cowboys' Training Camp and was concerned about another discrepancy in the parking lot money. She raised this with Mr.

Molina during a meeting the following day. Mr. Molina again raised the concept of misappropriation of funds. At that point, he indicated that it was necessary to go to the site to see the procedures being used. Mr. Molina indicated that he was going to speak to the City Manager and would meet the Treasury Supervisor outside the building to go to the site.

The Treasury Supervisor indicated that she and Mr. Molina went to the parking lot first to speak with the people running it and to observe the procedures being used. They then proceeded to the welcoming tent where they found CMO Employee #1. She approached CMO Employee #1 and said hello.

And she immediately started crying and said that she had just received a phone call from the City Manager stating that – what was going on? That Mr. Molina was accusing her of theft. . . . And then she just started crying. She was really upset.

The Treasury Supervisor indicated that she questioned Mr. Molina about this claim. She said:

“Did you go to City Manager’s and accuse her of theft?” And he said, “No.” I said, “well she’s crying because she says that you went to the City Manager’s and said that she was stealing money.” And he said, “that’s not what I said. I said I was going over there because there was possible theft. But I didn’t say that it was – it was her. That was not my intent.” And then I was very shocked.

When asked for her reaction to this information, the Treasury Supervisor responded:

But at that point, I was just upset that all this had taken place. Because I thought it was very uncalled for.

\* \* \*

That [CMO Employee #1] was upset and that [CMO Employee #1] had been accused of, according to the City Manager, theft. Because the intent to go there, was not to accuse anybody of theft. But to make sure that the process was being done right.

#### (12) City Manager

The City Manager was meeting with the Deputy CM when his Executive Assistant advised him that Mr. Molina was “coming over to talk to [him] about theft of, of cash at the Dallas Cowboys training camp.” He recalled his Executive Assistant specifically indicating that Mr. Molina had indicated that he suspected theft. When Mr. Molina did arrive, the City Manager specifically asked him why he believed “that it’s theft versus some other scenario.” Mr. Molina did not indicate that he never claimed theft had occurred. Moreover, the City Manager described Mr. Molina’s tone as follows:

The tone of it was that something either criminal or correct, the tone of it was, it was malfeasance. Which is different from there’s a discrepancy, let’s figure out

what happened. Right. It's jumping to the assumption that the explanation was malfeasance. And that was the tone.

(13) PD Commander

The PD Commander confirmed that she accompanied Asst. COP #1 to the Dallas Cowboys' Training Camp after the City Manager contacted Asst. COP #1 regarding Mr. Molina. When they arrived, she observed Mr. Molina speaking to CMO Employee #1. She indicated that CMO Employee #1:

Looked like she was upset as we walked up. She had sunglasses on, she was kind of wiping her face, um like this, which gave me the impression that she was crying because there wasn't really—isn't any reason to wipe your eyes in that fashion if you're wearing sunglasses. . . . Her face was red and I'm assuming that she was embarrassed, but, you know, obviously don't know exactly what she was feeling and she was wiping tears away from her face and so she walked back into a tent area.

When she finally spoke with CMO Employee #1, CMO Employee #1 confirmed that she felt like she was being cross-examined as Mr. Molina questioned her. She indicated that CMO Employee #1 said that she "felt like [she] was being accused of stealing."

When asked to further describe what she observed as Mr. Molina spoke with CMO Employee #1, the PD Commander responded:

I thought it was a little odd how close he was standing and compared to [CMO Employee #1] he's a very tall person. [CMO Employee #1] is a much smaller woman. He was standing very close proximity to her and had his hands on his hips, sort of like, you know, this over her, like leaning over her. I just thought that was weird. I wouldn't necessarily, you know, speak to somebody in that manner. In my role, you know, there is a difference in, you know, he's male or female. I wouldn't necessarily go to somebody that was smaller than me and then you know when I was questioning them in the capacity that he was – another employee – and you know use the close proximity and probably the body language. That seemed, you know with him being a much taller man, her being a much smaller woman. I probably wouldn't have done that if the roles were reversed.

When asked for clarification regarding her body language comment, the PD Commander explained:

I think that he was definitely showing the power of his position in the way that he was standing close to her. Maybe getting the authority. Giving himself the authority to ask the questions. Whatever he was questioning her about based on what she later said he was questioning her about.

3. Analysis

a. Personnel Rules and Regulations, Chapter 3, Section 3.10 – Anti-Bullying Policy

The question that must be assessed is whether Mr. Molina violated the City’s Personnel Rules and Regulations by “bullying” CMO Employee #1 with respect to this incident. (See Exhibit E.) The policy prohibits intimidation or bullying “in the workplace or elsewhere, such as at offsite events or work places.” It defines “bullying” as the use of aggression with the intent of harming. It indicates that “bullying” can be written, visual, verbal, or physical, when it causes harm to the individual’s person or property, interferes with the person’s ability to work, is severe or pervasive, and creates an intimidating or threatening environment. (See Exhibit E.)

As noted above, the City’s Anti-Bullying Policy prohibits intimidation or bullying in the workplace, as well as offsite events. In this case, the consistent testimony from CMO Employee #1, the Asst. City Treasurer, Asst. COP #1, TOE #8, the CCS Director, and the Treasury Supervisor shows that CMO Employee #1 was questioned by Mr. Molina concerning a discrepancy in the money collected for the parking lots in his office and at the welcoming tent at the training camp itself. Thus, both a traditional workplace and an offsite event are implicated.

While Mr. Molina indicated that he did not question CMO Employee #1 at his office after learning about the discrepancy, the Investigator discredited Mr. Molina’s testimony in this regard. First, it was contradicted by a number of witnesses – i.e., CMO Employee #1, the Asst. City Treasurer, TOE #8, and the Treasury Supervisor, who all recalled attending the meeting at issue. Second, during this interview, when discussing this incident, Mr. Molina continuously indicated that he was not able to recall key facts. In fact, he repeatedly advised the Investigator that other individuals had great memories and would be able to recall the events with more specificity. Based on these admissions, the Investigator found Mr. Molina’s denial that this meeting took place to be unreliable as the individuals he identified as having better memories included the Asst. City Treasurer and the Treasury Supervisor. Third, as noted earlier in this Report, Mr. Molina interfered with this investigation in three material manners. That interference impacted Mr. Molina’s credibility and provides another basis for discrediting his statements regarding this incident.

The policy also refers to the use of aggression, whether verbal, physical or written, that harms the victim, interferes with her ability to work, is severe or pervasive, and creates an intimidating or threatening environment. In this case, CMO Employee #1 described being questioned on two separate occasions by Mr. Molina. With respect to both occasions, she described it as a “cross-examination,” which supports verbal aggression. She conveyed these feelings to others (i.e., the CCS Director, Asst. COP #1, and the PD Commander), who each confirmed that CMO Employee #1 had shared these impressions in close temporal proximity to the events.

Against this contradictory evidence, Mr. Molina’s denials are discredited for the same reasons noted above. The Asst. City Treasurer, TOE #8, and the Treasury Supervisor indicated that CMO Employee #1 did not appear upset at any point during the meeting in Mr. Molina’s office. However, even if she did not appear upset, Mr. Molina’s questioning could nevertheless have been interpreted as a cross-examination by CMO Employee #1, who confirmed that she felt

intimidated by the events. Thus, the Investigator did not rely on the Asst. City Treasurer's, TOE #8's, and the Treasury Supervisor's impressions of CMO Employee #1's emotional state. Moreover, CMO Employee #1 is a better judge of her emotional state; therefore, her statements carry more weight.

In addition to displaying verbal aggression, Mr. Molina also showed written aggression when he sent an email that, according to CMO Employee #1, "basically [told] council that there was mishandling of funds, that theft was going on." Since CMO Employee #1 was exclusively in charge of those funds for the Dallas Cowboys' Training Camp, it is reasonable to assume that she would have viewed this email as a personal attack on her integrity or competency. In either event, Mr. Molina again demonstrated an aggressive intention toward CMO Employee #1.

Finally, both Asst. COP #1 and the PD Commander described Mr. Molina standing close to CMO Employee #1 in an aggressive posture when questioning her out at the training camp location. Both individuals described this as a form of physical dominance designed to set a command presence as Mr. Molina questioned CMO Employee #1 for a second time about the discrepancies. Given the extreme difference in size between Mr. Molina and CMO Employee #1, it is reasonable to assume that such an aggressive stance would have been considered intimidating by CMO Employee #1, which is confirmed by her referring to this exchange as yet another cross-examination.

With all three forms of aggression (i.e., verbal, written, and physical), a reasonable person would realize that CMO Employee #1 was likely to suffer harm in terms of the attack upon her character and integrity. In fact, by issuing the two emails discussed above, Mr. Molina publicized the issue to a wide audience; thereby, magnifying the amount of damage that CMO Employee #1 sustained. Moreover, since the underlying claim of theft proved untrue, Mr. Molina's emails constitute a spreading of rumors that is also prohibited under the policy.

As it relates to the severity or pervasiveness of these acts, the acts of aggression took place in a relatively small window of time. Therefore, they do not appear to have been pervasive. However, given the fact that CMO Employee #1 was brought to tears by the aggressive nature of Mr. Molina's conduct, which was confirmed by Asst. COP #1, the PD Commander, and the Treasury Supervisor, the acts were sufficiently severe to satisfy this component of the policy.

Finally, any reasonable person in CMO Employee #1's circumstances would have perceived Mr. Molina's conduct as creating an intimidating or threatening environment.

#### b. Duties of the City Treasurer

The question here is whether Mr. Molina's duties include investigating potential criminal conduct, including questioning employees who may be implicated. (See Exhibit C.)

It is undisputed that Mr. Molina initiated an investigation into what he believed to be a discrepancy in the parking lots' money collected for the Dallas Cowboys' Training Camp. Several individuals (i.e., CMO Employee #1, Asst. COP #1, the CCS Director, the Deputy CM, the Treasury Supervisor, and the City Manager) confirmed that Mr. Molina referred to the issue as a theft or misappropriation of funds. Even Mr. Molina confirmed that he used the term "theft"

in describing his suspicions. (See Exhibit AA.) In either case, Mr. Molina suggested criminal activity. Moreover, he chose to question CMO Employee #1 on two separate occasions, which CMO Employee #1 described as a cross-examination. That style of questioning suggests a criminal investigation, as opposed to a mere desire to correct procedural errors.

Nowhere in Exhibit C is there any reference to the City Treasurer's duties including the investigation of criminal activity, even when related to City funds. Despite the absence of any authority to investigate, Mr. Molina admitted that he was, in fact, investigating the issue. Thus, he exceeded the scope of his office.

**D. Did Mr. Molina engage in “keyboard warfare” by using misleading emails that were blind copied to various individuals, including members of the public, and that were designed to enhance his own image at the Public Works Department’s expense?**

1. Finding

By a preponderance of the evidence, the Investigator finds that Mr. Molina engaged in “keyboard warfare” by using misleading emails that were blind copied to various individuals, including members of the public, and that were designed to enhance his own image at the Public Works Department’s expense. A preponderance of the evidence further shows that, by engaging in this conduct, Mr. Molina violated the City’s Personnel Rules and Regulations, specifically those related to anti-bullying.

**This allegation is substantiated.**

2. Facts

a. Documents

In support of the allegation that Mr. Molina used misleading emails that were blind copied to various individuals, including members of the public, the Investigator was provided with multiple examples by various witnesses. Therefore, the Investigator makes reference to Exhibits F, H, I, J, L, P, Q, R, S, T, W, X, Y, and Z in support of this claim. In order to more specifically address these allegations with particularly persuasive examples, particular attention is drawn to the following documents:

(1) City’s Personnel Rules and Regulations

The City’s Personnel Rules and Regulations, Chapter 3, Section 3.10 – Anti-Bullying Policy reads, in pertinent part, as follows:

3.10 ANTI-BULLYING POLICY

. . . the City also prohibits any form of “intimidating or bullying” in the workplace or elsewhere, such as at offsite events or work places.

### 3.10.1 POLICY COVERAGE

. . . Bullying is the use of aggression with the intention of harming another individual. It can include any intentional written, visual, verbal, or physical act, when the act physically harms the individual or damages his or her property; has the effect of interfering with an employee's ability to work; is severe or pervasive; and creates an intimidating or threatening event.

Bullying comes in many shapes and sizes and can take many forms including, but not limited to . . . abusive comments, . . . spreading rumors . . . . Such conduct can also occur via use of electronic or telephonic communications such as the internet, email and chatroom misuse, mobile threats by text messaging or calls, or misuse of cameras and video equipment. (See Exhibit E, Chapter 3, Section 3.10 – Anti-Bullying Policy.)

#### (2) Exhibit J

Exhibit J is made up of a string of emails provided by Asst. COP #1 that relate to Mr. Molina divulging attorney-client privileged communications to the public. Although these particular emails and the underlying subject do not relate to the Public Works Department, the situation is nevertheless relevant and illustrative as the emails show Mr. Molina engaging in the type of conduct relative to emails as alleged by the Public Works Department. The emails show Mr. Molina requesting and receiving advice from the City Attorney's Office regarding an issue facing his department. The emails also show Mr. Molina then taking portions of those privileged communications and making them public. In fact, Mr. Molina engages in a back and forth with a member of the public, who identifies herself as an attorney, regarding the propriety of his actions.

#### (3) Exhibit P

Exhibit P is an exchange between Mr. Molina and the HR Director, regarding Voya, a new third-party provider for retirement programs, which was selected following cooperative discussions between the City and various unions. This particular issue does not directly involve the Public Works Department, but it is again relevant and illustrative as the emails show Mr. Molina's practice of blind copying various individuals, including members of the public and media. The first two pages of the exhibit show a list of well over one hundred individuals that were blind copied on the emails that Mr. Molina was exchanging with HR Director.

#### (4) Exhibit R

Exhibit R includes an exchange between Mr. Molina and a sitting councilmember. In Mr. Molina's first email, he writes "I've been told you are ordered to not communicate with me and I regret that you have been drawn into this." In response to this claim, the councilmember wrote:

I was NEVER TOLD not to communicate with you, I hope you verify the information you claim to have. Again I was never told not to communicate with the City Treasurer for the City of Oxnard, Mr. Phillip Molina, in the past, present,

or future. It did not happen[.] I did ask why your email was cut off and I feel it would be in your best interest to explain that yourself.

Phillip I request you share this with all those you sent your claimed information out to as it implies things IN MY SPECIFIC CASE that are not true; the use of words is a skill that can inform or confuse, innuendo is not a tool to inform and only casts doubt on the supplier of such.

I have cc[‘d] parties I feel need my statement, avoided a Brown Act issue by including on two other Council members and for anyone requesting a copy I have included the elected Oxnard City Clerk as she would not need to request this information as it will be in her [possession].

The document shows Mr. Molina misrepresenting facts to support his position. However, in this case, his efforts to mislead were called out by the councilmember who not only confronted Mr. Molina regarding his misinformation, but recommended that he correct his error by circulating the correct information to everyone he had sent the initial email.

(5) Exhibit T

Exhibit T again illustrates Mr. Molina’s inclusion of more than two hundred individuals as blind copies on this email.

(6) Exhibit W

Exhibit W does involve the Public Works Department and mirrors the same issues illustrated in the earlier identified documents. For example, in his communication with the PW Director at the end of this email string, Mr. Molina voices his disagreement with her assessment of the situation. However, he chose to blind copy this portion of the exchange to one hundred sixty-six people.

(7) Exhibit X

This is a December 20, 2017 memorandum from then-Assistant City Manager to Department Directors. In that memorandum, then-Assistant City Manager wrote, in part:

. . . Mass e-mails shall only be sent to recipients reasonably necessary to consider the information being communicated. The List shall only be used to communicate matters of considerable importance to the City as determined by the City Manager or his or her designee(s). Only the City Manager or his or her designee(s) may use the List to send mass e-mails.

\* \* \*

. . . As such only the following employees are designated to use the “all” email list in conformance with this policy: City Manager; Assistant City Managers; Media & Community Relations Manager; Police Chief and Assistant Police Chiefs; Fire Chief and Assistant Fire Chiefs; Human Relations Director and the Information Technology Director.



All of the examples specifically discussed above post-date this memorandum.

(8) Exhibit Y

This is a memorandum dated November 2, 2017 from the City Attorney to Mr. Molina addressing the “City Policy and Ralph M. Brown Act re Use of City Email System.” The City Attorney wrote, “your use of the email system for such mass mailings may have violated the Brown Act and, therefore, the City’s policy on the use of technology and devices.”

This demonstrates Mr. Molina’s historic practice of mass emailing and violation of City policy on the use of email.

(9) Exhibit Z

On December 4, 2018, Mr. Molina was issued a Letter of Reprimand “for your repeated improper use of the City of Oxnard e-mail system and release of confidential information to the public.” In support of this conclusion, the City Manager wrote, in pertinent part:

Prior to October of 2017, you used your City e-mail account to send out a variety of e-mails to every City employee using the [all@oxnard.org](mailto:all@oxnard.org) e-mail list. You also forwarded confidential and privileged e-mails sent by the City Attorney’s office to a list of outside recipients without authorization from the City Council.

On October 4, 2017, you were informed by Oxnard City Attorney [ ] that your use of the Oxnard e-mail system in this manner violated Oxnard Personnel Rules 18.4.2 as well as the attorney-client privilege.

\* \* \*

Despite [the City Attorney’s] discussions with you on October 4, 2017 and his November 2, 2017 memorandum to you and the implementation of Administrative Policy number 18.4.6, you continue to send out mass e-mails, using your official Oxnard e-mail account, through the use of either copying (cc) or blind copying (bcc) dozens or hundreds of individuals, including the general public, City of Oxnard employees, or outside attorneys.

\* \* \*

In sum, these e-mails sent by you from your City e-mail account between November 5 and November 20, 2018, in which you either copied or blind copied a large list of e-mail recipients, continue to violate Oxnard Personnel Rules 18.1.2 and 18.4.2 and are inappropriate mass e-mails. These e-mails also appear to attempt to convey, in the face of all evidence, that you are the only person within the City of Oxnard who is guarding the public coffers, and imply that you alone have the best interests of Oxnard in mind. Finally, these e-mails reflect a lack of professionalism and good judgment on your part given that you use your official position and City resources to publicize mostly your opinions.

\* \* \*

Your continued use of the City's e-mail system to copy dozens of individuals serves no official purpose and appears designed to undermine the City and its officials, misleads the public and creates a negative perception of the City organization.

You are ordered to immediately do the following:

1. Cease using your City e-mail account to divulge confidential City information with the public by either copying or blind copying individuals who are not entitled to this confidential information.
2. Remove your signature block footer from your official City E-mails in which you admit to releasing confidential information and express your personal disagreement with the City's confidentiality policy.
3. Cease using your City e-mail account to send out mass mailings.

b. Witnesses Statements

Nineteen individuals interviewed consistently stated that Mr. Molina sends out multiple emails daily that typically involve his communications with other departments and do not relate to their work assignments. They confirmed that they are typically blind copied on these emails. These witnesses are Finance Department Employee #1 ("FDE #1), the Asst. City Treasurer, Asst. COP #1, the Purchasing Manager, IT Director/Chief Information Officer ("IT Director"), the PW Director, TOE #6, Asst. City Manager, TOE #8, the CCS Director, the Deputy CM, the Treasury Supervisor, TOE #10, TOE #12, the PD Commander, Asst. COP #2, the Asst. CFO, the Controller/Senior Manager Internal Control ("Controller"), and the Management Accountant/Auditor ("Auditor"). No one interviewed denied that Mr. Molina engages in the alleged conduct. Since Mr. Molina declined to appear for a second interview, the Investigator was unable to ask him for his position relating to this allegation.

In order to set the proper context for this allegation, the summaries begin with the PW Director, who initiated the complaint on the Public Works Department's behalf. Thereafter, the summaries are provided in alphabetical order by the witness' last name. The summaries do not include all nineteen identified witnesses. Instead, for the sake of efficiency and brevity, the summaries relate to specific individuals who provided particularly illustrative examples.

(1) PW Director

When raising the issue of Mr. Molina's use of the e-mail system, the PW Director stated:

It almost feels like he just likes to flex muscle, but it harms the City. And if there is an error on billing or something comes up, if he could find something, he'll blast it out. You know he'll make it look like "I've done this wonderful thing and found this error and saved the City," but he's got a blind copy list of a whole lot

of people, so you never know the other thing. He sends you an email and he's copying all kind of people, you don't even know who he's copying. And a lot of times, my understanding is that these would be people in the community who are his supporters, so he has the opportunity to paint the City in whatever light he wants and we don't even know who he's included in this email.

In order to place the magnitude of this issue in context, the PW Director explained:

I was warned by the City Attorney's Office that just know that he blind copies folks so be careful, just know you don't know who the recipients if you hit "reply all." And so there's a feeling that sometimes he's baiting you to an argument that can play out publicly.

To support the claim that Mr. Molina baits individuals into arguments, the PW Director provided the Investigator with a sampling of emails that illustrated the point. (See Exhibit K.)

In short, the PW Director complained that Mr. Molina uses his emails, including his blind copying, as a tool to achieve his agenda.

(2) Asst. COP #1

As noted earlier in this Report, Asst. COP #1 provided a written statement regarding the issue related to the Dallas Cowboys' Training Camp. In that same written statement, Asst. COP #1 addressed Mr. Molina's practice related to emails and wrote:

Historically, he has demonstrated that he will have a one-on-one conversation with someone, and following their encounter, will send [an] email to a wide distribution of "bcc'ed" persons, recapping their contact on his terms and from his side of the story. These emails are typically cast with a negative slant toward others, and are often self-aggrandizing. . . . His emails are known for mischaracterizing matters, accusing staff, questioning integrity and character of staff, or grandstanding. His emails are often patronizing and condescending.

Additionally, following his interview, Asst. COP #1 provided the Investigator with a copy of a binder that he indicated related to Mr. Molina. In that binder, Asst. COP #1 included a string of emails related to Mr. Molina divulging attorney-client privileged communications to the public. The emails show Mr. Molina requesting and receiving advice from the City Attorney's Office regarding an issue facing his department. The emails also show Mr. Molina then taking portions of those privileged communications and making them public.

Asst. COP #1 described Mr. Molina's email practice as a huge strain on time at the City. In this regard he said:

It is exponentially disproportionate. I would put that in quotes. Like, I could qualify that a little bit further. In terms of that, prior to him, assuming his office as the treasurer, we spent very little time as I mentioned and so now, not only was I getting several bcc emails a day, and I would read through them to see where are

we going with this, does this have anything to do with me? Does it have anything to do with the police department? You know, and you find out when you and find out when you get through the string that it has nothing to do with anything to do with the police department, that takes time. Multiply that times all the line staff that, at the police department, that were receiving emails as well, because I know people at the line-level still, you know, and I talk to them and they're like "hey, who is this Phil Molina guy?" The people who really didn't know who he was, "why am I getting all these emails from him?" People were telling me that they were seeing all these odd emails that were popping up. They were getting any from once a day to several times a day. And so, that's taking their time, not just mine. So now this is multiplied by a factor of nearly 400 employees at least in the police department who are potentially getting these. The materials he sent, you know, like I said, had nothing to do with police operations. They were often times either I would call, like some kind of squabble between him and either the City Attorney, the City Manager, the IT Director, those were three people he was particularly very back and forth with. I would say quite nasty with them. A variety of topics, especially the City Manager, the City Attorney. He included some emails of discussions that he had with the mayor, so anyway. Seeing those things happening did take a lot more time. And so, at some point, you make a decision whether or not you're going to continue to read them or you're going to just start deleting them, and so what I saw happening was, in my opinion, was a gross abuse of the City's resources and colossal impact on staff time. Add to that, there were a few occasions where I did respond to him, so the time to go back and forth with him on a particular issue takes time, and these are usually over things that I was questioning why he was doing.

And also, it took me a little bit of time than it would for any other email because I'm realizing that I'm writing something to an elected official that I need to make sure that the email response is professional, it's articulate and prepared to be put in front of the potential bcc audience, for example if we go back, we'll probably get to this later, but the July 30<sup>th</sup> incident that happened with him and some City staff here, it literally took up a significant portion of my Thursday, Friday and part of my weekend just dealing with his emails and dealing with the collateral damage that was taking place because of that, so it's unreal. It's unreal, inappropriate and unnecessary I think are ways that I feel that what our, not just myself, but other employees and staff members and City employees had to deal with.

In terms of Mr. Molina's misrepresentations, Asst. COP #1 indicated that Mr. Molina will remove portions of email strings in order to make the communication support his position. In this regard, Asst. COP #1 pointed to his back and forth with Mr. Molina regarding CMO Employee #1 and Mr. Molina's apology email. Asst. COP #1 indicated that portions of his responses were edited in the versions that Mr. Molina shared with the public.

(3) Purchasing Manager

Like the PW Director, the Purchasing Manager indicated that she had also been warned not to respond to Mr. Molina's emails. She specifically said:

I was directed by the previous CFO and Assistant City Manager to never, ever reply to him again. Because he threw me under the bus so many times. And had blind copied all his constituents. And his, he was antagonistic in his emails.

(4) IT Director

The IT Director described a particular incident when Mr. Molina publicized highly confidential information regarding a potential breach of the City's on-line payment system, which could have resulted in additional breaches. He said:

So, very adversarial relationship in general with Mr. Molina. As I mentioned before his actions are ones that show he's attempting to make staff look bad, however and whenever he can. He does this under the guise of trying to say he's an advocate for the people that elected him. But while at the same time he's jeopardizing the people that elected him who are our residents. And so one example in, oh back in the middle of 2018, we had a scenario where our ERP System clicked the GOV online payment system was breached, or potentially breached. Something that we later found out had happened to a dozen cities across the nation. It was due to some code that the company used that wasn't kept up to date and some network settings that allowed hackers to exploit a known vulnerability in some web logic software that a company uses for online payments. The, Mr. Molina found out about that and there are exceptions in the Public Records Act that allow cities to not release information publically when it exposes a vulnerability about a system that could cause attacks. Could cause your systems harm. Mr. Molina clearly violated that by taking information about this, at that point supposed hack, and publically emailing it to people, letting people know that there are vulnerabilities in our system. Something you definitely don't want to do before you allow the vendor and us internally to take action to protect ourselves from further attacks. I met with Mr. Molina sometime middle of '18, probably in May, and explained in confidence to him how the system technically worked. Where the company thought the vulnerabilities were in the system. I drew it on his whiteboard, network diagram, servers, software names, ports, and explained how traffic flowed from the internet with payments into our network, into the systems, where the known vulnerability was from the web logic software, and back out again. Explained to him that this is highly confidential and dangerous if you share this information with anyone before Superian Sun Guard HTE has a chance to fix this problem, along with our help from our network engineers locally. And when I left his office I erased his whiteboard with all this information, I told him it was confidential, and when I get back to my office later that day, I got an email from Mr. Molina, basically he had retraced the network diagram everything I wrote on his board, off the ghosted images of the dry erase markers. So you could still see the images there even though they had been

erased. He retraced all of those, took a picture of it, emailed it to me, and said something like, yeah I can't get this image off my whiteboard, can you buy me a new whiteboard? I replied, tried to keep it light and said jokingly, ha ha, this is confidential, please do not share this information with anyone. So he proceeded to take that same image and forward it to a group of people via email, letting them know that this is what he had learned from me, in person.

Ironically, the IT Director stated that he discovered that Mr. Molina divulged this information because he was included on the email.

In describing Mr. Molina's general email practice, the IT Director said, "Mr. Molina's demeanor has been, I've got to make myself look good, and all the rest of staff look bad."

(5) Deputy CM

Similar to other individuals, the Deputy CM also provided specific examples to illustrate Mr. Molina's email practice. She provided the following description of Mr. Molina providing false or misleading information:

So another example is he communicated wrongly, so—and he knows it's wrong—to one of our labor unions in the latest budget—we had a very contentious budget process. He communicated wrong information to one of our labor unions. Our labor union put out an ad that basically blamed our Finance Department for hiding money or stealing money or something along those lines. We can get you a copy of the ad. Now, that's on the union for putting out the wrong information, but they got it from him. And he knows it's wrong.

The Deputy CM also provided an example of Mr. Molina's publicizing of attorney-client privileged communications. She said:

That's another—again, I'm off on tangents, but when I was at the City Attorney's Office and he still does this to the City Attorneys, there were multiple times when we said to him "You cannot—this is attorney-client privileged information. You cannot disseminate this information." And he sends it out anyway. So, you know, which is—as you know, as an attorney—incredibly dangerous to send out information. He would send out—we would provide a legal analysis to him, he would request, you know, "Can I do this? Can I do that?"—whatever it is, we would provide the response to him and then he would send that out to many people by email and that left us, as attorneys, and it still leaves them in the City Attorney's Office—you can talk to [the City Attorney] about this—it's in this weird quandary of "Well, do we not advise our own staff then?" We've got a whole Department that we can't provide legal advice to because they don't keep that information confidential. But then you've got the potential for real problems here.

(6) Asst. COP #2

Like several other witnesses, Asst. COP #2 also provided an example of Mr. Molina publicizing highly confidential information as a result of this email practice. Specifically, Asst. COP #2 identified an April 10, 2010 Confidential Memo from then-Police Commander that “detailed information about the security procedures used in the Oxnard City Treasurer’s Office to safeguard employees and funds.” (See Exhibit L.) Asst. COP #2 stated that a copy of this document was provided to Mr. Molina after he began his tenure as the City Treasurer. He explained that Mr. Molina was concerned about the security at the City Treasurer’s Office and asked if the Police Department could perform an assessment. Mr. Molina was provided with a copy of the 2010 memorandum in response to this request. Asst. COP #2 said that, after he received a copy of the memorandum and despite the fact that it is stamped “CONFIDENTIAL (NOT FOR PUBLIC RELEASE)”, Mr. Molina nevertheless attached the document to one of his emails and sent it to multiple individuals, including members of the public. Specifically, Asst. COP #2 stated, “this is law enforcement sensitive information and he sent it out to everybody.”

(7) Asst. CFO

The Asst. CFO also spoke of Mr. Molina’s practice of publicizing sensitive information in an effort to enhance his own image while negatively impacting the City’s image. In this regard, the Asst. CFO explained the negative impact that Mr. Molina’s actions had:

We already have a trust issue in this City with our citizens given all of the decades long mismanagement that has happened and we’re really working hard to rebuild that trust and get the credibility and he’s really undermining that with this kind of stuff.

To bolster her statement, the Asst. CFO shared an example involving emails that Mr. Molina sent out after the City drew down on a bond account. The Asst. CFO explained that, when a bond is approved, the associated money is placed in a separate account so that it is not comingled with the City’s other funds. As the associated work is performed, the City will pay the amounts due from its own bank account and then will draw down from the specific bond account in order to repay the money that was advanced. These “drawdowns” simply reimburse the City for the funds that were already spent on the associated improvement. The Asst. CFO emphasized that this is not new money.

Not long after the Asst. CFO joined the City in early 2019, she became aware of a bond account that had not been drawn down for quite some time. She discovered that approximately \$5.6 million in reimbursements were owed from this bond account. While all of this money still belongs to the City, from an accounting standpoint, it is proper to draw down from the bond account and to move the money into the account from which the original services were paid. This is akin to taking money from the right pocket and putting it into the left. In advance of this particular draw down, the Finance Department advised Mr. Molina that he would be receiving a large reimbursement.

The Asst. CFO explained that this was all taking place during or shortly after the City faced serious financial issues that resulted in the loss of multiple jobs. When Mr. Molina was advised

of this reimbursement, he accused the Finance Department of theft and claimed that this was “new” money that could have been used to save jobs. Mr. Molina so advised the unions through emails, which resulted in the unions taking out an ad in a local paper accusing the City of impropriety. The Asst. CFO explained that Mr. Molina did all this despite the fact that she and her staff explained to him multiple times that this was not “new” money, but merely constituted a reimbursement of funds that were already expended for their approved purpose.

After providing the above example, the Asst. CFO provided the following description of Mr. Molina’s use of emails:

Well, I mean, you know, if we look at the emails beyond this bond issue, it—there’s so many things. He just nitpicks, right? And he tries to correct—like this one, where I made a statement in a City Council meeting and I referred to fund balance for an enterprise fund and he feels that I should have said “retained earnings.” Well, you know, okay but I was speaking generically to non-accountants who understand fund balance better, right? But he has to send an email to correct me. It’s just—and when he does it, he copies a bunch of people. It’s not just like to me and saying “Okay, well you should’ve said retained earnings.” Well, okay. It’s ridiculous. Here’s another example where he—on a wire transfer, asked me about which fiscal year this item belonged to. I followed up, I responded, I confirmed it’s related to fiscal year ’19-’20. He doesn’t accept it. He comes back “Really?? Okay, well blah, blah, blah, blah, blah. How could this be?” It doesn’t make sense to you, then I have to go back again and say “Yes, I have confirmed that it relates to fiscal year ’19-’20.” And that’s—like why do I have to keep proving things? It’s just—“it’s my job to make sure things are accounted for in the right fiscal year. Not yours. You asked me the question. I responded. Leave it at that.” But he can’t. This one he’s questioning how we’re accounting for a particular interest payments. Oh, this was a great one. I love this one. So, the Treasurer’s Office received a payment for \$5,000 related to a civil fine or something and they needed an account to record it against. They sent the email to me, first of all, which is odd because typically it doesn’t need to come to my level for something like that. That could go to our accountant who’s responsible for recording revenues and receivables. It could’ve gone to the Controller. But for whatever reason, they submitted it to me directly. So, I forwarded it to my Controller and to the Finance Manager in the Police Department because it was related to a police fine, so say “What account do you guys want this booked to? Because I don’t need to get into that level of detail and you know, like defining or identifying what account it is.” So, I copied the person in Treasurer’s Office who asked the question that I said “Okay, can you please let Treasurer know what the appropriate account string is?” So, I don’t think I copied Phil on this. I wouldn’t have normally, but anyway, so he gets to Phil and he sends me an email and he copies his staff, he copies the Police Finance Manager, and he says “Let me know if you want to talk about the proper fund and account to post the entry. I have some texts on the subject.” Meaning like textbooks. Like, “I don’t—I’m a CPA. I know how to account for things. I don’t need your textbooks. I don’t need you to tell me. This is just a matter of having



the appropriate people who are close to the transaction identify which account—which specific line item it should go to. That’s all it is.” But no. He has to send an email like that completely insulting me. And he gets this one—I can’t remember what this was about. Oh, we had a billing issue with our—one of our utilities with one of our customers, and I was helping because—because he was questioning what the water fund—Water Department had calculated as being due to us by this customer, and he questioned it so Head of Public Works pulled me in to be the arbitrator of getting these numbers reconciled because, quite honestly, nobody wants to deal with him. Okay, so I said “Fine. I’ll look at it. Blah, blah, blah.” But I was really busy that day and I said “I won’t be able to look at this today. I’ll get to it tomorrow. Is there an urgency? Does this need to get resolved right away?” And the Water Department said “No, no, no. It’s fine. It can wait a couple days.” And the City Attorney was involved as well. And so we responded that—or [the City Manager], I think, sent him an email saying “No, Finance is going to look into it.” And then he says “Let me know when Finance staff wants to meet with Treasurer staff so we can educate them.” Okay? Then he sends out this email—again, I’m pretty sure this got copied to a bunch of people. “Here is more money for the general fund. Stop allocating interest earnings to any of the RDA successor agency funds.” So, again, he assumed that this was happening. He sends out this email. We go ahead and look into it and sure enough, there is no interest income being allocated to the successor agency funds. And then, yeah. It’s just—it’s just again, it’s like “You don’t need to send out emails like this. Just ask us the question first and let us confirm first before you just make it seem like ‘oh, we found more money.’” I think he’s trying to, you know, make himself look like the savior for the City. Anyway, so that was that one. And these were all related to the [unintelligible]. So those are a sampling of things. Again, I didn’t—I don’t save all my emails. There was a—not that long ago, I sent an email to [the CFO] and the Deputy City Manager, to give them an idea of the amount of distractions that we deal with from Mr. Molina. I went through and I looked at my inbox for like just a two-week—the most recent two-week period and I had 58 emails from him. Now, if you remember, too, at the beginning of our conversation, there really isn’t necessarily a need for us to have a daily interaction in our roles. But in two weeks I had 58 emails that I had to address or respond to or do something with. And I would venture to guess that a good majority of them unrelated to his specific role as Treasurer. It’s, you know, him looking into things that are outside his scope. (See also Exhibit G.)

(8) Controller

The Controller confirmed Mr. Molina’s practice of providing inaccurate or misleading information in his emails. She said:

There was some time ago, there was communication on a successor agency. And he was communicating faulty, falsely information that we had, you know, several millions of dollars. We hadn’t reconciled it. And we had. So he’s always, the majority of his emails are faulty information. And very mistrust, leaves, leaves

the community, I would think, when the public is on there to very distrust the City, yea.

(9) Auditor

The Auditor confirmed the Asst. CFO's example regarding the \$5.6 million draw down and the damage that Mr. Molina's subsequent email caused. He specifically stated:

He basically, he sent out an email and he cc'd a number of people on it and we don't know how many people he blind cc'd, but he had a history in the past of blind cc'ing people up to 100 of his constituents, I'm not sure exactly, at least that's what I've been told by various people. But he said that what we were doing is illegal, not only were we accounting for things inappropriately, what we're doing is illegal and what we're doing is illegal, essentially. Now shortly after that, now there was only a few people that knew about the requisition up till this point, it was me, [a former CFO], the Asst. CFO, maybe some other people in finance department, and Phil Molina. Then all of sudden, the next thing we know there's a big humongous, and I think he told [a councilmember]. Well, the people he cc'd on this, using this email, and whoever he blind cc'd, we don't know. But he specifically, the next day, the next day or so, in the newspaper in Ventura County Star, there's a full page article saying that the City just found, the finance department, just found \$5.6 million in new money, and this was put out I believe by SEIU, the Union and this could be used to save jobs and as result, and it says "What other things is the City hiding?"

The Auditor provided another example of Mr. Molina's circulation of misinformation through his emails. The following exchange took place:

AUDITOR: Yeah, to me this fits into a large picture, in my mind, it's my opinion, of him trying to be a hero for the City. So the successor agency is also, this is something that's not part of that big pie, it has its own separate bank account, the City's winding it down, we have fiduciary responsibility, it succeeded the former RDA that was dissolved per Governor Brown back in 2012. And there's this question why does the successor have such money, he shouldn't have this much money, in which case our consultant, . . . and she came to show, this is what makes up all this money, a lot of it is because we requested more than we ended up spending, and subsequent request, our allocation would be reduced. She showed what makes up all of that money, it's about \$10 million. It should only be about, whatever, like six months' worth. So she went into that and it was a big dispute and then he said "oh, she's not an auditor, she's just a consultant." And so there's this back and forth and it's been ongoing since before I got here. That's in one case and so he's basically saying, somewhere we're not accounting for it correctly.

LUNA: Well, just to make sure I understand. As the City Treasurer, do you not believe it to be within his scope of work, his job duties to look into the successor agency, or what is it that you think is inappropriate in terms of his . . . again, I'm

trying to distinguish between an individual perhaps having a different opinion on how to account for something or you know, the methodology used or what have you, versus doing something that, for example, the last thing we discussed. The email takes it a step beyond. You're no longer just expressing a different opinion, you are now announcing it publically and making an accusation that you cannot substantiate that is, you know, critical of people who have not done anything wrong. Is there something related to this successor agency that is similar to that, where you think he took it a step to far? You're no longer disagreeing or not understanding the methodology, you are now acting inappropriately.

AUDITOR: In that case, I mean I can't really find anything. In that case, it is within his scope to be able to look and "why is there so much money" what have you. So in that case, I guess no, I wouldn't say it's outside of his scope and it's certainly within, but I don't think anything we ever provided has ever been sufficient for him and so, it's like whatever, we can't do anything about that. There was an instance though where, as I said before, some of the things I submit, and in this case it was related to the successor agency, where the successor agency and as well as other debt payments that I've made and submitted to him and I've put on there, if you have any questions, feel free to contact me, and the next thing I know, the next morning, he's emailing the City Manager, the City Council, basically saying that the way we're requesting this to be posted is incorrect. And then on top of that, he excluded some of the information that I have provided from that, so I had to go back and reply and say "hey, this is what happened." Some of it is accounting stuff that most people is like "what does this mean and what does that mean?" so instead of coming and talking to me, instead of calling me and saying "hey, I have questions on this" he just immediately escalated it to City Manager and the City Councilmen and at that point, I had never even talked to him, never seen him face to face. I believe [then-Assistant CFO] was here at that time and so I was like "Oh my gosh, what the heck. It's going all the way up to the City Manager."

### 3. Analysis

As outlined above, all of the information provided to the Investigator concerning Mr. Molina's use of emails was consistent and demonstrated his practice of using misleading emails that were blind copied to various individuals, including members of the public, and that were designed to enhance his own image at the expense of others. In fact, there was no information provided to counter this conclusion.<sup>11</sup> Given Mr. Molina's general practice and the PW Director's specific complaints on the Public Works Department's behalf, it is reasonable to conclude that Mr. Molina remained consistent with his general practice and engaged in "keyboard warfare" by using misleading emails that were blind copied to various individuals, including members of the public, and that were designed to enhance his own image at the Public Works Department's expense.

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<sup>11</sup> The Investigator was unable to specifically question Mr. Molina regarding this practice or the specific allegations involving the Public Works Department because Mr. Molina declined to meet with the Investigator for a second interview.

In engaging in such conduct, Mr. Molina violated the City's Personnel Rules and Regulations, Chapter 3, Section 3.10 – Anti-Bullying Policy.

As noted above, under this policy, the City prohibits any form of “intimidating or bullying” in the workplace or elsewhere. In this regard, bullying is defined as the use of aggression with the intention of harming another individual. It includes written materials that affect or interfere with an employee's ability to work; is severe or pervasive; and creates an intimidating or threatening event.

Bullying includes, but is not limited to abusive comments, name-calling sarcasm, spreading rumors, or teasing. Such conduct can also occur via use of electronic communications such as email. (See Exhibit E, Chapter 3, Section 3.10 – Anti-Bullying Policy.)

In this case, the various examples of and statements regarding Mr. Molina's use of email demonstrate a consistent pattern of intimidation wherein Mr. Molina would place employees in the unfavorable position of having to defend themselves to an unknown audience to whom Mr. Molina had provided misleading or occasionally false information. The witnesses consistently commented on the amount of time that they had to invest in addressing these emails, which necessarily took away from them performing their regular duties. They also uniformly indicated that such communications had a negative effect on the City's image in an environment where the public already distrusted the City because of prior actions. The witnesses stated that they would receive hundreds of emails a month from Mr. Molina that took this aggressive and accusatory tone, which establishes a pervasive pattern of behavior. The negative impact was so considerable that several individuals, such as the Purchasing Manager, were advised not to respond to Mr. Molina because he continued to portray them in a negative light.

**E. Did Mr. Molina exceed the scope of his position as City Treasurer by engaging in a review of the accounts payable register of checks and holding checks, including checks requested by the Public Works Department, that he determined lacked sufficient funding or supporting documentation?**

1. Finding

By a preponderance of the evidence, the Investigator finds that Mr. Molina did not exceed the scope of his position as City Treasurer by engaging in a review of the accounts payable register of checks and holding those checks, including checks requested by the Public Works Department, that he determined lacked sufficient funding or supporting documentation.

**This allegation is unsubstantiated.**

2. Facts

a. Documents

(1) January 26, 2017 Memorandum re Duties of City Treasurer

On January 26, 2017, then-Assistant City Attorney issued a memorandum to then-Assistant City Manager, regarding the Duties of the City Treasurer. (See Exhibit C.) That document reads, in pertinent part, as follows:

Below is a listing of the Treasurer’s chief statutory duties:

\* \* \*

- Pay out of money on properly signed warrants (Gov’t Code § 41003)

\* \* \*

The main role of the Treasurer in disbursement of funds: “Funds belonging to a municipality may be withdrawn only in the manner prescribed by law and usually the city treasurer is only the custodian of the city funds.” Draper v. Grant (1949) 91 Cal.App.2d 566, 570.

\* \* \*

- The City Treasurer is required to pay written demands submitted and audited by the CFO (OCC § 2-184) [fn. 9]

\* \* \*

[fn.] 9 Willful refusal to pay or transfer public moneys can constitute a crime under Penal Code §§ 424-426.

(2) June 28, 2017 Letter from Liebert Cassidy Whitmore

On June 28, 2017, Liebert Cassidy Whitmore sent a letter to then-Chief Financial Officer; HR Director; and the City Attorney for the City, providing an analysis of the City’s Accounts Payable Finance Procedure. That letter reads, in pertinent part, as follows:

. . . the City Treasurer shall specify the purpose for which a warrant or check is drawn and the fund from which payment is to be made.

\* \* \*

. . . all warrants must be signed by “legally designated persons,” . . .

\* \* \*

Section 2-168(B) provides that the “city treasurer shall also perform such administrative duties as assigned by the city manager.”

\* \* \*

Section 2-184 provides: . . .

The city treasurer shall subscribe a direction to the depository of funds to pay the funds to the order of the payee, which action shall convert the warrant, or demand, to a bona fide check.

\* \* \*

Section 2-185 prescribes that “all demands against the city shall, before being paid, be presented to and approved by the proper officer.” (Oxnard Codified Ord., ch. 2, § 2-185 subd. (A).) It also provides guidance regarding instances where no appropriation has been made for demand and sets forth the procedures for obtaining approval of such demands.

\* \* \*

City Council Resolution No. 10,820 sets forth the administrative duties of the City Treasurer, which include:

- Paying the legal obligations of the City and serving as the treasurer for a number of entities as designated by the City Council. . . .
- . . . the processing of City payroll checks and accounts payable.

\* \* \*

**The next level of audit and approval would be done by the “controller or designee” and the City Treasurer prior to “check printing.”** (Emphasis added.)

b. Witnesses Statements

In order to set the proper context for this allegation, the summaries begin with the PW Director, who initiated the complaint on the Public Works Department’s behalf. Thereafter, the summaries are provided in alphabetical order by the witness’ last name.

(1) PW Director

The PW Director provided the following description of her complaint regarding Mr. Molina’s review of check requests and holding checks:

. . . It’s Phil has decided, and I have the emails, but he doesn’t like that the City budgets by fund, he believes that it should be by line item so he holds checks and

refuses to make payments because he wants to see the line item adjusted, so in the past, my staff were running around making budget adjustments because he was telling them you don't have money in this line item so I'm not going to sign this check, but they were spending a lot of time doing that, so finally the CFO told him because he was holding a check for almost a million dollars to a contractor and the contractor was getting mad, which I don't blame him, and Kevin told him that the City Council has already determined how we budget which is by fund. You don't get to change that, you need to sign the check. So he puts holds on checks because he doesn't agree with how the City budgets, and then we have, this does real harm to the City in that when we go out to bid, we already don't get a normal amount of bids for various construction projects. We might get one or two bids on a project where other places I would see eight or ten bidders. Part of it is, and I think our bids come in higher than they should a lot of the times because contractors are figuring in this no interest loan or this delay in getting paid, it hurts us. Because the more bidders we have interested in bidding in our projects, the better the prices. So this is a game, and then, in this recent incident, the contractor was upset and wanted to come in and pick-up their check because it was so late and then he was like "we don't do that, we don't like people picking up checks, blah, blah, blah" and then [the CFO], had to intercede again and said "this is fine, we're going to do it." Because what we had heard was that this contractor basically had to send people home because he couldn't pay his bills, so [the CFO] had to step in. So this was a real impact and it just doesn't make sense. It almost feels like he just likes to flex muscle, but it harms the City.

Thus, the PW Director is bothered by the level of analysis that Mr. Molina uses and that he will hold checks if he believes that a budget adjustment is required.

(2) Asst. City Treasurer

Although the Asst. City Treasurer did not address whether Mr. Molina is authorized to inspect the funding and supporting documentation for check requests, she did indicate that it was not necessary for Mr. Molina to perform such an audit as "I think there is enough checks and balances before the check is released." She also stated that, in her experience, no other treasurer had performed such an audit in the City. When asked if she nevertheless thought that Mr. Molina should be permitted to perform this level of audit, the Asst. City Treasurer responded "no, because I believe the City has enough safety measures."

(3) Finance Department Employee #2

Finance Department Employee #2 ("FDE #2) is responsible for supervising the entire Accounts Payable division within the Finance Department. She confirmed that, before providing Mr. Molina with a list of payables, her group will verify approval, the accounts, the authorized signatures, and the amount. She further explained the level of review that her group performs and stated:

We verify the account, just make sure it's, you know, that they are in charge of something for supplies that they are charging the supply and not a service

account. Or if it's service, make sure it's service account. Or sometimes like if it's training, we make sure that they like travel, that they're charging the right account.

Because it happens. Sometimes they just want to use the line item that has money. So we correct it. We notify them of any corrections that need to be made. Make sure that the person signing off on the payment is an authorized signer.

And also just the amounts. We verify the amounts, make sure it's to the right vendor. Because sometimes with the system, they'll just put you know, they'll sometimes enter in the wrong vendor number.

FDE #2 clarified that the review of the line level would be to ensure that the amount was being charged to the proper account and not necessarily to determine if there were sufficient funds in a particular line item. She viewed this as outside the Accounts Payable division's responsibilities.

(4) TOE #8

TOE #8 confirmed that, before Mr. Molina took office, she was unaware of any treasurer who performed an independent review of the check requests from Accounts Payable. TOE #8 indicated that Mr. Molina never cited to her any specific authority allowing him to perform this review.

(5) Phillip Molina

Mr. Molina confirmed that he performs a regular review of check requests from Accounts Payable. He explained that he does so "to make sure that there's a budget and that there's – okay, that there is a budget, that there's sufficient balance in the budget, and that there's been proper departmental approval for disbursement of that check." He further detailed the level of review, and said:

Well, if the line item is exceeded, then we look to see if it has a project approval. And if it has approval at a project level, then we identify in that project level, is there sufficient remaining balance within that project to cover that invoice and, if so, then we approve it.

(6) FDE #4

Finance Department Employee #4 ("FDE #4") confirmed that, as part of his assigned duties in the Accounts Payable division, he meets with Mr. Molina on a weekly basis for about forty-five minutes to provide Mr. Molina with additional information pertaining to specific check requests that Mr. Molina identifies. FDE #4 indicated that he finds nothing inappropriate about Mr. Molina requesting these weekly meetings to review a portion of the check requests. He confirmed that he has no issues with Mr. Molina or the review.



FDE #4 stated that he has never seen anything in writing that specifies the level of review that is to be used by the City Treasurer regarding check requests.

FDE #4 stated that he finds nothing unusual about Mr. Molina electing to perform this review before simply signing the checks.

(7) PWE #1

Public Works Employee #1 (“PWE #1”), who specifically handles payables for the Public Works Department, confirmed that Mr. Molina does hold check requests from her department. She described it as follows:

And then the only other time I actually deal directly is when he holds a check. Because when there's held checks, he goes through the payables with the AP staff and then AP staff emails the departments or divisions when there's held checks, whoever issued it for payment, so I get notified when there's a held check so since I do the payables, I have to make a response to why there isn't funding in the line item which is why he usually holds it because he doesn't see funding, so I respond because I do accounts payable as to, because I know if there's money or not money or if there needs to be a budget appropriation to put money in the line, if that's all that needed. It just depends, there's different reasons why.

PWE #1 indicated that, to preemptively address this issue, she simply began initiating line item adjustments immediately if she determined that a particular line item lacked sufficient funds. She confirmed that, as a result of these preemptive actions, there has been a noticeable reduction in the number of checks that Mr. Molina holds relating to the Public Works Department.

She also confirmed that Mr. Molina's decision to hold checks has not resulted in any financial penalty for the City.

Finally, PWE #1 confessed that she does not know whether Mr. Molina's authority includes the right to perform these reviews and to hold checks.

3. Analysis

There is no dispute that Mr. Molina, on a weekly basis, reviews the check requests from Accounts Payable, including requests originating in the Public Works Department. There is no dispute that he looks at the funding on a line item basis to ensure that there is sufficient funds to cover the expense. There is no dispute that he also reviews other supporting documentation to ensure that it is there and properly signed. Finally, it is undisputed that he will hold a check if either the funding or supporting documentation is lacking in his view. Thus, the sole question to be answered is whether he is authorized as the City Treasurer to do that.

The short answer is yes. This is a result of both the duties of the positions as outlined by the two documents identified above, as well as the undisputed fact that he has and continues to be permitted to perform this review on a weekly basis.

As to the documents, then-Assistant City Attorney's memorandum specifies that Mr. Molina is to pay out of money on properly signed warrants (Gov't Code § 41003), which can be interpreted to include properly funded warrants as the City's practice has been and continues to be that he can hold checks under these circumstances. (See Exhibit C.)

Additionally, Liebert, Cassidy's June 28, 2017 letter to then-Chief Financial Officer, the HR Director, and the City Attorney specifies that the City Treasurer performs an audit and provides approval before the checks are printed. (See Exhibit D.)

Thus, Mr. Molina is performing a review that is within his authority as outlined by Liebert, Cassidy's letter and that the City has permitted as a matter of practice since he took office.

Moreover, although the Adopted Budget Book and the Fiscal Year 2018-2019 CAFR both address a department head's authority to transfer appropriations between programs within the same fund, as long as funding is available in the department as a whole, those documents nevertheless do not relieve the department head of the obligation to perform that reapportionment before requesting a check. Thus, to the extent that Mr. Molina is requiring that these allocations at least receive City Manager approval before he will release a check, this requirement does not violate the language of either document. Furthermore, since the City has allowed Mr. Molina to exercise this power since he took office and began performing these reviews, the City has authorized him to exercise this discretion as a matter of practice.

**F. Did Mr. Molina engage in “keyboard warfare” by using misleading emails that were blind copied to various individuals, including members of the public, and that were designed to enhance his own image at the Finance Department’s expense?**

1. Finding

By a preponderance of the evidence, the Investigator finds that Mr. Molina engaged in “keyboard warfare” by using misleading emails that were blind copied to various individuals, including members of the public, and that were designed to enhance his own image at the Finance Department’s expense.

**This allegation is substantiated.**

2. Facts

a. Documents

In support of the allegation that Mr. Molina used misleading emails that were blind copied to various individuals, including members of the public, the Investigator was provided with multiple examples by various witnesses. Therefore, the Investigator makes reference to Exhibits F, G, H, I, J, L, P, Q, R, S, T, W, X, Y, and Z in support of this claim. In order to more specifically address these allegations with particularly persuasive examples, particular attention is drawn to the following documents:

(1) City's Personnel Rules and Regulations

The City's Personnel Rules and Regulations, Chapter 3, Section 3.10 – Anti-Bullying Policy reads, in pertinent part, as follows:

3.10 ANTI-BULLYING POLICY

. . . the City also prohibits any form of “intimidating or bullying” in the workplace or elsewhere, such as at offsite events or work places.

3.10.1 POLICY COVERAGE

. . . Bullying is the use of aggression with the intention of harming another individual. It can include any intentional written, visual, verbal, or physical act, when the act physically harms the individual or damages his or her property; has the effect of interfering with an employee's ability to work; is severe or pervasive; and creates an intimidating or threatening event.

Bullying comes in many shapes and sizes and can take many forms including, but not limited to . . . abusive comments, . . . spreading rumors . . . . Such conduct can also occur via use of electronic or telephonic communications such as the internet, email and chatroom misuse, mobile threats by text messaging or calls, or misuse of cameras and video equipment. (See Exhibit E, Chapter 3, Section 3.10 – Anti-Bullying Policy.)

(2) Exhibit J

Exhibit J is made up of a string of emails provided by Asst. COP #1 that relate to Mr. Molina divulging attorney-client privileged communications to the public. Although these particular emails and the underlying subject do not relate to the Finance Department, the situation is nevertheless relevant and illustrative as the emails show Mr. Molina engaging in the type of conduct relative to emails as alleged by the Public Works Department. The emails show Mr. Molina requesting and receiving advice from the City Attorney's Office regarding an issue facing his department. The emails also show Mr. Molina then taking portions of those privileged communications and making them public. In fact, Mr. Molina engages in a back and forth with a member of the public, who identifies herself as an attorney, regarding the propriety of his actions.

(3) Exhibit P

Exhibit P is an exchange between Mr. Molina and the HR Director, regarding Voya, a new third-party provider for retirement programs, which was selected following cooperative discussions between the City and various unions. This particular issue does not directly involve the Finance Department, but it is again relevant and illustrative as the emails show Mr. Molina's practice of blind copying various individuals, including members of the public and media. The first two pages of the exhibit show a list of well over one hundred individuals that were blind copied on the emails that Mr. Molina was exchanging with the HR Director.

(4) Exhibit R

Exhibit R includes an exchange between Mr. Molina and a sitting councilmember. In Mr. Molina's first email, he writes "I've been told you are ordered to not communicate with me and I regret that you have been drawn into this." In response to this claim, the councilmember wrote:

I was NEVER TOLD not to communicate with you, I hope you verify the information you claim to have. Again I was never told not to communicate with the City Treasurer for the City of Oxnard, Mr. Phillip Molina, in the past, present, or future. It did not happen[.] I did ask why your email was cut off and I feel it would be in your best interest to explain that yourself.

Phillip I request you share this with all those you sent your claimed information out to as it implies things IN MY SPECIFIC CASE that are not true; the use of words is a skill that can inform or confuse, innuendo is not a tool to inform and only casts doubt on the supplier of such.

I have cc[ed] parties I feel need my statement, avoided a Brown Act issue by including on two other Council members and for anyone requesting a copy I have included the elected Oxnard City Clerk as she would not need to request this information as it will be in her [possession].

The document shows Mr. Molina misrepresenting facts to support his position. However, in this case, his efforts to mislead were called out by the councilmember who not only confronted Mr. Molina regarding his misinformation, but recommended that he correct his error by circulating the correct information to everyone he had sent the initial email.

(5) Exhibit T

Exhibit T again illustrates Mr. Molina's inclusion of more than two hundred individuals as blind copies on this email.

(6) Exhibit W

Exhibit W involves the Public Works Department and mirrors the same issues illustrated in the earlier identified documents. For example, in his communication with the PW Director at the end of this email string, Mr. Molina voices his disagreement with her assessment of the situation. However, he chose to blind copy this portion of the exchange to one hundred sixty-six people.

(7) Exhibit X

This is a December 20, 2017 memorandum from then-Assistant City Manager, to Department Directors. In that memorandum, then-Assistant City Manager wrote, in part:

. . . Mass e-mails shall only be sent to recipients reasonably necessary to consider the information being communicated. The List shall only be used to communicate matters of considerable importance to the City as determined by the

City Manager or his or her designee(s). Only the City Manager or his or her designee(s) may use the List to send mass e-mails.

\* \* \*

. . . As such only the following employees are designated to use the “all” email list in conformance with this policy: City Manager; Assistant City Managers; Media & Community Relations Manager; Police Chief and Assistant Police Chiefs; Fire Chief and Assistant Fire Chiefs; Human Relations Director and the Information Technology Director.

All of the examples specifically discussed above post-date this memorandum.

(8) Exhibit Y

This is a memorandum dated November 2, 2017 from the City Attorney, to Mr. Molina addressing the “City Policy and Ralph M. Brown Act re Use of City Email System.” The City Attorney wrote, “your use of the email system for such mass mailings may have violated the Brown Act and, therefore, the City’s policy on the use of technology and devices.”

This demonstrates Mr. Molina’s historic practice of mass emailing and violation of City policy on the use of email.

(9) Exhibit Z

On December 4, 2018, Mr. Molina was issued a Letter of Reprimand “for your repeated improper use of the City of Oxnard e-mail system and release of confidential information to the public.” In support of this conclusion, the City Manager wrote, in pertinent part:

Prior to October of 2017, you used your City e-mail account to send out a variety of e-mails to every City employee using the [all@oxnard.org](mailto:all@oxnard.org) e-mail list. You also forwarded confidential and privileged e-mails sent by the City Attorney’s office to a list of outside recipients without authorization from the City Council.

On October 4, 2017, you were informed by the Oxnard City Attorney [ ] that your use of the Oxnard e-mail system in this manner violated Oxnard Personnel Rules 18.4.2 as well as the attorney-client privilege.

\* \* \*

Despite [the City Attorney’s] discussions with you on October 4, 2017 and his November 2, 2017 memorandum to you and the implementation of Administrative Policy number 18.4.6, you continue to send out mass e-mails, using your official Oxnard e-mail account, through the use of either copying (cc) or blind copying (bcc) dozens or hundreds of individuals, including the general public, City of Oxnard employees, or outside attorneys.

\* \* \*

In sum, these e-mails sent by you from your City e-mail account between November 5 and November 20, 2018, in which you either copied or blind copied a large list of e-mail recipients, continue to violate Oxnard Personnel Rules 18.1.2 and 18.4.2 and are inappropriate mass e-mails. These e-mails also appear to attempt to convey, in the face of all evidence, that you are the only person within the City of Oxnard who is guarding the public coffers, and imply that you alone have the best interests of Oxnard in mind. Finally, these e-mails reflect a lack of professionalism and good judgment on your part given that you use your official position and City resources to publicize mostly your opinions.

\* \* \*

Your continued use of the City's e-mail system to copy dozens of individuals serves no official purpose and appears designed to undermine the City and its officials, misleads the public and creates a negative perception of the City organization.

You are ordered to immediately do the following:

1. Cease using your City e-mail account to divulge confidential City information with the public by either copying or blind copying individuals who are not entitled to this confidential information.
2. Remove your signature block footer from your official City E-mails in which you admit to releasing confidential information and express your personal disagreement with the City's confidentiality policy.
3. Cease using your City e-mail account to send out mass mailings.

b. Witnesses Statements

Nineteen individuals interviewed consistently stated that Mr. Molina sends out multiple emails daily that typically involve his communications with other departments and do not relate to their work assignments. They confirmed that they are typically blind copied on these emails. These witnesses are FDE #1, Asst. City Treasurer, Asst. COP #1, the Purchasing Manager, the IT Director, the PW Director, TOE #6, Asst. City Manager, TOE #8, the CCS Director, the Deputy CM, the Treasury Supervisor, TOE #10, TOE #12, the PD Commander, Asst. COP #2, the Asst. CFO, the Controller, and Auditor. No one interviewed denied that Mr. Molina engages in the alleged conduct. Since Mr. Molina declined to appear for a second interview, the Investigator was unable to ask him for his position relating to this allegation.

In order to set the proper context for this allegation, the summaries begin with the Asst. CFO, who initiated the complaint on the Finance Department's behalf. Thereafter, the summaries are provided in alphabetical order by the witness' last name. The summaries do not include all nineteen identified witnesses. Instead, for the sake of efficiency and brevity, the summaries relates to specific individuals who provided particularly illustrative examples.

(1) Asst. CFO

The Asst. CFO also spoke of Mr. Molina's practice of publicizing sensitive information in an effort to enhance his own image while negatively impacting the City's image. In this regard, the Asst. CFO explained the negative impact that Mr. Molina's actions had:

We already have a trust issue in this City with our citizens given all of the decades long mismanagement that has happened and we're really working hard to rebuild that trust and get the credibility and he's really undermining that with this kind of stuff.

To bolster her statement, the Asst. CFO shared an example involving emails that Mr. Molina sent out after the City drew down on a bond account. The Asst. CFO explained that, when a bond is approved, the associated money is placed in a separate account so that it is not comingled with the City's other funds. As the associated work is performed, the City will pay the amounts due from its own bank account and then will draw down from the specific bond account in order to repay the money that was advanced. These drawdowns simply reimburse the City for the funds that were already spent on the associated improvement. The Asst. CFO emphasized that this is not new money.

Not long after the Asst. CFO joined the City in early 2019, she became aware of a bond account that had not been drawn down for quite some time. She discovered that approximately \$5.6 million in reimbursements were owed from this bond account. While all of this money still belongs to the City, from an accounting standpoint, it is proper to draw down from the bond account and to move the money into the account from which the original services were paid. This is akin to taking money from the right pocket and putting it into the left. In advance of this particular draw down, the Finance Department advised Mr. Molina that he would be receiving a large reimbursement.

The Asst. CFO explained that this was all taking place during or shortly after the City faced serious financial issues that resulted in the loss of multiple jobs. When Mr. Molina was advised of this reimbursement, he accused the Finance Department of theft and claimed that this was "new" money that could have been used to save jobs. Mr. Molina so advised the unions through emails, which resulted in the unions taking out an ad in a local paper accusing the City of impropriety. The Asst. CFO explained that Mr. Molina did all this despite the fact that she and her staff explained to him multiple times that this was not "new" money, but merely constituted a reimbursement of funds that were already expended for their approved purpose.

After providing the above example, the Asst. CFO provided the following description of Mr. Molina's use of emails:

Well, I mean, you know, if we look at the emails beyond this bond issue, it—there's so many things. He just nitpicks, right? And he tries to correct—like this one, where I made a statement in a City Council meeting and I referred to fund balance for an enterprise fund and he feels that I should have said "retained earnings." Well, you know, okay but I was speaking generically to non-accountants who understand fund balance better, right? But he has to send an

email to correct me. It's just—and when he does it, he copies a bunch of people. It's not just like to me and saying "Okay, well you should've said retained earnings." Well, okay. It's ridiculous. Here's another example where he—on a wire transfer, asked me about which fiscal year this item belonged to. I followed up, I responded, I confirmed it's related to fiscal year '19-'20. He doesn't accept it. He comes back "Really?? Okay, well blah, blah, blah, blah, blah. How could this be?" It doesn't make sense to you, then I have to go back again and say "Yes, I have confirmed that it relates to fiscal year '19-'20." And that's—like why do I have to keep proving things? It's just—"it's my job to make sure things are accounted for in the right fiscal year. Not yours. You asked me the question. I responded. Leave it at that." But he can't. This one he's questioning how we're accounting for a particular interest payments. Oh, this was a great one. I love this one. So, the Treasurer's Office received a payment for \$5,000 related to a civil fine or something and they needed an account to record it against. They sent the email to me, first of all, which is odd because typically it doesn't need to come to my level for something like that. That could go to our accountant who's responsible for recording revenues and receivables. It could've gone to the Controller. But for whatever reason, they submitted it to me directly. So, I forwarded it to my Controller and to the Finance Manager in the Police Department because it was related to a police fine, so say "What account do you guys want this booked to? Because I don't need to get into that level of detail and you know, like defining or identifying what account it is." So, I copied the person in Treasurer's Office who asked the question that I said "Okay, can you please let Treasurer know what the appropriate account string is?" So, I don't think I copied Phil on this. I wouldn't have normally, but anyway, so he gets to Phil and he sends me an email and he copies his staff, he copies the Police Finance Manager, and he says "Let me know if you want to talk about the proper fund and account to post the entry. I have some texts on the subject." Meaning like textbooks. Like, "I don't—I'm a CPA. I know how to account for things. I don't need your textbooks. I don't need you to tell me. This is just a matter of having the appropriate people who are close to the transaction identify which account—which specific line item it should go to. That's all it is." But no. He has to send an email like that completely insulting me. And he gets this one—I can't remember what this was about. Oh, we had a billing issue with our—one of our utilities with one of our customers, and I was helping because—because he was questioning what the water fund—Water Department had calculated as being due to us by this customer, and he questioned it so Head of Public Works pulled me in to be the arbitrator of getting these numbers reconciled because, quite honestly, nobody wants to deal with him. Okay, so I said "Fine. I'll look at it. Blah, blah, blah." But I was really busy that day and I said "I won't be able to look at this today. I'll get to it tomorrow. Is there an urgency? Does this need to get resolved right away?" And the Water Department said "No, no, no. It's fine. It can wait a couple days." And the City Attorney was involved as well. And so we responded that—or [the City Manager], I think, sent him an email saying "No, Finance is going to look into it." And then he says "Let me know when Finance staff wants to meet with Treasurer staff so we can educate them." Okay? Then he sends out



this email—again, I’m pretty sure this got copied to a bunch of people. “Here is more money for the general fund. Stop allocating interest earnings to any of the RDA successor agency funds.” So, again, he assumed that this was happening. He sends out this email. We go ahead and look into it and sure enough, there is no interest income being allocated to the successor agency funds. And then, yeah. It’s just—it’s just again, it’s like “You don’t need to send out emails like this. Just ask us the question first and let us confirm first before you just make it seem like ‘oh, we found more money.’” I think he’s trying to, you know, make himself look like the savior for the City. Anyway, so that was that one. And these were all related to the [unintelligible]. So those are a sampling of things. Again, I didn’t—I don’t save all my emails. There was a—not that long ago, I sent an email to [the CFO] and the Deputy City Manager, to give them an idea of the amount of distractions that we deal with from Mr. Molina. I went through and I looked at my inbox for like just a two-week—the most recent two-week period and I had 58 emails from him. Now, if you remember, too, at the beginning of our conversation, there really isn’t necessarily a need for us to have a daily interaction in our roles. But in two weeks I had 58 emails that I had to address or respond to or do something with. And I would venture to guess that a good majority of them unrelated to his specific role as Treasurer. It’s, you know, him looking into things that are outside his scope. (See also Exhibit G.)

(2) Asst. COP #1

As noted earlier in this Report, Asst. COP #1 provided a written statement regarding the issue related to the Dallas Cowboys’ Training Camp. In that same written statement, Asst. COP #1 addressed Mr. Molina’s practice related to emails and wrote:

Historically, he has demonstrated that he will have a one-on-one conversation with someone, and following their encounter, will send [an] email to a wide distribution of “bcc’ed” persons, recapping their contact on his terms and from his side of the story. These emails are typically cast with a negative slant toward others, and are often self-aggrandizing. . . . His emails are known for mischaracterizing matters, accusing staff, questioning integrity and character of staff, or grandstanding. His emails are often patronizing and condescending.

Additionally, following his interview, Asst. COP #1 provided the Investigator with a copy of a binder that he indicated related to Mr. Molina. In that binder, Asst. COP #1 included a string of emails related to Mr. Molina divulging attorney-client privileged communications to the public. The emails show Mr. Molina requesting and receiving advice from the City Attorney’s Office regarding an issue facing his department. The emails also show Mr. Molina then taking portions of those privileged communications and making them public.

Asst. COP #1 described Mr. Molina’s email practice as a huge strain on time at the City. In this regard he said:

It is exponentially disproportionate. I would put that in quotes. Like, I could qualify that a little bit further. In terms of that, prior to him, assuming his office

as the treasurer, we spent very little time as I mentioned and so now, not only was I getting several bcc emails a day, and I would read through them to see where are we going with this, does this have anything to do with me? Does it have anything to do with the police department? You know, and you find out when you and find out when you get through the string that it has nothing to do with anything to do with the police department, that takes time. Multiply that times all the line staff that, at the police department, that were receiving emails as well, because I know people at the line-level still, you know, and I talk to them and they're like "hey, who is this Phil Molina guy?" The people who really didn't know who he was, "why am I getting all these emails from him?" People were telling me that they were seeing all these odd emails that were popping up. They were getting any from once a day to several times a day. And so, that's taking their time, not just mine. So now this is multiplied by a factor of nearly 400 employees at least in the police department who are potentially getting these. The materials he sent, you know, like I said, had nothing to do with police operations. They were often times either I would call, like some kind of squabble between him and either the City Attorney, the City Manager, the IT Director, those were three people he was particularly very back and forth with. I would say quite nasty with them. A variety of topics, especially the City Manager, the City Attorney. He included some emails of discussions that he had with the mayor, so anyway. Seeing those things happening did take a lot more time. And so, at some point, you make a decision whether or not you're going to continue to read them or you're going to just start deleting them, and so what I saw happening was, in my opinion, was a gross abuse of the City's resources and colossal impact on staff time. Add to that, there were a few occasions where I did respond to him, so the time to go back and forth with him on a particular issue takes time, and these are usually over things that I was questioning why he was he doing.

And also, it took me a little bit of time than it would for any other email because I'm realizing that I'm writing something to an elected official that I need to make sure that the email response is professional, it's articulate and prepared to be put in front of the potential bcc audience, for example if we go back, we'll probably get to this later, but the July 30<sup>th</sup> incident that happened with him and some City staff here, it literally took up a significant portion of my Thursday, Friday and part of my weekend just dealing with his emails and dealing with the collateral damage that was taking place because of that, so it's unreal. It's unreal, inappropriate and unnecessary I think are ways that I feel that what our, not just myself, but other employees and staff members and City employees had to deal with.

In terms of Mr. Molina's misrepresentations, Asst. COP #1 indicated that Mr. Molina will remove portions of email strings in order to make the communication support his position. In this regard, Asst. COP #1 pointed to his back and forth with Mr. Molina regarding CMO Employee #1 and Mr. Molina's apology email. Asst. COP #1 indicated that portions of his responses were edited in the versions that Mr. Molina shared with the public.

(3) Purchasing Manager

Like the PW Director, the Purchasing Manager indicated that she had also been warned not to respond to Mr. Molina's emails. She specifically said:

I was directed by the previous CFO and Assistant City Manager to never, ever reply to him again. Because he threw me under the bus so many times. And had blind copied all his constituents. And his, he was antagonistic in his emails.

(4) IT Director

The IT Director described a particular incident when Mr. Molina publicized highly confidential information regarding a potential breach of the City's on-line payment system, which could have resulted in additional breaches. He said:

So, very adversarial relationship in general with Mr. Molina. As I mentioned before his actions are ones that show he's attempting to make staff look bad, however and whenever he can. He does this under the guise of trying to say he's an advocate for the people that elected him. But while at the same time he's jeopardizing the people that elected him who are our residents. And so one example in, oh back in the middle of 2018, we had a scenario where our ERP System clicked the GOV online payment system was breached, or potentially breached. Something that we later found out had happened to a dozen cities across the nation. It was due to some code that the company used that wasn't kept up to date and some network settings that allowed hackers to exploit a known vulnerability in some web logic software that a company uses for online payments. The, Mr. Molina found out about that and there are exceptions in the Public Records Act that allow cities to not release information publically when it exposes a vulnerability about a system that could cause attacks. Could cause your systems harm. Mr. Molina clearly violated that by taking information about this, at that point supposed hack, and publically emailing it to people, letting people know that there are vulnerabilities in our system. Something you definitely don't want to do before you allow the vendor and us internally to take action to protect ourselves from further attacks. I met with Mr. Molina sometime middle of '18, probably in May, and explained in confidence to him how the system technically worked. Where the company thought the vulnerabilities were in the system. I drew it on his whiteboard, network diagram, servers, software names, ports, and explained how traffic flowed from the internet with payments into our network, into the systems, where the known vulnerability was from the web logic software, and back out again. Explained to him that this is highly confidential and dangerous if you share this information with anyone before Superian Sun Guard HTE has a chance to fix this problem, along with our help from our network engineers locally. And when I left his office I erased his whiteboard with all this information, I told him it was confidential, and when I get back to my office later that day, I got an email from Mr. Molina, basically he had retraced the network diagram everything I wrote on his board, off the ghosted images of the dry erase markers. So you could still see the images there even though they had been

erased. He retraced all of those, took a picture of it, emailed it to me, and said something like, yeah I can't get this image off my whiteboard, can you buy me a new whiteboard? I replied, tried to keep it light and said jokingly, ha ha, this is confidential, please do not share this information with anyone. So he proceeded to take that same image and forward it to a group of people via email, letting them know that this is what he had learned from me, in person.

Ironically, the IT Director stated that he discovered that Mr. Molina divulged this information because he was included on the email.

In describing Mr. Molina's general email practice, the IT Director said, "Mr. Molina's demeanor has been, I've got to make myself look good, and all the rest of staff look bad."

(5) PW Director

When raising the issue of Mr. Molina's use of the e-mail system, the PW Director stated:

It almost feels like he just likes to flex muscle, but it harms the City. And if there is an error on billing or something comes up, if he could find something, he'll blast it out. You know he'll make it look like "I've done this wonderful thing and found this error and saved the City," but he's got a blind copy list of a whole lot of people, so you never know the other thing. He sends you an email and he's copying all kind of people, you don't even know who he's copying. And a lot of times, my understanding is that these would be people in the community who are his supporters, so he has the opportunity to paint the City in whatever light he wants and we don't even know who he's included in this email.

In order to place the magnitude of this issue in context, the PW Director explained:

I was warned by the City Attorney's Office that just know that he blind copies folks so be careful, just know you don't know who the recipients if you hit "reply all." And so there's a feeling that sometimes he's baiting you to an argument that can play out publicly.

To support the claim that Mr. Molina baits individuals into arguments, the PW Director provided the Investigator with a sampling of emails that illustrated the point. (See Exhibit K.)

In short, the PW Director complained that Mr. Molina uses his emails, including his blind copying, as a tool to achieve his agenda.

(6) Deputy CM

Similar to other individuals, the Deputy CM also provided specific examples to illustrate Mr. Molina's email practice. She provided the following description of Mr. Molina providing false or misleading information:

So another example is he communicated wrongly, so—and he knows it's wrong—to one of our labor unions in the latest budget—we had a very contentious budget

process. He communicated wrong information to one of our labor unions. Our labor union put out an ad that basically blamed our Finance Department for hiding money or stealing money or something along those lines. We can get you a copy of the ad. Now, that's on the union for putting out the wrong information, but they got it from him. And he knows it's wrong.

The Deputy CM also provided an example of Mr. Molina's publicizing of attorney-client privileged communications. She said:

That's another—again, I'm off on tangents, but when I was at the City Attorney's Office and he still does this to the City Attorneys, there were multiple times when we said to him "You cannot—this is attorney-client privileged information. You cannot disseminate this information." And he sends it out anyway. So, you know, which is—as you know, as an attorney—incredibly dangerous to send out information. He would send out—we would provide a legal analysis to him, he would request, you know, "Can I do this? Can I do that?"—whatever it is, we would provide the response to him and then he would send that out to many people by email and that left us, as attorneys, and it still leaves them in the City Attorney's Office—you can talk to [the City Attorney] about this—it's in this weird quandary of "Well, do we not advise our own staff then?" We've got a whole Department that we can't provide legal advice to because they don't keep that information confidential. But then you've got the potential for real problems here.

(7) Asst. COP #2

Like several other witnesses, Asst. COP #2 also provided an example of Mr. Molina publicizing highly confidential information as a result of this email practice. Specifically, Asst. COP #2 identified an April 10, 2010 Confidential Memo from then-Police Commander that "detailed information about the security procedures used in the Oxnard City Treasurer's Office to safeguard employees and funds." (See Exhibit L.) Asst. COP #2 stated that a copy of this document was provided to Mr. Molina after he began his tenure as the City Treasurer. He explained that Mr. Molina was concerned about the security at the City Treasurer's Office and asked if the Police Department could perform an assessment. Mr. Molina was provided with a copy of the 2010 memorandum in response to this request. Asst. COP #2 said that, after received a copy of the memorandum and despite the fact that it is stamped "CONFIDENTIAL (*NOT FOR PUBLIC RELEASE*)", Mr. Molina nevertheless attached the document to one of his emails and sent it to multiple individuals, including members of the public. Specifically, Asst. COP #2 stated, "this is law enforcement sensitive information and he sent it out to everybody."

(8) Controller

The Controller confirmed Mr. Molina's practice of providing inaccurate or misleading information in his emails. She said:

There was some time ago, there was communication on a successor agency. And he was communicating faulty, falsely information that we had, you know, several

millions of dollars. We hadn't reconciled it. And we had. So he's always, the majority of his emails are faulty information. And very mistrust, leaves, leaves the community, I would think, when the public is on there to very distrust the City, yea.

(9) Auditor

The Auditor confirmed Asst. CFO's example regarding the \$5.6 million draw down and the damage that Mr. Molina's subsequent email caused. He specifically stated:

He basically, he sent out an email and he cc'd a number of people on it and we don't know how many people he blind cc'd, but he had a history in the past of blind cc'ing people up to 100 of his constituents, I'm not sure exactly, at least that's what I've been told by various people. But he said that what we were doing is illegal, not only were we accounting for things inappropriately, what we're doing is illegal and what we're doing is illegal, essentially. Now shortly after that, now there was only a few people that knew about the requisition up till this point, it was me, [a former CFO], the Asst. CFO, maybe some other people in finance department, and Phil Molina. Then all of sudden, the next thing we know there's a big humongous, and I think he told [a councilmember]. Well, the people he cc'd on this, using this email, and whoever he blind cc'd, we don't know. But he specifically, the next day, the next day or so, in the newspaper in Ventura County Star, there's a full page article saying that the City just found, the finance department, just found \$5.6 million in new money, and this was put out I believe by SEIU, the Union and this could be used to save jobs and as result, and it says "What other things is the City hiding?"

The Auditor provided another example of Mr. Molina's circulation of misinformation through his emails. The following exchange took place:

AUDITOR: Yeah, to me this fits into a large picture, in my mind, it's my opinion, of him trying to be a hero for the City. So the successor agency is also, this is something that's not part of that big pie, it has its own separate bank account, the City's winding it down, we have fiduciary responsibility, it succeeded the former RDA that was dissolved per Governor Brown back in 2012. And there's this question why does the successor have such money, he shouldn't have this much money, in which case our consultant, . . .and she came to show, this is what makes up all this money, a lot of it is because we requested more than we ended up spending, and subsequent request, our allocation would be reduced. She showed what makes up all of that money, it's about \$10 million. It should only be about, whatever, like six months' worth. So she went into that and it was a big dispute and then he said "oh, she's not an auditor, she's just a consultant." And so there's this back and forth and it's been ongoing since before I got here. That's in one case and so he's basically saying, somewhere we're not accounting for it correctly.

LUNA: Well, just to make sure I understand. As the City Treasurer, do you not believe it to be within his scope of work, his job duties to look into the successor agency, or what is it that you think is inappropriate in terms of his . . . again, I'm trying to distinguish between an individual perhaps having a different opinion on how to account for something or you know, the methodology used or what have you, versus doing something that, for example, the last thing we discussed. The email takes it a step beyond. You're no longer just expressing a different opinion, you are now announcing it publically and making an accusation that you cannot substantiate that is, you know, critical of people who have not done anything wrong. Is there something related to this successor agency that is similar to that, where you think he took it a step to far? You're no longer disagreeing or not understanding the methodology, you are now acting inappropriately.

AUDITOR: In that case, I mean I can't really find anything. In that case, it is within his scope to be able to look and "why is there so much money" what have you. So in that case, I guess no, I wouldn't say it's outside of his scope and it's certainly within, but I don't think anything we ever provided has ever been sufficient for him and so, it's like whatever, we can't do anything about that. There was an instance though where, as I said before, some of the things I submit, and in this case it was related to the successor agency, where the successor agency and as well as other debt payments that I've made and submitted to him and I've put on there, if you have any questions, feel free to contact me, and the next thing I know, the next morning, he's emailing the City Manager, the City Council, basically saying that the way we're requesting this to be posted is incorrect. And then on top of that, he excluded some of the information that I have provided from that, so I had to go back and reply and say "hey, this is what happened." Some of it is accounting stuff that most people is like "what does this mean and what does that mean?" so instead of coming and talking to me, instead of calling me and saying "hey, I have questions on this" he just immediately escalated it to City Manager and the City Councilmen and at that point, I had never even talked to him, never seen him face to face. I believe [then-Assistant Chief Financial Officer] was here at that time and so I was like "Oh my gosh, what the heck. It's going all the way up to the City Manager."

### 3. Analysis

As outlined above, all of the information provided to the Investigator concerning Mr. Molina's use of emails was consistent and demonstrated his practice of using misleading emails that were blind copied to various individuals, including members of the public, and that were designed to enhance his own image at the expense of others. In fact, there was no information provided to counter this conclusion.<sup>12</sup> Given Mr. Molina's general practices, as well as Asst. CFO's specific complaints on the Finance Department's behalf, it is reasonable to conclude that Mr. Molina remained consistent with his general practice and engaged in "keyboard warfare" by using

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<sup>12</sup> The Investigator was unable to specifically question Mr. Molina regarding this practice or the specific allegations involving the Public Works Department because Mr. Molina declined to meet with the Investigator for a second interview.

misleading emails that were blind copied to various individuals, including members of the public, and that were designed to enhance his own image at the Finance Department's expense.

In engaging in such conduct, Mr. Molina violated the City's Personnel Rules and Regulations, Chapter 3, Section 3.10 – Anti-Bullying Policy.

As noted above, under this policy, the City prohibits any form of “intimidating or bullying” in the workplace or elsewhere. In this regard, bullying is defined as the use of aggression with the intention of harming another individual. It includes written materials that affect or interfere with an employee's ability to work; is severe or pervasive; and creates an intimidating or threatening event.

Bullying includes, but is not limited to abusive comments, name-calling sarcasm, spreading rumors, or teasing. Such conduct can also occur via use of electronic communications such as email. (See Exhibit E, Chapter 3, Section 3.10 – Anti-Bullying Policy.)

In this case, the various examples of and statements regarding Mr. Molina's use of email demonstrate a consistent pattern of intimidation wherein Mr. Molina would place employees in the unfavorable position of having to defend themselves to an unknown audience to whom Mr. Molina had provided misleading or occasionally false information. The witnesses consistently commented on the amount of time that they had to invest in addressing these emails, which necessarily took away from them performing their regular duties. They also uniformly indicated that such communications had a negative effect on the City's image in an environment where the public already distrusted the City because of prior actions. The witnesses stated that they would receive hundreds of emails a month from Mr. Molina that took this aggressive and accusatory tone, which establishes a pervasive pattern of behavior. The negative impact was so considerable that several individuals, such as the Purchasing Manager, were advised not to respond to Mr. Molina because he continued to portray them in a negative light.

**G. Did Mr. Molina exceed the scope of his position as City Treasurer by engaging in a review of the accounts payable register of checks and holding checks, including checks requested by the Public Works Department, that he determined lacked sufficient funding or supporting documentation?**

1. Finding

By a preponderance of the evidence, the Investigator finds that Mr. Molina did not exceed the scope of his position as City Treasurer by engaging in a review of the accounts payable register of checks and holding those checks, including checks requested by the Finance Department, that he determined lacked sufficient funding or supporting documentation.

**This allegation is unsubstantiated.**



2. Facts

a. Documents

(1) January 26, 2017 Memorandum re Duties of City Treasurer

On January 26, 2017, then-Assistant City Attorney, issued a memorandum to then-Assistant City Manager, regarding the Duties of the City Treasurer. (See Exhibit C.) That document reads, in pertinent part, as follows:

Below is a listing of the Treasurer’s chief statutory duties:

\* \* \*

- Pay out of money on properly signed warrants (Gov’t Code § 41003)

\* \* \*

The main role of the Treasurer in disbursement of funds: “Funds belonging to a municipality may be withdrawn only in the manner prescribed by law and usually the city treasurer is only the custodian of the city funds.” Draper v. Grant (1949) 91 Cal.App.2d 566, 570.

\* \* \*

- The City Treasurer is required to pay written demands submitted and audited by the CFO (OCC § 2-184) [fn. 9]

\* \* \*

[fn.] 9 Willful refusal to pay or transfer public moneys can constitute a crime under Penal Code §§ 424-426.

(2) June 28, 2017 Letter from Liebert Cassidy Whitmore

On June 28, 2017, Liebert Cassidy Whitmore sent a letter to then-Chief Financial Officer; the HR Director; and the City Attorney for the City, providing an analysis of the City’s Accounts Payable Finance Procedure. That letter reads, in pertinent part, as follows:

. . . the City Treasurer shall specify the purpose for which a warrant or check is drawn and the fund from which payment is to be made.

\* \* \*

. . . all warrants must be signed by “legally designated persons,” . . .

\* \* \*

Section 2-168(B) provides that the “city treasurer shall also perform such administrative duties as assigned by the city manager.”

\* \* \*

Section 2-184 provides: . . .

The city treasurer shall subscribe a direction to the depository of funds to pay the funds to the order of the payee, which action shall convert the warrant, or demand, to a bona fide check.

\* \* \*

Section 2-185 prescribes that “all demands against the city shall, before being paid, be presented to and approved by the proper officer.” (Oxnard Codified Ord., ch. 2, § 2-185 subd. (A).) It also provides guidance regarding instances where no appropriation has been made for demand and sets forth the procedures for obtaining approval of such demands.

\* \* \*

City Council Resolution No. 10,820 sets forth the administrative duties of the City Treasurer, which include:

- Paying the legal obligations of the City and serving as the treasurer for a number of entities as designated by the City Council. . . .
- . . . the processing of City payroll checks and accounts payable.

\* \* \*

**The next level of audit and approval would be done by the “controller or designee” and the City Treasurer prior to “check printing.”** (Emphasis added.)

b. Witnesses Statements

In order to set the proper context for this allegation, the summaries begin with the CFO and the Asst. CFO, who initiated the complaint on the Finance Department’s behalf. Thereafter, the summaries are provided in alphabetical order by the witness’ last name.

(1) CFO

The CFO summarized the Finance Department’s complaint as follows:

Phil has said many times that as the—as an elected official who’s also a Department head, he feels he’s the one elected official looking out for taxpayer and rate payer interests, so he has decided that the level of budgetary control at

which the Finance Department checks to be sure there is sufficient funding, sufficient appropriations to pay a bill, is insufficient. He has unilaterally decided that there should be line item control over every payment that goes out.

\* \* \*

But Phil feels that's not an adequate level of control, so he requires that the budget be adjusted—and that can be done administratively by the City Manager—so that each line item each week has enough to pay that week's bills.

\* \* \*

We disagree because that's not the level of control the City Council has established. So we have a fundamental philosophical disagreement. But, getting to your opening remarks about the path of least resistance, in order to persuade the City Treasurer to release checks to vendors who have to be paid, the organization, including myself and the Finance Department, accommodates his demand that budget adjustments be made for 5, 10, 12 checks every week in order to prove to him that after the budget adjustments have been made, there's enough in that particular line item to cover the check being requested for payment.

The CFO conceded that Mr. Molina is requiring departments to abide by the line items budgets that they prepared, submitted and had the City Council approve. From the CFO's perspective, he finds it inappropriate for Mr. Molina to use this level of scrutiny with respect to the check requests.

(2) Asst. CFO

The Asst. CFO summarized the Finance Department's complaint as follows:

The City code specifically spells out that the Finance Director is responsible for reviewing and approving our disbursements, but he doesn't care that that's what the City codes says.

\* \* \*

And so that creates a lot of extra work for the Finance team and the departments to make sure that we do an administrative budget adjustment to move the money into the proper line items so that we can release the check, which then also means that we end up holding checks with, you know, to our vendors who are getting very upset with us that they are not getting paid timely.

\* \* \*

But Mr. Molina insists that we have to manage the budget at line item level.

\* \* \*

I mean it costs us more in staff time to do this adjustment, you know. Sometimes they're more, we've been working with him to try to get him to look at things at a higher level or you know let's look at a putting a threshold in place at least. The reality is he doesn't even have the authority to do this but he insists and **we've allowed it to happen.** (Emphasis added.)

Although the Asst. CFO insists that Mr. Molina is exceeding the scope of his position, she nevertheless acknowledged that he has occasionally properly held checks. She said:

And then sometimes it's legitimate, so we can't—you know what I mean, I can't say like okay, if there's really no money in the budget or if there's not sufficient money in the department's budget they have to do—they have to go to the City Manager to get a, you know, a transfer budget or potentially if there's no money in the fund they have to go City Council to do that.

\* \* \*

But you know like I said, there are occasions where he does find an exception where okay, we do need to actually do a budget adjustment that's legitimate and sometimes that can happen because of the timing of, you know, multiple items going against the same you know budget. So at the time that you checked to make sure the budget was available it was there, but then something else came in so you know we—there may still be situations where things like that happen. But I guess to me the point is that we've incurred a liability we have to deal with that and then afterwards we can look at the budget and say okay now we need to [adjust it].

(3) Asst. City Treasurer

Although the Asst. City Treasurer did not address whether Mr. Molina is authorized to inspect the funding and supporting documentation for check requests, she did indicate that it was not necessary for Mr. Molina to perform such an audit as “I think there is enough checks and balances before the check is released.” She also stated that, in her experience, no other treasurer had performed such an audit in the City. When asked if she nevertheless thought that Mr. Molina should be permitted to perform this level of audit, the Asst. City Treasurer responded “no, because I believe the City has enough safety measures.”

(4) FDE #2

FDE #2 is responsible for supervising the entire Accounts Payable division within the Finance Department. She confirmed that, before providing Mr. Molina with a list of payables, her group will verify approval, the accounts, the authorized signatures, and the amount. She further explained the level of review that her group performs and stated:

We verify the account, just make sure it's, you know, that they are in charge of something for supplies that they are charging the supply and not a service account. Or if it's service, make sure it's service account. Or sometimes like if

it's training, we make sure that they like travel, that they're charging the right account.

Because it happens. Sometimes they just want to use the line item that has money. So we correct it. We notify them of any corrections that need to be made. Make sure that the person signing off on the payment is an authorized signer.

And also just the amounts. We verify the amounts, make sure it's to the right vendor. Because sometimes with the system, they'll just put you know, they'll sometimes enter in the wrong vendor number.

FDE #2 clarified that the review of the line level would be to ensure that the amount was being charged to the proper account and not necessarily to determine if there were sufficient funds in a particular line item. She viewed this as outside the Accounts Payable division's responsibilities.

(5) TOE #8

TOE #8 confirmed that, before Mr. Molina took office, she was unaware of any treasurer who performed an independent review of the check requests from Accounts Payable. TOE #8 indicated that Mr. Molina never cited to her any specific authority allowing him to perform this review.

(6) Phillip Molina

Mr. Molina confirmed that he performs a regular review of check requests from Accounts Payable. He explained that he does so "to make sure that there's a budget and that there's – okay, that there is a budget, that there's sufficient balance in the budget, and that there's been proper departmental approval for disbursement of that check." He further detailed the level of review, and said:

Well, if the line item is exceeded, then we look to see if it has a project approval. And if it has approval at a project level, then we identify in that project level, is there sufficient remaining balance within that project to cover that invoice and, if so, then we approve it.

(7) FDE #4

FDE #4 confirmed that, as part of his assigned duties in the Accounts Payable division, he meets with Mr. Molina on a weekly basis for about forty-five minutes to provide Mr. Molina with additional information pertaining to specific check requests that Mr. Molina identifies. FDE #4 indicated that he finds nothing inappropriate about Mr. Molina requesting these weekly meetings to review a portion of the check requests. He confirmed that he has no issues with Mr. Molina or the review.

FDE #4 stated that he has never seen anything in writing that specifies the level of review that is to be used by the City Treasurer regarding check requests.

FDE #4 stated that he finds nothing unusual about Mr. Molina electing to perform this review before simply signing the checks.

### 3. Analysis

There is no dispute that Mr. Molina, on a weekly basis, reviews the check requests from Accounts Payable, including requests originating in the Public Works Department. There is no dispute that he looks at the funding on a line item basis to ensure that there is sufficient funds to cover the expense. There is no dispute that he also reviews other supporting documentation to ensure that it is there and properly signed. Finally, it is undisputed that he will hold a check if either the funding or supporting documentation is lacking in his view. Thus, the sole question to be answered is whether he is authorized as the City Treasurer to do that.

The short answer is yes. This is a result of both the duties of the positions as outlined by the two documents identified above, as well as the undisputed fact that he has and continues to be permitted to perform this review on a weekly basis.

As to the documents, then-Assistant City Attorney's memorandum specifies that Mr. Molina is to pay out of money on properly signed warrants (Gov't Code § 41003), which can be interpreted to include properly funded warrants as the City's practice has been and continues to be that he can hold checks under these circumstances. (See Exhibit C.) In this regard, the Asst. CFO admitted that "we have allowed this to happen." Demonstrating that whether initially authorized to perform this review and hold checks, Mr. Molina has been permitted to do so for at least two years.

Additionally, Liebert, Cassidy's June 28, 2017 letter to then-Chief Financial Officer, the HR Director, and the City Attorney specifies that the City Treasurer performs an audit and provides approval before the checks are printed. (See Exhibit D.) The necessity of this review is illustrated by the Asst. CFO's admission that Mr. Molina has discovered actual errors.

Thus, Mr. Molina is performing a review that is within his authority as outlined by Liebert, Cassidy's letter and that the City has permitted as a matter of practice since he took office.

Moreover, although the Adopted Budget Book and the Fiscal Year 2018-2019 CAFR both address a department head's authority to transfer appropriations between programs within the same fund, as long as funding is available in the department as a whole, those documents nevertheless do not relieve the department head of the obligation to perform that reapportionment before requesting a check. Thus, to the extent that Mr. Molina is requiring that these allocations at least receive City Manager approval before he will release a check, this requirement does not violate the language of either document. Furthermore, since the City has allowed Mr. Molina to exercise this power since he took office and began performing these reviews, the City has authorized him to exercise this discretion as a matter of practice.

**H. Did Mr. Molina exceed the scope of his position as City Treasurer by weighing in on procurements that did not involve his office or department?**

1. Finding

By a preponderance of the evidence, the Investigator finds that Mr. Molina exceeded the scope of his position as City Treasurer by weighing in on procurements that did not involve his office or department.

**This allegation is substantiated.**

2. Facts

a. Document

(1) January 26, 2017 Memorandum re Duties of City Treasurer

As previously noted, on January 26, 2017, then-Assistant City Attorney issued a memorandum outlining the City Treasurer's duties under State law and City Ordinance/Resolution. Those duties are as follows:

1. Receive and safely keep all money;
2. Comply with all laws governing the deposit and securing of public funds and the handling of trust funds;
3. Pay out money on properly signed warrants;
4. Keep a record of bonds, warrants, judgments, notes, or other evidence of indebtedness redeemed, and report redemption to the City Council;
5. Duties related to registered bonds;
6. Maintenance of a book showing at all times what bonds are registered and in whose names;
7. Disbursement of funds;
8. Tax collection duties;
9. Collection of business tax certificates;
10. Pay written demands submitted and audited by the Chief Financial Officer;
11. Investment of public funds;
12. Utility billing responsibilities; and
13. Duties related to unclaimed funds held by the City.

Procurements are not mentioned anywhere within this document outlining the City Treasurer's duties.

b. Witnesses Statements

The CFO and the Purchasing Manager, stated that Mr. Molina exceeds the scope of his office by continually offering unsolicited advice regarding how procurements should be run. Both individuals indicated that Mr. Molina's advice results in an expenditure of time and energy in order to research and respond to his input. They both stated that this advice is provided with respect to procurements that were neither initiated by nor involve his department.

The Investigator was unable to obtain Mr. Molina's position on this allegation as Mr. Molina declined to meet with the Investigator for a second interview.

3. Analysis

The CFO and the Purchasing Manager offered corroborating testimony with respect to Mr. Molina's practice of providing unsolicited input with respect to procurements. Both also confirmed that addressing and responding to Mr. Molina results in an expenditure of time and resources.

There is nothing in the document outlining Mr. Molina's duties as the City Treasurer that even remotely connects to procurements. Thus, Mr. Molina's conduct falls outside the scope of his position.

**I. Did Mr. Molina exceed the scope of his position as City Treasurer by injecting himself into general accounting issues that are the Finance Department's exclusive responsibility?**

1. Finding

By a preponderance of the evidence, the Investigator finds that Mr. Molina exceeded the scope of his position as City Treasurer by injecting himself into general accounting issues that are the Finance Department's exclusive responsibility.

**This allegation is substantiated.**

1. Facts

a. Document

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9. Collection of business tax certificates;
10. Pay written demands submitted and audited by the Chief Financial Officer;
11. Investment of public funds;
12. Utility billing responsibilities; and
13. Duties related to unclaimed funds held by the City.

General accounting not mentioned anywhere within this document outlining the City Treasurer's duties.

b. Witness Statement

(1) CFO

The CFO voiced the following complaint regarding general accounting:

Yeah, the second one is not part of the normal relationship between the City Treasurer's Office and—the accounts payable obviously is a big part of the normal relationship with the City Treasurer's Office and the Finance Department, and what I just described is Phil taking a part of that relationship and then adding—imposing his own policy level of control that he feels appropriate. But the second area is of general accounting issues for the City and in the Finance Department where the City Treasurer does not have a role, but which Phil frequently inserts himself into—either with questions or challenges or assertions that we're violating governmental accounting standard—board standards. And these are incredibly time consuming for accounting staff, especially for our Assistant CFO, and for our Controller, and for other accounting staff. Phil will also copy councilmember who sometimes then ask the question that he's asked.

He'll sometimes—he'll frequently address emails to the internal auditors, who is a third party contractor, or to the City's independent financial auditor, ask them questions, challenge certain accounting treatments, and I'm sure he does this because 20 years ago he was a Finance Director and he was an active CPA at one point. So he knows a lot about accounting, but that's not the role he's in now and—but he acts like it is and so we spend way, way more time than we should answering questions about accounting—sometimes the same one over and over and over, posed in different ways or by different people or by Phil because he perhaps forgot the answer from a previous question a few months prior. And it's very disruptive.

(2) Phillip Molina

The Investigator was unable to obtain Mr. Molina's position on this allegation as Mr. Molina declined to meet with the Investigator for a second interview.

1. Analysis

There is nothing in the document outlining Mr. Molina's duties as the City Treasurer that identifies responsibility for general accounting within the City. Thus, Mr. Molina's conduct falls outside the scope of his position.

**Conclusions**

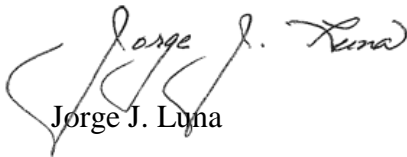
1. Mr. Molina interfered with the investigation by communicating with the Asst. CFO after being directed not to do so, by meeting with the members of his department to discuss this investigation after being directed not to do so, and by circulating an email regarding this and another investigation into his alleged conduct.
2. Mr. Molina made inappropriate comments concerning female employees' appearance/attire, stereotypical female roles, and sexual innuendo in the workplace that violated the City's Sexual Harassment policy contained in its Personnel Rules and Regulations.
3. Mr. Molina did accuse and improperly investigate CMO Employee #1 for theft in connection with a perceived shortfall in parking lot money related to the Dallas Cowboys' Training Camp held in the Summer of 2019, and Mr. Molina's conduct violated the City's Personnel Rules and Regulations and fell outside his duties as outlined by the City Attorney's Office.
4. Mr. Molina engaged in "keyboard warfare" by using misleading emails that were blind copied to various individuals, including members of the public, and that were designed to enhance his own image at the Public Works Department's expense.
5. Mr. Molina did not exceed the scope of his position as City Treasurer by engaging in a review of the accounts payable register of checks and holding those checks, including

checks requested by the Public Works Department, that he determined lacked sufficient funding or supporting documentation.

6. Mr. Molina engaged in “keyboard warfare” by using misleading emails that were blind copied to various individuals, including members of the public, and that were designed to enhance his own image at the Finance Department’s expense.
7. Mr. Molina did not exceed the scope of his position as City Treasurer by engaging in a review of the accounts payable register of checks and holding those checks, including checks requested by the Finance Department, that he determined lacked sufficient funding or supporting documentation.
8. Mr. Molina exceeded the scope of his position as City Treasurer by weighing in on procurements.
9. Mr. Molina exceeded the scope of his position as City Treasurer by injecting himself into general accounting issues that are the Finance Department’s exclusive responsibility.

This concludes the investigation.

Respectfully submitted,



Jorge J. Luna