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SEPTEMBER 10, 2025

CONFIDENTIAL: ATTORNEY-CLIENT PRIVILEGED
MEMORANDUM

TO: Santa Clara Valley Water District, Office of District Counsel and Board of Directors

FROM: Jenica D. Maldonado, Partner
Rahi Azizi, Of Counsel

RE: Executive Summary – Investigation of Workplace Misconduct Complaint Made by Santa Clara Valley Water District Employees Complainant 1, Complainant 2, and Complainant 3 against CEO Rick Callender

EXECUTIVE SUMMARY

I. INTRODUCTION

On October 25, 2024, the Santa Clara Valley Water District (“District”) received an email from District employee Complainant 1 (“Complainant 1”), indicating that ■ wanted to make a complaint. On November 4, 2024 during an EEO intake, Complainant 1 alleged that District CEO Rick Callender and another District employee (“Respondent 2”) subjected ■ to workplace mistreatment.¹ Complainant 1 raised allegations that, if true, could violate the District’s Anti-Discrimination, Harassment, and Retaliation Policy (Document No. AD-2.8) (“Policy”).

In early November 2024, the District retained our firm, Atkinson Andelson Loya Ruud & Romo (“Firm”), and the principal authors of this memorandum, Partner Jenica Maldonado and Of

¹ During ■ EEO intakes and in subsequent interviews, Complainant 1 also made allegations against Callender that potentially implicated the District’s AD-2.11 policy on Ethics and Business Conduct (the “Ethics Policy”) and other District policies implicating the ethics of District employees. At the request of the Board, a separate Executive Summary and Investigative Report addressing alleged violations of the Ethics Policy have been prepared. This Executive Summary and the full Investigative Report address only those allegations implicating the Anti-Discrimination, Harassment, and Retaliation Policy.

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Counsel Rahi Azizi (“we,” “our,” “us,” or the “Investigators”), to conduct a confidential attorney-client privileged investigation.

During this investigation, Complainant 1 sat for interviews eight separate times (including ■■■ initial EEO intake), most recently on June 13, 2025. In these interviews, Complainant 1 expanded on the allegations made during ■■■ EEO intakes and made new allegations. We also considered voluminous written materials Complainant 1 submitted in support of ■■■ claims, including text and Meta Messenger (“Messenger”) exchanges with Callender, photos, journal entries, and a written “matrix” of complaints submitted by Complainant 1 through ■■■ union representative. Complainant 1 accused Callender of sexual harassment, abusive conduct, discrimination based on parental status, retaliation, and hostile work environment. ■■■ also alleged Callender had coordinated with Respondent 2 to create a hostile environment. Complainant 1 furthermore accused Callender of ethical violations, which will be addressed in a separate report.

During our investigation, two other District employees came forward—Complainant 2 (“Complainant 2”) and Complainant 3 (“Complainant 3”)—with complaints. Complainant 2 and Complainant 3 both alleged facts that, if sustained, could likewise violate the Policy. The District asked us to expand the scope of the investigation to address these complaints as well (Complainant 2, Complainant 3, and Complainant 1 are herein collectively referred to as “Complainants”).

We are currently preparing a comprehensive report (“Investigative Report”) that summarizes the evidence we considered and sets forth our findings of fact (i.e., whether the facts, as alleged by the Complainants, were or were not likely to be true, applying the preponderance of evidence standard) and, as to the factual findings sustained, whether such facts constitute a violation of the Policy. In the interim, the District requested we provide an Executive Summary of our report; this document serves that purpose.

II. SUMMARY OF ALLEGATIONS

A. Complainant 1’s Allegations

We received voluminous allegations and related evidence relating to Complainant 1, as addressed more thoroughly in the Investigative Report. Complainant 1 worked in Callender’s chain of command, interacting with him ■■■ from ■■■ to ■■■. Complainant 1 continued interacting with him from ■■■ until he took a leave of absence in December 2024. Complainant 1 often could not identify dates for alleged incidents, made sweeping allegations spanning the full time ■■■ worked for Callender (from ■■■), and alleged that Callender engaged in misconduct up until his leave. This Executive Summary focuses on Complainant 1’s material allegations—allegations that, if sustained, support a violation of District policy.

Complainant 1 contends Callender committed various inappropriate acts and behaviors. The following purported incidents serve as illustrative examples of the overall conduct Complainant 1

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attributes to Callender while the full Investigative Report discloses additional acts Complainant 1 alleges.

- (1) Throughout ■ time at the District, since ■ started in ■, Callender made inappropriate comments and sent inappropriate messages to Complainant 1 about the purported sexual or romantic activities of Complainant 1, Complainant 1's partner, and other District employees; about the appearance of other coworkers; about his own sexual or romantic activities; about comments insinuating sexual or romantic interest in Complainant 1; about his preference for Complainant 1, which could be construed as romantically motivated; about Complainant 1's menopause-related symptoms; and about his own appearance. Callender also inappropriately told Complainant 1 multiple times (including in April 2020) that they should get married because ■ did not communicate with him. Complainant 1 has been in a long-term, committed relationship during Complainant 1's entire time at the District, and Callender was aware of that relationship and depth of commitment.
- (2) Callender made unsolicited comments about Complainant 1's attire. On one occasion, Callender observed that Complainant 1 wore more formal professional attire and asked ■ if ■ was dressing up to impress someone "on the side" or if ■ was trying to make ■ partner jealous. On another occasion, he noticed Complainant 1 wore high heels and asked ■ to move so he could view ■ shoes better. On another occasion, he told ■ that ■ dress "fit nicely." Complainant 1 felt uncomfortable with his comments.
- (3) On July 25, 2023, Callender requested a favor from Complainant 1: that ■ water his tomato plants at his personal home while he went on vacation. When ■ took ■ ■ to his house to learn about his plants in preparation for the task, he hugged Complainant 1 without asking. ■ felt uncomfortable with the unusual physical contact, since they did not hug. Callender gave Complainant 1 access to his home via an electronic key application. After Complainant 1 finished the task, ■ removed ■ from the application, but Callender stated he would keep ■ on because "you never know," implying that he may ask ■ for favors at his home in the future.
- (4) On July 5, 2023, Complainant 2 told Callender a rumor ■ heard from another subordinate: that Callender favored Complainant 1 so he treated ■ differently. Callender interpreted this as a rumor that he and Complainant 1 shared an intimate personal relationship and told Complainant 1 as well as the other employees. Complainant 2 and others clarified that the rumor merely referred to favoritism, and he backtracked.
- (5) Callender sent Complainant 1 photos of other women whom he flirted with or who flirted with him. Callender also sent Complainant 1 selfies of himself and his activities. Most notably, he sent ■ a photo of his clothed lap, centered on the crotch area.

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- (6) Callender belittled Complainant 1's work experience, expressing disbelief to Complainant 1 that [REDACTED] had formerly worked at a prestigious company. He implied that he did not think [REDACTED] was skilled enough to do so.
- (7) Callender made snide and snarky comments to Complainant 1, such as on or around April 11 or 12, 2024, when Complainant 1 arrived for a luncheon at work after teleworking in the morning, he commented "How nice of you to join us."
- (8) Callender regularly made comments to Complainant 1 about how he should have fired [REDACTED]. One example of such is a written exchange between the two on June 4, 2020.
- (9) Callender took Complainant 1 with him when he ran errands, such as bringing [REDACTED] to a hardware store so he could pick up materials for his home remodel, taking [REDACTED] to his girlfriend's house to pick up something he left, and having Complainant 1 drive him to a car dealership so he could pick up his new vehicle.
- (10) On or around [REDACTED], after Complainant 1 went on bereavement leave, Callender plainly stated that [REDACTED] should "prepare for the death" of loved ones, without appropriate empathy or condolences.
- (11) Callender pressured Complainant 1 to apply for a new position, even after [REDACTED] told him [REDACTED] did not want to apply because [REDACTED] wanted to prioritize [REDACTED] parental responsibilities.
- (12) In the post-COVID period when the District shifted from fully remote work to partially remote work, Callender required at least one subordinate in the executive suite per day, to ensure in-person service. He directed Complainant 1 to take on the unpopular task of assigning Friday in-office work to the subordinates to "punish" Complainant 1 after [REDACTED] refused to take the new position he had suggested. He also refused to let [REDACTED] stop after Complainant 1 notified him that [REDACTED] did not want to take the assignment and struggled to persuade the other subordinates.
- (13) Callender consistently messaged Complainant 1 after hours and on weekends when [REDACTED]. On one occasion during this period, Callender messaged Complainant 1 after hours, and when [REDACTED] did not respond over that weekend, he told [REDACTED] that he paid for [REDACTED] cell phone bill, insinuating that [REDACTED] needed to respond in [REDACTED] time off. At the time, Complainant 1 received reimbursement from the District to cover [REDACTED] phone bill for work-related calls. Callender also told Complainant 1 that he would buy [REDACTED] a watch connected to a phone, insinuating it would assist [REDACTED] in responding to his weekend communications. When Complainant 1 stated that would be inappropriate, Callender stated that he buys gifts for his friends all the time, and it would help [REDACTED] to not miss his calls.

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- (14) In or around 2022, Callender repeatedly pressured Complainant 1 to place [REDACTED] child in daycare and told [REDACTED] [REDACTED] and another employee at the District would find themselves without a job if they did not square away their childcare situation.
- (15) On or about November 13, 2023, Callender did not acquiesce to Complainant 1's requests that he treat other employees in the same manner he treated Complainant 1, or vice versa, perpetuating rumors of favoritism.
- (16) Callender expected Complainant 1 to provide him with the rumors going around the District.
- (17) Complainant 1 alleged Respondent 2 emailed [REDACTED] on September 26, 2024, unfairly and untruthfully critiquing [REDACTED] work. A few weeks later, on October 18, 2024, Complainant 1 replied to this email, challenging Respondent 2's feedback. According to Complainant 1, following this exchange Callender conspired with Respondent 2 to frame Complainant 1 as a problematic employee. [REDACTED] contends he summoned [REDACTED] to his office on October 21, 2024 for a one-on-one meeting, and that during this meeting Callender scolded [REDACTED] and raised his voice. Callender admonished Complainant 1 that [REDACTED] email to Respondent 2 was unprofessional and that Complainant 1 had let [REDACTED] emotions "blow up." He mentioned three times that Complainant 1 "must be a tough [REDACTED] to date" because [REDACTED] was emotional. He reminded Complainant 1 he had hired [REDACTED], insinuating [REDACTED] owed him for giving [REDACTED] a position and that he could just as easily fire [REDACTED].
- (18) Complainant 1 spoke with another employee on or about October 21, 2024 and inferred from the employee's body language and tone that Callender and Respondent 2 would attempt to frame [REDACTED].

B. Complainant 2's Allegations

Complainant 2 did not immediately report to or perform work directly for Callender until [REDACTED] transitioned to [REDACTED] current role, which required [REDACTED] to intermittently interact with him on various projects. [REDACTED] began interacting with him more frequently after they attended a San Jose Sharks hockey game together with two other District employees in or around [REDACTED]. Complainant 2 sat next to Callender during at least a portion of the game and conversed with him. According to Complainant 2, in the weeks and months following this event, Callender made a concerted effort to forge a personal relationship with [REDACTED], despite [REDACTED] desire to limit their interactions to work-related matters.

Complainant 2 alleges Callender engaged in inappropriate conduct from the period between Spring 2023 and November 2024, including but not limited to the following:

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- (1) Callender made unwelcome comments about Complainant 2's physical appearance and attire. On one occasion, Callender observed that Complainant 2 was wearing a floral shirt, telling ■■■, "Oh, well, you don't usually wear floral." On another occasion, he asked ■■■ if ■■■ was wearing color contacts.
- (2) On ■■■■■■■■■■, at 10:12 p.m., Callender texted Complainant 2: "Showered yet? Just playing." He messaged ■■■ following an office party earlier that day during which Complainant 2 donned the ■■■■■■■■■■ ■■■■■■■■■■ costume. During this after-hours exchange, which Callender admits he initiated, Callender remarked on the "stinky" nature of the costume, telling Complainant 2, "hey but your checks [sic] were red when you took off the sweaty drip." Complainant 2 responded that even when ■■■ sweats, ■■■ does not stink, to which Callender replied: "Hmm . . . interesting . . . I'll believe it when I smell it . . . trust me I can't say the same." In this same exchange, Callender texted ■■■, "You are not that much of a rose . . . out in the sun . . . and still smelling sweet." This exchange perplexed Complainant 2.
- (3) Callender repeatedly invited Complainant 2 to Sharks games on Saturdays, both during the day and at night, even after Complainant 2 emailed him in November 2023 informing him ■■■ was not interested in attending sporting events (and Callender acknowledged receipt of this email). On September 23, 2023, Callender invited ■■■ to a Saturday night game and suggested they each bring a friend. He told ■■■ the invitation was, "My [Complainant 2] happy bday present." On Saturday, January 6, 2024, at 9:35 a.m., Callender messaged Complainant 2: "Hey. Last minute sharks tickets open for today. . .interested? It's meet at 230 at the Tank for early entry. It's [Coworker] and my friend [Callender's girlfriend] going." More recently, in November 2024, Callender messaged Complainant 2, "Do you oppose see Sharks play on weekend in addition to weekdays?" Complainant 2 responded, "Def no for weeknights. Or I guess I'd say evening games." Callender wrote back, "Ok. I was going to offer a sat 7pm sharks game. I have one Xtra ticket this Saturday. But understand your early bird status. If you change your mind and choose to stay up till 930ish. Let me know tonight. I'm looking for a single person I can tolerate being around!"
- (4) Callender offered to buy drinks for Complainant 2 and engaged in other banter that could be construed as an attempt on his part to be flirtatious or solicitous. On July 21, 2023, at 7:25 p.m., Callender texted Complainant 2, "Random question...What is the website to purchase enneagram tests? I asked a friend to take it, but it seems like there are a lot of sites claiming to sell it." Complainant 2 texted him a link to one such site, and Callender responded, "Thank you! Still owe you a drink! Excuse my rudeness...How are you doing?" About 30 minutes later, Callender texted Complainant 2: "Whats your plan tonight. Big partying?" Complainant 2 responded ■■■ was "going to bed early to work out early" and that ■■■ does not party. Callender replied: "You deserve a good weekend party every week after being micro managed into frustration." Complainant 2 responded, "It's all good. I'm much happier where I am than where I've ever been." Callender then

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- (7) Callender frequented Complainant 2's workspace or invited [REDACTED] to his office for one-on-one conversations. He would also unnecessarily ask [REDACTED] to come behind his desk to view his monitor.

- (8) Callender repeatedly called Complainant 2 at night to discuss matters unrelated, loosely related, or pretextually related to work, like personality tests or office gossip, even when Complainant 2 would signal [REDACTED] was uncomfortable speaking to him. In their July 2021 text exchange about Complainant 2's purported "happy hour party," after Callender told Complainant 2 [REDACTED] was "scared" to invite him, he pivoted to another topic and asked [REDACTED]: "Curious. What time are you hitting the work out tomorrow?" Complainant 2 responded, "People always make comments when they see you talking to anyone." Complainant 2 indicates [REDACTED] said this to Callender because [REDACTED] did not like socializing with him in the office, as [REDACTED] feared their interactions might spark rumors. [REDACTED] says Callender had a reputation for eschewing small talk, so if people saw them together, knowing Complainant 2 did not directly report to him, they might speculate on the nature of their relationship. Callender asked Complainant 2 if he could call [REDACTED], and Complainant 2 told him [REDACTED] was going to sleep. Callender responded he had "ennegeam qs," but that he would catch up with [REDACTED] tomorrow, adding, "Nite sleepy [Complainant 2]..." Complainant 2 told him [REDACTED] "turn[s] into a pumpkin at 8, sometimes 7:30," and Callender responded, "Wow, you're no fun. Nite." Complainant 2 did not respond to his last text, but Callender messaged [REDACTED] the following day, a Saturday: "How was your workout. Still very curious about what people think when I talk to people." Complainant 2 did not respond to these texts either.

- (9) Callender informed Complainant 2 he supported [REDACTED] "upward mobility," repeatedly volunteered career-related advice, and offered to help [REDACTED] secure—or outright offered [REDACTED]—other positions within the District. On [REDACTED], he messaged [REDACTED] he had found a suitable candidate for an opening. Complainant 2 responded, "That's good news," and Callender texted back, "But ONLY if you are not going for it." Complainant 2 alleges Callender for all intents and purposes created a position for [REDACTED], essentially reclassifying [REDACTED] current role to a higher-paying one (and proposed doing so to [REDACTED]) to incentivize [REDACTED] to apply for the position. Callender often texted and approached Complainant 2 about the position, telling [REDACTED] [REDACTED] should "warm up" [REDACTED] resume, advising [REDACTED] on how [REDACTED] should disclose [REDACTED] interest in the position to [REDACTED] then-supervisor Witness 2, and asking [REDACTED] if [REDACTED] had submitted [REDACTED] application. Complainant 2 says the pressure [REDACTED] received from Callender upset [REDACTED] as did the prospect of working directly for him, given that the hiring authority (also known as the hiring manager) for the position, [REDACTED] had recently announced [REDACTED] retirement. Complainant 2 feared Callender would use the opportunity to supervise [REDACTED] directly and try to draw [REDACTED] closer to him. These misgivings prompted Complainant 2 to withdraw [REDACTED] application, but [REDACTED] did not disclose [REDACTED] actual reasons for withdrawing for fear that Callender would retaliate against [REDACTED]. Complainant 2 says when Callender found out, he was devastated and thereafter "distanced himself" from [REDACTED], which [REDACTED] indicated was [REDACTED] goal. After receiving assurances that the District

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intended to replace Witness 1, and Witness 1's replacement would oversee the new role, Complainant 2 reapplied for and got the position. Once [REDACTED] started, Callender resumed messaging Complainant 2 outside of work hours about personal matters. Given that [REDACTED] was not an executive-level employee and had, up to this point, seldom collaborated with Callender regarding work-related assignments that fell within the course and scope of [REDACTED] duties, the attention he was giving [REDACTED] and his professed interest in [REDACTED] career troubled Complainant 2. [REDACTED] did not observe him demonstrate a comparable degree of interest in [REDACTED] employees.

- (10) After Complainant 2 initially withdrew [REDACTED] application for the new role in [REDACTED], Callender told other employees [REDACTED] was mentally ill.
- (11) Callender repeatedly pressured Complainant 2 to join Messenger, even after [REDACTED] told him [REDACTED] had deleted the app. He told [REDACTED] he preferred Messenger because he could delete his messages on it, and because Messenger displays a read receipt anytime a recipient views a message. In deference to him, Complainant 2 installed Messenger after [REDACTED] accepted the new position. Once [REDACTED] installed it, [REDACTED] says [REDACTED] dreaded opening the program because [REDACTED] knew Callender could see whether [REDACTED] had viewed his messages—specifically those unrelated to work—and felt pressured to respond immediately, i.e., like [REDACTED] was at his beck and call.
- (12) Callender often used nicknames or labels to refer to Complainant 2. He called [REDACTED] an “unassuming assassin” and a “stealth lobbyist,” the implication being that Complainant 2 was adept at advocating for [REDACTED] and advancing [REDACTED] interests in covert ways.

C. Complainant 3's Allegations

Complainant 3 alleges Callender used his authority to block [REDACTED] advancement within the District in retaliation for a prior protected activity that [REDACTED] engaged in involving him.

In [REDACTED], the District hired Complainant 3. Between [REDACTED] date of hire and [REDACTED], Complainant 3 made an allegation of sexual harassment against Callendar, both informally and formally. For purposes of this summary, “informally” means Complainant 3 utilized the District's internal complaint process, and “formally” means Complainant 3 also engaged in an external process outside the District's complaint procedure; in sum, Complainant 3 engaged in a “protected activity” related to Callender. We refrain from divulging more information about the latter in order to safeguard and attempt to maintain, to the extent feasible, confidentiality as to Complainant 3's identity. For the purpose of this investigation, we did not investigate the veracity of Complainant 3's allegations from [REDACTED] prior informal and formal complaints. We did, however, consider whether Callendar retaliated against Complainant 3 for [REDACTED] participation in those past complaint procedures.

Complainant 3 alleges that in or around [REDACTED], [REDACTED] applied for a new position.
[REDACTED]

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Complainant 1: *Thumbs up emoji*

**Callender: Fyi, I heard [Complainant 3] asked about the position
Wtf**

Complainant 1: No way!!!!!!

Callender: Serious

**█ is lick [sic] damn
Like damn**

Complainant 1: If █ hadn't opened █ mouth to talk shhhhzzzz

Callender: U mean lie

Complainant 3 provided the following context for this exchange based on █ own recollection and █ conversation with Complainant 1: Callender had confided to Complainant 1 he had found a suitable internal candidate for a position in a District Division. Complainant 3 considered applying for the position and word of █ intention apparently reached Callender, who at the time was Chief of External Affairs. Complainant 3 ultimately reconsidered and decided not to apply, because █ did not want to work directly for Callender. Complainant 1 told Complainant 3 that Callender once declared Complainant 3 should be thankful to him, because █ received a payout from the District on account of █ prior complaint and that the payout enabled █ to buy █ home. Complainant 3 denies ever receiving any payout.² Complainant 3 says Complainant 1 apologized to Complainant 3 for making the “talking shhhhzzzz” comment to Callender, stating █ felt █ had no choice but to reciprocate this banter with him.

Complainant 3 alleges Complainant 1 also shared that Callender told █ he likes it when Complainant 3 comes to the executive area because █ “jiggles” when █ walks.

Complainant 3 believes the District did not comply with the requisite policies governing recruitments. █ asserts Callender prevented █ from securing the position and that his motive was retaliatory in light of █ prior complaint against him.

III. APPLICABLE DISTRICT POLICIES

The Complainants’ allegations against Callender implicate the District’s prohibitions on harassment, hostile work environment, abusive conduct, discrimination on the basis of parental status, and retaliation. We have excerpted relevant provisions of the Policy below.

Anti-Discrimination, Harassment, Abusive Conduct, and Retaliation Policy AD-2.8

Valley Water prohibits discrimination and harassment based on . . . gender, sex (which includes pregnancy, childbirth, breastfeeding and medical conditions

² Whether Complainant 3 received a payout is not germane to the allegations and outside the scope of this investigation.

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related to pregnancy, childbirth, or breastfeeding) . . . [or] parental status (“Protected Categories”).

1. Discrimination

Adverse employment actions related to hiring, promotions, assignments, performance management, and other terms and conditions of employment where membership in a Protected Category is a substantial motivating reason for the action. Discrimination is a Prohibited Behavior.

2. Retaliation

Valley Water strictly prohibits retaliation against any person by another at Valley Water for:

- making a non-malicious and non-frivolous internal complaint about an allegation of discrimination, harassment, abusive conduct, or retaliation;
- utilizing the complaint procedure of any state or federal agency to report discrimination, harassment, or retaliation;
- opposing discrimination, harassment, abusive conduct, or retaliation;
- reporting discrimination, harassment, abusive conduct, or retaliation;
- requesting an accommodation for religious practice or disability; or
- for filing, testifying, assisting, or participating in any manner in any investigation, proceeding or hearing conducted by Valley Water or a governmental enforcement agency relating to this policy or any state or federal anti-discrimination laws or regulations.

This means that any employee who participates in the protected activity described above shall not be adversely affected or discriminated against in their terms and conditions of employment because of their involvement in the protected activity. “Because of” means that the employee’s involvement in the protected activity must be a substantial motivating reason behind the prohibited retaliatory conduct. In short, there must be a causal connection.

Prohibited retaliation includes, but is not limited to: termination, demotion, suspension, failure to hire or consider for hire, failure to give equal consideration in making an employment decision, failure to make employment recommendations impartially, adversely affecting working conditions or otherwise denying any employment benefit to the person engaging in the protected activity. Prohibited retaliation includes any conduct that is reasonably likely to impair an employee’s job performance or prospects for advancement or promotion. Prohibited retaliation

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does not include minor or trivial actions or conduct that is not reasonably likely to do more than anger or upset an employee.

Valley Water does not consider conduct in violation of this Policy to be within the course and scope of employment and does not sanction such conduct on the part of any employee, including management employees. Employees found to have engaged in retaliatory conduct are subject to disciplinary action. Retaliation is a Prohibited Behavior.

3. Harassment

Harassing conduct may include, but is not limited to: verbal harassment (obscene language, demeaning conduct, slurs, or threats); physical harassment such as unwanted touching, assault, or actual physical interference with normal work; visual harassment (offensive posters, drawings, photographs, cartoons, or objects); unwanted sexual advances; and other communicative harassment (offensive emails, text messages, internet postings, letters, etc.) because of a Protected Category. Harassment is a Prohibited Behavior.

4. Hostile Work Environment

A hostile work environment exists where one is subjected to unwanted harassing conduct because of his or her Protected Category, where the harassing conduct is severe or pervasive, where one considers the work environment to be hostile or abusive as a result of the conduct, and where a reasonable person in the same circumstances would also have found the environment to be hostile or abusive. Creating a Hostile Work Environment is a Prohibited Behavior.

5. Abusive Conduct

Valley Water employees, including managers, shall refrain from any malicious conduct that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interest. Valley Water's legitimate business interests include employees being held accountable for timeliness, meeting deadlines, producing deliverables adequately, and other general work responsibilities, among other things.

Examples of abusive conduct include, but are not limited to, repeated infliction of verbal abuse, such as the use of malicious, derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the intentional sabotage or undermining of a person's work performance.

Abusive Conduct that is substantially motivated by one's Protected Category may constitute harassment. Abusive Conduct is a Prohibited Behavior.

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IV. FINDINGS

A. Standard of Proof and Findings Cited Herein

The standard of proof we applied in making our findings was whether, after weighing the evidence gathered, the alleged conduct more likely than not occurred. This is commonly known as the “preponderance of the evidence” standard. Under this standard, exercising our reasonable discretion as investigators, we only sustained a factual allegation if the preponderance of evidence showed the allegation was more likely than not to be true. Even though this standard mirrors the burden of proof in civil litigation, it bears noting we have made no legal findings or conclusions. Rather, our investigation is limited to determining whether Callender’s alleged conduct more likely than not violated any of the District’s workplace policies.

As a threshold matter, we questioned Callender extensively about Complainant 1’s, Complainant 2’s, and Complainant 3’s allegations over the course of five interviews, and these interviews ranged from four to seven hours. We presented him with screenshots of the texts, emails, and messages the Complainants provided to us, and gave him multiple opportunities to dispute the authenticity of this evidence and other records germane to this investigation. Callender did not dispute the authenticity of the messages and other documentary evidence, even if he could not recall sending them. Callender was represented by counsel during his interviews—specifically, Lori Costanzo of Costanzo Law Firm.

This Executive Summary does not present all factual findings rendered, but the full report will do so. Instead, here, we cite only some of these findings to illustrate the evidence on which we relied to reach our ultimate conclusions on whether a policy violation occurred.

B. Credibility Determinations

i. Complainant 1’s Credibility

We found Complainant 1 to be credible in some areas but lacking credibility in others. While we did sustain many of [REDACTED] allegations, we also found Complainant 1 to be lacking in credibility—perhaps out of self-interest—in other areas. The timing of Complainant 1’s complaint vis-à-vis Respondent 2’s email criticizing [REDACTED] job performance and revoking [REDACTED] teleworking privileges seemed significant. Although Complainant 1’s allegations spanned years, [REDACTED] only complained after an adverse employment action, suggesting [REDACTED] reacted to a legitimate unfavorable performance evaluation with [REDACTED] complaint. Written evidence and [REDACTED] own testimony corroborate that Complainant 1 played along with much of Callender’s behavior, whether [REDACTED] felt uncomfortable or not, for years. However, Callender still admitted or could not adequately explain a number of troubling factual allegations. Complainant 1 made many salacious allegations after making [REDACTED] initial complaint and failed to explain why [REDACTED] did not initially report this conduct in earlier interviews. While acknowledging that human memory is fallible, the piecemeal complaints suggested Complainant 1 piled on as much as [REDACTED] could to bolster [REDACTED] complaint in the face of [REDACTED]

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unfavorable performance review, rather than that [REDACTED] genuinely felt offended or intimidated by the behavior. However, Complainant 1 often told other witnesses (such as Complainant 2, Complainant 3, Witness 3, Witness 4, and others) either contemporaneously or after the fact (but prior to [REDACTED] complaint) about inappropriate communications Callender sent or told [REDACTED], indicating either genuine discomfort or the desire to scandalize others.

ii. Complainant 2's Credibility

We found Complainant 2 to be credible. Many of [REDACTED] conversations with Callender occurred over text or Messenger, and Complainant 2 provided screenshots of these exchanges. [REDACTED] responses to our questions were not contradictory, and we observed no indicia of bias. In fact, some of [REDACTED] assertions arguably gainsaid [REDACTED] own professional interests. For example, [REDACTED] indicated [REDACTED] did not think the District had a compelling need for [REDACTED] new position, even though [REDACTED] compensation increased once [REDACTED] accepted the role.

Furthermore, Callender for his part corroborated the alleged interactions, although he denied he had any romantic interest and insisted he did not intend to annoy or harass [REDACTED]—he characterized Complainant 2 as a “professional friend.” Callender acknowledged Complainant 2’s texts and messages were authentic, even where he offered an alternative explanation for them.

iii. Complainant 3's Credibility

We found Complainant 3 to be a credible witness overall. Other witnesses corroborated most of [REDACTED] factual allegations, although the witness³ who allegedly told Complainant 3 that they overheard Callender tell Witness 2 he wanted Witness 2 to sit on the interview panel disputed this account. The witness also denied that they overheard Witness 1 engage in a heated argument with Witness 2. The witness said they never overheard Witness 2 discuss the recruitment with Callender, nor did they overhear Witness 1 engage in a heated argument with Witness 2. But other evidence, including Witness 2’s own statements to us, suggested Witness 2 had concerns about Complainant 3’s judgment—unfairly so, according to Witness 1—based on purported misrepresentations Complainant 3 had made while giving a presentation during a meeting [REDACTED] [REDACTED] overseen by Witness 2’s team, and that Witness 2 may have been biased against Complainant 3 as a result. Complainant 3 did not provide any contradictory statements or display any signs [REDACTED] was being untruthful.

iv. Callender's Credibility

We also evaluated Callender’s credibility. Callender frequently gave evasive, argumentative, and sarcastic answers. Combined with explanations of certain incidents that defied reasonable interpretation and a refusal to acknowledge any inappropriateness of his behavior, we found his

³ We refrain from disclosing the names of witnesses we interviewed where, as here, the witness’ identity is not directly relevant to demonstrating the rationale or context behind our factual or policy findings.

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credibility suspect. For example, we sustained a finding that Callender sent Complainant 1 a picture of his lap and crotch area. His explanation of this conduct—that he sent the picture to demonstrate to Complainant 1 that he was wearing casual clothes below the waist—defied logic given that his shoes were not visible, and his shirt, tie, and coat could barely be seen in the photo. Similarly, Callender admitted to sending Complainant 1 a picture of a woman in a bikini. When asked why he sent [REDACTED] this message, he explained that the woman was a friend of his who worked in Cancun, that he was going to Cancun, and that he thought he had previously spoken about the woman in the photo with Complainant 1. Callender offered no explanation why, even if he had talked to Complainant 1 about this woman, he thought that [REDACTED] would like to see a photo of the woman in a bikini.

Callender’s explanation for many incidents related to Complainant 2 also lacked credibility. For example, he said that he did not tell anyone at the District or in HR that he believed Complainant 2 was [REDACTED] because he “didn’t want to be part of the rumor mill” yet admitted discussing the topic with Complainant 1 and another coworker, Witness 5.

While Callender did admit to many of the allegations made by the Complainants—thus demonstrating some truthfulness—his explanation of these events often lacked credibility and sometimes defied common sense. We analyze his credibility in more detail in the Investigative Report.

C. Findings on Complainants’ Allegations

i. Complainant 1’s Allegations

1. Factual Findings

Complainant 1’s numerous alleged interactions with Callender would overwhelm the summary nature of this communication if we provided a list of whether we found each allegation more likely than not to be true. We instead note that we sustained a significant amount of Complainant 1’s factual allegations. Although, as discussed within, [REDACTED] motivations as to the timing of [REDACTED] complaint are suspect, [REDACTED] backed up many of [REDACTED] allegations with written evidence that allowed us to substantiate [REDACTED] claims. When we questioned Callender about his exchanges with Complainant 1, he acknowledged their authenticity. Multiple witnesses also observed Callender treat Complainant 1 differently from other employees and often sought [REDACTED] out, even after Complainant 1 stopped working regularly with Callender.

Callender initiated conversations, requested favors, and told Complainant 1 of his interactions with others on his own initiative. Complainant 1 did engage at times, but his statements in and of themselves were inappropriate in the workplace and unprofessional. We did sustain that Complainant 1 specifically asked Callender to stop treating [REDACTED] differently from other subordinates, and either interact with them as much as he does with [REDACTED] or ignore [REDACTED] like he does them. He refused to do so. Complainant 1 remained cognizant of the power dynamics inherent in [REDACTED]

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interactions with Callender. We found [REDACTED] intimidation or acquiescence due to his position realistic. Complainant 1 explained how [REDACTED] tried to avoid interacting with him, going so far as to keep his calendar open on [REDACTED] computer so [REDACTED] could regularly check it to see if he was in a meeting. That way, if he was not in a meeting, [REDACTED] could take steps to avoid interacting with him in case he came by (by pretending to be on the phone or otherwise appearing busy). We found this explanation plausible—Complainant 1 indicated [REDACTED] had access to his calendar and plausibly described the types of meetings he had and his other day-to-day commitments.

On the other hand, Callender failed to provide credible alternative explanations for his texts, messages, and actions. He requested Complainant 1, his subordinate and coworker, water his tomato plants at his home instead of hiring a gardener or asking a friend to do so. He regularly told Complainant 1 he should have fired [REDACTED] or that he gave Complainant 1 [REDACTED] position, hanging [REDACTED] livelihood over [REDACTED] head. He told Complainant 1 about his exploits with women and sent [REDACTED] photos of women. When questioned, he often alleged that he joked with Complainant 1 and they regularly engaged in such banter. Even if Complainant 1 participated, his messages frequently crossed the line of professionalism, especially for Callender, who was in a position of power over his subordinate and had no direct supervisory need to contact [REDACTED]. Callender also admitted to “probably” making some comments that Complainant 1 alleged or comments similar to what Complainant 1 alleged, even without corresponding written evidence. By way of example, although Callender denied asking to see Complainant 1’s high heels, he admitted that he often compliments coworkers on their attire or shoes. Combined with Complainant 1’s testimony and [REDACTED] contemporaneous sharing of his comments with other witnesses, it is more likely than not that Callender commented on Complainant 1’s shoes.

In sum, and as explained in more detail in our full report, Callender’s own testimony, witness testimony, and corroborating documentary evidence led us to sustain findings that most of Complainant 1’s factual allegations were more likely than not true, despite any misgivings we may have had about the timing of [REDACTED] making them.

2. Alleged or Potential Policy Violation(s): Abusive Conduct, Harassment and Hostile Work Environment Based on Sex, and Discrimination and Harassment Based on Parental Status

(a) Abusive Conduct

The Investigators evaluated whether any of the sustained findings of fact alleged by Complainant 1 violated the District’s Policy prohibiting abusive conduct. Under the Policy, “abusive conduct” includes malicious conduct unrelated to a legitimate business interest, including holding employees accountable for timeliness and adequately producing deliverables. Examples of abusive conduct include malicious, derogatory remarks, insults, epithets, or verbal conduct that a reasonable person would find threatening, intimidating or humiliating or the intentional sabotage of one’s performance. The Policy does not define the meaning of “malicious.” Merriam-Webster

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defines “malicious” as “having or showing a desire to cause harm to someone: given to, marked by arising from malice.”

The balance of Callender’s conduct towards Complainant 1 does not appear objectively to have been malicious, save his comments to ■■■ threatening ■■■ job security. The Policy, however, also defines abusive conduct in terms broader than the dictionary definition of “malicious,” noting that it can also include derogatory remarks, insults, or verbal conduct that a reasonable person would find threatening, intimidating, or humiliating. The sustained findings evidence that Callender and Complainant 1 had an inappropriate dynamic, which Callender perpetuated even if Complainant 1 did not object to and in fact participated in the conduct. Within the context of their relationship, Callender’s apex status within the organization cannot be discounted. Complainant 1’s assertion that ■■■ felt pressured to engage in reciprocal banter and conduct for fear ■■■ would lose ■■■ job is credible, given Callender’s authority over ■■■ and broader role in his position.

We find at the very least that Callender’s threats to terminate Complainant 1, even if made in jest, were malicious, and that the sustained findings also reflect Callender made derogatory remarks to ■■■ and insulted ■■■. We further find a reasonable person in Complainant 1’s position would have been intimidated in similar circumstances.

(b) Harassment and Hostile Work Environment Based on Sex

The Investigators evaluated whether any of the sustained findings of fact alleged by Complainant 1 violated the District’s Policy prohibiting harassment and hostile work environment conduct on the basis of sex.

The Policy on harassment provides in relevant part that “[h]arassing conduct may include, but is not limited to: verbal harassment (obscene language, demeaning conduct, slurs, or threats).” The Policy section addressing hostile work environment harassment indicates a violation occurs “where the harassing conduct is severe or pervasive, where one considers the work environment to be hostile or abusive as a result of the conduct, and where a reasonable person in the same circumstances would also have found the environment to be hostile or abusive.”

Although Complainant 1 made many unsubstantiated salacious allegations of sexual harassment against Callender that we cannot sustain, and we found Complainant 1 to be complicit in some of the conduct about which ■■■e now complains, we nonetheless find, based on a preponderance of the evidence, that Callender engaged in severe or pervasive conduct that violated the District’s prohibition on sexual harassment. At least some of the allegations Complainant 1 made that we sustained support this finding. For example, Complainant 1 sent Callender a photo of his clothed lap in 2020. Callender insisted his motive in doing so was benign: he said he previously had a conversation with Complainant 1 regarding his work attire at home during the Covid-19 pandemic, and that he sent the photo to show he was “wearing sweats on the bottom, and dressed up on the top.” He indicated his tie, dress shirt, and coat could be seen from the photo. But we did not find this explanation to be particularly credible or reassuring. First, he gave this explanation after we

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presented the photo to him. His shirt, tie, and coat are barely visible. Nor can his shoes be seen in the photo. And whatever his reasoning for sending it, we found Complainant 1's allegation that the photo troubled [REDACTED] (as it was essentially a close-up picture of Callender's lap) to be believable.

We wish to address the timeline pertaining to Complainant 1's allegations and the reporting period set forth in the District's Policy. The Policy provides that complainants may report incidents three years after the date of the last occurrence or event, and that this period may be extended up to 90 days under certain circumstances. [REDACTED]

Said otherwise, [REDACTED] makes allegations dating back to 2017, i.e., an approximately eight-year time period. Moreover, Complainant 1's allegations were not isolated, discrete instances—[REDACTED] articulated a detailed, drawn-out pattern and practice and dynamic with Callender that remained consistent or habitual over time and over a series of interactions and conversations. To fully and appropriately evaluate [REDACTED] claims pursuant to the Investigators' obligation to undertake an unbiased and objective review, it would have been unreasonable to exclude facts pre-dating the three-year reporting period where those facts related to timely allegations or could support [REDACTED] pattern-and-practice allegations. To ensure fairness to Callender, we refrained from sustaining specific factual allegations that fell outside the reporting period where they lack corroboration and applied particular scrutiny to Complainant 1's claims from outside the limitations period.

Furthermore, as noted, we sustained Complainant 1's allegations of incidents that occurred within the reporting period and are indicative of harassment or hostile work environment conduct at least in part. For example, Callender asked Complainant 1 for personal favors (e.g., watering his plants at home); told Complainant 1 there was a rumor they were having an affair (and helped spread this rumor by disclosing it to other personnel, specifically other executive staff, and not taking sufficient steps to prevent its further dissemination); asked Complainant 1 personal questions about [REDACTED] private life; and repeatedly told [REDACTED] he should have fired [REDACTED]. Callender also asked Complainant 1 if [REDACTED] had ever "been with" an African American man and spoke with [REDACTED] about his own personal life and exploits. We discuss more examples in the full Investigative Report, but these ones are particularly illustrative. And the alleged incidents we sustained that occurred outside the reporting period also helped demonstrate a nexus between the more recent conduct and Complainant 1's sex.

An argument can be made that Complainant 1 willingly participated in the foregoing conduct. But as discussed, we find Complainant 1's allegation that [REDACTED] only did so because [REDACTED] feared Callender credible, given the power imbalance between them. A reasonable person standing in Complainant 1's shoes would have found Complainant 1's work environment to be hostile or abusive and replete with overtures or unwelcome interactions based on sex.

For these reasons, credible evidence exists to sustain an ultimate finding that Callender subjected Complainant 1 to harassment and a hostile work environment.

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(c) Discrimination and Harassment Based on Parental Status

The Investigators evaluated Complainant 1's allegations relating to Callender's comments about Complainant 1's parental status and whether this conduct, to the extent we sustained the allegations in whole or in part, supports a finding that Callender violated the Policy's prohibitions against discrimination or harassment based on parental status. We did not sustain Complainant 1's allegations that Callender made comments threatening the security of Complainant 1's job if ■ did not timely secure childcare. Moreover, any discussion between Callender and Complainant 1 about the fact that Complainant 1 had a child, objectively needed childcare to ensure ■ reported to work timely and fulfilled ■ job duties, or could not treat the office as a daycare by bringing ■ child there for excessive durations, would not by itself support a harassment claim.

Moreover, an adverse action would be needed to support a finding that Callender discriminated against Complainant 1 based on parental status. The Policy defines an adverse employment action as relating to hiring, promotions, assignments, performance management, and other terms and conditions of employment where membership in a protected category is a substantial motivating reason for the action. But Complainant 1 did not accuse Callender of any adverse employment action that satisfies this definition. At most, ■ broadly accused ■ direct supervisor, Respondent 2, of consulting with Callender on all meaningful decisions pertaining to ■ employment. Complainant 1 attributed certain adverse employment actions to Respondent 2: ■ alleged Respondent 2 gave ■ negative feedback regarding ■ job performance and revoked ■ telework privileges. Those actions, theoretically, could be imputed to Callender based on Complainant 1's allegation that Callender conspired with Respondent 2 to mistreat Complainant 1. But we reject this suggestion, because to the extent Respondent 2 or the District engaged in these actions, we found they did so for nondiscriminatory, legitimate work-related reasons. And we obtained no evidence that Callender attempted to or did in fact influence these decisions, even assuming—without finding—he harbored discriminatory animus toward Complainant 1 based on ■ parental status.

Complainant 1 and other witnesses also discussed that, on occasion, Complainant 1 and other District employees, including Callender, would bring their children to work. Complainant 1 discussed feeling judged by some for doing so and more recently being questioned about this by Human Resources. The District has no formal policy on this topic. And we are unaware of any policy or rule that grants Complainant 1 an unqualified right to bring ■ child to work. Nor does it appear the District formally precluded Complainant 1 from bringing ■ child to the office, and Complainant 1 for ■ part never made this allegation. Accordingly, even if we had sustained these allegations, they would be insufficient to demonstrate a violation of the Policy's provisions regarding harassment or discrimination.

For these reasons, we do not find that Callender harassed or discriminated against Complainant 1 due to ■ parental status.

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3. Alleged or Potential Policy Violation(s): Retaliation

In relevant part, the Policy identifies the following acts as examples of protected activity: (1) “making a non-malicious and non-frivolous internal complaint about an allegation of discrimination, harassment, abusive conduct, or retaliation”; and (2) “utilizing the complaint procedure of any state or federal agency to report discrimination, harassment, or retaliation.” The Policy further provides that “any employee who participates in the protected activity described above shall not be adversely affected or discriminated against in their terms and conditions of employment because of their involvement in the protected activity.” Under the Policy, prohibited retaliation includes “any conduct that is reasonably likely to impair an employee’s job performance or prospects for advancement or promotion,” but excludes “minor or trivial actions or conduct that is not reasonably likely to do more than anger or upset an employee.”

The Policy strictly prohibits retaliation by another District employee where the complainant makes a non-malicious and non-frivolous internal complaint about an allegation of discrimination, harassment, abusive conduct, or retaliation. Employees who engage in protected activity shall not be adversely affected or discriminated against in their terms and conditions of employment for having done so, *i.e.*, that an adverse action is a substantially motivating reason behind the prohibited retaliatory conduct.

The Investigators evaluated whether any of the sustained conduct by Callender would support a finding that Callender retaliated against Complainant 1 for having engaged in protected activity—that activity being the making of the October 25, 2024 complaint and ■ subsequent actions to expound upon the same. Here, the only retaliation-related allegation that Complainant 1 made against Callender was that Callender and Respondent 2 allegedly conspired to paint Complainant 1 as a problematic employee following Complainant 1’s submission of ■ October 25, 2024 complaint to Human Resources. ■ did not, however, allege specifics concerning Callender’s behavior in particular. Moreover, Callender started a leave of absence in fall 2024 and, since that time, has been out of the workplace. While that fact alone does not negate the possibility that Callender may have been having conversations with District employees about Complainant 1 while out of the office, the Investigators did not discover specific evidence of that or other evidence that would otherwise support Complainant 1’s theory of conspiracy.

We did not sustain that Callender engaged in retaliation-related behavior; we likewise do not sustain that Callender violated the Policy’s prohibition regarding the same.

ii. Complainant 2’s Allegations

1. Factual Findings

Given the voluminous nature of Callender’s allegedly objectionable communications and interactions with Complainant 2, we are unable to provide a point-by-point recitation of whether every factual allegation made by Complainant 2 is more likely than not to be true. Instead, for

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purposes of this Executive Summary, we advise that sufficient evidence exists to sustain most if not all of Complainant 2's allegations, or at least [REDACTED] principal allegations. As noted, we found Complainant 2 to be credible, and [REDACTED] was able to substantiate many of [REDACTED] allegations by presenting screenshots of texts and messages from Callender. When we presented these screenshots to Callender, he acknowledged their authenticity. Furthermore, multiple witnesses said they observed Callender display an unusual interest in Complainant 2 and frequent [REDACTED] cubicle even though [REDACTED] did not report directly to him.

Additionally, Complainant 1 shared that Callender told [REDACTED] Complainant 2 was mentally ill after Complainant 2 withdrew [REDACTED] application for a new position. Callender admitted he told multiple District employees he believed Complainant 2 had mental health issues and was possibly [REDACTED], commenting to them, "I don't want to see someone that's depressed [REDACTED] [REDACTED]" He indicated he told Complainant 1 that Complainant 2 "probably needs someone to make sure they're looking after [REDACTED], and [REDACTED] probably needs a hug" and that [REDACTED] was depressed because [REDACTED] was "not being loved by [REDACTED] parents" (according to Callender, Complainant 2 informed him [REDACTED] parents dislike [REDACTED]). He also characterized Complainant 2 as "paranoid." He opined [REDACTED] was at one point [REDACTED] and acknowledged he advised Complainant 1 and another employee—because he believed these two individuals were close to Complainant 2—that they should watch over Complainant 2 and "be nice, be kind to [REDACTED]," and "keep [REDACTED] close, because we don't want someone committing [REDACTED] on our watch." Callender claims he formed this opinion after watching [REDACTED] videos in which Complainant 2 discussed mental and physical health. He claimed that others at the District also watched these videos. He could not recall the specific mental health issues Complainant 2 mentioned [REDACTED] had experienced—only that [REDACTED] generally admitted to struggling with [REDACTED] mental health.⁴

In many of their exchanges via text and Messenger, Callender appeared to be comparatively more communicative. He asked Complainant 2 questions and sent [REDACTED] back-to-back texts and messages regarding [REDACTED] personal life, even when [REDACTED] would not respond. Often, Complainant 2 would respond with only a few words, a "like" symbol, or an emoji. These terse responses were consistent with Complainant 2's assertion that [REDACTED] tried to signal to Callender [REDACTED] was uncomfortable pursuing an outside relationship with him.

Complainant 2 never explicitly asked Callender to refrain from texting [REDACTED] at night or inquiring about [REDACTED] personal life. But as discussed, [REDACTED] told him [REDACTED] did not wish to attend Sharks games with him, and Callender disregarded [REDACTED] wishes by repeatedly inviting [REDACTED] to games. Complainant 2 maintains [REDACTED] also told Callender their colleagues took notice whenever they saw him speaking to [REDACTED] at the office, and that [REDACTED] was uncomfortable with the attention he was giving [REDACTED] and the growing perception he favored [REDACTED]. Callender pressed [REDACTED] for details and even jokingly offered to "bribe" [REDACTED] for this information with Sharks game tickets. Complainant 2 also feared Callender

⁴ We watched these videos, and in them, Complainant 2 appeared to address more physical health changes rather than any mental health issues with which [REDACTED] was purportedly struggling. Put differently, the videos did not strike us as a "call for help," which is how Callender characterized them.

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would discover [REDACTED] was uncomfortable with his overtures and retaliate against [REDACTED]. Given Callender's status within the District, we found this fear to be plausible. Complainant 2 stressed [REDACTED] interactions with Callender greatly bothered [REDACTED], and that [REDACTED] felt "sick to [REDACTED] stomach" whenever he reached out.

Callender, by contrast, did not provide credible alternative explanations for his texts and messages. At one point, when we asked Callender if he texted or socialized with [REDACTED] employees in the same way (e.g., complimented their attire, or wished them happy birthday), Callender responded he does not engage in "gender identification" or "relate to people by gender identity." This answer struck us as glib and insincere, particularly because Complainant 1 shared messages from Callender to [REDACTED] in which he arguably engaged in "gender identification."⁵ Many of his other responses were similarly evasive. Frankly, Callender's characterization of Complainant 2 as a mentally ill or [REDACTED] person who needed a hug, and his representation he was watching over [REDACTED], seemed gendered and paternalistic. Callender admitted he did not notify the District's workplace violence coordinator or other qualified personnel of his concerns that Complainant 2 might [REDACTED] or take other steps to address this risk, as one would expect of a high-level manager in a large organization. Moreover, Callender's conduct is particularly troubling because in his position, he wields considerable power and influence within the organization. The power imbalance between Complainant 2 and Callender is stark and during our interviews with [REDACTED] Complainant 2 repeatedly called attention to it. [REDACTED] expressed [REDACTED] suspicions were driven in part by this disparity in rank— [REDACTED] wondered why Callender was constantly reaching out and trying to socialize with [REDACTED] when they had virtually no professional overlap.

Callender also conceded that some of Complainant 2's allegations were truthful even where they were not independently substantiated by messages or texts. For example, he admitted he likely told Complainant 2 he preferred to use Messenger because it generated read receipts and he could delete his messages on it. Such admissions bolstered Complainant 2's credibility.

In sum, the Investigators sustained most of Complainant 2's allegations. We found [REDACTED] to be credible, and nearly all of [REDACTED] allegations were corroborated with documentary evidence or, for those that were not, were supported by witness testimony or Callender's own admissions. All of our factual findings with respect to Complainant 2's allegations are discussed in our full report.

⁵ In one such message to Complainant 1, dated December 15, 2018, Callender wrote: "Well maybe I am. But I have no babies by women at work. And no GFs at work. But everyone wants me to have both. Why not give [a former coworker] a bf. Or someone else secret babies." In another exchange on or about March 19, 2019, Callender messaged Complainant 1: "I'm quitting dating women. They are WAY to [sic] crazy." Complainant 1 asked, "You gonna date men?????" and Callender replied, "F no," followed by "Married women."

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2. Alleged or Potential Policy Violation(s): Harassment and Hostile Work Environment Based on Sex

The Investigators evaluated whether any of the sustained findings of fact as to Complainant 2 constituted a violation of the District's Policy, specifically its prohibition on harassment and hostile work environment conduct.

Based on the allegations we sustained, we believe credible evidence exists to sustain an ultimate finding that Callender engaged in sexual harassment toward Complainant 2, and/or that Callender subjected Complainant 2 to a hostile work environment based on [REDACTED] sex. The Policy provides in relevant part that “[h]arassing conduct may include, but is not limited to: verbal harassment (obscene language, demeaning conduct, slurs, or threats).” And the section of the Policy addressing hostile work environment harassment indicates a violation occurs “where the harassing conduct is severe or pervasive, where one considers the work environment to be hostile or abusive as a result of the conduct, and where a reasonable person in the same circumstances would also have found the environment to be hostile or abusive.” We find Callender's conduct toward Complainant 2 meets these standards: his conduct was severe or pervasive (and likewise hostile or abusive), particularly his statements to other employees that Complainant 2 was depressed and possibly [REDACTED] because [REDACTED] parents did not love [REDACTED]. And a reasonable person in Complainant 2's circumstances would have found the environment to be hostile or abusive. Callender's characterization of Complainant 2 as mentally ill also amounts to demeaning language or conduct. The prohibition on harassment also extends to unwanted sexual advances, and we find Callender's overtures toward [REDACTED]—including but not limited to his multiple invitations to Sharks' games, his late-night calls and texts, and his statement “I owe you a drink”—seemed to be romantic in nature and based on Complainant 2's sex. The evidence supports a finding that Callender's conduct likely violated these provisions of the Policy.

iii. Complainant 3's Allegations

1. Factual Findings

Sufficient evidence exists to sustain most of Complainant 3's factual allegations, i.e., that [REDACTED] applied for a position in [REDACTED]; that the hiring authority for that position, Witness 1, favored [REDACTED], chiefly because of [REDACTED] stronger presentation skills and stronger interview performance; and that Callender made the ultimate decision to hire the second candidate instead of Complainant 3. The evidence on these allegations is relatively undisputed. But witnesses have made inconsistent statements regarding other allegations or details relating to this incident.

Multiple witnesses with intimate knowledge of the District's hiring processes could not recall another occasion on which Callender overrode Witness 1's selection of a candidate for an [REDACTED] position that directly reported to [REDACTED]. With that said, Witness 1, Witness 2, and Callender all provided credible non-retaliatory reasons as to why Witness 2 and Callender may have favored the second candidate over Complainant 3: they cited the former's particular

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background and certain experience which Complainant 3 lacked. Witness 2 also clarified to investigators that the position was [REDACTED] and Callender had final say given his hierarchical position. Other witnesses confirmed that Callender approved candidates for [REDACTED] roles.

Witness 1 indicated that when [REDACTED] informed Complainant 3 of the panel's decision, Complainant 3 was shocked. Witness 1 said [REDACTED] did not recall having a conversation with Complainant 3 about the latter's prior complaint against Callender. Nor did [REDACTED] recall whether [REDACTED] told Complainant 3 [REDACTED] expected Callender to retire soon and that new opportunities would thereafter emerge for Complainant 3. But Witness 1 said [REDACTED] "could not remember" or "could not recall" in response to many of our questions.

Although [REDACTED] could not recall this development with certainty, Witness 1 indicated two different employees may have been the two other panelists originally assigned to the third interview panel. [REDACTED] indicated it made more sense for them to conduct the interview rather than Callender and Witness 2, because they had direct knowledge of Complainant 3 and the second candidate's work and involvement with or oversight of the specific program. Witness 1 said [REDACTED] was surprised at the last-minute substitution of Callender and Witness 2. [REDACTED] also indicated [REDACTED] did not think Callender would participate in the third panel but would instead conduct a one-on-one meeting with the finalist before deciding whether to approve the panel's selection. Witness 1 could not recall an instance in which Callender rejected the hiring panel's recommendation.

Witness 6, who assisted with the recruitment, indicated they thought Complainant 3 was the stronger candidate, based on Complainant 3's experience and interview performance (Witness 6 sat in on both Complainant 3 and the second candidate's interviews). Following the interviews, Callender emailed Witness 6 the hiring panel's rationale for selecting the second candidate over Complainant 3. In that email, Callender cited the second candidate's specific background and commitment to racial equity and inclusion as factors. At Witness 1's behest, Witness 6 prepared a hiring justification memo, but Callender took issue with the memo because it did not recite all the factors listed in his email. Callender directed Witness 6 to include a copy of Callender's email in the recruitment file. In an email to the District's Human Resources Director, Witness 2 likewise expressed concern that Witness 6 had not sought [REDACTED] input before submitting the justification memo to Callender. Witness 6 informed us they could not "think of another example of this happening"—i.e., Witness 2 and Callender attempting to influence Witness 6's recruitment notes—in the "hundreds of recruitments" Witness 6 had overseen.

Notably, we interviewed Witness 6 because Complainant 2 had identified them as a potential witness in connection with [REDACTED] own allegations before Complainant 3 even submitted [REDACTED] retaliation complaint. But, during the interview we scheduled with Witness 6 to inquire about Complainant 2's allegations, Witness 6 [REDACTED] that Callender also had retaliated against Complainant 3. Witness 6 shared that Witness 2 was initially supposed to sit on the second interview panel, but that Witness 1 arranged for another District employee to replace [REDACTED] (a contemporaneous email exchange corroborates this account, which closely mirrors Complainant 3's allegation). Witness 6 indicated Witness 7 thereafter emailed them, directing them to replace

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the original panelist with Witness 2 on the third panel per Callender's request. Witness 7 told Witness 6: "[Callender] was fine with having [another panelist] replace [Witness 2] on the 2nd Panel but he didn't want [Witness 2] removed from the panels altogether, so he wants [REDACTED] on the third panel. Please make sure [REDACTED] is invited/included." The rationale given for this change was that the District's hiring policies prohibited the hiring manager (here Witness 1) and the manager's subordinate from sitting on an interview panel together. Both Witness 6 and Witness 8 stated in their emails they were unaware of this policy. Based on these emails and statements provided by witnesses, we are unsure if it was a formal policy that had recently been adopted or simply a recommended practice. Witness 6 informed us there was no such policy and the rationale was entirely pretextual. And no other witness cited this policy when asked why Witness 2 replaced the original panelist or otherwise joined the final interview panel. Multiple witnesses indicated the change was likely made at Callender's behest.

Witness 2 informed us [REDACTED] believed Complainant 3 is a strong communicator with strong writing and analytical skills, but that the second candidate was the better candidate for the position because of [REDACTED] particular background.

Callender's statements about the recruitment were inconsistent with other witnesses' accounts. Witness 2 informed us that [REDACTED] expressed concerns about Complainant 3 to Callender before the interviews. [REDACTED] told Callender Complainant 3 had made "various misrepresentations" during a presentation regarding the status of an outstanding [REDACTED] Witness 2 was directly or indirectly overseeing. Callender denies Witness 2 ever expressing any concerns about Complainant 3 to him. And Witness 1 offered a somewhat different account: [REDACTED] claimed Witness 2 was biased against Complainant 3 because, a year or so before the recruitment, Witness 1 endorsed a proposal to place a [REDACTED]—which Witness 2 at the time was supervising—under Complainant 3's purview. The District never implemented this change, but according to Witness 1 the episode bred mistrust between Witness 2 and Complainant 3 because Witness 2 misconstrued it as an attempted "power play" on Complainant 3's part. Witness 1 recalled expressing this concern to Callender, but Callender indicated no one ever communicated to him that Witness 2 may have been biased against Complainant 3. Callender disclosed that interview panelists are required to sign a form listing the District's interview guidelines ("Guidelines Form")⁶. According to Callender, these guidelines require interview panelists to be impartial. He said Witness 2 could not have been biased "because [REDACTED] signed the form." But Callender later clarified he did not know if either he or Witness 2 signed the Guidelines Form with respect to this recruitment.

We obtained a copy of the Guidelines Form from a witness. The witness shared that any District employee participating in a panel interview must manifest their assent either by signing the Guidelines Form or acknowledging receipt of and agreeing to abide by it in an email to HR. The Guidelines Form provides that in agreeing to participate in the interview, the panelist has "no conflict of interest that would compromise [their] ability to be objective in [the interview] process

⁶ The complete title listed on the form is "INTERVIEW PANEL GUIDELINES (CLASS SPEC / 0000-E)."

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(i.e., personal relationship, previous interaction that may cause a predisposed bias, etc.).” The recruitment file contained copies of emails from the interviewers who sat on the first two panels, acknowledging or agreeing to adhere to the guidelines. But the file did not contain a signed copy of the Guidelines Form or an email acknowledging receipt of and adherence to the guidelines from Witness 1, Witness 2, and Callender. We repeatedly requested copies of any such signed forms or emails from Witness 1, Witness 2, and Callender, but never received them.

An email exchange between Witness 1 and Witness 6 also suggests Callender decided to assign Witness 2 to the interview panel. On [REDACTED], Witness 6 emailed Witness 1: “Hi [Witness 1], just an FYI that I was instructed to put [Witness 2] on the final round with you and [another panelist]. It sounds as though you may have already been contacted about this, but in case you hadn’t, I wanted to let you know.” Witness 1 replied, “I was not contacted. Instructed by who?” The following day, Witness 6 gave an update to Witness 7: “Hi all, I just got off the phone with [Witness 1] who spoke with [Callender] this morning about [REDACTED] recruitment. [Witness 1] and [Callender] came to the agreement that the final round panel (in person) on [REDACTED] will consist of [Callender], [Witness 2], and [Witness 1]. Please let me know if you have any questions or concerns.” A few minutes later, Witness 6 emailed another update: “Hi all, I just got off the phone with [Witness 1] who told me that [REDACTED] spoke with [Callender] this morning. He’d like to be added to the final round interview panel ([REDACTED] in-person in the Chief’s conference room). There’s been a lot of movement of panelists in this recruitment so I just wanted to let you know that the final panel per [Callender] and [Witness 1] will be: [Callender], [Witness 1], and [Witness 2]. I’ll update the calendar shortly.” Witness 6 confirmed this sequence of events to us.

Callender did not recall whether he asked Witness 2 to help him conduct the interview, but he referred to the third panel as “my” panel and interview.

Additionally, Callender, for his part, claimed he was unbiased toward Complainant 3. He admitted he sent the text to Complainant 1, asserting Complainant 3 lied. He stated Complainant 3 was “dishonest about things about me,” but insisted he did not predicate his evaluation of [REDACTED] as a candidate based on this observation. He also maintained he approved a request to grant [REDACTED] a pay increase “two or three years ago.” Another witness in HR clarified that this increase was not a promotion (according to this witness, the raise was “slight” or marginal), but rather a pay reclassification both Complainant 3 and Witness 1 requested as part of a broader classification study the District conducts annually to ensure employees’ salaries match their current duties.

When we asked Callender to identify the matters about which Complainant 3 had been dishonest, Callender responded: “I just don’t know that [REDACTED] always been honest. I think I’ve had interactions with [REDACTED] that [REDACTED] was dishonest about.” He clarified that Complainant 3 had made dishonest accusations against him, but that he had “prayed for” and “forgiven” [REDACTED]. He reiterated the decision to hire the second candidate over Complainant 3 was a business call.

Witness 7 indicated they believed Witness 1 was biased in favor of Complainant 3, and that they expressed this concern to others. Witness 7 said Witness 1 and Complainant 3 were friends, and

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that the job posting too closely mirrored Complainant 3's existing duties. They thought Witness 1 may have been trying to give Complainant 3 a leg up within the organization, based on Complainant 3's personal relationship with [REDACTED].⁷

As to the allegation Callender told Complainant 1 he likes it when Complainant 3 comes to the executive suite because [REDACTED] "jiggles" when [REDACTED] walks: Complainant 1 claimed Callender made this comment, but Callender categorically denied it. No other witnesses corroborated this allegation.

Our investigation led us to a conclusion that Complainant 3's key factual allegations—the allegations that informed the policy findings discussed immediately below—were more likely than not true. Namely, we sustained findings that (1) Complainant 3 previously made a complaint against Callender; (2) Complainant 3 applied for a new position in [REDACTED]; (3) the hiring authority for that position favored Complainant 3 for the job; and (4) Callender made the ultimate decision to hire the second candidate instead of Complainant 3.

2. Alleged or Potential Policy Violation(s): Retaliation

The following acts are provided as examples of protected activity under the Policy: (1) "making a non-malicious and non-frivolous internal complaint about an allegation of discrimination, harassment, abusive conduct, or retaliation"; and (2) "utilizing the complaint procedure of any state or federal agency to report discrimination, harassment, or retaliation." Furthermore, the Policy provides that "any employee who participates in the protected activity described above shall not be adversely affected or discriminated against in their terms and conditions of employment because of their involvement in the protected activity. 'Because of' means that the employee's involvement in the protected activity must be a substantial motivating reason behind the prohibited retaliatory conduct. In short, there must be a causal connection." Under the Policy, prohibited retaliation includes (but is not limited to) a "failure to hire or consider for hire, failure to give equal consideration in making an employment decision, failure to make employment recommendations impartially," and "adversely affecting working conditions or otherwise denying any employment benefit to the person engaging in the protected activity." It also includes "any conduct that is reasonably likely to impair an employee's job performance or prospects for advancement or promotion," but excludes "minor or trivial actions or conduct that is not reasonably likely to do more than anger or upset an employee."

Based on the allegations we sustained, we believe credible evidence exists to find the protected activity in which Complainant 3 engaged—the informal and formal complaints [REDACTED] previously made against Callender—was either a substantial motive in Callender's decision not to hire Complainant 3 for the position, or it was a substantial motive in his failure to make an employment recommendation impartially, i.e., his recommendation to the other panelists that they select the second candidate in lieu of Complainant 3.

⁷ Whether Witness 1 unfairly skewed the recruitment to favor Complainant 3 falls outside our prescribed investigation scope, as Witness 1 is not a named respondent.

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We recognize the second candidate was qualified for the position. And Callender's stated reason for passing on Complainant 3 seems plausible. Witness 2 also considered the second candidate a better fit, and while Witness 1 preferred Complainant 3, [REDACTED] believed the second candidate could perform well in the role too. But based on the text Callender sent Complainant 1—expressing disbelief or surprise that Complainant 3 wanted to apply for a position under him in 2019 and accusing [REDACTED] of lying—and statements he made to us during his interview indicating he believed Complainant 3's accusations against him were dishonest, we believe Callender likely harbored a personal bias toward Complainant 3. Under the District's own guidelines, based on this ostensible conflict of interest Callender should have recused himself from the final panel altogether, particularly because Complainant 3 was only one of two candidates. The very notion he could evaluate Complainant 3 impartially, when he believed that [REDACTED] had lied about him and made both informal and formal complaints against him, strains credulity. Furthermore, we find there is sufficient evidence to surmise Witness 2 replaced the original panelist on the interview panel at Callender's request, and that he likely did so because he knew or suspected Witness 2 might prejudge Complainant 3 and vouch for the second candidate (and thereby serve as the tie-breaking vote). He may have thought his decision to select the second candidate in lieu of Complainant 3 would draw less suspicion if Witness 2 supported the decision too, even if Witness 1 favored Complainant 3. His email to Witness 6, directing Witness 6 to enclose a copy of his email explaining the panel's rationale for selecting the second candidate over Complainant 3 in the recruitment file and faulting Witness 6 for not including all the factors he previously cited in the justification memo, also reflects his awareness or anticipation that he (and the District) might at some point face scrutiny for the decision. To that end, he wanted to ensure Witness 6 sufficiently documented a non-retaliatory or nondiscriminatory rationale for the hiring decision to shield himself and the District from potential liability. Ordinarily, this practice is sensible, but under the circumstances it struck us as pretextual and potentially suggestive of a cover-up.

The Policy states a complainant may report a violation or incident "3 years after the date of the last occurrence or event," and that this "3 year period may be extended up to 90 days if the person allegedly aggrieved by the discrimination first obtained knowledge or facts after expiration of the 3 year period." Here, the protected activity at issue—the informal and formal complaints Complainant 3 made against Callender—occurred [REDACTED]. But the "last occurrence or event" that forms the basis for Complainant 3's retaliation complaint occurred in [REDACTED], when Callender decided not to hire [REDACTED]. Without this incident (or other comparable conduct), there would be no retaliation. Because this event occurred within the District's three-year reporting period, Complainant 3's complaint is timely. Much of the evidence on which we relied to make our findings likewise falls within the three-year period.

Based the totality of the circumstances—including but not limited to Callender's text to Complainant 1, his participation on the interview panel notwithstanding the obvious conflict of interest, his last-minute decision to include Witness 2 on the panel despite Witness 1's suggestion to him that Witness 2 might be biased, and Callender's selection of the second candidate over the

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