THE SANDERS FIRM, PC
30 Wall Street, 8th Floor
New York, NY 10005
212-652-2782
212-652-2783

October 31, 2026

VIA ELECTRONIC MAIL
Police Commissioner Jessica S. Tisch
New York City Police Department
One Police Plaza
New York, New York 10038

Re: NYPD v. Police Officer Shatorra J. Foster, DAO Case No. C-030622

Preliminary Statement: The Deputy Commissioner of Trials Abandoned Impartial Adjudication and Became the Department's Second Prosecutor

Police Officer Shatorra J. Foster, through counsel, submits these written objections pursuant to *Fogel v. Board of Education*, 48 A.D.2d 925 (2d Dep't 1975), and 38 RCNY § 15-06(c), challenging Deputy Commissioner of Trials Rosemarie Maldonado's October 23, 2026 Report and Recommendation. The objections concern an adjudicator who repeatedly adopted the Department Advocate's prosecution theory, disregarded material contradictions in the testimony of its principal complaining witness, and substituted personal assumptions for independent factfinding. Rather than distinguish misconduct actually established from disputed allegations, Maldonado constructed an expansive narrative of criminal stalking, harassment, and personal vindictiveness to justify recommending termination.

A threshold procedural concern arises from the inclusion of an unsigned, pre-drafted "Final Order of Dismissal" in the October 23, 2026 transmittal packet, prepared for Commissioner Jessica S. Tisch's signature before Foster's opportunity to submit objections had expired. Although the preparation of a proposed order does not itself establish prejudgment, the Commissioner's review under *Fogel* and 38 RCNY § 15-06(c) must be meaningful rather than a formality preceding an effectively predetermined result. Foster expressly preserves this objection for review under CPLR 7803(3).

The evidentiary deficiencies are substantial. Headley could not personally identify Foster as the author of the disputed anonymous communications, and Sergeant Christopher Morano failed to establish comprehensive, message-specific forensic attribution. Maldonado nevertheless enlarged Foster's admissions and sustained Specifications 1, 2, and 6 without adequately establishing the distinct statutory elements incorporated into those charges. Her credibility findings were equally selective. She discounted Headley's contradictory testimony concerning her verified November 15, 2023 access to Foster's confidential CPR records, acknowledged disciplinary authority over subordinate officers, prior adjudicated unwanted physical contact

with another female officer, and admitted failure to report allegations of sexual assault against herself.

Most troubling, Maldonado disregarded the Department's own previously approved reasoning concerning consent and supervisory authority. In the earlier Headley disciplinary proceeding, Assistant Deputy Commissioner Vanessa Facio-Lince recognized that apparent cooperation or failure to resist unwanted physical contact did not necessarily establish consent. Commissioner Tisch approved that determination, and Maldonado expressly granted judicial notice of it during Foster's hearing. (Tr. 88–89, 267–268.) Nevertheless, Maldonado relied upon Foster's subsequent expressions of alleged enjoyment to discredit her allegations of sexual assault, minimized Headley's sustained physical misconduct as an "inappropriate photo," and selectively evaluated Respondent's Exhibits A, B, and C, which contained contemporaneous communications concerning the alleged March 14, 2024 assault.

The Department's investigative failures compounded those deficiencies. Morano confirmed receiving Foster's answer with counterclaims on June 27, 2025, reviewing the allegations of sexual assault and supervisory coercion, and bringing them to Inspector Fikru's attention. (Tr. 184–187.) Yet the tribunal received no completed investigative determination addressing those allegations. Maldonado expressly acknowledged that deficiency before faulting Foster for insufficient corroboration, including the absence of expert and medical evidence.[1] Her analysis failed to adequately consider the Department's investigative obligations under Labor Law § 201-g, the victim-status protections of New York City Administrative Code § 8-107(27), and the principle recognized in *Matter of Reynolds v. Fraser*, 5 Misc. 3d 758 (Sup. Ct. N.Y. Cnty. 2004), that municipal disciplinary authority remains subject to applicable statutory protections.

The proposed penalty demonstrates the consequences of Maldonado's defective factfinding. Foster acknowledged submitting six false 311 complaints, conduct warranting discipline. Those admissions did not establish every disputed offense or conclusively disprove Foster's explanation that the complaints described prior abuse. Morano admitted that he never investigated that possibility. Nevertheless, Maldonado declared that the complaints alone warranted termination, without adequately reconciling that conclusion with the Disciplinary Matrix's presumptive and aggravated penalties, Foster's favorable performance evaluations, four

[1] Maldonado's criticism concerning the absence of expert testimony improperly elevated the lack of specialized corroboration over sworn testimony and contemporaneous documentary evidence. The Department Advocate also suggested, without independent evidentiary support, that Foster fabricated her allegations after consulting defense counsel (Tr. 253–254, 256–257). Although Headley had previously denied the alleged workplace sexual encounter, the Department elected not to recall her after Foster testified or to obtain her explanation of Respondent's Exhibits A, B, and C (Tr. 84, 97, 260). Maldonado remained entitled to assess credibility and draw reasonable inferences from the evidence, but she could not substitute personal conjecture for evidence the Department elected not to present or treat unsupported prosecutorial assumptions as established facts. Her analysis effectively furnished the adverse evidentiary narrative the Department had not adequately established through its witnesses.

Department medals, and her acknowledged remorse. The Commissioner must independently distinguish established misconduct from unsupported aggravating findings and reject the recommendation of termination.

Foster does not seek immunity from discipline. She seeks an impartial determination based upon the specifications actually proved, the governing legal standards, and a proportionate assessment of the complete record. The Commissioner must reject Maldonado's unsupported findings, dismiss Specifications 1, 2, and 6 for failure to establish the charged misconduct, and determine an appropriate penalty for any remaining sustained specifications without relying upon the selective factfinding and personal condemnation that permeate the Report and Recommendation.

I. Maldonado Attributed Anonymous Communications to Foster Without Adequate Proof, Expanded Her Admissions Beyond the Trial Record, and Failed to Establish the Statutory Elements of Specifications 1, 2, and 6

The fundamental evidentiary and legal defect in Maldonado's Report and Recommendation is her conclusion that Police Officer Foster engaged in criminal stalking and harassment through an extensive campaign of anonymous electronic communications. The Department's principal complaining witness could not personally identify Foster as the sender of the disputed messages, its investigator did not establish comprehensive forensic attribution, and Maldonado enlarged Foster's admissions beyond their demonstrated scope. More consequentially, the Deputy Commissioner failed to establish the distinct statutory elements incorporated into Specifications 1, 2, and 6. Rather than separately examining authorship, the particular conduct proved, and the requirements of the Penal Law provisions expressly invoked, Maldonado combined circumstantial electronic evidence, generalized admissions, and Headley's reported distress into an undifferentiated finding of criminal misconduct.

Headley's testimony exposed the initial attribution deficiency. During cross-examination on September 8, 2026, she acknowledged that she provided investigators with no evidence personally connecting Foster to the anonymous communications introduced as Department Exhibits 1 through 30 and 32 through 39. When asked whether she had suggested that Foster transmitted those communications, Headley answered in the negative. (Tr. 79.) She subsequently confirmed that she had not identified Foster to IAB as their sender. (Tr. 92.) As the recipient of the disputed communications, Headley could establish their receipt, contents, and alleged effect upon her. She could not establish authorship through personal knowledge. Maldonado was therefore required to determine whether the Department's independent evidence adequately supplied that missing connection rather than treat Headley's characterization of the communications and their emotional consequences as proof of Foster's responsibility.

Sergeant Christopher Morano's investigation did not establish comprehensive, message-specific forensic attribution. Although approximately fifty telephone numbers were associated with the investigation, Morano concentrated upon identifying the service providers for only two numbers used over extended periods. (Tr. 120.) His examination of Pinger-related information and network records associated certain communications activity with Department infrastructure, including One Police Plaza during Foster's assigned tours of duty. (Tr. 125–133.) Those findings

supplied circumstantial evidence of possible involvement but did not independently establish exclusive control of every originating account, device, or communication. Morano also acknowledged that IAB Group 7 never assumed responsibility for conducting any portion of his investigation. (Tr. 152–153.) The observation of Foster accessing Pinger at One Police Plaza likewise established application use, not authorship of every disputed message. (Report at 21; Tr. 127–129.) Maldonado was entitled to weigh those circumstances collectively, but their limitations remained material to determining the extent of Foster's proven involvement.

The Deputy Commissioner's reliance upon Foster's admissions did not eliminate that evidentiary distinction. Footnote 3 of Maldonado's report acknowledges that investigators did not separately read the disputed messages to Foster during her September 5, 2024 administrative interview, instead referring generally to thirty-eight text threads. (Report at 5–6 n.3; Dept. Ex. 42 at 27.) Morano further testified that he could not recall asking Foster specifically how many individual messages she transmitted. (Tr. 148.) Although Foster acknowledged using Pinger, creating anonymous telephone numbers, and transmitting communications concerning Headley, those admissions required evaluation according to their actual contents and scope. The report nevertheless characterized Foster as having admitted responsibility for hundreds of messages without adequately reconciling the particular exhibits with her testimony. (Report at 22; Tr. 227, 240, 243–245.) Defense counsel expressly challenged that evidentiary expansion during closing argument. (Tr. 261–262.) The difference between acknowledging anonymous communications and admitting authorship of every communication introduced by the Department cannot be resolved by treating approximately forty telephone numbers, thirty-eight threads, and hundreds of individual messages as equivalent evidence.

These deficiencies become particularly consequential when measured against Specification 1, which expressly cites Penal Law § 120.45(1) and (2), while incorporating factual allegations concerning employment, business, or career that correspond to subdivision (3). The statutory alternatives impose distinct requirements. Subdivision (1) concerns an intentional course of conduct, undertaken without legitimate purpose, that the actor knows or reasonably should know is likely to cause reasonable fear of material harm to physical health, safety, or property. Subdivision (2) requires conduct causing material harm to mental or emotional health through specified forms of following or communication, together with prior clear notice to cease. Subdivision (3) separately concerns conduct likely to cause reasonable fear of harm to employment, business, or career and likewise requires prior clear notice. Having incorporated allegations associated with these different provisions, the Department was required to establish the elements of any theory upon which it relied. Maldonado instead quoted subdivisions (1) and (2) in footnote 10 and sustained Specification 1 without adequately distinguishing their requirements or explaining the significance of the employment-related allegations associated with the uncited subdivision.

The prior-notice requirement under § 120.45(2) presents a substantial independent deficiency. Headley testified that she did not block the anonymous telephone numbers because she wanted to identify the sender and potentially arrange a meeting. (Tr. 40.) She further acknowledged that she did not know who transmitted the messages, had never confronted Foster concerning their authorship, and could not recall whether she had specifically questioned Foster about sending them. (Tr. 78.) Department Exhibit 10 documents Headley's participation in

communications concerning proposed meetings. Although Maldonado expressly quoted the statutory notice requirement, her findings identify no communication, date, or circumstance establishing that Foster was previously clearly informed to cease the alleged conduct. Absent that proof, subdivision (2) cannot sustain Specification 1. Nor did Maldonado adequately establish the independent requirements of subdivision (1). Although Headley described feeling frightened and hypervigilant, the Deputy Commissioner failed to identify the particular conduct reliably attributable to Foster and explain how it established the requisite likelihood of reasonable fear of material harm to physical health, safety, or property. (Report at 24; Tr. 32–33, 65–66.) Headley's emotional response was relevant evidence, but it did not relieve Maldonado of establishing the distinct statutory elements of either subdivision.

Specification 2 presents an even more direct statutory deficiency. The Department expressly charged aggravated harassment in the second degree under Penal Law § 240.30(1), alleging that Foster communicated a threat to cause physical harm or unlawful harm to property and knew or reasonably should have known that the communication would cause reasonable fear for physical safety or property. The operative statute does not criminalize every offensive, anonymous, embarrassing, or emotionally distressing communication. Following *People v. Golb*, 23 N.Y.3d 455 (2014), which invalidated the former, broader aggravated-harassment provision, the Legislature adopted a narrower threat-based formulation. The Department therefore had to establish a communication conveying the particular threat prescribed by the statute, together with the requisite intent and knowledge. Psychological mistreatment, reputational criticism, interpersonal conflict, and generalized emotional distress cannot independently satisfy those requirements.

Maldonado's own characterization of the messages exposes that deficiency. On page 24 of her report, she describes communications suggesting that Headley was being watched, criticizing her personal relationships, proposing meetings, and accusing her of professional misconduct. Yet the report identifies no particular communication conveying a threat of physical harm or unlawful property damage. The Department Advocate's cross-examination further illustrates the distinction. When questioning Foster about alleged warnings concerning Headley's friendships and professional prospects, the Advocate expressly characterized the conduct being described as something other than a physical threat, referring instead to psychological abuse. (Tr. 244.) Whatever significance that questioning may have concerning Foster's intentions, a threat of psychological harm or professional embarrassment does not independently establish the threat required by § 240.30(1). Maldonado was required to identify the particular threatening communication and explain how its contents and circumstances satisfied the statute. Her reliance upon the cumulative emotional effect of the messages did not supply an omitted statutory element.

Specification 6 contains a comparable failure to distinguish the statutory theories charged. The Department expressly cited Penal Law §§ 240.25 and 240.26(2), while incorporating factual language concerning repeated conduct that alarms or seriously annoys another person and serves no legitimate purpose. That latter language corresponds to § 240.26(3), which the specification did not expressly cite, although Maldonado subsequently quoted both subdivisions (2) and (3) in her report. The distinction is material. Section 240.26(2) prohibits following another person in or about a public place with the requisite intent to harass,

annoy, or alarm, whereas subdivision (3) concerns a course of conduct or repeated acts causing alarm or serious annoyance without legitimate purpose. The specification's factual allegations may provide notice of the conduct associated with subdivision (3), but Maldonado was nevertheless required to identify the theory sustained and the evidence establishing its elements rather than treat the alternatives as interchangeable.

The evidence concerning Department surveillance cameras illustrates the problem. Foster testified that she examined interior security-camera monitors and attendance information to determine whether Headley was present so she could avoid encountering her. (Tr. 246–247, 258.) Maldonado instead interpreted that conduct as monitoring and following Headley's whereabouts. Whatever disciplinary significance unauthorized access to Department systems may have under Specification 4, viewing a security-camera feed does not, without additional evidence of physical pursuit, constitute following another person in or about a public place under § 240.26(2). Section 240.25 permits an alternative theory based upon an intentional and repeated course of conduct or acts placing another person in reasonable fear of physical injury, but that theory likewise requires proof of its particular elements. Maldonado failed to distinguish the physical-following theory from the course-of-conduct theory or explain how the conduct proved satisfied either provision. Nor could the Deputy Commissioner invoke the serious-annoyance language associated with § 240.26(3) without determining whether the evidence established the requisite intent, repeated conduct, and absence of legitimate purpose.

The Department's treatment of Foster's anonymous complaints concerning Headley's professional conduct further undermines Maldonado's generalized characterization of malicious harassment. Foster testified that she communicated concerns about Headley's conduct anonymously because she feared professional consequences. Maldonado herself acknowledged that IAB substantiated certain allegations of Headley's administrative misconduct and expressly recognized that those complaints did not form the basis of the charged misconduct. (Report at 23 n.9.) That finding required the Deputy Commissioner to distinguish communications concerning actual workplace misconduct from communications constituting prohibited threats or intentional harassment without legitimate purpose. Similarly, Foster's admission that she submitted six false 311 complaints established conduct requiring disciplinary consideration under Specification 3, but it did not establish authorship of the separate collection of disputed anonymous messages or satisfy the statutory requirements incorporated into Specifications 1, 2, and 6. Proof of one category of misconduct could not substitute for proof of another.

The Department's incorporation of Penal Law offenses into specifications alleging conduct prejudicial to good order, efficiency, or discipline does not eliminate those distinctions. Although this is an administrative proceeding governed by the applicable administrative burden of proof, Maldonado remained obligated to establish the elements of the statutory offenses upon which she expressly relied. Conduct may warrant administrative discipline without constituting a criminal offense, but generalized misconduct falling short of the incorporated statutory definitions cannot support a finding that Foster committed criminal stalking, aggravated harassment, or harassment. Nor can unsupported criminal characterizations properly serve as aggravating circumstances justifying termination. Any independently established administrative misconduct must be assessed according to the conduct actually proved, the specifications

charged, and the Department's disciplinary guidelines, without importing the seriousness associated with statutory offenses whose essential elements were not established.

Maldonado's findings concerning Specifications 1, 2, and 6 therefore rest upon an evidentiary and statutory analysis that fails to distinguish disputed authorship, the actual scope of Foster's admissions, and the independent elements of the offenses expressly incorporated into the charges. The Police Commissioner must reject findings of criminal misconduct unsupported by those elements, independently evaluate any remaining administrative violations actually established, and refuse to permit unproven aggravating allegations to supply the foundation for termination. The Department's disciplinary authority does not permit its chief trial officer to transform disputed electronic evidence and generalized findings of objectionable conduct into criminal offenses without establishing the particular statutory requirements upon which those findings depend.

II. Headley's Cross-Examination Exposed Material Contradictions, Documented Supervisory Misconduct, and Credibility Defects Maldonado Failed to Reconcile

The September 8, 2026 cross-examination of Sergeant Trevlyn Headley exposed substantial deficiencies in the credibility findings upon which Maldonado relied to sustain the Department's allegations against Police Officer Foster. Headley acknowledged possessing disciplinary authority over Foster despite their separate command assignments, gave materially contradictory sworn testimony concerning her access to Foster's confidential disciplinary records, admitted prior adjudicated misconduct involving unwanted physical contact with another female officer, and acknowledged possessing intimate imagery of Foster while failing to report allegations of sexual assault against herself. These matters were not collateral impeachment or unsupported accusations directed at the Department's principal complaining witness. They concerned independently documented misconduct, institutional authority, and the circumstances underlying Foster's allegations of intimidation and sexual coercion. Nevertheless, Maldonado credited Headley's prosecution-favorable testimony without adequately reconciling the evidence that materially undermined its reliability.

Headley's characterization of her intimate involvement with Foster was significant. Rather than describe a conventional romantic partnership, Headley called the arrangement a "dealing-ship," acknowledging sexual intimacy, frequent communications, and time spent together without the formal designation of a committed relationship. She nevertheless acknowledged introducing Foster to family members and discussing the possibility of a more substantial relationship. (Tr. 80, 95–96.) Those admissions required examination of the relationship's actual circumstances rather than adoption of the Department's simplified theory that Foster's alleged misconduct arose principally from jealousy and romantic rejection. Foster's testimony concerning financial demands, intimidation, and sexual coercion presented a materially different explanation of the parties' interactions. Maldonado was required to assess those competing accounts against the evidence rather than treat Headley's characterization of the relationship as dispositive of Foster's motivations.

The supervisory relationship presented a particularly consequential issue. Headley acknowledged that, as a sergeant, she possessed authority to initiate disciplinary action against subordinate members of service assigned to commands other than her own, including Foster. (Tr. 86–87.) The absence of a direct reporting relationship therefore did not eliminate the institutional authority Headley could exercise over Foster. That distinction mattered because Foster alleged that Headley exploited her superior rank and access to confidential Department information to intimidate and control her. Maldonado was required to examine whether that authority influenced the parties' interactions and Foster's responses to alleged misconduct. Instead, her analysis discounted the potential for supervisory coercion without adequately addressing Headley's express acknowledgment that her disciplinary authority extended beyond her immediate command.

The most substantial impeachment concerned Headley's November 15, 2023 access to Foster's confidential CPR information. During cross-examination, Headley initially denied searching Foster's disciplinary records. When confronted with the Department's investigation, she alternated between denial and an asserted inability to remember, eventually asking: "I don't recall. I didn't do it. I don't know. Can both work right now?" (Tr. 85–86.) Sergeant Christopher Morano subsequently confirmed that IAB obtained and examined the relevant CPR audit, verified Headley's access, and established that she received a disciplinary Letter of Instruction. (Tr. 180–184.) The verified access occurred before the parties' alleged physical relationship began. This was not an uncorroborated accusation or a peripheral inconsistency. The Department's own investigation independently contradicted material portions of its principal witness's sworn testimony concerning her examination of Foster's confidential disciplinary information.

The significance of that contradiction extended beyond impeachment. Foster alleged that Headley exploited her superior rank and knowledge of confidential personnel information to intimidate her during their intimate involvement. The verified CPR access therefore concerned the precise category of information Foster claimed Headley possessed and subsequently used to exercise control. Although the audit did not independently establish every allegation of intimidation, it objectively corroborated Headley's access to confidential information before the alleged physical relationship commenced. Maldonado was required to distinguish the established database inquiry from the disputed allegations concerning its subsequent use and evaluate both in assessing Headley's credibility. Her failure to reconcile those matters was especially consequential because the same Report and Recommendation treated Foster's alleged unauthorized computer inquiries under Specification 4 as serious misconduct supporting the recommended penalty of termination.

The legal significance of unauthorized official action is reinforced by *People v. Moreno*, 100 A.D.3d 435 (1st Dep't 2012). There, the First Department affirmed official-misconduct convictions arising from police officers' knowing, unauthorized exercise of official functions to obtain personal sexual benefits. Penal Law § 195.00(1) requires that a public servant, with intent to obtain a benefit or deprive another of one, knowingly commit an unauthorized act relating to official functions. The relevant principle is that police authority cannot lawfully be exercised for unauthorized personal objectives merely because the circumstances arise from an intimate relationship. Headley's verified access to Foster's confidential disciplinary information, coupled

with Foster's allegations concerning supervisory intimidation, required consideration of whether official functions had been exploited for personal purposes. Those facts did not automatically establish every element of criminal official misconduct, but they presented a substantial question concerning misuse of institutional authority that Maldonado failed to meaningfully examine.

The seriousness of unauthorized NYPD computer access is further demonstrated by the October 16, 2026 indictment in *People v. Joel DeJesus*, Supreme Court, Bronx County, Grand Jury No. 45531/2025. That indictment charges an NYPD sergeant with eight counts of Computer Trespass under Penal Law § 156.10(2), eight counts of Official Misconduct under Penal Law § 195.00(1), and one count of Unlawful Dissemination or Publication of an Intimate Image under Penal Law § 245.15. The computer-related charges concern eight alleged unauthorized accesses to NYPD computer systems between August 10, 2024, and July 27, 2025. The corresponding official-misconduct counts allege knowing, unauthorized exercises of official functions with intent to obtain a benefit or deprive another person of one. The seventeenth count separately alleges intentional dissemination of an intimate image without the depicted person's consent. The indictment establishes the charges, not their truth or DeJesus's guilt, and does not establish that his alleged conduct was identical to Headley's. Nevertheless, it demonstrates that unauthorized access to Department computer systems may implicate criminal statutes beyond internal disciplinary rules when the additional statutory elements are present.

That contemporary prosecution makes Maldonado's treatment of Headley's verified CPR access especially troubling. In the DeJesus prosecution, the Bronx County District Attorney obtained an indictment alleging that unauthorized access to NYPD computer systems constituted both computer trespass and official misconduct. In Foster's proceeding, IAB independently verified Headley's access to confidential disciplinary information and imposed a Letter of Instruction, yet Maldonado failed to reconcile that finding with Headley's contradictory sworn testimony. The Deputy Commissioner simultaneously relied upon Foster's alleged misuse of Department computer systems as significant misconduct supporting termination. The issue is not whether Headley committed the criminal offenses charged against DeJesus or whether every unauthorized database inquiry constitutes a crime. It is whether Maldonado evaluated misuse of official access consistently, particularly where the Department's own investigative findings directly undermined the credibility of its principal complaining witness. Her report provides no adequate explanation for that disparity.

Headley's prior disciplinary adjudication supplied additional evidence Maldonado was required to consider. During cross-examination, Headley acknowledged that the Department previously sustained misconduct involving unwanted physical contact with another female officer. The resulting penalty, approved by Police Commissioner Jessica S. Tisch on June 11, 2026, included forfeiture of forty-five vacation days, one year of dismissal probation, and remedial EEO training. (Tr. 83; Disciplinary Case Nos. C-033349 and C-033457.) This was an established disciplinary finding, not an unsupported allegation concerning Headley's character. Although the prior adjudication did not prove Foster's separate allegations of sexual assault, it was directly relevant to evaluating the defense's allegations concerning inappropriate physical boundaries and supervisory coercion. Maldonado nevertheless minimized that adjudication in footnote 12 of her report by characterizing the underlying misconduct as an "inappropriate photo taken with another member of service at a holiday party." (Report at 27 n.12.) That

characterization materially misrepresented the significance of the sustained finding of unwanted physical contact, diminishing the Department's own disciplinary record while discrediting Foster's allegations concerning Headley's physical conduct.

Headley's testimony concerning intimate imagery further complicated the Department's characterization of the relationship. Although she denied sexually assaulting Foster or engaging in sexual activity inside police headquarters, Headley acknowledged taking an intimate photograph depicting Foster's genital area and maintained that Foster consented. (Tr. 84, 90–91.) Foster further testified that, after sexual contact ceased in June 2024, Headley threatened to disseminate intimate recordings to Foster's family and friends to compel her compliance. (Tr. 223–225.) Those allegations described a specific means of intimidation involving intensely private material. Penal Law § 245.15 criminalizes qualifying intentional dissemination or publication of intimate images without consent and with the required intent to cause harm; an unfulfilled threat of dissemination does not, by itself, establish that completed offense. Nevertheless, Foster's testimony concerning threatened disclosure was directly relevant to evaluating the alleged coercive relationship, particularly when considered alongside Headley's admitted possession of intimate imagery, disciplinary authority, and verified access to confidential personnel records. Maldonado was required to assess those circumstances together rather than isolate Headley's assertion of consent from the broader evidentiary record.

Headley's admitted failure to report the sexual-assault allegations against herself presented another material violation of Department policy. She acknowledged learning that Foster accused her of sexual assault inside One Police Plaza, admitted that she had not personally reported those allegations to EEO or IAB, and conceded that her failure to report violated Department policy. (Tr. 93–95.) That admission was particularly significant under Patrol Guide Procedure 207-21, governing reporting of corruption and other misconduct, and Administrative Guide Procedure 332-01, governing employment discrimination and sexual harassment. The latter procedure expressly identifies uniformed supervisors as mandated reporters and requires notification to the Office of Equal Employment Opportunity even when the allegation concerns the supervisor herself. Headley also testified that she had not been interviewed concerning the alleged workplace assault. Morano subsequently acknowledged that the allegations had been referred for investigation, but his testimony did not establish that a completed investigation had resolved them. (Tr. 184–187.) The record therefore establishes Headley's admitted reporting failure and the absence of a completed investigative determination before the disciplinary tribunal, not that no investigation was ever initiated. Maldonado nevertheless relied upon Foster's delayed disclosure to question her credibility without applying comparable scrutiny to Headley's failure to fulfill the reporting obligations imposed upon her as a supervisory member of service.

The Department Advocate declined redirect examination after Headley's cross-examination concluded. (Tr. 97.) The prosecution therefore offered no immediate clarification concerning her contradictory CPR testimony, acknowledged disciplinary authority, prior sustained physical misconduct, intimate imagery, or admitted reporting failure. The absence of redirect did not compel Maldonado to accept every defense inference, but it left substantial contradictions requiring resolution through the evidence actually presented. The Deputy Commissioner could assess credibility and weigh competing testimony; she could not preserve

Headley's reliability merely by accepting her prosecution-favorable statements while disregarding independently documented evidence that contradicted them.

Headley's cross-examination established a materially different evidentiary foundation from the one reflected in Maldonado's Report and Recommendation. The Department's investigation verified Headley's access to Foster's confidential disciplinary records notwithstanding her contradictory sworn testimony. Headley acknowledged disciplinary authority extending to Foster, prior sustained unwanted physical contact with another female officer, possession of intimate imagery involving Foster, and a violation of Department reporting obligations concerning allegations of sexual assault. These facts were material to evaluating the credibility of the Department's principal complaining witness and the circumstances underlying Foster's allegations of intimidation and supervisory coercion. Maldonado was required to reconcile that evidence before sustaining the prosecution's narrative and recommending the ultimate employment sanction. The Police Commissioner must independently assess those contradictions and reject credibility findings that minimize documented misconduct by the Department's principal witness while treating disputed allegations against Foster as established fact.

III. Maldonado Abandoned Impartial Adjudication, Applied a Double Standard to Allegations of Sexual Assault, and Substituted Personal Judgment for the Department's Own Evidentiary Principles

Maldonado's treatment of Police Officer Foster's allegations of sexual assault represents a serious departure from the impartial evaluation of evidence required in a disciplinary proceeding. This objection concerns more than an adverse credibility determination. Maldonado was presented with an earlier Department adjudication involving the same superior-ranking officer, Sergeant Headley, in which the tribunal recognized that a subordinate's apparent cooperation or failure to resist unwanted physical contact did not necessarily establish consent. She was also presented with contemporaneous communications concerning Foster's alleged sexual assault, testimony that Foster expressly objected to the sexual conduct, and evidence that Headley possessed disciplinary authority over Foster and had accessed her confidential personnel information. Rather than reconcile that evidence, Maldonado emphasized Foster's alleged jealousy, vindictiveness, and expressions of sexual enjoyment while minimizing evidence concerning Headley's conduct and supervisory authority. The resulting credibility analysis reflects an identifiable failure of adjudicative judgment: evidence unfavorable to Foster received extensive adverse interpretation, while evidence challenging the Department's principal witness was discounted, mischaracterized, or left substantially unexplained.

The Department's earlier adjudication demonstrates the inconsistency. In *NYPD v. Sergeant Trevlyn Headley*, Disciplinary Case Nos. C-033349 and C-033457, Assistant Deputy Commissioner of Trials Vanessa Facio-Lince sustained misconduct arising from Headley's unwanted physical contact with another female police officer during a Department-sponsored holiday gathering on December 19, 2024. Headley, then a lieutenant, grabbed the officer's hand and placed it upon her thigh while photographs were being taken. Headley defended her conduct by emphasizing the officer's apparent willingness to participate in the photographs, her failure to object, and the absence of outward indications of discomfort. Facio-Lince rejected that

explanation, recognizing that apparent cooperation could not be assessed independently of Headley's superior rank and that responsibility for maintaining appropriate professional boundaries rested with the superior-ranking officer. The Office approved the resulting disciplinary determination on June 11, 2026. The Department thus recognized that silence, accommodation, or an absence of resistance cannot automatically establish consent to unwanted physical contact, particularly where the parties occupy unequal positions of institutional authority.

Maldonado was not merely informed that the earlier proceeding existed. Defense counsel specifically raised the adjudication during Foster's hearing and again during closing argument, requesting that the tribunal take judicial notice of the Department's own determination. (Tr. 88–89, 267–268.) Maldonado granted that application, expressly recognizing the decision as an official matter approved by the Police Commissioner. (Tr. 89, 268.) The significance of this procedural history cannot be overstated. Maldonado had before her a recent disciplinary determination concerning the same superior-ranking officer, addressing unwanted physical contact, apparent consent, and the influence of rank upon a subordinate's conduct. Although that determination did not constitute binding appellate precedent or compel an identical result, it presented directly relevant adjudicative reasoning that required meaningful consideration. Maldonado could distinguish the earlier proceeding based upon material differences in the evidence. She could not reasonably acknowledge the decision and then disregard its substantive analysis while relying upon assumptions about apparent cooperation that the earlier tribunal had expressly rejected.

The disparity becomes particularly stark when the two complainants' accounts are examined. In the earlier proceeding, the female officer did not expressly object when Headley placed the officer's hand upon her thigh. Facio-Lince nevertheless refused to equate the absence of objection with consent. Foster, by contrast, testified that Headley sexually assaulted her inside a dormitory at One Police Plaza on March 14, 2024, and that she expressly stated, "Stop, are you crazy?" According to Foster, Headley responded, "I am." (Tr. 212–213, 217.) Maldonado nevertheless emphasized subsequent communications suggesting that Foster enjoyed the encounter and treated those statements as grounds for discrediting her allegations. The inconsistency is substantial. In one proceeding, the absence of resistance did not establish consent because supervisory authority and the surrounding circumstances mattered. In the other, expressions of apparent enjoyment after an encounter allegedly involving an express objection became central to rejecting the subordinate's account. Maldonado offered no adequate explanation for employing these materially different approaches to alleged unwanted sexual conduct involving the same superior-ranking officer.

The objection is not that subsequent communications suggesting enjoyment were inadmissible or irrelevant. They were evidence bearing upon the parties' competing accounts, and Maldonado was entitled to examine their significance. The defect lies in treating those communications as though they resolved the existence of consent at the time of the alleged conduct. Subsequent expressions of enjoyment do not retroactively establish consent to an earlier sexual act allegedly undertaken over an express objection. Nor does subsequent affectionate or accommodating communication necessarily demonstrate that the underlying encounter was consensual. Foster testified that she attempted to placate Headley because she feared provoking

her and exposing herself to professional consequences. (Tr. 218–219.) Maldonado was entitled to assess the credibility of that explanation, but she was required to do so against the evidence of Headley's rank, disciplinary authority, access to confidential information, and the parties' disputed relationship. Instead, the report repeatedly invoked Foster's purported enjoyment without adequately explaining why the surrounding evidence failed to support her account of accommodation and fear. That reasoning substituted an assumption about how a person subjected to unwanted sexual conduct would behave for a disciplined assessment of the particular facts presented.

Maldonado's treatment of Respondent's Exhibits A, B, and C further exposes the selective character of her analysis. Exhibit A documented Headley's inquiries concerning whether Foster was getting dressed and whether another individual had departed. (Resp. Ex. A; Tr. 212–213, 216.) Exhibit B recorded Headley's statement following the encounter, "You were delicious!", Foster's question, "What made you do that," and Headley's response, "It's time you experience how I am." (Resp. Ex. B; Tr. 214, 217.) Exhibit C contained Foster's contemporaneous description of approaching Headley for what she understood would be a hug before unexpectedly having her pants unbuttoned and being thrown onto a bed. (Resp. Ex. C; Tr. 214, 218.) Headley responded, "Yea I'm an 'owner' I've been real low key trying to feel you out and waiting to see how you move." (Resp. Ex. C; Tr. 219.) These communications directly concerned the encounter, including Foster's description of unexpected physical conduct and Headley's characterization of her own behavior. They were not allegations developed for the first time during the disciplinary hearing. They were contemporaneous evidence requiring evaluation alongside the parties' testimony and the remaining communications.

Exhibit C was particularly significant because Foster described an encounter beginning with an anticipated hug and becoming unexpectedly sexual. Headley did not expressly deny that description in the contemporaneous exchange. Instead, she characterized herself as an "owner" and acknowledged that she had been assessing Foster's reactions. Those statements were not an express admission of sexual assault, and their meaning required examination within the complete conversation. Nevertheless, they were plainly relevant to determining who initiated the encounter, whether the physical conduct was anticipated, and how Headley understood her position within the relationship. An impartial adjudicator would have examined those statements together with Foster's subsequent expressions of apparent enjoyment, identified the competing inferences, and explained why one interpretation was more persuasive than another. Maldonado instead concentrated upon the portions of the communications unfavorable to Foster without providing a comparably developed assessment of the language supporting her account. Selective reliance upon documentary evidence does not become impartial fact-finding merely because the selected excerpts appear in admitted exhibits.

The problem becomes more serious in light of Maldonado's treatment of the existence and significance of contemporaneous statements concerning the alleged assault. (Report at 28–29.) Respondent's Exhibits A, B, and C were admitted into evidence and addressed the encounter itself. (Tr. 260.) Maldonado was entitled to determine that those communications did not conclusively corroborate Foster's allegation of nonconsent. She was not entitled to resolve their significance through an incomplete presentation of their contents or by minimizing their relevance without confronting the language describing unexpected physical conduct. The

distinction between evidence that exists but is ultimately found unpersuasive and evidence that is effectively disregarded is fundamental to reasoned adjudication. Here, the contemporaneous communications required particular attention because they supplied a record of the parties' own words rather than merely competing recollections developed during testimony. Maldonado's failure to provide a balanced analysis of those exchanges materially weakened the factual foundation of her credibility determination.

The Department's decision not to recall Headley following Foster's testimony compounded that evidentiary deficiency. Foster described the alleged assault, identified the contemporaneous communications, and explained her conduct following the encounter. (Tr. 212–219.) Headley had previously denied the workplace sexual encounter. (Tr. 84.) The Department had an opportunity to recall her to address Foster's specific testimony and the documentary exchanges but elected not to do so. (Tr. 97, 260.) That decision did not compel Maldonado to accept Foster's account or reject Headley's earlier denial. It did, however, leave Headley without subsequent testimony explaining the communications in light of Foster's allegations. Maldonado remained free to draw reasonable inferences from the evidence, but her authority to assess credibility did not permit her to supply missing factual explanations through conjecture about Foster's supposed motives, jealousy, or expected behavior following an alleged assault. Where the Department elected not to develop additional testimony, the resulting gaps could not properly be filled by the adjudicator's personal narrative.

The evidence concerning supervisory authority made Maldonado's selective treatment especially difficult to justify. As established in Section II, Headley admitted possessing disciplinary authority over Foster despite their separate command assignments, and IAB independently verified that Headley accessed Foster's confidential CPR information on November 15, 2023. (Tr. 86–87, 180–184.) Those facts did not independently establish every allegation of intimidation, but they supplied objective support for examining Foster's claim that Headley possessed professional leverage over her. Facio-Lince had recognized the significance of superior rank in the earlier Headley proceeding without requiring proof of direct supervision. Maldonado confronted additional evidence of disciplinary authority and actual access to confidential personnel information, yet failed to integrate those circumstances into her assessment of Foster's explanation for her subsequent communications. Her reliance upon the absence of a direct reporting relationship did not answer whether Headley's institutional position and demonstrated access to Department records could have influenced Foster's conduct. It avoided that question.

Maldonado further undermined her analysis by materially mischaracterizing the earlier adjudication. In footnote 12, she described Headley's sustained misconduct as an "inappropriate photo taken with another member of service at a holiday party." (Report at 27 n.12.) The actual disciplinary finding concerned unwanted physical contact: Headley grabbed another female officer's hand and placed it upon her thigh. The photographs were part of the surrounding circumstances, not the misconduct sustained. Nor was Facio-Lince's reasoning limited to the propriety of photographs taken during a social gathering. It addressed physical boundaries, apparent consent, superior rank, and the obligation of a superior-ranking officer not to exploit a subordinate's apparent cooperation. By reducing that adjudication to an inappropriate photograph, Maldonado omitted the very findings that made it relevant to Foster's defense. This

was a material distortion of the Department's own disciplinary record, particularly because Maldonado had expressly granted judicial notice of the earlier determination. The mischaracterization deprived the Commissioner's review of a fair account of the adjudication against which Maldonado's reasoning must be evaluated.

The different procedural positions occupied by the two complainants do not excuse that inconsistency. In the earlier proceeding, the Department prosecuted Headley for unwanted physical contact involving another female officer. In Foster's proceeding, Headley appeared as the Department's principal complaining witness, while Foster alleged that Headley had sexually assaulted and intimidated her. Those differences affected the charges to be decided and the ultimate disposition of each proceeding, but they did not justify contradictory assumptions concerning consent or supervisory coercion. A member of service defending disciplinary charges does not surrender the right to have allegations of sexual victimization evaluated impartially. Foster's testimony was relevant to the credibility of Headley, the circumstances of their relationship, and the Department's characterization of Foster's subsequent conduct. Maldonado was required to assess that testimony according to its evidentiary significance, not according to whether it assisted or complicated the prosecution's case.

The resulting defect is not merely that Maldonado reached a conclusion adverse to Foster. It is that her reasoning failed to apply a consistent method of evaluating materially relevant evidence. Facio-Lince examined Headley's conduct and recognized that apparent cooperation did not necessarily establish consent. Maldonado focused upon Foster's subsequent behavior and treated expressions of apparent enjoyment as substantial grounds for rejecting testimony concerning an express objection. Facio-Lince recognized the influence of superior rank despite the absence of direct supervision. Maldonado minimized that influence despite additional evidence of disciplinary authority and access to confidential personnel information. Facio-Lince identified unwanted physical contact as the misconduct sustained against Headley. Maldonado described that misconduct as an inappropriate photograph. These contradictions concern the integrity of the adjudicative process itself. They demonstrate that the Deputy Commissioner's adverse credibility determination was reached through an analysis that consistently diminished evidence unfavorable to the Department's principal witness while assigning disproportionate significance to evidence unfavorable to Foster.

The Police Commissioner must reject that selective and internally inconsistent assessment. Commissioner Tisch previously approved a disciplinary determination recognizing that apparent cooperation does not necessarily establish consent to unwanted physical contact by a superior-ranking officer. Maldonado expressly granted judicial notice of that determination and received Foster's testimony concerning an express objection, contemporaneous communications describing the alleged encounter, and evidence bearing upon supervisory coercion. Yet she failed to reconcile the Department's previously approved reasoning with her treatment of Foster, materially mischaracterized the prior sustained misconduct, and relied upon assumptions concerning Foster's subsequent conduct to discredit her allegations. An adjudicator is entitled to reject testimony after a reasoned assessment of the evidence. She is not entitled to diminish material evidence, misstate official findings, and replace an impartial evaluation with a narrative that consistently advances the prosecution's theory. Maldonado's Report and Recommendation does not demonstrate the detached, evenhanded judgment required to support the ultimate

sanction of termination. Its credibility findings must be rejected insofar as they rest upon that defective analysis.

IV. Maldonado Disregarded the NYCHRL's Protections for Victims of Domestic Violence and Sexual Assault, Excused the Department's Failure to Establish an Adequate Investigation, and Used the Resulting Evidentiary Deficiency Against Foster

Maldonado's Report and Recommendation contains a serious legal and adjudicative defect: she expressly acknowledged that the tribunal lacked the benefit of a full, thorough, and unbiased investigation into Police Officer Foster's allegations of sexual assault and supervisory abuse, yet proceeded to use the perceived absence of corroborating evidence as a substantial basis for discrediting those allegations. This contradiction was particularly consequential because the Department had been placed on notice that Foster accused a superior-ranking officer of sexual assault inside One Police Plaza, professional intimidation, and coercive conduct arising from their intimate relationship. Rather than critically examine the Department's handling of those allegations, Maldonado treated the resulting evidentiary deficiency principally as a failure of Foster's defense. Her approach disregarded the investigative obligations established by New York Labor Law § 201-g, failed to adequately account for the employment protections afforded to victims under New York City Administrative Code § 8-107(27), and departed from the principle recognized in *Matter of Reynolds v. Fraser*, 5 Misc. 3d 758, 781 N.Y.S.2d 885 (Sup. Ct. N.Y. Cnty. 2004),[2] that municipal disciplinary authority remains subject to statutory protections for employees experiencing domestic violence.

---

[2] New York courts have long recognized that governmental employers must not compound the victimization of employees subjected to abuse by punishing them through discriminatory employment practices, deficient investigations, or institutional indifference. In *Reynolds v. Fraser*, 5 Misc. 3d 758, 765–66, 781 N.Y.S.2d 885 (Sup. Ct. N.Y. Cnty. 2004), the court devoted substantial attention to the public-policy consequences of domestic violence, including the fear, psychological injury, economic vulnerability, and workplace disruption experienced by victims. The court recognized that continued employment is frequently essential to a victim's independence and survival, while abuse can undermine workplace productivity, attendance, employee retention, and safety. Its discussion of judicial responsibility included *Matter of Romano*, 93 N.Y.2d 161 (1999), in which the Court of Appeals removed a town and village justice from office for misconduct demonstrating insensitivity toward domestic-violence victims. These public-policy principles bear directly upon the disciplinary proceedings involving Foster. Foster testified under oath that she feared her superior, Headley, and that Headley sexually abused her. Her testimony concerning that fear and abuse cannot be divorced from Headley's supervisory authority, the circumstances of their workplace relationship, or the contemporaneous communications introduced as Respondent's Exhibits A, B, and C. Yet Deputy Commissioner of Trials Maldonado employed subjective assumptions concerning Foster's supposed sexual enjoyment and conduct to discredit her account, effectively substituting sexual stereotypes for a proper examination of coercion, fear, and the abuse

Labor Law § 201-g requires every New York employer, including the NYPD, to adopt and distribute a sexual-harassment prevention policy containing procedures for the timely and confidential investigation of complaints and protections ensuring due process for all parties. The State's model sexual-harassment prevention policy further contemplates prompt and thorough investigation when management receives a complaint or otherwise becomes aware of possible sexual harassment. These requirements are not discretionary expressions of institutional preference. They establish mandatory features of an employer's harassment-prevention framework. Although the statute does not require every allegation to be investigated by IAB or by any particular investigator, the Department cannot satisfy its obligations merely by acknowledging that a complaint exists. It must maintain and implement procedures capable of examining allegations of sexual misconduct fairly and in accordance with the governing policy. An allegation that a superior-ranking officer sexually assaulted a subordinate inside police headquarters plainly warranted consideration under that framework, regardless of whether it first arose through an internal complaint, a civil pleading, or testimony in a disciplinary proceeding.

The Department received formal notice of Foster's allegations no later than June 27, 2025. Sergeant Christopher Morano confirmed under oath that on that date he received and read Foster's answer with counterclaims alleging Headley's supervisory abuse and the March 14, 2024 sexual assault inside One Police Plaza. Morano further testified that he brought those allegations to Inspector Fikru's attention, specifically questioned whether they would be investigated, and was instructed to document the matter in his investigative case file. Morano assumed that the

---

of supervisory power. In *Matter of Quick v. Horn*, 21 Misc. 3d 1116(A), 2008 N.Y. Slip Op. 52078(U) (Sup. Ct. N.Y. Cnty. 2008), the court annulled a probationary correction officer's termination where investigators credited unverified accusations originating with her abuser while disregarding evidence corroborating her victimization. Similarly, in *Matter of Castillo v. Schriro*, 49 Misc. 3d 774 (Sup. Ct. N.Y. Cnty. 2015), the court found bad faith in the termination of a probationary correction officer whose employer knew she was experiencing domestic violence but failed to provide legally required accommodations; the court also found termination disproportionately severe. The common public-policy principle is that governmental employers must confront the realities of abuse rather than turn the victim's circumstances, behavior, or responses into grounds for professional punishment. In Foster's case, that principle is particularly compelling because the Department independently substantiated Headley's unauthorized access to her confidential personnel record, yet imposed only a Letter of Instruction upon her while Maldonado recommended Foster's termination.

A disciplinary system that discounts a subordinate's sworn testimony of fear and sexual abuse, speculates about her sexual enjoyment, and imposes career-ending consequences upon her while minimizing substantiated misconduct by her superior does not merely raise questions about evidentiary judgment. It raises the very public-policy concerns that New York courts have repeatedly recognized when governmental institutions compound abuse through the exercise of their own authority.

Office of Equal Employment Opportunity might be conducting a concurrent investigation because Headley had recently been demoted, but he identified no completed investigation resolving Foster's allegations. (Tr. 184–187.) The significance is unmistakable: the allegations reached IAB, were reviewed by its investigator, and were elevated to supervisory personnel. Yet the disciplinary tribunal proceeded without a completed investigative determination concerning allegations directly bearing upon the credibility of the Department's principal complaining witness and the circumstances surrounding Foster's alleged misconduct. The record does not establish that no Department component initiated an investigation. It establishes that the Department's investigative response remained unresolved in the evidentiary record and that Maldonado proceeded to evaluate Foster's allegations without the benefit of the investigation she expressly acknowledged was warranted.

Maldonado herself recognized the importance of the missing investigation. On page 28 of her Report and Recommendation, she expressly declared: "Every claim of abuse and sexual assault deserves a full, thorough and unbiased investigation. Unfortunately, this tribunal does not have the benefit of such an investigation before it." (Report at 28.) That acknowledgment should have prompted a critical examination of the Department's institutional responsibilities and the limitations imposed upon the tribunal's factual assessment by the absence of investigative findings. Instead, Maldonado immediately shifted the analysis toward the purported insufficiency of Foster's corroboration. She criticized Foster for failing to present expert testimony, medical evidence concerning psychological harm, corroborating witnesses, relevant contemporaneous statements, and documentary proof of alleged financial payments. (Report at 28–29.) The resulting analysis is fundamentally unbalanced. Maldonado recognized that an investigation was warranted and unavailable, but did not adequately examine whether the Department's investigative response contributed to the evidentiary deficiency she then used against Foster.

That distinction is not a demand that the Department prove Foster's allegations or that the absence of an investigation automatically establish sexual assault. Nor does Labor Law § 201-g transfer the disciplinary burden of proof to the Department concerning every factual assertion advanced in Foster's defense. The defect is narrower and more substantial. Where a public employer has notice of allegations of sexual assault by its own supervisory employee, the adjudicator cannot reasonably acknowledge the absence of a completed investigation and then evaluate the complainant's credibility as though the resulting evidentiary record developed independently of the employer's handling of those allegations. Maldonado was required to distinguish evidence that Foster could reasonably have presented from evidence that an appropriate institutional investigation might have obtained, including interviews, contemporaneous witness accounts, relevant Department records, and explanations from the accused supervisor. Her report makes no meaningful effort to examine that distinction. Instead, the Department's lack of a completed investigative determination became another circumstance supporting rejection of Foster's defense.

Maldonado's criticism concerning the absence of relevant contemporaneous statements was particularly difficult to reconcile with the admitted evidentiary record. As established in Section III, Respondent's Exhibits A, B, and C contained communications directly concerning the March 14, 2024 encounter. Those exchanges included Foster's description of unexpected physical conduct, her question concerning Headley's actions, and Headley's responses

concerning the encounter. Although the communications did not conclusively establish sexual assault or the absence of consent, they were contemporaneous documentary evidence bearing directly upon the disputed allegations. Maldonado was entitled to evaluate their probative value, including language suggesting that Foster subsequently expressed enjoyment. She was not entitled to minimize their significance through an incomplete assessment of their contents while simultaneously faulting Foster for insufficient contemporaneous corroboration. The problem was not merely the absence of an institutional investigation. It was Maldonado's selective treatment of the evidence that existed despite that investigative deficiency.

Her insistence upon expert or medical evidence raised an additional concern. Neither an expert psychological assessment nor contemporaneous medical documentation is an indispensable prerequisite to crediting testimony concerning sexual assault. Such evidence may assist a factfinder where available and relevant, but its absence does not establish that an alleged assault did not occur or that the complainant's description is inherently unreliable. Maldonado expressly acknowledged that survivors may delay reporting and react in unexpected ways because of delayed processing. (Report at 28.) She nevertheless cited the absence of expert testimony concerning the psychological consequences of the alleged abuse as a deficiency in Foster's defense. If expert evidence was necessary to resolve a particular factual question, the Deputy Commissioner needed to identify that question and explain why the remaining testimony and exhibits were insufficient. Instead, her analysis treated the absence of specialized corroboration as another reason to discount Foster's account without adequately distinguishing the elements of her disciplinary defense from the evidentiary standards that would govern a separate prosecution of Headley. The Department's obligation to prove the disciplinary charges against Foster did not disappear because she failed to establish a separate sexual offense through expert or medical evidence.

The significance of Maldonado's approach must also be evaluated under New York City Administrative Code § 8-107(27). Subdivision (27)(a) prohibits an employer from discharging or otherwise discriminating against an employee because of actual or perceived status as a victim of domestic violence, sex offenses, or stalking. Subdivision (27)(g) further recognizes that prohibited discrimination may include adverse treatment based upon the actions or threats of the perpetrator. These provisions bind municipal employers and constrain employment decisions notwithstanding an agency's authority to impose lawful discipline. They do not establish that every adverse credibility determination concerning an alleged victim constitutes discrimination, nor do they prohibit discipline for independently established misconduct. They do prohibit adverse employment treatment because of protected victim status. That distinction was especially important where Maldonado's recommended penalty depended substantially upon her interpretation of Foster's motives, credibility, and conduct following the alleged abuse.

The record presented circumstances requiring that distinction to be addressed with precision. Foster testified that Headley sexually assaulted her, threatened professional consequences, and exploited her superior rank and access to confidential information to exercise control. Foster also testified that she attempted to placate Headley and later acted out in response to the harm she believed Headley had inflicted upon her. Maldonado rejected that explanation while repeatedly characterizing Foster's conduct through jealousy, resentment, and vindictiveness. Those characterizations were not legally prohibited merely because Foster

alleged sexual victimization; the Deputy Commissioner remained entitled to make findings concerning motive based upon competent evidence. But where the report relied upon disputed interpretations of conduct allegedly occurring within an abusive relationship, the Police Commissioner must determine whether the recommended sanction rests upon independently established wrongdoing or impermissible adverse assumptions associated with Foster's actual or perceived victim status. Maldonado's failure to engage that distinction is particularly consequential because her credibility findings formed part of the foundation for recommending termination.

The governing principle is reinforced by *Matter of Reynolds v. Fraser*, 5 Misc. 3d 758, 781 N.Y.S.2d 885 (Sup. Ct. N.Y. Cnty. 2004). In *Reynolds*, the Supreme Court annulled the termination of a probationary correction officer whose circumstances as a domestic-violence victim implicated the City's reasonable-accommodation protections. The employee had fled an abusive relationship and experienced displacement, including residence in a domestic-violence shelter, while the Department of Correction relied upon ordinary sick-leave verification procedures to justify termination. The court held that the employer's disciplinary authority did not displace its obligation to comply with applicable statutory protections and ordered reinstatement with back pay. *Reynolds* was an accommodation case involving identifiable employment needs and the employer's knowledge of the employee's circumstances. It did not establish that every disciplinary proceeding involving an alleged victim requires a separate adjudication of employment discrimination. Its relevance here is the controlling distinction between legitimate management authority and employment action that contravenes statutory protections. The Department may discipline independently established misconduct, but it cannot invoke its disciplinary authority as a reason to disregard the legal consequences of an employee's protected victim status.

That principle does not excuse Foster's admitted misconduct. Foster acknowledged submitting six false 311 complaints, and those admissions remained subject to disciplinary consideration under Specification 3. Nor does the NYCHRL excuse unauthorized database inquiries, threatening communications, or other misconduct independently established through competent evidence. The question is whether Maldonado properly separated such conduct from disputed allegations and from adverse inferences potentially influenced by Foster's claimed victimization. Her report instead used a sweeping characterization of Foster's conduct as a prolonged campaign of stalking and harassment while treating her allegations against Headley as insufficiently corroborated, notwithstanding the absence of a completed institutional investigation and the contemporaneous evidence presented. That approach risked converting the circumstances surrounding Foster's allegations of abuse into additional aggravating considerations rather than evaluating their evidentiary significance with the care required of an impartial tribunal. The distinction is especially important because the ultimate disciplinary penalty must rest upon misconduct actually proved, not upon hostility toward an employee's explanation for her conduct.

The Department's reasonable-accommodation and cooperative-dialogue obligations provide additional statutory context, although they must not be confused with the prohibition against victim-status discrimination. Administrative Code § 8-107(27)(b) addresses reasonable accommodations for qualifying employees when the employer knows or should know of the

protected status and the applicable statutory conditions are satisfied. Section 8-107(28)(a)(4) separately addresses the cooperative dialogue required when an accommodation request or notice of a potentially qualifying need triggers that obligation. The record presently discussed does not establish that Foster requested a particular workplace accommodation or that the Department failed to engage in a dialogue concerning an identified accommodation need. Accordingly, this objection does not depend upon asserting an independently established accommodation violation. Its focus is the Department's handling of allegations requiring investigation, the evidentiary consequences of proceeding without a completed investigative determination, and the prohibition against employment action based upon protected victim status.

The Department's investigative obligations and the Commissioner's disciplinary authority cannot be treated as unrelated institutional functions when the same allegations bear directly upon the credibility of the prosecution's principal witness and the interpretation of the respondent's conduct. Maldonado expressly recognized that a full, thorough, and unbiased investigation was warranted but unavailable. She nevertheless proceeded to discredit Foster's allegations by emphasizing missing corroboration without adequately examining the Department's investigative response or giving balanced consideration to contemporaneous documentary evidence. The report thereby permitted an unresolved institutional deficiency to operate principally against the employee who alleged sexual assault by a superior-ranking officer. That approach did not establish that Foster's allegations were false, did not establish that Headley's conduct was lawful, and did not relieve the Department of proving each disciplinary specification through competent evidence. It instead exposed a substantial weakness in the foundation of Maldonado's adverse credibility findings.

The Police Commissioner must reject that defective analysis. Labor Law § 201-g establishes mandatory requirements for the Department's sexual-harassment prevention and investigation procedures, while Administrative Code § 8-107(27) prohibits adverse employment treatment because of actual or perceived victim status. *Reynolds* confirms that municipal disciplinary authority remains constrained by applicable employment protections. None of those authorities immunizes Foster from discipline for independently established misconduct. They do, however, require that her allegations of sexual assault and supervisory coercion not be dismissed through an analysis that overlooks the Department's investigative responsibilities, selectively discounts contemporaneous evidence, and permits unsupported assumptions concerning victim behavior to influence the recommended penalty. Maldonado acknowledged the absence of a completed investigation, faulted Foster for insufficient corroboration, and recommended termination without adequately addressing the institutional and evidentiary consequences of that omission. The Commissioner must independently evaluate the Department's investigative response, reject credibility findings resting upon that defective analysis, and determine any appropriate discipline solely upon the misconduct established by the record and a legally supportable assessment of aggravating and mitigating circumstances.

V. Maldonado Disregarded the Potential Outcry Significance of Foster's 311 Complaints, Ignored Material Investigative Admissions, and Improperly Elevated Unexamined Assumptions Concerning Motive into Grounds for Termination

Maldonado's treatment of Foster's six admitted false 311 complaints expose a substantial defect in her assessment of motive and her application of the Department's Disciplinary Matrix. The Department established that Foster knowingly submitted complaints describing contemporaneous emergencies that were not occurring as reported. Foster acknowledged that misconduct. What the Department did not adequately investigate, however, was whether the specific descriptions of domestic violence contained in those complaints reflected abusive conduct Foster testified she had previously experienced at Headley's apartment. That distinction was essential to evaluating her state of mind, the credibility of her allegations against Headley, and the aggravating or mitigating circumstances bearing upon the appropriate penalty. Maldonado nevertheless characterized the complaints as a calculated escalation of stalking and harassment, ultimately declaring that their submission alone warranted termination. (Report at 32.) Her conclusion assigned the most damaging interpretation to Foster's conduct while disregarding material limitations in the investigation underlying that interpretation.

The contents of the complaints were neither generic nor devoid of identifying details. The July 10, 2024 complaint described the apartment's occupant as follows: "Someone is yelling for help inside 2D. Lady who lives there is six-foot tall. Very aggressive and abusive to her girlfriend. Every day in the evening this poor girl is yelling." (Dept. Ex. 31; Tr. 169.) The July 12, 2024 complaint similarly stated: "Someone being hurt in apartment. Young female looks scared when I see her. Tenant is six foot." (Dept. Ex. 31; Tr. 173.) Foster testified that Headley stood approximately six feet two inches tall, while Foster herself stood approximately five feet three inches tall. (Tr. 208.) She further testified that the descriptions of the frightened younger woman, the screaming, and the alleged physical abuse referred to circumstances she personally experienced inside Headley's apartment. (Tr. 230–235.) Those details did not establish that the allegations of abuse were true, but they presented a specific factual explanation requiring examination. The complaints identified a markedly taller female occupant as the alleged aggressor and a younger, frightened female as the person allegedly experiencing abuse. Maldonado could not fairly assess the significance of that language without confronting its correspondence to Foster's testimony concerning the parties' physical characteristics and disputed interactions.

Sergeant Christopher Morano's cross-examination established that the Department's investigation had not meaningfully explored that explanation. Asked whether he questioned Foster concerning the specific language describing a person screaming or being hurt inside the apartment, Morano acknowledged: "Why she used this verbiage specifically, no, sir." (Tr. 164.) When questioned about the July 12 complaint, he likewise admitted that he had not asked Foster why she used its particular descriptions. (Tr. 173.) Most significantly, when asked whether he considered that the language might describe abuse Foster herself had experienced, Morano answered: "No, it never occurred to me to think it was Shatorra Foster being abused in the apartment." (Tr. 176.) He further acknowledged that he had not consulted Department personnel with specialized domestic-violence responsibilities concerning that possibility. (Id.) These were not minor omissions concerning peripheral details. They demonstrated that the investigator established the falsity of the contemporaneous emergency reports without examining whether their substantive descriptions originated in Foster's alleged prior experiences.

The investigative deficiency is particularly consequential because Morano acknowledged that he recognized similarities among the complaints' descriptions. (Tr. 173.) The repeated references to a tall, aggressive female occupant, a frightened girlfriend, screaming, and requests for police assistance supplied a recognizable pattern. An investigator assessing the complaints as deliberate false reports was entitled to establish that no contemporaneous emergency occurred. But determining that the emergency was falsely reported did not answer why Foster selected those particular descriptions or whether they related to her alleged experiences. Morano's testimony established that he did not pursue that distinction. Rather than acknowledge the limitation of the investigation when determining motive, Maldonado adopted the Department's conclusion that the complaints reflected a calculated, malicious campaign against Headley. The Deputy Commissioner thereby converted an investigative conclusion concerning the falsity of the reported emergencies into a broader finding concerning Foster's motivations without adequately examining the factual basis for that inference.

Foster's testimony supplied an explanation that Maldonado was required to evaluate rather than dismiss through characterization. Foster acknowledged that the complaints did not describe emergencies occurring when she submitted them. She nevertheless testified that the underlying descriptions concerned incidents she claimed had occurred at Headley's apartment approximately one month earlier. She identified herself as the frightened woman referenced in the reports and explained that she did not summon police during the alleged incidents because she feared Headley would exploit her superior rank to avoid accountability. (Tr. 230–235.) Foster also acknowledged that she wanted to hurt Headley's feelings and get her into trouble for conduct she believed Headley had committed. (Tr. 228–229, 236.) Those admissions supported disciplinary scrutiny and were relevant to motive. They did not, however, conclusively disprove the alleged prior abuse. A desire to retaliate against someone perceived as an abuser and the existence of prior victimization are not mutually exclusive. Maldonado's analysis failed to meaningfully address that distinction, instead treating Foster's admitted anger and desire to cause emotional harm as sufficient to reject the factual explanation for the complaints' content.

Defense counsel repeatedly raised the significance of unconventional responses to domestic violence and sexual abuse throughout the proceeding. During opening statement, cross-examination, and closing argument, counsel emphasized that individuals experiencing abuse may delay disclosure, maintain contact with an alleged abuser, express distress indirectly, or engage in conduct that appears inconsistent with conventional expectations. (Tr. 12, 157–162, 269–275.) The defense did not contend that such behavior established victimization or excused false emergency reporting. It maintained that Foster's conduct had to be evaluated within the circumstances she described rather than through assumptions about how an alleged victim ought to behave. The 311 complaints were potentially significant in that respect because their language could be considered circumstantial evidence of Foster's claimed experiences. Whether that interpretation was persuasive required consideration of the specific descriptions, their timing, Foster's testimony, and the investigation's limitations. Maldonado was entitled to reject the explanation after a reasoned assessment. She was not entitled to substitute the investigator's failure to examine it with her own categorical attribution of malicious motive.

The Report and Recommendation demonstrates that Maldonado understood Foster's explanation but failed to adequately confront its evidentiary implications. At page 28, she

recounted Foster's testimony that the complaints referred to events she claimed had experienced approximately one month earlier, including descriptions of a frightened young woman and someone crying for help. Maldonado also acknowledged that survivors of intimate-partner abuse and sexual assault may delay reporting and react in unexpected ways. Yet she characterized Foster's explanation as a rationalization for fabricated crimes, relying upon her admitted resentment toward Headley and the asserted absence of corroboration. (Report at 27–29.) Reciting Foster's testimony did not cure the failure to examine the investigative admissions directly bearing upon it. Maldonado never adequately explained why Morano's failure to consider the possible connection between the descriptions and Foster's alleged experiences was immaterial to her finding of a calculated, malicious purpose. Her analysis instead treated the absence of corroboration as though it conclusively established the falsity of the underlying abuse allegations.

The potential outcry significance of the complaints required careful treatment. An anonymous 311 report falsely describing a present emergency is not automatically a legally recognized outcry of an earlier sexual assault or domestic-violence incident. Nor does language describing physical abuse establish that the person submitting the complaint personally experienced that conduct. Nevertheless, Foster's testimony supplied a factual basis for considering whether the reports indirectly expressed experiences she had previously been unwilling to disclose through formal channels. The specific descriptions of Headley's height, the frightened younger woman, and the alleged physical violence were relevant to that inquiry. Morano admitted that he never considered the possibility, and Maldonado failed to provide a sufficiently developed explanation for dismissing its significance. The issue was not whether Foster's explanation transformed false complaints into lawful reports. It was whether the language she selected constituted relevant circumstantial evidence bearing upon her allegations and state of mind. That question could not properly be resolved by invoking the undisputed falsity of the contemporaneous emergencies.

Maldonado's failure became most consequential when she translated her characterization of the complaints into a standalone justification for termination. In the penalty discussion, she described the six complaints as an escalation of Foster's alleged stalking and harassment and concluded: "This dangerous filing of false multiple 311 complaints, alone, warrants termination." (Report at 32.) That declaration must be examined against footnote 13, where Maldonado acknowledged that the Department's Disciplinary Matrix provides a range of sanctions for conduct prejudicial to good order and discipline and identifies thirty days as the presumptive penalty for qualifying misdemeanor conduct, with termination available as an aggravated penalty. (Report at 30 n.13.) The Matrix therefore did not automatically require termination merely because misconduct was sustained. Selecting the aggravated penalty required a reasoned assessment of the established conduct and the circumstances justifying that sanction. Maldonado's declaration that the six reports alone warranted termination was an exercise of disciplinary judgment, not a mandatory consequence dictated by the Matrix.

The problem with that exercise of judgment is that Maldonado relied upon an aggravated narrative of calculated vindictiveness without adequately addressing evidence relevant to Foster's state of mind. The six false reports were serious. They unnecessarily triggered police responses, consumed public resources, and created potential risks for responding officers and affected

persons. Those consequences could properly be considered in determining discipline. But Maldonado went further, presenting the complaints as the culmination of a calculated campaign of stalking and harassment and treating that characterization as independently sufficient to end Foster's employment. (Report at 27, 30–32.) The distinction matters because the severity of the misconduct and the motive attributed to the employee are separate considerations. Even when termination falls within an authorized aggravated penalty range, the adjudicator must explain why the particular circumstances justify imposing it. An inference concerning calculated vindictiveness cannot substitute for an evidentiary assessment of Foster's explanation, particularly where the Department's investigator admitted that he had not examined the factual premise underlying that explanation.

The record also reflects circumstances that warranted consideration in assessing the proportionality of the recommended sanction. Foster acknowledged wrongdoing, testified that she understood her conduct was improper, and expressed remorse. When questioned concerning the consequences of her actions, she stated: "I felt bad," explaining that she knew the conduct was wrong but had been upset and hurt and had "just acted out." (Tr. 250.) Those admissions did not erase the misconduct or require mitigation. They were nevertheless relevant to determining whether the false complaints reflected conduct warranting the most severe available employment sanction. Maldonado was entitled to consider Foster's prior disciplinary history and the seriousness of the false reports. She was equally obligated to evaluate the evidence concerning remorse, state of mind, and the disputed circumstances surrounding the conduct. Her categorical declaration that the six reports alone warranted termination failed to adequately explain why the aggravated sanction was justified after considering the competing evidence.

The Police Commissioner must reject Maldonado's unsupported conflation of admitted misconduct, disputed motive, and mandatory termination. Foster's six false 311 complaints warranted discipline, but their falsity did not conclusively resolve whether the descriptions of domestic violence reflected experiences she claimed to have endured. Morano admitted that he never investigated that possibility, despite the repeated identifying descriptions and their correspondence to Foster's testimony. Maldonado nevertheless adopted the Department's most damaging interpretation of motive and elevated the complaints into a standalone ground for termination without adequately explaining why the aggravated penalty was warranted under the Disciplinary Matrix. The Commissioner must independently assess the seriousness of the proven misconduct, the evidence concerning Foster's state of mind, the limitations of the investigation, and the aggravating and mitigating circumstances supported by the record. The Department's authority to impose discipline does not permit an adjudicator to replace a reasoned penalty determination with an unexamined narrative of vindictiveness. Maldonado's recommendation must be rejected insofar as it rests upon that defective analysis.

VI. Maldonado's Recommendation of Termination Rests Upon Inflated Findings, an Unbalanced Application of the Disciplinary Matrix, and a Failure to Meaningfully Evaluate Mitigating Evidence

Maldonado's recommendation that Police Officer Foster be terminated represents the culmination of the evidentiary and adjudicative deficiencies identified throughout these objections. The ultimate employment sanction demands more than a finding that an officer

engaged in serious misconduct. It requires a reliable determination of the conduct actually established, a reasoned application of the Department's Disciplinary System Penalty Guidelines, and an assessment of aggravating and mitigating circumstances supported by the record. Maldonado's recommendation fails those requirements because it combines disputed allegations with admitted misconduct, relies upon insufficiently established criminal characterizations, and repeatedly invokes Foster's perceived jealousy and vindictiveness to justify the conclusion that continued employment is untenable. The Police Commissioner must independently determine whether the evidence supports the particular findings and aggravating circumstances upon which Maldonado relied, rather than adopt a termination recommendation whose factual foundation remains materially disputed.

The first defect is the aggregation of separate specifications into a sweeping account of criminal stalking and harassment. As demonstrated in Section I, the Department's proof concerning the authorship of numerous anonymous communications did not establish comprehensive message-specific attribution, while the findings concerning Specifications 1, 2, and 6 failed to adequately address the elements of the Penal Law provisions expressly incorporated into those charges. Foster's acknowledgment of particular anonymous communications did not establish authorship of every disputed message or responsibility for every alleged criminal offense. Nevertheless, Maldonado described a prolonged campaign of stalking and harassment as an established factual premise in her penalty analysis. (Report at 30–32.) This distinction is consequential because the magnitude, criminal character, and duration of the alleged misconduct materially affect the perceived seriousness of the case. The Commissioner cannot properly determine the appropriate sanction by accepting an aggravated characterization of conduct whose essential factual and statutory predicates remain insufficiently established. Each specification must be evaluated separately, and only misconduct actually sustained upon competent evidence may supply the foundation for the penalty determination.

The Disciplinary Matrix does not eliminate that requirement. Maldonado acknowledged that conduct prejudicial to the Department's good order and discipline carries a range of potential penalties extending from training to termination. She further recognized that qualifying misconduct constituting a misdemeanor under New York law carries a presumptive penalty of thirty days, with termination available as an aggravated penalty. (Report at 30 n.13; Matrix at 19–20, 46.) The distinction between a presumptive penalty and an aggravated penalty is consequential. Although the Matrix authorizes termination for sufficiently serious misconduct, it does not require dismissal whenever an adjudicator characterizes an officer's actions as criminal or professionally unacceptable. Selecting an aggravated sanction requires consideration of the seriousness of the misconduct, the circumstances proved, the applicable disciplinary guidance, and aggravating and mitigating factors supported by the record. Maldonado's repeated condemnation of Foster's character cannot substitute for that assessment, particularly where her recommendation relies upon contested criminal classifications and disputed conclusions concerning motive. The Commissioner must determine whether the aggravated penalty is warranted by the misconduct actually established, rather than by the cumulative effect of allegations the Department failed to adequately prove.

The defect is especially apparent in Maldonado's treatment of Specification 3. Foster admitted submitting six false 311 complaints, and those admissions established serious

misconduct warranting disciplinary action. The complaints caused unnecessary police responses and implicated legitimate concerns about public resources, officer safety, and the misuse of emergency-reporting systems. Maldonado was entitled to consider those consequences. She nevertheless declared that the six complaints, standing alone, warranted termination. (Report at 32.) As demonstrated in Section V, that conclusion rested partly upon her characterization of the complaints as an escalation of a calculated campaign of revenge, without adequately addressing their specific descriptions of domestic violence, Morano's investigative admissions, or Foster's testimony concerning her state of mind. The falsity of the contemporaneous emergency reports did not conclusively resolve whether their descriptions reflected prior experiences Foster alleged she had endured. Even if the seriousness of six deliberately false reports could independently support termination, Maldonado was required to explain why the aggravated sanction was justified after considering the relevant evidence. Her declaration that the complaints alone warranted dismissal did not relieve her of the obligation to distinguish their established consequences from disputed conclusions concerning motive.

Foster's prior disciplinary history required equally careful analysis. Maldonado placed considerable emphasis upon Foster's 2020 Schedule "C" Command Discipline, which resulted in forfeiture of nine vacation days for 327 unauthorized Department computer inquiries made during a seven-month period in 2019. (Report at 30–31.) Foster acknowledged that misconduct and confirmed that she had previously received instruction concerning the proper use of Department computer systems. That history is a legitimate aggravating consideration, particularly when evaluating the separate computer-misuse allegations in the present proceeding. It cannot be disregarded merely because Foster disputes other charges. Nevertheless, the prior disciplinary matter did not establish her guilt of the present stalking and harassment specifications, nor did it render termination automatic for subsequent misconduct. The Commissioner must examine the relationship between the earlier computer inquiries and the misconduct actually proved in this proceeding, the significance of the intervening years, and whether the complete employment record supports the conclusion that Foster is incapable of rehabilitation. Maldonado instead treated the earlier discipline principally as confirmation that Foster could no longer be trusted with Department resources, without adequately reconciling that conclusion with the favorable evidence concerning her subsequent service.

The Department's own employment summary supplied substantial mitigating evidence. Foster was appointed as a police officer on July 2, 2018, after serving as an Evidence and Property Control Specialist beginning April 24, 2017. Her three most recent documented performance evaluations included a 4.5 rating of "Extremely Competent/Highly Competent" in 2023 and ratings of 4.0, "Highly Competent," in both 2020 and 2022. She also received one medal for Meritorious Police Duty and three medals for Excellent Police Duty. (Report, Summary of Employment Record.) These were not unsupported testimonials offered by the defense. They were accomplishments documented in the Department's own personnel records and transmitted for the Commissioner's consideration. Although favorable evaluations and commendations do not excuse serious misconduct, they are directly relevant to Foster's demonstrated professional capabilities, overall service, and prospects for rehabilitation. Maldonado's conclusion that Foster had irretrievably destroyed the Department's trust required meaningful consideration of that favorable record alongside the established misconduct. A penalty analysis that emphasizes an earlier disciplinary violation while giving insufficient

analytical weight to subsequent professional performance and commendations presents an incomplete assessment of the employee's record.

The Department's prior treatment of Headley supplies an additional proportionality consideration. In Disciplinary Case Nos. C-033349 and C-033457, the Department sustained findings involving unwanted physical contact with another female officer and a separate inappropriate remark concerning another employee's religious attire. The Office approved a penalty consisting of forfeiture of forty-five vacation days, remedial EEO training, and one year of dismissal probation, permitting Headley to remain employed. The earlier disciplinary analysis recognized termination as an available aggravated penalty for the physical-contact misconduct, an official determination of which Maldonado expressly took judicial notice during Foster's proceeding. (Tr. 88–89, 267–268; Disciplinary Case Nos. C-033349 and C-033457.) The offenses adjudicated against Headley were not identical to those charged against Foster, and the differences do not establish an entitlement to equivalent sanctions. Nevertheless, the Department's willingness to retain a supervisory member of service following sustained unwanted physical contact is relevant to evaluating the consistency of its disciplinary judgment, particularly where Maldonado minimized that adjudication while recommending Foster's termination through findings materially dependent upon contested allegations and disputed credibility determinations.

The significance of consistent disciplinary treatment is further illustrated by the October 16, 2026 indictment in *People v. Joel DeJesus*, Supreme Court, Bronx County, Grand Jury No. 45531/2025. The Bronx County District Attorney charged an NYPD sergeant with eight counts of Computer Trespass under Penal Law § 156.10(2), eight counts of Official Misconduct under Penal Law § 195.00(1), and one count of Unlawful Dissemination or Publication of an Intimate Image under Penal Law § 245.15. The computer-related counts allege unauthorized access to NYPD computer systems. Those charges remain allegations and do not establish DeJesus's guilt or that his conduct was identical to Headley's. Nevertheless, the indictment demonstrates the seriousness with which unauthorized access to official police systems may be treated when accompanied by the additional elements of criminal misconduct. In Foster's proceeding, IAB verified Headley's unauthorized access to Foster's confidential CPR information and imposed a Letter of Instruction, while Maldonado relied upon Foster's misuse of Department computer systems as a significant basis for termination. The circumstances of the respective incidents differ, but the comparison reinforces the need for consistent and reasoned evaluation of unauthorized official access, supervisory misconduct, and the penalties imposed. Maldonado's recommendation cannot be insulated from that scrutiny merely because the conduct of the Department's principal complaining witness arose in a separate disciplinary context.

The credibility and investigative deficiencies identified in Sections II through V further undermine the reliability of the recommended sanction. Maldonado failed to adequately reconcile Headley's contradictory testimony concerning verified access to Foster's confidential disciplinary information, materially mischaracterized the Department's earlier adjudication involving unwanted physical contact, and selectively evaluated contemporaneous communications concerning Foster's allegations of sexual assault. She also acknowledged that the tribunal lacked the benefit of a completed investigation into those allegations while emphasizing the absence of corroboration as a reason to reject Foster's defense. None of those

deficiencies independently immunized Foster from discipline. Their significance to the penalty inquiry is that the disputed evidence bore directly upon the circumstances of the parties' relationship, Foster's state of mind, and the motives Maldonado repeatedly invoked to aggravate the misconduct. The recommended sanction cannot reliably rest upon aggravating conclusions derived from an evidentiary assessment that fails to confront material contradictions and investigative limitations.

Foster's acknowledgment of wrongdoing and testimony concerning remorse likewise warranted meaningful consideration. During cross-examination, when questioned about the consequences of her conduct, Foster did not insist that her admitted actions were appropriate or deny their harmful effects. She testified: "I felt bad," explaining, "I knew it wasn't the right thing to do. But at the time, I also was upset and hurt. I just acted out." (Tr. 250.) Those statements were direct acknowledgments of error and remorse, elicited during the Department Advocate's cross-examination rather than presented solely through defense counsel's characterization. They did not compel mitigation, establish rehabilitation, or amount to an admission of every specification charged. They were nevertheless relevant evidence concerning Foster's recognition of wrongdoing and the prospects for corrective discipline. Maldonado was entitled to find that the seriousness of the misconduct outweighed that evidence, but she was required to evaluate it as part of the penalty determination. Her conclusion that continued employment was untenable did not adequately explain why Foster's acknowledgment of wrongdoing, favorable performance history, and commendations were insufficient to support a sanction short of termination. The omission is particularly consequential because her recommendation repeatedly portrayed Foster as irredeemably dishonest and professionally unfit without meaningfully reconciling that characterization with the mitigating record.

The cumulative penalty analysis is therefore defective in a manner that cannot be cured by invoking the Commissioner's broad disciplinary authority. Maldonado treated disputed allegations of criminal misconduct as established aggravating facts, declared that the six false 311 complaints independently warranted termination without adequately addressing the defense's evidence concerning motive, and relied upon Foster's earlier computer discipline while giving insufficient analytical weight to her favorable evaluations, commendations, and testimony concerning remorse. The resulting recommendation was not an inevitable consequence of the Disciplinary Matrix. It reflected discretionary judgments requiring an accurate factual foundation and a balanced assessment of the entire record. Where those judgments are materially affected by unsupported findings, selective credibility determinations, and unexamined aggravating assumptions, the Commissioner's independent review must address the actual basis for the proposed sanction rather than defer to Maldonado's repeated condemnation of Foster's character.

The Police Commissioner must reject Maldonado's recommendation of termination and independently determine the appropriate disposition of each specification upon the evidence actually established. Any penalty must reflect the applicable Disciplinary Matrix provisions, the seriousness and consequences of sustained misconduct, Foster's prior disciplinary history, her documented professional performance and commendations, her acknowledgment of wrongdoing, and aggravating and mitigating circumstances supported by competent evidence. The prior Headley adjudication, of which Maldonado took judicial notice, and the Department's treatment of unauthorized official access further warrant careful consideration of proportionality and

consistency without assuming that different incidents require identical sanctions. Unsupported criminal characterizations, disputed factual assumptions, and adverse inferences arising from an incomplete evaluation of Foster's allegations of sexual victimization cannot supply the justification for the ultimate employment sanction. The Department may impose substantial discipline where the record warrants it. It must not terminate Foster upon a recommendation that substitutes an inflated narrative of wrongdoing and personal condemnation for a reliable assessment of what the evidence actually proves.

Conclusion

Deputy Commissioner of Trials Rosemarie Maldonado's October 23, 2026 Report and Recommendation cannot withstand meaningful scrutiny. Its findings rest upon disputed electronic attribution, insufficient proof of the statutory offenses incorporated into the disciplinary specifications, materially inconsistent credibility determinations, and an adjudicative analysis that repeatedly minimized evidence contradicting the Department's prosecution theory. More troubling, Maldonado acknowledged the absence of a completed investigation into Foster's allegations of sexual assault and supervisory coercion, yet invoked insufficient corroboration to discredit those allegations while disregarding the Department's own previously approved reasoning concerning consent and superior-subordinate authority. These defects are not isolated errors. They collectively undermine the reliability of the factual findings and aggravating circumstances upon which Maldonado recommended the ultimate employment sanction.

Maldonado's determination reflects an adjudicator who repeatedly adopted the Department's most damaging interpretation of disputed evidence while failing to apply comparable scrutiny to the testimony and documented misconduct of its principal complaining witness. Her assessment of Foster's alleged victimization, motivations, and credibility was neither sufficiently balanced nor adequately reconciled with the governing statutory protections and evidentiary record. The Police Commissioner must not permit those deficiencies to become the foundation of a final disciplinary determination merely because Foster acknowledged separate misconduct warranting administrative discipline. The Department's authority to impose sanctions does not relieve it of the obligation to prove the charges sustained or justify termination through findings supported by competent evidence.

Accordingly, Police Officer Foster respectfully requests that the Office reject Deputy Commissioner Maldonado's Report and Recommendation insofar as it sustains Specifications 1, 2, and 6; dismiss those specifications for failure to establish the charged misconduct, including the requisite statutory elements; reject the unsupported aggravating findings and recommendation of termination; and independently determine an appropriate penalty, if any, for the remaining sustained specifications in accordance with the Department's Disciplinary Matrix, the evidence actually established, Foster's documented service and commendations, her acknowledgment of wrongdoing and remorse, and all applicable mitigating circumstances. The ultimate employment sanction must not rest upon selective factfinding, unsupported criminal characterizations, or personal condemnation substituted for impartial adjudication.

Respectfully submitted,

s/Eric Sanders, Esq.

Attorney for Police Officer Shatorra J. Foster