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Michael J. Sellers  
Chief of Police

### NOTICE OF PROPOSED DISCIPLINARY ACTION

April 1, 2016

*Served via Electronic Mail to Alison Berry Wilkinson, Esq.*

Thomas Leipelt  
Police Sergeant



Dear Sergeant Leipelt,

#### I

You are hereby notified that it is the intention of the City of Santa Clara to terminate your employment effective April 7, 2016.

#### II

These actions are being taken against you for cause specified in the following sections of the City of Santa Clara Civil Service Rules and Regulations:

- 6.4 (6) Dishonesty
- 6.4 (15) Failure to Observe City Manager's Directives (CMDs), Departmental Rules and Regulations, and all City Rules and Policies, to wit:
  - Santa Clara Police Department Operations Manual Section 26.3.3 AV, Violation of Law
  - Santa Clara Police Department Operations Manual Section 26.3.3 AL, Conduct Unbecoming of an Employee
  - Santa Clara Police Department Values Statement
- 6.4 (17) Any other failure of good behavior or acts either during or outside of duty hours which is incompatible with or inimical to the public service

#### III

The above causes are based on the following acts or omissions as reviewed and documented in Santa Clara Police Department Internal Affairs Investigation 2015-04 investigated by Sgt. Gary Hosman, and others who have documented incidents contained in your personnel file, which you will have the opportunity to review.

On May 15, 2015, you attended Advanced Officer Training (AOT) and participated in "Active Shooter" training. After being released from AOT, you drove to Annieglass, a business located at Santana Row, in San Jose to meet your mistress ( [REDACTED] ). Ms. [REDACTED] was an employee at the store.

Police Department  
601 El Camino Real  
Santa Clara, CA 95050  
FAX (408) 248-0276  
police@santacruzca.gov

When you arrived at the store, you met the victim in this case, [REDACTED] who was Ms. [REDACTED]'s co-worker. Ms. [REDACTED] had never met you before this date. Ms. [REDACTED] however, had informed her that you were a married police officer [REDACTED]

After you arrived at the store, you and Ms. [REDACTED] went to the small stockroom. This very small store was open for business at the time. You and Ms. [REDACTED] engaged in consensual sexual intercourse and oral sex behind an unlocked, closed door, in both the stockroom and the restroom. The restroom is located within the stockroom.

While you were engaged in sexual intercourse with your mistress, two customers entered the main area of the store and specifically asked Ms. [REDACTED] to speak with Ms. [REDACTED]. Ms. [REDACTED] opened the closed door leading to the stockroom and called out to Ms. [REDACTED]. Ms. [REDACTED] eventually walked out to greet the customers, who turned out to be two of her friends.

As Ms. [REDACTED] spoke to her friends, Ms. [REDACTED] printed an email from the store computer located in the main part of the store. The printer is located in the stockroom so Ms. [REDACTED] opened the closed door of the stockroom to retrieve the email.

When Ms. [REDACTED] entered the stockroom, she saw you sitting in a chair, completely nude. You were holding your erect penis with one of your hands while masturbating. According to Ms. [REDACTED] you said something to the effect of "Come over here." Ms. [REDACTED] was immediately offended and returned to the main store area.

When Ms. [REDACTED] was done speaking with her friends, Ms. [REDACTED] immediately told Ms. [REDACTED] she had seen you completely nude and masturbating in the stockroom. Ms. [REDACTED] entered the stockroom and eventually the two of you left the store. Ms. [REDACTED] notified her employer of this crime and later contacted Sgt. Hosman of the Professional Standards Unit. Sgt. Hosman turned the case over to the San Jose Police Department since the crime occurred in their jurisdiction.

On August 12, 2015, you came to the police station with your representative to provide a statement to the Professional Standards Unit. You were ordered to provide a complete and truthful statement. You provided a completely different account than the victim. You stated that Ms. [REDACTED] opened the closed, but unlocked door of the restroom, and saw you standing and urinating into the toilet. You denied masturbating in the restroom and stated you were fully clothed while urinating. You did, however, admit to having the prior sexual intercourse and oral sex with Ms. [REDACTED] in the stockroom and restroom of this small open business.

On July 14, 2015, the District Attorney's Office filed one charge of 314.1 P.C. against you. On July 16, 2015 you turned yourself in at the Santa Clara Sheriff's Office where you were cited and released on \$5,000 bail.

Through your attorney, you delayed this case going to trial for many months while you remained on paid administrative leave. You were given an initial court date of August 19, 2015. That date was rescheduled to September 15, 2015, for a pre-trial conference. At the pre-trial conference, your attorney sent a representative who requested a continuance until October 27, 2015. On October 27, 2015, your representative requested another continuance to November 10, 2015. At the November 10, 2015 court date, the trial was set to begin on January 25, 2016. Prior to that date, the trial was re-scheduled for February 8. Your attorney was then able to postpone the trial date until March 7, citing the need to conduct further follow-up. The March 7 trial date was then re-scheduled for March 21, 2015. The actions of you and your attorney delayed the closure of this case for many months.

After all of the delays, your jury trial finally started on March 21, 2016. A jury of your peers heard all of the testimony, including yours, and on March 28 they found you guilty of one count of indecent exposure (314 P.C.). In an unusual move, the judge remanded you into custody until sentencing. At the time of this writing, your sentencing is pending. However, as a result of your conviction you will be required to register as a sex offender for the remainder of your life.

Based on the jury's verdict, your statement to the Professional Standards Unit was simply untrue. Your account that you were merely urinating after having intercourse, was just not believable when compared to the victim's account and the victim's reaction. For your statement to be true, it would have required the victim in this case to have developed a plan to frame you for a crime before she opened the door to the stockroom. You and your legal team provided no plausible motivation for the victim to fabricate this entire event. The jury found that the victim was credible and you were not.

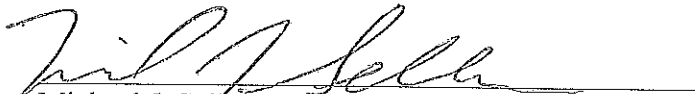
Your completely inappropriate and criminal conduct constitutes a violation of the Santa Clara Police Department Operations Manual and City of Santa Clara Civil Service Rules and Regulations. You have brought great discredit upon yourself and this department. You have demonstrated an inability to model the behavior demanded of a police officer. Your continued employment would be detrimental to the Police Department, the City, and its residents. Because of this misconduct, it is our intention to terminate your employment.

IV


Right to Respond to Issuing Authority. As an employee with this Department you are entitled to five (5) calendar days within which to respond to this notice. To request an Administrative Review ("Skelly Hearing"), you may respond either orally or in writing to the Chief of Police. You are entitled to a reasonable amount of City time to prepare your response to the charges. You are not, at this time, entitled to a formal hearing with the examination of witnesses. However, one (1) representative may represent or accompany you in presenting your response.

Because you are currently in the custody of the Santa Clara County Sheriff's Department, a "Skelly Hearing" has been scheduled on your behalf should you choose to have one. The hearing is scheduled for Wednesday, April 6, 2016 at 0900 hours at the Santa Clara Police Department Chief's Office (601 El Camino Real, Santa Clara CA 95050). If you remain in custody and are unable to attend, your chosen representative may attend on your behalf or may provide your written response. The hearing may be conducted by phone, in person or via written statement.

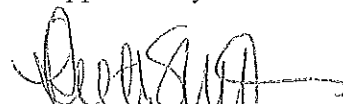
Right to Respond Pursuant to Government Code Section 3306. If you fail to answer within the time specified, the action taken by the Issuing Authority shall be final. You are however, entitled to respond in writing to this document within thirty (30) days as guaranteed in section 3306 of the California Government Code.

  
Michael J. Sellers  
Chief of Police

Reviewed by:

  
Elizabeth Brown  
Director of Human Resources

Approved by:

  
for Julio Fuentes  
City Manager

I acknowledge receipt of a copy of this notice:

SERVED ELECTRONICALLY AND SENT CERTIFIED MAIL

Thomas Leipelt (Or chosen representative)  
Police Sergeant

Date: 4/1/16 & 4/8/16

Attachments (2):

Civil Service Rules and Regulations, Sections 6 and 7

## Civil Service Rules and Regulations (continued)

### SECTION 5 REPORTS AND RECORDS

#### 5.1 OFFICE RECORDS:

- (a) The Director of Human Resources shall keep such records as are necessary for transaction and reference and for making reports showing administrative actions, including records of all examinations, eligible lists, records and files of employment history of each employee, history of each position, classification plan, applications and correspondence pursuant to the City's record retention policy.
- (b) The Director of Human Resources shall maintain an official roster containing the names, addresses, telephone numbers, classification, and department of all employees holding positions in the classified service of the City.

### SECTION 6 SEPARATIONS AND DISCIPLINE

- 6.1 TENURE OF PERMANENT EMPLOYEES: METHODS OF SEPARATION: The tenure of every permanent employee in the classified service is contingent upon satisfactory performance, adherence to all the rules and regulations of the City and the existence of the position. Any classified employee may be temporarily separated from the service through lay-off, leave of absence, or suspension; or permanently separated through resignation, removal for cause, or through retirement.
- 6.2 REDUCTION IN FORCE: The Appointing Authority shall determine the number of positions and the classes in which the reduction in force is to be made. Among classified employees holding permanent appointments, the order of reduction in force shall be according to the applicable Memorandum of Understanding.
- 6.3 RESIGNATION: An employee in good standing who shall decide for any reason to leave the employ of the City shall submit a formal resignation in writing to the Appointing Authority at least fourteen (14) calendar days before leaving the service. If any classified employee leaves the employ of the City without submitting such a written resignation, the employee may be deemed to have resigned with prejudice, and a record of the same shall be made in employee's personnel records.
- 6.4 REMOVAL FOR CAUSE: No cause is necessary for termination, demotion, suspension, or reduction in pay of any employee other than a permanent employee in the classified service.

The Appointing Authority may cause the termination, demotion, suspension, or reduction in pay of any permanent employee in the classified service for each of, but not limited to, the following causes:

- (1) Fraud in securing appointment
- (2) Incompetence
- (3) Inefficiency
- (4) Inexcusable neglect of duty
- (5) Insubordination or willful disobedience
- (6) Dishonesty
- (7) Under the influence of or the consumption of any alcoholic beverages during working hours

## Civil Service Rules and Regulations (continued)

- (8) Under the influence of, or the use of narcotics or habit-forming drugs during working hours, unless prescribed by a licensed California medical doctor or physician
- (9) Absence without leave, or failure to report after leave of absence has expired, or after such leave of absence has been disapproved or revoked or cancelled by the Appointing Authority; provided, however, that if such absence or failure to report is excusable, the Appointing Authority may dismiss the charges
- (10) Conviction of a felony
- (11) Conviction of a misdemeanor involving moral turpitude
- (12) Discourteous treatment of the public or other employees
- (13) Political activities as proscribed by law and which are in violation of City policy
- (14) Misuse or abuse of City property
- (15) Failure to observe City Manager's Directives (CMDs), departmental rules and regulations, and all City rules and policies
- (16) Failure to adhere to the City's Code of Ethics
- (17) Any other failure of good behavior or acts either during or outside of duty hours which is incompatible with or inimical to the public service
- (18) Failure to satisfactorily perform the duties of the position, with or without reasonable accommodation
- (19) Failure to cooperate reasonably with superiors or other employees
- (20) Falsification of City records
- (21) Possession or storage of firearms on City premises or work sites, or in City vehicles, excluding sworn law enforcement personnel
- (22) Unlawful manufacture, distribution, dispensation, possession or use of controlled substances as defined by section 102 of the Controlled Substances Act, 21 USC Section 802, in the workplace by employees
- (23) Violation or disregard of published safety rules
- (24) Sleeping on the job
- (25) Violence in the workplace

6.5 MEDICAL ACTION: The Appointing Authority may cause the termination, demotion, reduction in pay, suspension of any permanent employee in the classified service for: Inability to perform the essential functions of the job, even with reasonable accommodation.

6.6 NOTICE: Written notice of termination, demotion, suspension, or reduction-in-pay, taken by the Appointing Authority under this Section 6, and the specific reasons therefor shall be furnished in writing by 1st class and certified mail to the address on file with the Human Resources Department within three (3) days after such termination, demotion, suspension or reduction-in-pay. Any permanent employee in the classified service against whom such action is taken may appeal the termination, demotion, suspension, or reduction in pay as provided in Section 7 of these rules.

## SECTION 7 - BOARD OF REVIEW

7.1 ORGANIZATION: The Civil Service Commission (here after called Board) shall meet and act as a Board of Review when required. The Director of Human Resources shall serve as Recording Secretary of the Board, and the Notice of Decision and Findings of the proceedings shall be signed by the members present and voting. Three (3) members shall constitute a quorum. The concurring vote of at least three (3) members shall be required for any decision or recommendation of the Board, other than to adjourn or postpone a meeting.

## Civil Service Rules and Regulations (continued)

### 7.2 POWERS:

- (a) In any hearing conducted by the Board, it shall have the power to subpoena and require the attendance of witnesses, the production of books, papers and other evidence pertinent to the investigation, to administer oaths to witnesses, to examine witnesses under oath in the name of the City. It shall be the duty of the Secretary of the Board to cause all such subpoenas to be served and the refusal of a person to attend or testify in answer to such subpoena shall subject said person to prosecution as provided by law.
- (b) Each member of the Board of Review shall have the power to administer oaths or affirmation to witnesses and to sign subpoena.
- (c) Within thirty (30) calendar days after the proper filing of a written request for a hearing or as soon as possible thereafter as is practicable, the Board shall conduct a hearing.
- (d) The hearing before the Board may be public or private at the option of the employee but the hearings of the Board shall be informal and the rules of evidence shall not apply.

7.3 REVIEW PROCEDURE FOR DISCIPLINE: Any permanent classified employee who has been terminated, suspended, demoted, or received a reduction-in-pay by the Appointing Authority shall be entitled to be heard before the Board of Review at a duly constituted meeting thereof provided a written request therefor has been filed with the Secretary of the Board and the Appointing Authority within ten (10) calendar days from the date of receipt or posting of the written notice of the action taken, as set forth in Section 6.6, whichever occurs first. If the employee fails to file a response within the ten (10) calendar days, or withdraws his/her appeal, the disciplinary action taken by the Appointing Authority shall be final.

7.4 BINDING FORCE OF BOARD'S DECISION: In any case involving a termination, suspension, demotion, or reduction-in-pay the decision of the Board shall be binding upon the employee and the Appointing Authority. It shall not be subject to review by any Court, or other tribunal, except in cases where the decision was procured through fraud, or lack of jurisdiction. Before any such review shall occur in such cases, a petition for reconsideration shall first be presented to the Board wherein such alleged fraud or lack of jurisdiction is set forth, and verified by the petitioner. Petitions for reconsideration of any such decision of the Board shall be filed with Board not later than ten (10) calendar days after rendition of such decision. A decision shall be deemed to have been rendered as of the date of mailing to the employee.

In the event the Board revokes or modifies a termination, suspension, demotion, or reduction-in-pay and orders the employee reinstated, it may direct payment of salary to the employee for the period of time the Board finds the termination, lay-off, suspension, demotion, or reduction in pay was improperly in effect. Refer to Section 7.5 of current CSCR&R, page 50.

7.5 REVIEW PROCEDURE FOR GRIEVANCES: Any employee whose duly processed grievance, and not a termination, suspension, demotion, or pay reduction that has not been resolved to his/her satisfaction by the Appointing Authority, may petition and at the discretion of the Board of Review may be heard before the Board at a duly constituted meeting thereof provided the Board has not previously heard the case, and provided a written request therefore has been filed with the Secretary of the Board and the Appointing Authority within ten (10) calendar days from the date of receipt of the Appointing Authority's final decision on the grievance.

The Appointing Authority may also refer an unresolved grievance to the Board for their consideration and recommendation, whereupon the Board shall hear the case at a duly constituted meeting.



## **Civil Service Rules and Regulations (continued)**

The Board shall, within fourteen (14) calendar days after the hearing is closed and the matter is submitted, render its decision in writing. Copies of said decision shall be directed by the Secretary of the Board to the Appointing Authority and to the employee.

- 7.6 **APPEARANCE REQUIREMENT:** Unless incapacitated, the appellant making the complaint shall appear personally before the Board of Review at the time of the hearing.
- 7.7 **NON-BINDING FORCE OF BOARD'S DECISION:** In any case involving a grievance and not a termination, suspension, demotion, or pay reduction, the decision of the Board shall not be binding upon the Appointing Authority but shall be submitted in the form of a recommendation for consideration by the Appointing Authority.
- 7.8 **FALSE STATEMENTS UNDER OATH AND REFUSAL TO TESTIFY FORBIDDEN:** If any appellant or witness in the classified service makes any false statement under oath relative to the matter being heard by the Commission or the Director on any grounds, he/she shall be terminated from City service and shall not be eligible for appointment to any position in City service for a period of five (5) years. If any appellant or witness in the Classified Service willfully refuses to testify or answer any questions relative to the matter being heard by the Commission or the Director on any grounds, he/she shall be subject to disciplinary action, up to and including, termination. The false statement under oath or refusal to testify shall be incorporated in the employee's personnel record and shall be considered as a factor at any time in the future in which he/she may make application for appointment to City Service.

## **SECTION 8 - DEFINITIONS OF TERMS**

The words and terms used in these rules shall be defined and construed as follows.

- 8.1 **ALLOCATION:** The official determination of the class to which a position belongs and the assignment of a position to the appropriate class.
- 8.2 **ANNIVERSARY DATE:** The anniversary of the date an employee was appointed to his/her current position.
- 8.3 **APPLICANT:** A person who, under the rules, has made formal application for employment.
- 8.4 **APPOINTMENT:** The offer of and acceptance of a position by a person in accordance with the provisions of these Civil Service rules.
- 8.5 **APPOINTING AUTHORITY:** The City Manager, and others as provided for in the City Charter.
- 8.6 **BOARD:** The Civil Service Commission convened as a Board of Review.
- 8.7 **CANDIDATE:** An applicant in the process of examination, testing, or on an eligible list.
- 8.8 **CERTIFICATION:** The submission of names of eligibles from an appropriate eligible list to the Appointing Authority by the Director of Human Resources.
- 8.9 **CHARTER:** The Charter of the City of Santa Clara.
- 8.10 **CITY:** The City of Santa Clara.
- 8.11 **CITY COUNCIL:** The duly elected governing body of the City of Santa Clara

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Michael J. Sellers  
Chief of Police

**NOTICE OF FINAL DISCIPLINARY ACTION**

April 7, 2016

*Served via Electronic Mail to Alison Berry Wilkinson, Esq. and mailed to the below address*

Thomas Leipelt  
Police Sergeant



Dear Sergeant Leipelt,

**I**

On April 1, 2016, Assistant City Attorney Julia Hill served your chosen representative (Alison Berry Wilkinson, Esq.) via electronic mail with a Notice of Proposed Discipline, informing you that it was the intention of the City of Santa Clara to terminate your employment.

Because you were in the custody of the Santa Clara County Sheriff's Department at the time of service, a "Skelly Hearing" was pre-scheduled on your behalf. The hearing was scheduled for Wednesday, April 6, 2016 at 0900 hours at the Santa Clara Police Department Chief's Office (601 El Camino Real, Santa Clara CA 95050).

On April 4, 2016, your sentencing hearing was held in the Santa Clara County Superior Court. After some discussions with the judge, the sentencing hearing was postponed until April 15, 2016. Your bail was set at \$50,000. You chose to remain in custody, instead of making bail.

As was stated in the Notice of Proposed Discipline, if you remained in custody your chosen representative (Alison Berry Wilkinson, Esq.) could attend the hearing on your behalf or could provide a written response. The Notice also stated that the hearing could be conducted by phone, in-person or via a written statement. On April 5, 2016, at 8:49 P.M., your chosen representative sent a letter called a "Skelly Response" via electronic mail. In the letter, Alison Berry Wilkinson did not dispute the charges, but merely stated you were not being given your due process rights because the Skelly was scheduled on short notice and while you were in custody.

You and your representative had ample time to prepare for the Skelly hearing. The incident causing your discipline occurred almost eleven months ago (May 15, 2015) and you remained out of custody on paid administrative leave until you were found guilty of Indecent Exposure on March 28, 2016. You and your representative had more than ample time to prepare for a Skelly Hearing that you knew or should have known would occur quickly following the completion of your trial. The fact that you were remanded into

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custody and that you chose not to make bail are not reasons to extend your employment with the city.

Therefore, for all the reasons stated above and detailed in the Professional Standards investigation and the Notice of Proposed Discipline, your termination from employment will become final. You are hereby notified that the City of Santa Clara will terminate your employment effective April 7, 2016.

## II

These actions are being taken against you for cause specified in the following sections of the City of Santa Clara Civil Service Rules and Regulations:

6.4 (6) Dishonesty

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- Santa Clara Police Department Values Statement

6.4 (17) Any other failure of good behavior or acts either during or outside of duty hours which is incompatible with or inimical to the public service

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The above causes are based on the following acts or omissions as reviewed and documented in Santa Clara Police Department Internal Affairs Investigation 2015-04 investigated by Sgt. Gary Hosman, and others who have documented incidents contained in your personnel file, which you will have the opportunity to review.

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When you arrived at the store, you met the victim in this case [REDACTED] who was Ms. [REDACTED] co-worker. Ms. [REDACTED] had never met you before this date. Ms. [REDACTED] however, had informed her that you were a married police officer [REDACTED]

After you arrived at the store, you and Ms. [REDACTED] went to the small stockroom. This very small store was open for business at the time. You and Ms. [REDACTED] engaged in consensual sexual intercourse and oral sex behind an unlocked, closed door, in both the stockroom and the restroom. The restroom is located within the stockroom.

While you were engaged in sexual intercourse with your mistress, two customers entered the main area of the store and specifically asked Ms. [REDACTED] to speak with Ms. [REDACTED]. Ms. [REDACTED] opened the closed door leading to the stockroom and called out to Ms. [REDACTED]. Ms. [REDACTED] eventually walked out to greet the customers, who turned out to be two of her friends.

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Through your attorney, you delayed this case going to trial for many months while you remained on paid administrative leave. You were given an initial court date of August 19, 2015. That date was rescheduled to September 15, 2015, for a pre-trial conference. At the pre-trial conference, your attorney sent a representative who requested a continuance until October 27, 2015. On October 27, 2015, your representative requested another continuance to November 10, 2015. At the November 10, 2015 court date, the trial was set to begin on January 25, 2016. Prior to that date, the trial was re-scheduled for February 8. Your attorney was then able to postpone the trial date until March 7, citing the need to conduct further follow-up. The March 7 trial date was then re-scheduled for March 21, 2015. The actions of you and your attorney delayed the closure of this case for many months.

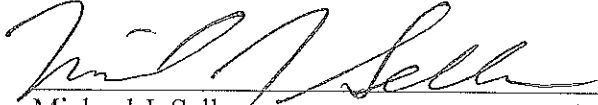
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Based on the jury's verdict, your statement to the Professional Standards Unit was simply untrue. Your account that you were merely urinating after having intercourse, was just not believable when compared to the victim's account and the victim's reaction. For your statement to be true, it would have required the victim in this case to have developed a plan to frame you for a crime before she opened the door to the stockroom. You and your legal team provided no plausible motivation for the victim to fabricate this entire event. The jury found that the victim was credible and you were not.

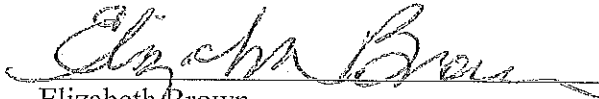
Your completely inappropriate and criminal conduct constitutes a violation of the Santa Clara Police Department Operations Manual and City of Santa Clara Civil Service Rules and Regulations. You have brought great discredit upon yourself and this department. You have demonstrated an inability to model the behavior demanded of a police officer. Your continued employment would be detrimental to the Police Department, the City, and its residents. Because of this misconduct, your employment with the City is now terminated effect April 7, 2016.

IV

Right to Appeal to the Civil Service Commission: You may appeal this action to the Civil Service Commission. Attached are Section 6 and Section 7 of the City of Santa Clara Civil Service Rules and Regulations. This document contains the procedures for your right to appeal this action to the Civil Service Board of Review.

  
\_\_\_\_\_  
Michael J. Sellers  
Chief of Police

Reviewed by:

  
\_\_\_\_\_  
Elizabeth Brown  
Director of Human Resources

Approved by:

  
\_\_\_\_\_  
Julio Fuentes  
City Manager

I acknowledge receipt of a copy of this notice:

*SERVED ELECTRONICALLY AND SENT CERTIFIED MAIL*

\_\_\_\_\_  
Thomas Leipelt (Or chosen representative)  
Police Sergeant

Date: 4/7/16 AND 4/8/16

Attachments (2):

Civil Service Rules and Regulations, Sections 6 and 7

## Civil Service Rules and Regulations (continued)

### SECTION 5 REPORTS AND RECORDS

#### 5.1 OFFICE RECORDS:

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- 6.1 TENURE OF PERMANENT EMPLOYEES: METHODS OF SEPARATION: The tenure of every permanent employee in the classified service is contingent upon satisfactory performance, adherence to all the rules and regulations of the City and the existence of the position. Any classified employee may be temporarily separated from the service through lay-off, leave of absence, or suspension; or permanently separated through resignation, removal for cause, or through retirement.
- 6.2 REDUCTION IN FORCE: The Appointing Authority shall determine the number of positions and the classes in which the reduction in force is to be made. Among classified employees holding permanent appointments, the order of reduction in force shall be according to the applicable Memorandum of Understanding.
- 6.3 RESIGNATION: An employee in good standing who shall decide for any reason to leave the employ of the City shall submit a formal resignation in writing to the Appointing Authority at least fourteen (14) calendar days before leaving the service. If any classified employee leaves the employ of the City without submitting such a written resignation, the employee may be deemed to have resigned with prejudice, and a record of the same shall be made in employee's personnel records.
- 6.4 REMOVAL FOR CAUSE: No cause is necessary for termination, demotion, suspension, or reduction in pay of any employee other than a permanent employee in the classified service.

The Appointing Authority may cause the termination, demotion, suspension, or reduction in pay of any permanent employee in the classified service for each of, but not limited to, the following causes:

- (1) Fraud in securing appointment
- (2) Incompetence
- (3) Inefficiency
- (4) Inexcusable neglect of duty
- (5) Insubordination or willful disobedience
- (6) Dishonesty
- (7) Under the influence of or the consumption of any alcoholic beverages during working hours

## Civil Service Rules and Regulations (continued)

- (8) Under the influence of, or the use of narcotics or habit-forming drugs during working hours, unless prescribed by a licensed California medical doctor or physician
- (9) Absence without leave, or failure to report after leave of absence has expired, or after such leave of absence has been disapproved or revoked or cancelled by the Appointing Authority; provided, however, that if such absence or failure to report is excusable, the Appointing Authority may dismiss the charges
- (10) Conviction of a felony
- (11) Conviction of a misdemeanor involving moral turpitude
- (12) Discourteous treatment of the public or other employees
- (13) Political activities as proscribed by law and which are in violation of City policy
- (14) Misuse or abuse of City property
- (15) Failure to observe City Manager's Directives (CMDs), departmental rules and regulations, and all City rules and policies
- (16) Failure to adhere to the City's Code of Ethics
- (17) Any other failure of good behavior or acts either during or outside of duty hours which is incompatible with or inimical to the public service
- (18) Failure to satisfactorily perform the duties of the position, with or without reasonable accommodation
- (19) Failure to cooperate reasonably with superiors or other employees
- (20) Falsification of City records
- (21) Possession or storage of firearms on City premises or work sites, or in City vehicles, excluding sworn law enforcement personnel
- (22) Unlawful manufacture, distribution, dispensation, possession or use of controlled substances as defined by section 102 of the Controlled Substances Act, 21 USC Section 802, in the workplace by employees
- (23) Violation or disregard of published safety rules
- (24) Sleeping on the job
- (25) Violence in the workplace

6.5 MEDICAL ACTION: The Appointing Authority may cause the termination, demotion, reduction in pay, suspension of any permanent employee in the classified service for: Inability to perform the essential functions of the job, even with reasonable accommodation.

6.6 NOTICE: Written notice of termination, demotion, suspension, or reduction-in-pay, taken by the Appointing Authority under this Section 6, and the specific reasons therefor shall be furnished in writing by 1st class and certified mail to the address on file with the Human Resources Department within three (3) days after such termination, demotion, suspension or reduction-in-pay. Any permanent employee in the classified service against whom such action is taken may appeal the termination, demotion, suspension, or reduction in pay as provided in Section 7 of these rules.

## SECTION 7 - BOARD OF REVIEW

7.1 ORGANIZATION: The Civil Service Commission (here after called Board) shall meet and act as a Board of Review when required. The Director of Human Resources shall serve as Recording Secretary of the Board, and the Notice of Decision and Findings of the proceedings shall be signed by the members present and voting. Three (3) members shall constitute a quorum. The concurring vote of at least three (3) members shall be required for any decision or recommendation of the Board, other than to adjourn or postpone a meeting.



## Civil Service Rules and Regulations (continued)

### 7.2 POWERS:

- (a) In any hearing conducted by the Board, it shall have the power to subpoena and require the attendance of witnesses, the production of books, papers and other evidence pertinent to the investigation, to administer oaths to witnesses, to examine witnesses under oath in the name of the City. It shall be the duty of the Secretary of the Board to cause all such subpoenas to be served and the refusal of a person to attend or testify in answer to such subpoena shall subject said person to prosecution as provided by law.
- (b) Each member of the Board of Review shall have the power to administer oaths or affirmation to witnesses and to sign subpoena.
- (c) Within thirty (30) calendar days after the proper filing of a written request for a hearing or as soon as possible thereafter as is practicable, the Board shall conduct a hearing.
- (d) The hearing before the Board may be public or private at the option of the employee but the hearings of the Board shall be informal and the rules of evidence shall not apply.

7.3 REVIEW PROCEDURE FOR DISCIPLINE: Any permanent classified employee who has been terminated, suspended, demoted, or received a reduction-in-pay by the Appointing Authority shall be entitled to be heard before the Board of Review at a duly constituted meeting thereof provided a written request therefor has been filed with the Secretary of the Board and the Appointing Authority within ten (10) calendar days from the date of receipt or posting of the written notice of the action taken, as set forth in Section 6.6, whichever occurs first. If the employee fails to file a response within the ten (10) calendar days, or withdraws his/her appeal, the disciplinary action taken by the Appointing Authority shall be final.

7.4 BINDING FORCE OF BOARD'S DECISION: In any case involving a termination, suspension, demotion, or reduction-in-pay the decision of the Board shall be binding upon the employee and the Appointing Authority. It shall not be subject to review by any Court, or other tribunal, except in cases where the decision was procured through fraud, or lack of jurisdiction. Before any such review shall occur in such cases, a petition for reconsideration shall first be presented to the Board wherein such alleged fraud or lack of jurisdiction is set forth, and verified by the petitioner. Petitions for reconsideration of any such decision of the Board shall be filed with Board not later than ten (10) calendar days after rendition of such decision. A decision shall be deemed to have been rendered as of the date of mailing to the employee.

In the event the Board revokes or modifies a termination, suspension, demotion, or reduction-in-pay and orders the employee reinstated, it may direct payment of salary to the employee for the period of time the Board finds the termination, lay-off, suspension, demotion, or reduction in pay was improperly in effect. Refer to Section 7.5 of current CSCR&R, page 50.

7.5 REVIEW PROCEDURE FOR GRIEVANCES: Any employee whose duly processed grievance, and not a termination, suspension, demotion, or pay reduction that has not been resolved to his/her satisfaction by the Appointing Authority, may petition and at the discretion of the Board of Review may be heard before the Board at a duly constituted meeting thereof provided the Board has not previously heard the case, and provided a written request therefore has been filed with the Secretary of the Board and the Appointing Authority within ten (10) calendar days from the date of receipt of the Appointing Authority's final decision on the grievance.

The Appointing Authority may also refer an unresolved grievance to the Board for their consideration and recommendation, whereupon the Board shall hear the case at a duly constituted meeting.

## **Civil Service Rules and Regulations (continued)**

The Board shall, within fourteen (14) calendar days after the hearing is closed and the matter is submitted, render its decision in writing. Copies of said decision shall be directed by the Secretary of the Board to the Appointing Authority and to the employee.

- 7.6 APPEARANCE REQUIREMENT: Unless incapacitated, the appellant making the complaint shall appear personally before the Board of Review at the time of the hearing.
- 7.7 NON-BINDING FORCE OF BOARD'S DECISION: In any case involving a grievance and not a termination, suspension, demotion, or pay reduction, the decision of the Board shall not be binding upon the Appointing Authority but shall be submitted in the form of a recommendation for consideration by the Appointing Authority.
- 7.8 FALSE STATEMENTS UNDER OATH AND REFUSAL TO TESTIFY FORBIDDEN: If any appellant or witness in the classified service makes any false statement under oath relative to the matter being heard by the Commission or the Director on any grounds, he/she shall be terminated from City service and shall not be eligible for appointment to any position in City service for a period of five (5) years. If any appellant or witness in the Classified Service willfully refuses to testify or answer any questions relative to the matter being heard by the Commission or the Director on any grounds, he/she shall be subject to disciplinary action, up to and including, termination. The false statement under oath or refusal to testify shall be incorporated in the employee's personnel record and shall be considered as a factor at any time in the future in which he/she may make application for appointment to City Service.

## **SECTION 8 - DEFINITIONS OF TERMS**

The words and terms used in these rules shall be defined and construed as follows.

- 8.1 **ALLOCATION**: The official determination of the class to which a position belongs and the assignment of a position to the appropriate class.
- 8.2 **ANNIVERSARY DATE**: The anniversary of the date an employee was appointed to his/her current position.
- 8.3 **APPLICANT**: A person who, under the rules, has made formal application for employment.
- 8.4 **APPOINTMENT**: The offer of and acceptance of a position by a person in accordance with the provisions of these Civil Service rules.
- 8.5 **APPOINTING AUTHORITY**: The City Manager, and others as provided for in the City Charter.
- 8.6 **BOARD**: The Civil Service Commission convened as a Board of Review.
- 8.7 **CANDIDATE**: An applicant in the process of examination, testing, or on an eligible list.
- 8.8 **CERTIFICATION**: The submission of names of eligibles from an appropriate eligible list to the Appointing Authority by the Director of Human Resources.
- 8.9 **CHARTER**: The Charter of the City of Santa Clara.
- 8.10 **CITY**: The City of Santa Clara.
- 8.11 **CITY COUNCIL**: The duly elected governing body of the City of Santa Clara

SANTA CLARA POLICE DEPARTMENT  
PROFESSIONAL STANDARDS UNIT  
P.C. #2015-04

CASE INVESTIGATION LOG

This case log contains only the more significant events of the investigation. Various tasks and events of lesser importance have been omitted.

2015

May 15 Event occurs  
May 26 Complaint received by phone to the Professional Standards Unit  
May 27 Recorded statement taken from complainant by Sgt. Hosman  
May 28 Met with San Jose PD ICAC supervisor Sgt. Brian Spears  
May 29 Met with Sgt. Spears at Annieglass store to view scene  
June 11 Sgt. Leipelt contacted for an interview by Sgt. Spears  
June 18 Sgt. Leipelt interviewed at SJPD by Sgt. Spears  
June 30 Personnel Complaint update memo sent to Sgt. Leipelt via email  
July 14 District Attorney's Office files one charge of 314 PC against Sgt. Leipelt  
July 16 Sgt. Leipelt was cited and released for 314.1 PC at the Sheriff's Office  
August 11 Visit to Annieglass by Sgt. Hosman and Lt. Moreno to view backroom  
August 12 Sgt. Leipelt interviewed by Sgt. Hosman and Lt. Moreno  
August 20 [REDACTED] interviewed by Sgt. Hosman and Lt. Moreno  
September 12 Pre-trial hearing set in Dept. 48  
October 27 Court hearing to plea / set trail date. Continued until November 10  
November 10 Trial date set for January 25

2016

January 25 Trial continued to February 8  
February 8 Trial continued to March 7 at the request of Sgt. Leipelt's attorney  
March 7 Trial continued until March 21  
March 24 I testified as a witness for the prosecution  
March 28 Jury finds Sergeant Leipelt guilty of 314.1 PC and he is remanded in to custody  
March 30 Judge Paul Bernal denied bail and continued sentencing until April 4  
April 4 Sergeant Leipelt's sentencing was continued at the request of the Probation Department to allow time to prepare their report for the court. Judge Bernal set bail at \$50,000.  
April 7 - Tom Leipelt's employment with the Santa Clara Police Department was terminated  
April 15 - Tom Leipelt was sentenced to 45 days in jail and ordered to register as a sex offender for life

**SANTA CLARA POLICE DEPARTMENT  
PERSONNEL COMPLAINT – INTAKE REPORT**

SUBJECT EMPLOYEE(S): Sgt. Tom Leipelt

DATE / TIME OF INCIDENT: May 15, 2015/ 5pm

LOCATION OF INCIDENT: Annieglass Company  
Santana Row, San Jose

INTAKE DATE / TIME: May 27, 2015 / 3pm

COMPLAINANT:

[REDACTED]  
Cell: [REDACTED]  
Work: [REDACTED]

WITNESSES:

[REDACTED]

ALLEGATIONS:

Conduct Unbecoming  
SCPD Operations Manual section  
26.3.3AL

Violation of Law  
SCPD Operations Manual section  
26.3.3AV

INTAKE COMPLETED BY: Sergeant Gary Hosman

COMPLAINT DETAILS:

On May 26, 2015, Ms. [REDACTED] contacted the Professional Standards Unit by phone to lodge a formal complaint against an off-duty officer who she witnessed masturbating in the rear stockroom of a business where she works at Santana Row in San Jose. She gave a physical description of the officer; coupled with additional information that led to the belief the employee in question may be Sergeant Thomas (Tom) Leipelt of the Santa Clara Police Department. Ms. [REDACTED] stated that the off-duty officer had been in her business, Annieglass, to visit his girlfriend, [REDACTED] on May 15, 2015. [REDACTED] is an employee of Annieglass.

Prior to the officer coming to the business, [REDACTED] had told Ms. [REDACTED] her boyfriend was named "Thomas." According to Ms. [REDACTED] [REDACTED] told her Thomas works for the Santa Clara Police Department, is married to [REDACTED] and recently worked the Kenny Chesney concert at Levi's Stadium. [REDACTED] told Ms. [REDACTED] she met Thomas several years earlier through her grandfather.

I found a color photo of Tom Leipelt on the internet from a promotional ceremony a few years earlier. I trimmed the photo to only show Tom's face and not his Santa Clara PD uniform. I confirmed Tom had worked the Kenny Chesney concert on May 2 from an Operations Order for that event.

Assistant Chief Dan Winter asked that I meet with Ms. [REDACTED] to determine if Tom Leipelt was the employee in question and to determine if a crime could have been committed in San Jose jurisdiction. On May 27, at about 1500 hours, I met Ms. [REDACTED] in the parking lot of the Macy's Men's Wear located at Stevens Creek Blvd. and Winchester Blvd. The interview was conducted outside my assigned department car. I recorded the interview with Ms. [REDACTED]'s permission on my digital recorder. Ms. [REDACTED] told me the following:

I asked Ms. [REDACTED] for additional information regarding the identity of the officer in question. Her information from [REDACTED] was consistent with her phone call to the Professional Standards Unit. I decided to show her the internet photo of Tom Leipelt. To this point, the identity of the off-duty officer was still in question. When Ms. [REDACTED] saw the photo she immediately stated, "That's him. Absolutely." I asked if she was "100%." She confirmed by saying, "I'm positive. That's him." I then proceeded with questions to establish if a crime may have been committed.

On Friday May 15, 2015, at about 1700 hours, Ms. [REDACTED] was working at Annieglass with a co-worker, [REDACTED]. Tom entered the store and was introduced to her by [REDACTED] as "Thomas." This was the first time Ms. [REDACTED] had met Tom. [REDACTED] wanted to leave the store on her lunch break with Tom; however, he declined because he had paint on his pants. According

██████████ and she said "No." She described ██████████ being about 5'9" with blue eyes, long brown hair, a little heavy-set and "buxom." This does not resemble Ms. ██████████ I asked about the clothing she and ██████████ wore to work on May 15th. Ms. ██████████ was wearing jeans and a tan - colored tweed jacket. ██████████ was wearing a long skirt with blue and gray colors and a tank top with a long shirt over it.

I asked Ms. ██████████ at one point she decided to tell ██████████ what she had seen in the stockroom. Ms. ██████████ waited until the customer left and approached ██████████ When she told ██████████ what she saw, ██████████ apologized for Tom's bad behavior and went into the stockroom. About 5 - 7 minutes later, ██████████ and Tom emerged together from the stockroom. They both approached Ms. ██████████ and ██████████ apologized again. Tom told Ms. ██████████ "I apologize. I went a little too far." Ms. ██████████ told me she had no response to his apology because she had no idea what to say. She felt "a little too far" did not fully describe what happened. Tom left the business and ██████████ finished her shift.

Prior to ending the interview, I explained to Ms. ██████████ that based on jurisdictional boundaries she may need to be interviewed by the San Jose Police Department. I also explained she would need to inform San Jose PD investigators whether or not she wished to press charges against Tom. Ms. ██████████ became emotional and told me what happened was "highly offensive and wrong." I ended the interview.

**CONFIDENTIAL**

Sergeant Gary Hosman

9/10/15

SANTA CLARA POLICE DEPARTMENT  
PROFESSIONAL STANDARDS UNIT  
PERSONNEL COMPLAINT #2015-04

Summary

On May 15, 2015, Sergeant Tom Leipelt attended Advanced Officer Training (AOT) and participated in "Active Shooter" training. After being released from AOT, Tom drove to Annieglass located at Santana Row in San Jose. Annieglass sells luxury glassware, jewelry and gifts.

Tom drove to Annieglass to visit his girlfriend, [REDACTED]. Tom has known [REDACTED] for several years and, even though Tom is married, they have a dating relationship. When Tom arrived at the store, he met Complainant [REDACTED] in person for the first time. Ms. [REDACTED] and [REDACTED] are co-workers at the business. Ms. [REDACTED] had heard about Tom from [REDACTED] prior to Ms. [REDACTED] meeting Tom. Ms. [REDACTED] was also aware that Tom was a police officer through conversation with [REDACTED].

After arriving at the store on May 15, Tom and [REDACTED] engaged in consensual sexual acts in the rear stockroom and the restroom of the store during [REDACTED]'s break. The stockroom is used to store merchandise and also contains counter space, a printer and a unisex restroom. The stockroom is separated from the main area of the store by a solid door. While Tom and [REDACTED] were engaged in sexual intercourse in the restroom, Ms. [REDACTED] walked to the threshold of the stockroom to inform [REDACTED] that customers had entered the store and specifically requested her. [REDACTED] acknowledged Ms. [REDACTED] and eventually emerged from the stockroom to assist her customers.

While [REDACTED] was assisting the customers, Ms. [REDACTED] went to the computer on the main showroom floor and printed an email. The printer is located in the stockroom. Ms. [REDACTED] opened the unlocked, but closed, stockroom door to retrieve her printout. Ms. [REDACTED] statement is that she saw Tom sitting on a chair, with an erect penis, masturbating. Ms. [REDACTED] was immediately offended and returned to the front area of the store. Ms. [REDACTED] waited until the customers left and told [REDACTED] that Tom was completely nude in the stockroom. [REDACTED] apologized for Tom and walked into the stockroom.

Several minutes later, Tom and [REDACTED] emerged from the stockroom. Tom offered an apology to Ms. [REDACTED] and left the store. [REDACTED] completed her scheduled shift. [REDACTED] was terminated from Annieglass a few days later by the owner for inappropriate sexual acts in the workplace.

Tom's statement is that he engaged in consensual sex with [REDACTED] in the stockroom and the restroom. After [REDACTED] left the stockroom to attend to her customers, he was urinating in the



SANTA CLARA POLICE DEPARTMENT  
PROFESSIONAL STANDARDS UNIT  
P.C #2015-04

Person interviewed: Sergeant Tom Leipelt  
Address: Santa Clara Police Department  
Phone: 408-615-4700  
Nature: Subject employee statement  
Date: August 12, 2015  
Time: 1500 - 1545 hours  
Interviewer: Lt. Moreno / Sgt. Hosman  
Attorney: Attorney Alison Berry-Wilkinson  
Cell: [REDACTED]  
Location: Chief's Conference Room - SCPD  
Recorded: Yes

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Sergeant Tom Leipelt was served with a Confidentiality Notice and placed on Administrative Leave by Assistant Police Chief Dan Winter on May 27, 2015. Tom's attorney, Alison Berry-Wilkinson, scheduled a subject employee interview with Tom for August 12<sup>th</sup>, 2015.

On August 12th, Lt. Dan Moreno and I interviewed Tom in the presence of his attorney, Alison Berry-Wilkinson. The interview was recorded on my digital recorder with everyone's knowledge. Ms. Berry-Wilkinson also recorded the interview.

Prior to the interview, I handed the Miranda and Lybarger forms to Tom's attorney and gave her time to review both documents with Tom in the privacy of the Chief's conference room. After they reviewed the documents, Lt. Moreno and I entered the room.

I turned on my digital recorder and confirmed with Tom and his attorney that neither of them had any questions regarding the Miranda or Lybarger forms. I confirmed Tom had signed and dated the Miranda form and checked box #2 indicating he wished to invoke his rights. I then confirmed

had walked in on him. Tom said [REDACTED] "Did not say a word" in response to him, so he left the store. Lt. Moreno asked Tom why he did not confront [REDACTED] about her telling [REDACTED] that he was naked in the stockroom. Tom explained that the whole situation was really "weird" so he just left and drove home. [REDACTED] stayed behind to finish her work shift.

Lt. Moreno confirmed with Tom that at no time was his penis erect around [REDACTED]. He also confirmed that [REDACTED] did not enter the stockroom or bathroom at any time while Tom and [REDACTED] were having oral sex or sexual intercourse.

Lt. Moreno asked Tom if he was aware of the content of [REDACTED] statement. Tom's attorney interjected and said that Tom did have a copy of the San Jose PD criminal report, which contained [REDACTED]'s statement. Lt. Moreno specifically asked Tom if he was naked on a chair, masturbating, and said "Come here" when [REDACTED] walked into the stockroom and if it happened as [REDACTED] stated. Tom answered "No, it did not."

Lt. Moreno told Tom that he was trying to figure out a reason why [REDACTED] would make up a story that Tom was sitting on a chair nude, masturbating. Lt. Moreno reminded Tom that [REDACTED] statement also described [REDACTED] as being upset and reporting to her that Tom was masturbating in the stockroom. Lt. Moreno confirmed with Tom that by his (Tom's) account, [REDACTED] were friends. Lt. Moreno asked Tom if [REDACTED] had told [REDACTED] that he was married. [REDACTED] Tom confirmed [REDACTED] knew his marital status and had heard it from [REDACTED]. Lt. Moreno asked Tom if he was aware of [REDACTED] being upset in any way that [REDACTED] was seeing a married man. Tom said [REDACTED] never indicated to him that [REDACTED] had anything negative to say, or seemed upset, that Tom was a married man.

*The purpose of Lt. Moreno's specific questions in the above paragraph was to explore a plausible reason why [REDACTED] would make up a story about Tom masturbating in the stockroom.*

During the above line of questioning, Tom stated that [REDACTED] had told him that she and [REDACTED] were "very open sexually" during their private conversations. [REDACTED] told Tom that [REDACTED] was recently divorced and was "on the prowl" at Santana Row because she liked seeing men all dressed up. Tom's attorney then prompted Tom to tell Lt. Moreno and me about [REDACTED] desire to do "unusual sexual things" at the workplace. Tom clarified that the unusual sexual things were not necessarily at the workplace; however, there was an indication of her and [REDACTED] wanting to have sex on-duty in the stockroom at Annieglass. Lt. Moreno confirmed that Tom meant there was an understanding between [REDACTED] that one would cover for the other to have sex with a boyfriend in the stockroom. Tom was unaware if [REDACTED] had ever had sex on-duty at the store.

I confirmed with Tom that [REDACTED] had been terminated from Annieglass. He said [REDACTED] had showed him the termination letter, but had not gone into details about the conversation with her employer when she was terminated. Tom's attorney then prompted Tom to tell us about [REDACTED]

being "unhappy or jealous" of [REDACTED] at work. Tom then explained that [REDACTED] is a "long time employee" of Annieglass and has been trying to get more hours and take on a leadership role in the company. [REDACTED] was hired on as a manager and there was some tension between [REDACTED] and [REDACTED] over their role in the company. I clarified with Tom that [REDACTED] was the manager of the store and that [REDACTED] reported the incident on May 15<sup>th</sup> to the owner, who terminated [REDACTED] employment. *At this point in the interview I went to my office to retrieve the termination letter.*

While I was out of the room, the interview continued. Tom's attorney said she had not seen the termination letter and Tom only saw it briefly. Tom said his understanding was [REDACTED] was terminated for having sex at the store. Lt. Moreno asked Tom if he thought [REDACTED] knew he and [REDACTED] were having sex in the stockroom on May 15<sup>th</sup>. Tom's attorney then clarified with Tom that he believed when [REDACTED] told he and [REDACTED] to go in the "back" and "have fun", Tom understood that to mean [REDACTED] expected he and [REDACTED] would have sex in the stockroom. He believed this because [REDACTED] told Tom that she and [REDACTED] had numerous conversations on and off duty about covering for each other while one of them had sex in the stockroom.

Lt. Moreno read [REDACTED]'s termination letter to Tom and his attorney when I returned. Tom then looked at the termination letter and stated it was not familiar to him. Tom confirmed that at the time of this interview he was still friends with [REDACTED]. His attorney confirmed that the incident on May 15 did not end the relationship between the two of them.

Lt. Moreno informed Tom that [REDACTED] denied she had winked at Tom and [REDACTED] prior to them going into the stockroom for [REDACTED]'s break. We continued to try and figure out why [REDACTED] would make up a story about Tom. A possibility for a motive was [REDACTED] rivalry with [REDACTED] over [REDACTED]'s management position and getting fewer hours than [REDACTED]. Tom's attorney asked if we had looked into [REDACTED] background and alluded to [REDACTED] having made "bizarre accusations" in the past. Lt. Moreno specifically asked if Tom or his attorney had any specific information to share with us. His attorney suggested we talk after the interview.

I then asked Tom if he felt having consensual sexual intercourse with [REDACTED] at an open store could be considered "acts unbecoming of an employee of this agency." Tom's attorney objected to the "fairness" of the question. She then re-phrased the question and asked Tom if he had any "regret or remorse" over his actions on May 15<sup>th</sup>. Tom answered "Absolutely. I could have used better judgment and made better decisions. I made a mistake that turned my life upside down." I asked Tom if he felt he violated any laws on May 15<sup>th</sup> and he answered "No. Absolutely not."

Lt. Moreno asked Tom if [REDACTED] was lying about what she saw him doing in the stockroom. Tom answered "Yes." Tom's attorney stated she felt saying that [REDACTED] lied was a harsh statement. She believes Danette could be "crazy", but the bottom line is that she made an untrue statement.

Lt. Moreno confirmed [REDACTED] continued working with [REDACTED] after he left Annieglass on May 15<sup>th</sup>. Tom believed she did, but did not know if [REDACTED] had any further discussions with each other over what [REDACTED] alleged she had seen Tom doing in the stockroom. I asked Tom if [REDACTED] had given him any specific information why she ([REDACTED] felt [REDACTED] would make up a story about Tom. Tom hesitated with his answer and looked at his attorney. I asked if they needed to speak alone, but they declined. Tom's attorney specifically asked Tom if [REDACTED] felt [REDACTED] was trying to get her fired. Tom said "Yes. As an end result, [REDACTED] was after [REDACTED] job."

I asked Tom if he knew the last time that [REDACTED] had socialized with each other prior to May 15<sup>th</sup>. Tom told us the week prior to May 15<sup>th</sup> [REDACTED] was at [REDACTED]'s house drinking wine. Tom learned about [REDACTED] and [REDACTED] discussion about having sex in the stockroom from [REDACTED] when she told him the following night (May 16). [REDACTED] also told Tom, that she and [REDACTED] talked about prior relationships, threesomes, and their sexual fantasies. Tom's attorney clarified that Tom knew about [REDACTED] discussion about sex in the workplace prior to him going to the store on May 15<sup>th</sup> and that he learned additional sexual information after May 15<sup>th</sup>. Tom stated he did not know about [REDACTED] discussions about having "threesomes" until after the May 15<sup>th</sup> incident. Tom denied having any intention of having sex with [REDACTED] when he arrived at the store on May 15<sup>th</sup>. He re-stated that he only had a short window of time to visit [REDACTED] before having to be home.

The interview ended with Tom's attorney stating that the best she felt Tom could offer us for in interview is that [REDACTED] seemed to have a motive for getting [REDACTED] fired. [REDACTED] wanted [REDACTED]'s job and saw [REDACTED] as being in a position (on May 15<sup>th</sup>) where [REDACTED] could level an allegation that would cost [REDACTED] her job.

END OF STATEMENT

Sergeant Gary Hosman

Confidential











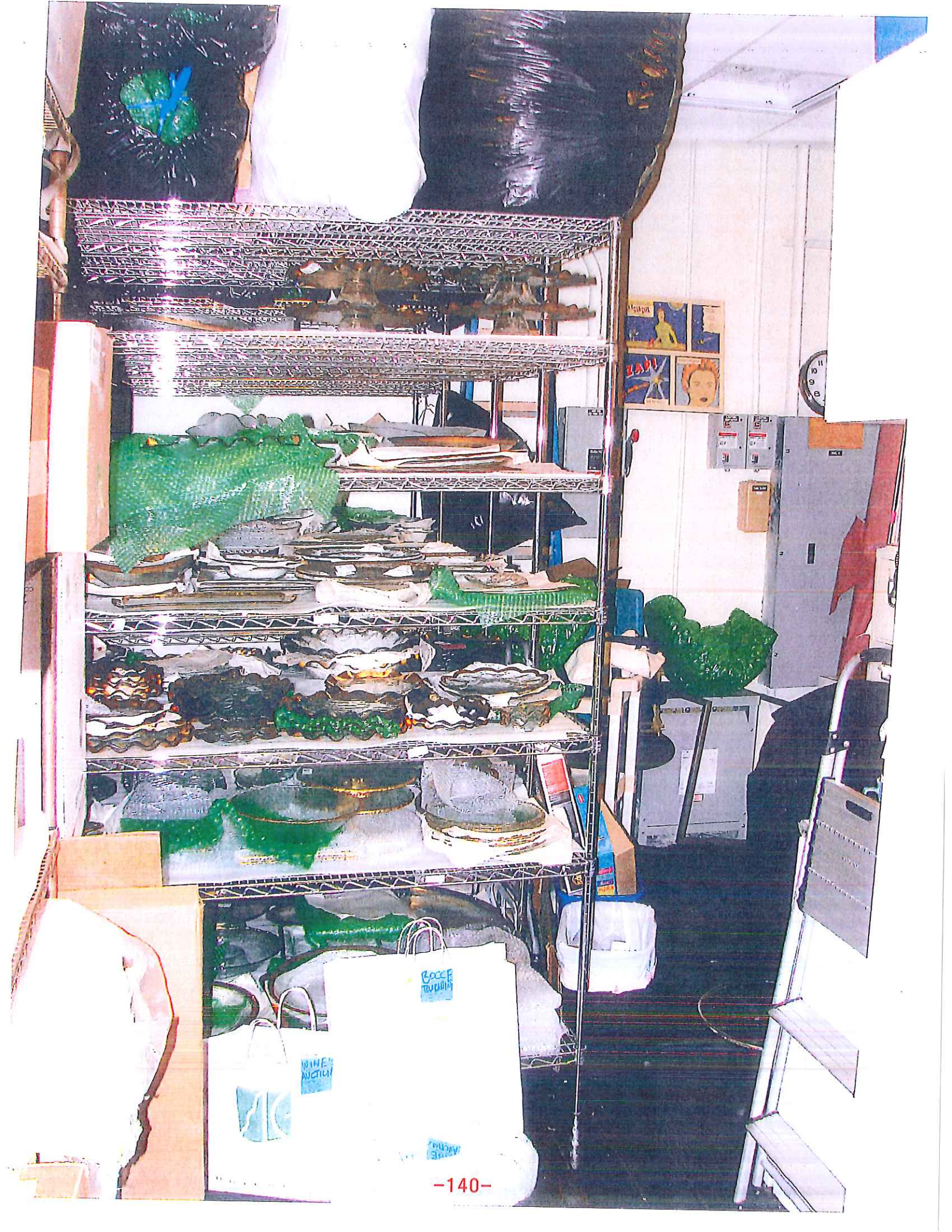




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8  
7  
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love, peace, beauty.

Blue  
New

SANTA CLARA POLICE DEPARTMENT  
*PROFESSIONAL STANDARDS UNIT*  
*P.C #2015-04*

Person interviewed: [REDACTED]  
Address: [REDACTED]  
Phone: [REDACTED]  
Nature: Witness statement  
Date: August 12, 2015  
Time: 0900 hours  
Interviewer: Lt. Moreno / Sgt. Hosman  
Location: [REDACTED] apartment  
Recorded: Yes

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On August 12<sup>th</sup>, Lt. Moreno and I drove to [REDACTED] apartment to interview her as part of this investigation. Prior to the interview, I was already aware that [REDACTED] and Sgt. Tom Leipelt were in a romantic relationship. I also knew [REDACTED] had been terminated from Annieglass in May. I had also been present in her apartment when San Jose PD investigators interviewed her as part of the criminal case against Tom.

I digitally recorded the interview on my recorder with [REDACTED] knowledge. I asked [REDACTED] to first tell me about her employment with Annieglass. She explained how she was initially hired in mid-April 2015, as a sales associate by the store manager, Eva. Eva is the owner's daughter. Eva and [REDACTED] had agreed that [REDACTED] would roll into an assistant manager position, following training, due to her managerial experience. After training her pay would also increase. Prior to being terminated from the company, Eva was scheduling [REDACTED] for about forty hours a week.

I asked [REDACTED] what [REDACTED] role was with the Annieglass company. [REDACTED] explained that [REDACTED] was an "8 year employee." [REDACTED] mostly ran the jewelry portion of the store, which mostly sells high end glassware. [REDACTED] had previously worked at the Annieglass store on Cooper Street in Santa Cruz, which is now closed. While at the Santa Cruz store, [REDACTED] handed out business cards bearing the title of Jewelry Manager. [REDACTED] believed there was some confusion with [REDACTED] at the new Santana Row store because she was not a manager, although

she still handed out business cards with that title. I asked [REDACTED] who took the manager or leadership responsibilities if they both worked the same shift. [REDACTED] described her and [REDACTED] as being on a "level playing field" and not "stepping on each other's toes" when it came to working the store together. I asked [REDACTED] if she was aware of any plan to make [REDACTED] a manager and she did not believe so. According to [REDACTED] she was teaching Eva and [REDACTED] how to use the computer systems and get the store ready for the grand opening in June. Eva was taking management classes and she and [REDACTED] frequently spoke about the management aspect of the store, while [REDACTED] was normally not included. [REDACTED] felt this caused conflict between her and [REDACTED].

[REDACTED] further explained she was getting forty hours a week per her hiring agreement, and [REDACTED] was not. [REDACTED] was denied a request for more hours multiple times by Eva. The store owner, Annie, had explained to [REDACTED] that she did not like giving an employee forty hours a week because Annie wanted to avoid paying benefits.

After gaining her employment history, I asked [REDACTED] specifically about the incident on May 15<sup>th</sup>, when Tom visited the store. She told me that whole day was "crazy" and Tom showing up was a "complete surprise." When Tom walked in, she was talking to her mother, who had also shown up unannounced. [REDACTED] confirmed she had told her mother about Tom prior to May 15<sup>th</sup>, but they had never met. When Tom walked in to the store he made a comment to her mother along the lines of "Look, Mom. I really do exist." [REDACTED] then introduced [REDACTED] to Tom. [REDACTED] described feeling excited that her mother and Tom both came in to see the new store that she had been "raving" about to them.

[REDACTED] mother eventually left the store and only [REDACTED] Tom and [REDACTED] remained. [REDACTED] described the conversation between the three of them as "completely friendly" and just general conversation. She added that a week prior, [REDACTED] had stayed at her apartment in Santa Clara because there was construction being done in the area where [REDACTED] lived in Santa Cruz County.

After general conversation between the three, [REDACTED] decided to take her lunch break. She and Tom walked into the stockroom and [REDACTED] clocked out. They decided to stay in the store, rather than walk around Santana Row, because Tom was tired and had paint on his pants. I asked [REDACTED] to back up and describe the conversation she had with [REDACTED] when it came to taking her thirty minute lunch break. [REDACTED] described [REDACTED] demeanor as "flirtacious" and that she told her and Tom to go have "fun" and she would watch the store. I asked [REDACTED] how she took [REDACTED] demeanor and [REDACTED] only took it as [REDACTED] watching the store while she and Tom went into the stockroom.

I asked [REDACTED] what happened while she and Tom were in the stockroom. She explained how they were both sitting on a computer chair, getting "flirtatious" and basically becoming caught up in the moment. She did not provide specific details, but clearly alluded to the fact they were



fooling around sexually in some capacity. They eventually decided that being in the open stockroom was not a good idea so they moved to the restroom. She described this scenario as being "uncharacteristic of both of us" but they were excited at the moment and attracted to each other. She described what they did in the restroom as "having an adult moment." I asked [REDACTED] if Tom ever took off all his clothes. She answered "No" and said he was wearing his black cargo pants and he "just undid his pants." According to [REDACTED] Tom only took his pants down enough in the stockroom so that she could "enjoy him" and then they decided to take things to the restroom. She was able to simply lift up her skirt so they could have sexual intercourse in the restroom. Soon after they began having sex, [REDACTED] knocked on the closed, but unlocked, restroom door and announced that [REDACTED] had clients in the front requesting her. [REDACTED] stated that Tom pulled up his pants, which were not "all the way down." Tom was fully dressed when he and [REDACTED] walked out of the restroom so she could walk out to greet her clients. She asked Tom to wait for her because she did not believe she would be gone long. Tom agreed to wait and [REDACTED] went to the front of the store.

[REDACTED] spoke with her clients, who turned out to be two of her friends, while [REDACTED] stood near the back of the store near the counter. [REDACTED] noticed that [REDACTED] walked into the stockroom at some point. When [REDACTED] emerged from the stockroom a short time later, [REDACTED] described her as "looking disturbed and flustered." [REDACTED] heard her say something to the effect of "Oh, my God." [REDACTED] continued talking to her friends; however, she kept looking back at [REDACTED] because it was obvious she was upset about something. [REDACTED] two friends also seemed to notice [REDACTED] was upset and told [REDACTED] they were going to an early dinner and would return later.

[REDACTED] walked to the back of the store (not the stockroom) and asked [REDACTED] "What is going on?" [REDACTED] told [REDACTED] she just saw Tom in the stockroom "completely naked and holding himself." [REDACTED] was shocked and walked into the stockroom to ask Tom what had happened with [REDACTED]. Tom told [REDACTED] that [REDACTED] had "walked in on me using the restroom." [REDACTED] noticed that [REDACTED] was now becoming even more upset and the whole situation became increasingly awkward. [REDACTED] was basically standing in the doorway between Tom and [REDACTED] and described herself as being "royally confused" about what had occurred. According to [REDACTED] when she walked into the stockroom to ask Tom what happened, he was standing fully-clothed by the microwave oven in the rear part of the stockroom.

At this point, Tom said that he needed to leave. [REDACTED] kept saying something to the effect of "I can't believe this" over and over. Per [REDACTED] did not say anything to Tom when he emerged from the stockroom to leave. Tom commented to both [REDACTED] "This is uncomfortable. I have to go." [REDACTED] did not hear him apologize or say anything else. After Tom left, [REDACTED] continued to be emotional and kept stating she could not believe what happened. [REDACTED] then clocked out and told [REDACTED] "I'm out of here. I can't be here" and left the store.

finished her shift and closed the store at about 2100 – 2130 hours with no further contact with that night.

I then switched topics and asked specific questions about her relationship with I asked about past romantic relationships had shared with her and provided me details of their conversations. confirmed spoke to her about

vent on to describe that she and had discussed their sexual fantasies, specifically what they have already done and what they would like to do. They elaborated on conversations about their sexual preferences when spent the night at house in early May. On that date, had closed the store and arrived at apartment about 2200 hours to spend the night. They had dinner and shared “a few bottles of wine.” They initially spoke about work and why was getting more hours than Their conversation about the hours got a little awkward, but not necessarily confrontational.

At some point, moved to the sofa and continued their “girl talk.”

Lt. Moreno then asked if they discussed having sex at work. said the topic did come up and admitted she has had sex at work, but did not offer any further details told us she assumed had sex at the Cooper Street store because would know if it occurred at the Santana Row store.

was asked if she discussed any of her sexual conversation at her apartment with Tom. confirmed she told Tom “everything” the next day. told him the details of their discussion, to include that she felt a real connection with following their evening together. I asked shared any feelings toward police officers with her. said that had told her she liked seeing an officer in uniform because they looked authoritarian and in control, which excited As far as knew had nothing against police officers.

also said mentioned having but did not elaborate any further on him. mentioned being divorced, but did not give any details. believed may have been married while living in San Diego, but she was not sure.

Lt. Moreno asked [REDACTED] if she called or texted [REDACTED] right after the stockroom incident with Tom. [REDACTED] confirmed she did call her, but [REDACTED] did not answer the call. [REDACTED] stated she did not talk to Tom until the following week because she knew he was spending the weekend with his family.

I then asked how the next shift went with [REDACTED] following the incident on May 15<sup>th</sup>. [REDACTED] said she and [REDACTED] worked together on Saturday May 16<sup>th</sup>. They greeted each other and minded the store during the shift like a normal business day. The manager, Eva, was also there, but left early. [REDACTED] described the vibe of the store as "being a new day." [REDACTED] never brought up the incident with Tom and was acting cheerful and normal. [REDACTED] was off on Sunday and then was asked to come into the store later than her normal hours on Monday. When she arrived on Monday, she was terminated by Annie (the owner) and Eva. She signed a termination letter and received her last paycheck. Annie and Eva explained that she was being terminated because she let someone in the stockroom. Annie asked if she had anything to say and before she could finish explaining, they ended the conversation and asked [REDACTED] to leave. When [REDACTED] walked out, [REDACTED] told [REDACTED] "I'm sorry." [REDACTED] told us she has not had any contact with Annie, Eva or [REDACTED] since that date (May 18<sup>th</sup>).

I specifically asked [REDACTED] what she believes happened between Tom and [REDACTED] after she [REDACTED] walked out of the restroom to talk to her friends. She believes [REDACTED] did walk in on Tom using the restroom because she was "curious." [REDACTED] says that [REDACTED] is flirtacious and probably wanted to talk to Tom. I asked if there had ever been any conversation with [REDACTED] about having a threesome with Tom at the store or anywhere else. [REDACTED] admitted that she and [REDACTED] discussed the possibility of a threesome with Tom the night [REDACTED] spent the night at [REDACTED] apartment. The two of them agreed with the right scenario anything could happen. [REDACTED] confirmed she shared the threesome conversation with Tom the day after [REDACTED] had spent the night.

Lt. Moreno asked [REDACTED] why [REDACTED] would act so upset if she only walked in on Tom urinating in the restroom. [REDACTED] said "That, I can't answer." She described [REDACTED] as "over-reacting" to minor issues at work and acting immature, rather than acting like a fifty year old woman. [REDACTED] would be happy, and then switch moods.

I explained to [REDACTED] that I had a "he said / she said" investigation and I was hoping to gain information that made sense. I specifically asked [REDACTED] if she was aware of [REDACTED] having any animosity toward Tom and if she could think of a reason why [REDACTED] would make up a story about him. [REDACTED] theorized that [REDACTED] was upset about her getting more hours, but admitted [REDACTED] had no specific reason to go after Tom.

████████ offered more information on why ██████████ may have animosity toward her. Prior to being terminated, it had gotten back to ██████████ that ██████████ was telling the owner, Annie, that ██████████ was commenting about Eva being incapable of running the store as a manager. ██████████ told me she never said those things; however, she had mentioned to ██████████ that she hoped to help Eva be successful by using her (██████████) experience. ██████████ confirmed that Eva had been receptive to her help and frequently asked ██████████ for assistance around the store. During ██████████ termination discussion, Annie confronted ██████████ about talking badly about management, which ██████████ denied. ██████████ had apparently also told Annie that ██████████ had made her drink too much when she spent the night at ██████████ apartment. According to ██████████ ██████████ lied about things to Annie and Eva regarding things ██████████ never said.

I asked ██████████ to describe ██████████ relationship with Annie and Eva. ██████████ explained that Eva had just moved back from Hawaii and ██████████ did not really have anything more than a work related relationship with her. When Eva wanted to take time off, ██████████ would fill in for her. Annie and ██████████ obviously knew each other because Annie owned the Cooper Street store where ██████████ worked for eight years.

I asked clarifying questions about the police officer ██████████ dated in Santa Cruz. ██████████ said ██████████ never really elaborated about him. ██████████ was not aware of ██████████ ever lodging complaints about the Santa Cruz officer, or any other police officer. As far as ██████████ was concerned, ██████████ seemed to like police officers. She and ██████████ shared "common ground" because they had both dated married officers.

I asked ██████████ to think back to when ██████████ came out of the stockroom and if ██████████ had ever seen her that upset ██████████ said "No. Not like that." She described ██████████ as having a "shocked, upset, Oh my God" look on her face.

I asked ██████████ if she had any questions of us and she did not. She told me she would be willing to answer more questions for the investigation if needed. She provided me her email address and the interview ended.

END OF STATEMENT

Sergeant Gary Hosman

Confidential

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**Professional Standards Unit**  
**P.C. # 2015-04**

**OPINIONS**

The Professional Standards Unit has completed the investigation into the actions of Sergeant Tom Leipelt on May 15th, 2015. After evaluating the complaint details, interviewing Sgt. Leipelt, the complainant, a witness, and evaluating the circumstances of this investigation. I believe events on May 15<sup>th</sup>, 2015, essentially occurred as follows:

On May 15th, 2015, Sergeant Tom Leipelt attended Advanced Officer Training (AOT) and participated in "Active Shooter" training. After being released from AOT, Tom drove to Annieglass, a business located at Santana Row, in San Jose. Tom was wearing his BDU pants from AOT. His BDU's were still partially covered in paint from Simunition rounds used during training scenarios. Tom intended to meet an employee, [REDACTED] at the store. Tom and [REDACTED] have known each other for several years and have a dating / sexual relationship.

When Tom arrived at the store, he met [REDACTED] who is C [REDACTED] co-worker. Ms. [REDACTED] had never met Tom; however, [REDACTED] had told her that Tom was a police officer and was married with children. After Tom arrived at the store, [REDACTED] took a break in the stockroom of the business and Tom joined her.

While in the stockroom, Tom and [REDACTED] engaged in consensual sexual intercourse and oral sex behind an unlocked, closed door, in both the stockroom and the restroom. The restroom is located within the stockroom. While the two of them engaged in sexual intercourse, two customers entered the main area of the store and specifically asked Ms. [REDACTED] to speak with [REDACTED]. Ms. [REDACTED] opened the closed door leading to the stockroom and called out to [REDACTED]. [REDACTED] was flustered at the interruption, but walked out to greet the customers, who turned out to be two of her friends. As [REDACTED] spoke to her friends, Ms. [REDACTED] printed an email from the store computer located in the main part of the store. The printer is located in the stockroom so Ms. [REDACTED] opened the closed door of the stockroom to retrieve the email.

*Up to the point of [REDACTED] emerging from the restroom to greet her friends, the statements are mostly consistent between Tom, [REDACTED] and Ms. [REDACTED]. The following is a summary of Ms. [REDACTED] statement regarding her observations after [REDACTED] left the stockroom / restroom to greet her friends.*

When Ms. [REDACTED] entered the stockroom, she saw Tom sitting in a chair, completely nude. He was holding his erect penis with one of his hands while masturbating. According to Ms. [REDACTED] Tom said something to the effect of "Come over here." Ms. [REDACTED] was immediately offended and returned to the main store area.

When [REDACTED] was done speaking with her friends, Ms. [REDACTED] immediately told [REDACTED] she had seen Tom completely nude and masturbating in the stockroom. [REDACTED]

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entered the stockroom and eventually emerged with Tom, who left the store. There are different accounts regarding exactly what was said between Tom and Ms. [REDACTED] however, he may have offered a vague apology to her. His specific reason for apologizing is unclear. Tom states that he did not confront Ms. [REDACTED] about walking in on him while he was urinating. Statements are consistent that Ms. [REDACTED] did not say anything to Tom, so he left the store.

*The following is Tom's statement of events when Ms. [REDACTED] entered the stockroom area, after [REDACTED] left to greet her friends, following sexual intercourse in the restroom.*

Tom offers a different account of events at the point where Ms. [REDACTED] enters the stockroom while [REDACTED] is speaking with her friends. Tom states that Ms. [REDACTED] opened the closed, but unlocked, door of the restroom, and saw him standing and urinating into the toilet. Tom denied masturbating in the restroom and stated he was fully clothed while urinating. Tom does admit having sexual intercourse and oral sex with [REDACTED] in the stockroom and restroom after they entered the stockroom for [REDACTED]'s break. This is also consistent with [REDACTED]'s statement during the criminal and administrative interviews.

Both Tom and [REDACTED] offer a reason for Ms. [REDACTED] to be jealous of [REDACTED] and potentially want her fired from the store. Ms. [REDACTED] is an eight year employee of the business, she is not a manager, and is only scheduled part-time hours. [REDACTED] was hired the month before this incident and is being prepped to be a manager, while receiving forty hours a week. The owner and store manager have denied Ms. [REDACTED] requests for more hours. Logically, if [REDACTED] is terminated, Ms. [REDACTED] could benefit in both hours and position. However, it has been established that Ms. [REDACTED] and [REDACTED] had a sleep-over the week prior to this incident where they drank wine, talked explicitly about sex and engaged in sexual activity with each other. This seems to contradict any sincere animosity Ms. [REDACTED] may have felt toward [REDACTED] to the extreme of having her terminated. Furthermore, no evidence has surfaced that would suggest Ms. [REDACTED] had any biases toward Tom or toward law enforcement officers in general. If Ms. [REDACTED] goal was to have [REDACTED] terminated, for either selfish or legitimate reasons, that goal was accomplished once [REDACTED] employment was terminated. During the interview with [REDACTED] she stated that Ms. [REDACTED] seemed to like law enforcement officers and had even dated a married officer in the past, just like [REDACTED].

### Pre-Trial Opinion

Based on the vastly different statements of Tom and Ms. [REDACTED] I have a "he said, she said" investigation. The *circumstantial* aspects of this investigation seem to support Ms. [REDACTED]'s claims against Tom. On the contrary, this investigation is lacking substantial and supportive evidence that Tom has provided a false statement to the San Jose Police Department and during his administrative interview.

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Based on the conflicting statements of Ms. [REDACTED] and Sgt. Leipelt, I was unable to form an opinion during the early stages of this investigation as to the specific allegation of *Violation of Law* until a jury reached a decision. During Sergeant Leipelt's administrative interview, there was also an indication from his attorney, Alison Berry-Wilkinson, that Ms. [REDACTED] may have made up the allegation against him.

### Post-Trial Opinion

On March 24, 2016 I testified as a prosecution witness for ADA Lindsey Walsh. On March 25, I was present in court during closing arguments by the ADA Walsh and Tom's attorney, Cameron Bowman, to include, ADA Walsh's rebuttal closing. One of the significant points made by ADA Walsh in her closing was the lack of motivation for the victim to fabricate the entire event and then stick to her story for nearly a year, to include testifying under oath in front of a jury. Additionally, Sergeant Leipelt's statement that he was merely urinating is just not believable when compared to the victim's account. Since gaining Cameron Bowman as his legal counsel last July, neither Sgt. Leipelt, nor his legal team were discovered a plausible motivation for the victim to fabricate the event.

After seeing this investigation through to a jury's verdict, I have formed the opinion that the victim provided a truthful statement and the elements of 314.1 PC were met.

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**Conclusions – Sergeant Tom Leipelt**

The following analysis of the actions of Sergeant Tom Leipelt are **CONFIDENTIAL** should only be viewed by Sergeant Tom Leipelt or others permitted to view his personnel information.

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**Santa Clara Operations Manual 26.3.3 AL**  
**Conduct Unbecoming an Employee**

*Conduct which adversely affects the morale or efficiency of the Department, or conduct which tends to bring the Department or the employee into disrepute, or conduct that reflects discredit upon the employee as an element of the Department.*

On May 15<sup>th</sup>, 2015, Sergeant Tom Leipelt was released, at about 1630 hours, to an off-duty capacity after he attended Advanced Officer Training in the City of Santa Clara. He drove directly to Annieglass at Santana Row to surprise his girlfriend, [REDACTED] who works at the store. When Sergeant Leipelt arrived [REDACTED] introduced him to her co-worker (the complainant), [REDACTED] had previously told Ms. [REDACTED] that Sergeant Leipelt was a Santa Clara Police Officer and that he was married [REDACTED] children. Ms. [REDACTED] was also aware [REDACTED] and Sergeant Leipelt were dating each other and had known each other for several years.

After introductions, Sergeant Leipelt and [REDACTED] went to the rear stockroom of the open business. Sergeant Leipelt or [REDACTED] closed, but did not lock, the solid door that separates the customer area from the stockroom. While in the stockroom they both admittedly engaged in oral sex in the stockroom area, then sexual intercourse in the unisex restroom located inside the stockroom. At one point [REDACTED] was summoned by Ms. [REDACTED] to help a customer in the main area of the store. [REDACTED] exited the restroom, leaving Sergeant Leipelt in the stockroom / restroom area of the store by himself. The statements of events which occurred in the stockroom between Sergeant Leipelt and Ms. [REDACTED] after [REDACTED] left, are completely different.

On July 14<sup>th</sup>, 2015, the District Attorney's Office filed one count of 314.1 PC against Sergeant Leipelt. He was cited and released for the charge on July 16<sup>th</sup>, with an initial August 19<sup>th</sup> court date. On September 15<sup>th</sup>, Sergeant Leipelt attended a pre-trial conference in Dept. 48 in Superior Court.

During Sergeant Leipelt's administrative interview, I specifically asked him if he felt his actions on May 15<sup>th</sup> fit the allegation of acts unbecoming of an employee of this agency. His attorney objected to the question. She re-phrased the question for Sergeant Leipelt by



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asking him if he had any "regret or remorse" over his actions. He answered by saying: "Absolutely. I could have made some better judgments and better decision-making. Absolutely. Let's call a spade a spade. People make mistakes and I made a mistake. I made a very bad decision which has turned my life upside down as a result. An accusation has been presented about me. So I could have made some better decisions."

Sergeant Leipelt's conduct on May 15<sup>th</sup>, brought himself and this agency into disrepute. As a married man, Sergeant Leipelt engaged in sexual conduct in the stockroom of an open business with his girlfriend, behind an unlocked door. Arguably, a customer could have opened the unlocked stockroom door, as Ms. [REDACTED] did, and witnessed Sergeant Leipelt and [REDACTED] engaged in sexual activity. Sergeant Leipelt's actions in the stockroom resulted in a criminal charge against him by the district attorney's office, which tends to undermine the efficiency of this department.

I find the allegation of violating Santa Clara Operations Manual 26.3.3 AL – Conduct Unbecoming and Employee against Sergeant Tom Leipelt to be **SUSTAINED**.

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### Santa Clara Operations Manual 26.3.3 AV Violation of Law

*Violation or attempted violation of any Federal, State, County or Municipal law while on or off duty.*

#### Court Continuation Time line

After Sergeant Leipelt was cited and released for 314.1 PC, his first court date was set for September 15, 2015 for a pre-trial hearing. His attorney sent a representative attorney who requested a continuance until October 27. On October 27, the pre-trial hearing was again re-scheduled for November 10 by a representative attorney. At the November 10 court date, the trial was set to begin on January 25, 2016. Prior to that date, the trial was re-scheduled for February 8. Sergeant Leipelt's attorney was able to post-pone the trial date until March 7, citing the need to conduct further follow-up. The March 7 trial date was then re-scheduled for March 21. ADA Lindsey Walsh informed me two other trials were ahead of Sergeant Leipelt's for the first week of March and the courthouse did not have a courtroom to accommodate a third trial during that week.

#### Verdict

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On March 22, 2016 Sergeant Leipelt went on trial for 314.1 PC. On March 28, the jury found him guilty of the charge. Judge Paul Bernal remanded Sergeant Leipelt into custody and ordered him back to court on March 30 for sentencing.

On March 30, Judge Bernal denied Sergeant Leipelt bail and continued sentencing until April 4. On April 4, the Probation Department requested additional time to prepare a probation report for the court. Judge Bernal set bail at \$50,000; however, Sergeant Leipelt decided to stay in custody. On April 7, his employment with the City of Santa Clara was terminated.

On April 15, Tom Leipelt was sentenced to 45 days in county jail with credit for 20 days. He is required to register per 290 PC for life and will be on probation for five years. The conditional terms of probation include search and seizure. Tom was ordered to stay away from the victim and comply with all conditions as a sex offender. He was also ordered to pay numerous fees as part of his sentence.

I find the allegation of violating Santa Clara Operations Manual 26.3.3 AV –Violation of Law against Sergeant Tom Leipelt to be **SUSTAINED**.

Reviewed by Sergeant Tom Leipelt: \_\_\_\_\_

Date: \_\_\_\_\_