



**VAN DERMYDEN MADDUX**  
*Investigations Law Firm*

**CONFIDENTIAL**  
**INVESTIGATIVE**  
**REPORT**

County of Sacramento  
Report Concerning Phil Serna  
April 21, 2021

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## I. Brief Introduction

On January 11, 2021, Van Dermyden Maddux Law Corporation (Firm) commenced an independent investigation for the County of Sacramento (County). The County initiated this investigation in response to Senior Civil Engineer [REDACTED]'s January 6, 2021 written complaint against Sacramento County Supervisor Phil Serna.

[REDACTED] alleged Supervisor Serna "harassed" him based on his political affiliation. He alleged Supervisor Serna did so via Supervisor Serna's January 3, 2021 Facebook posts about supporters of Former President Donald Trump and Republicans. [REDACTED] is a self-identified Trump supporter. **Attachment 1.**

Sacramento County Deputy Sheriff's Association (SCDSA) also submitted a January 7, 2021 written complaint to the County against Supervisor Serna on behalf of its members.<sup>1</sup> SCDSA, led by its President, Sergeant [REDACTED] and its Vice President, Sergeant [REDACTED] alleged Supervisor Serna "discriminated" against Trump supporters by a series of Facebook posts beginning on January 3, 2021. **Attachment 2.**

SCDSA subsequently alleged Supervisor Serna retaliated against SCDSA for its January 7, 2021 complaint. SCDSA alleged he did so by way of his January 7, 2021 Facebook post referencing SCDSA's complaint.

This Confidential Investigative Report (Report) summarizes relevant evidence and provides factual findings regarding the allegations.

## II. Summary Of Findings

This section summarizes the findings for the convenience of the reader. The remainder of the Report details the evidence and analyses supporting each finding.

After a thorough review of the evidence, I make the following findings by a preponderance of the evidence:

- [REDACTED]'s allegations of political affiliation harassment – Not Sustained.
- SCDSA's allegations of political affiliation discrimination – Not Sustained.
- SCDSA's and Sergeant [REDACTED]'s allegation of retaliation – Not Sustained.

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<sup>1</sup> SCDSA's written complaint was signed by and submitted to the County by its attorney, [REDACTED]. [REDACTED] indicated the complaint was on behalf of the entire SCDSA. She copied Sergeant [REDACTED] and Sergeant [REDACTED] on the complaint. I interviewed them for that reason and because they are President and Vice President of the association, respectively.



In this Report, I make factual and policy findings only.<sup>2</sup> The County's policies are interpreted to prohibit behavior even if not unlawful under legal principles. I also do not make any findings related to Supervisor Serna's claims that his comments were protected by the First Amendment.

### III. Investigative Methodology

The methodology in this investigation is set forth in the **Appendix** to this Report.

### IV. Factual Background

The following facts provide relevant background and context to the allegations.

#### A. Sacramento County And The Parties

All four parties work for the County in various capacities. The following provides context for the role each plays within the County.

**Department of Transportation.** Sacramento County Department of Transportation is comprised of over 250 employees. Per the County website, this Department is "responsible for planning, improving, operating and maintaining a transportation system that serves unincorporated area citizens, regional traffic and commerce." [REDACTED] works as a Senior Civil Engineer for this Department.

**Sacramento County Deputy Sheriff's Association.** SCDSA is an association that provides representation relating to the employment, working conditions, and benefits of its members. SCDSA uses collective efforts, including collective bargaining, to secure compensation for its members and to improve working conditions. SCDSA was founded in 1950 and has "mirrored the growth and development of the Sacramento metropolitan area and of the Sheriff's Department," per its website. SCDSA currently represents over 1,500 members. All of the members of SCDSA are employees of the Sacramento County Sheriff's Department. As a result, the members are afforded the protections of County policies as County employees.

SCDSA is governed by its Board of Directors. The Board has 13 members. SCDSA President [REDACTED] and SCDSA Vice President [REDACTED] are both on the Board.

**Board of Supervisors.** Sacramento County is governed by its Board of Supervisors. Per the County website, the Board is "empowered to adopt ordinances, establish programs, levy taxes, appropriate funds, appoint certain officials, and zone property in the unincorporated area" within the limits of California law and the County Charter. Five Supervisors, including Serna, sit on the Board.

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<sup>2</sup> Although I utilize a legal analysis in reaching the factual and policy determinations in this Report, I do not reach legal determinations. Instead, these findings are intended to facilitate the rendering of legal advice by the employer's counsel.

██████████, ██████████ is a Senior Civil Engineer for the County Department of Transportation, Operations, and Maintenance. He has been in this role for four years. ██████████ has worked for the County for 20 years. ██████████ reports to Principal Civil Engineer ██████████. ██████████ has never met or worked with Supervisor Serna. However, ██████████ does work on projects for Supervisor Serna's District.

██████████, ██████████ is a Sergeant for the Sacramento County Sheriff's Department. He has been in this role for about five years. He serves as SCDSA President and has done so for 13 years. Sergeant ██████████ is on full-time release to the Union. He has worked for the County for 27 years. Sergeant ██████████ and Supervisor Serna have a strained professional relationship.

██████████, ██████████ is a Sergeant for the Sacramento County Sheriff's Department. He has been in this role for about two years. He also serves as SCDSA Vice President and has done so for about four months. Sergeant ██████████ is on full-time release to the Union. He reports to Sergeant ██████████. Sergeant ██████████ has worked for the County for 15 years. He has never met Supervisor Serna.

**Phil Serna.** Serna is currently serving as the Supervisor of the First District on the Sacramento County Board of Supervisors. He was elected in June of 2010 and is in his third, four-year term. He was elected to represent around 300,000 constituents that comprise the First District. Supervisor Serna also serves on several other Boards and Commissions.<sup>3</sup>

#### **B. Supervisor Serna's Training History**

I reviewed the history of the training Supervisor Serna received in his role as a County Supervisor. He received training on the topics of Ethics, Harassment and Discrimination Prevention, and Security Awareness. **Attachment 3.**

Supervisor Serna most recently completed Discrimination and Harassment Prevention Training online on June 10, 2020. I reviewed the online course he completed. The training was interactive and included workplace scenarios the trainee had to assess and render opinions on.

#### **C. Supervisor Serna's Facebook Pages**

Supervisor Serna has two Facebook pages, one for his personal use and one for his professional use. Supervisor Serna made all the Facebook posts referenced in this investigation on his personal Facebook page. Supervisor Serna's personal Facebook page describes him as "██████████'s husband/chef," "activist county supe," proud Cal Poly alum, RCAF member, musician, and photographer. In the "About" section, his personal page states, "I work for the people of Sacramento County, First Supervisorial District." Per Supervisor Serna, his personal Facebook page is accessible to the public.

Supervisor Serna's professional Facebook page identifies him as "Sacramento County Supervisor Phil Serna" and as a "Government Official." Within his "About" section, he provided his Sacramento County contact information.

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<sup>3</sup> Supervisor Serna indicated he serves on the local Air Quality Management District Board and the Sewer District Board. He is also a gubernatorial appointee to the California Resources Board.



#### D. Requested Resolution

I asked the parties how they envisioned this matter resolved. I advised them that this question was for informational purposes only, and no resolution was guaranteed. Their responses are included below.

█████. █████ stated he does not expect an apology. He knows he cannot change Supervisor Serna's mind. He also said he does not expect a "censure from the Board." █████ thinks maybe "the investigation is enough."

Sergeant █████ Sergeant █████ stated he feels Supervisor Serna is an elected official and should "step down." Sergeant █████ explained Supervisor Serna should do so because he is "biased towards at least 296,000 County residents on just this one issue."

Sergeant █████ Sergeant █████ stated he feels Supervisor Serna is "compromised." Sergeant █████ stated Supervisor Serna should resign or be removed from office because he cannot adequately represent the community, his constituents, or the bargaining units without bias. Sergeant █████ felt Supervisor Serna should issue a public apology.

#### V. █████'s January 6, 2021 Complaint

##### A. █████'s Allegations

In his written complaint, █████ alleged Supervisor Serna "harassed" him on the basis of his political affiliation. █████ explained Supervisor Serna "harassed" him by way of two January 3, 2021 Facebook posts Supervisor Serna addressed to all Trump supporters.<sup>4</sup> In terms of his political affiliation, █████ identified during his interview as a Libertarian and a Trump supporter. Attachment 1.

█████'s complaint referenced the following two Facebook posts made by Supervisor Serna on January 3, 2021.



<sup>4</sup> █████ learned of Supervisor Serna's January 3, 2021 Facebook posts from watching a news story about the posts.



In his complaint, █████ commented on the language Supervisor Serna used in his January 3, 2021 posts. █████ questioned how Supervisor Serna can treat people “fairly and respectfully” when he considers them “irrelevant” or “traitor[s].” █████ explained during his interview that being called a “traitor” by a member of the Board of Supervisors was “out of line” and “sort of a smack in the face.” As a result, █████ claimed he lost sleep thinking about Supervisor Serna’s posts.

█████ claimed that in addition to “harassing” him, Supervisor Serna also “dishonor[ed]” and “libel[ed]” █████’s family and friends. Specifically, █████ felt Supervisor Serna’s posts dishonored his family members who served in the military. Supervisor Serna also put down █████’s non-military family and friends who are Republicans or Trump supporters, “all because of how they voted.”

█████ claimed the posts will impact his work with Supervisor Serna and his staff despite the fact he has not worked with Supervisor Serna directly. █████ stated he has never met Supervisor Serna or communicated with him directly. However, █████ routinely receives communications from the Board about pavement with which he is tasked with researching and responding. █████ stated he will continue to do work for Supervisor Serna’s District, but it will “rub” him “the wrong way every time.” █████ stated he will think, “I can’t believe what a jerk this guy is” when he does work for Supervisor Serna’s District.

### B. Supervisor Serna’s Response

Supervisor Serna acknowledged he made the comments posted on his personal Facebook page on January 3, 2021. However, Supervisor Serna denied his posts were motivated by improper reasons.

Supervisor Serna explained the posts reflect his passion about how his country is “being represented.” His posts also reflect his passion about the behavior of Trump and his supporters.



In addition, Supervisor Serna stated his posts were also “a reflection” of him standing up to people on Facebook who were “trolling” him for his political views.<sup>5</sup>

Supervisor Serna stated posting on Facebook can be “cathartic” and that it was his “outlet.” In response to doubts that he can treat Trump supporters or Republicans fairly and respectfully, Supervisor Serna thinks this is a “misplaced concern.” He explained he would have made these posts on his professional Facebook page if he intended to treat people unfairly based on political affiliation in his capacity as Supervisor.

When he made the posts, Supervisor Serna said he did not consider the impact the posts would have on County employees. He also did not “qualify” his posts to apply to County employees or their families in particular. Supervisor Serna stated he understands County employees who are Trump supporters felt “degraded” by his opinions. However, he explained he too felt degraded as a result of Trump “being the bigoted, racist, misogynistic, dangerous individual that he is.”

Supervisor Serna further denied intending to dishonor military members who served the country with his post. He stated he did not “qualify [his] post” with military members or veterans “that happened to be Trump supporters.”

Supervisor Serna did not agree that his Facebook posts would affect County employees’ ability to do their work, particularly if the employee is not on his staff.<sup>6</sup> He also stated it was never his intent to affect County employees’ ability to do work involving him or his office.

During his interview, Supervisor Serna indicated he received some positive and supportive comments to his January 3, 2021 Facebook posts. I reviewed the sampling of positive comments he provided to me. The comments illustrated support for his posts. For example, one person wrote, “So many of us feel the same way.” Another wrote, “You have some freaking guts and passion. You have no fear to speak your truth. [...] You are true to your country and democracy.” Another comment read, “Sometimes it just needs to be said and I’m glad you said it!”

**Attachment 5.**

### C. Analysis And Findings

Supervisor Serna’s conduct is not in dispute. He unapologetically admitted he posted the January 3, 2021 Facebook messages. It is also undisputed the posts referenced an individual’s political affiliation. Supervisor Serna acknowledged expressing opinions about Trump supporters and Republicans in his posts.

What is in dispute, however, is whether Supervisor Serna’s conduct violated Sacramento County’s policies. The Board of Supervisors has not enacted social media or code of conduct policies that are applicable to itself. As such, I looked to the revised County Policy # 601, Discrimination,

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<sup>5</sup> Supervisor Serna stated one such “troll” sent him a message through Facebook Messenger. The message included “very, very ugly derogatory remarks” about Supervisor Serna’s wife. He provided an example of the type of message he referred to. **Attachment 4.**

<sup>6</sup> I did not identify ██████ to Supervisor Serna in an effort to preserve ██████’s privacy. I referred to ██████ as a County employee only.



Harassment, and Retaliation.<sup>7</sup> This policy states that “harassing any applicant, employee, agent, contractor, or volunteer based on any protected characteristic is prohibited.” “Political Affiliation or Belief” is included in this policy’s enumeration of Protected Characteristics/Statuses. In the revised policy, it further provides: “Harassment is unwelcome conduct of a verbal, visual, or physical nature that is based on a protected characteristic or status and unreasonably interferes with the individual’s ability to do his or her job.” **Attachment 7.**

After a thorough review of the evidence, and using a preponderance of the evidence standard, I find Supervisor Serna’s conduct does not unreasonably interfere with [REDACTED]’s ability to do his job. I reach this finding for the following reasons.

First, and compellingly, by his own account, [REDACTED] has never met Supervisor Serna. They are not in contact in their daily work. Supervisor Serna is not [REDACTED]’s immediate supervisor and they are not co-workers. Although [REDACTED] said it will “rub” him “the wrong way every time” to do work for Supervisor Serna’s District, he also (professionally) stated he will continue to perform work for Supervisor Serna’s District. Personal loyalty and confidence are not necessary between [REDACTED] and Supervisor Serna for proper functioning of the County.

Second, I find Supervisor Serna’s conduct was disconnected from the County’s workplace, and thereby does not unreasonably interfere with [REDACTED]’s ability to do his job. Supervisor Serna did not make the Facebook posts while performing his official duties. The act of posting his political opinions on his personal Facebook page is not within the scope of his official duties as a County Supervisor. Instead, his posts were about the U.S. political climate and the presidency, which are matters of political concern to the community – not the County’s workplace.<sup>8</sup>

Similarly, Supervisor Serna’s decision to post the messages on his personal Facebook page – not his professional Facebook page – reflects his intention to separate his personal political activity from the County’s workplace and his official role as Supervisor. The existence of Supervisor Serna’s dedicated professional Facebook page highlights his intention to distinguish between personal and professional posts.<sup>9</sup>

Next, Supervisor Serna did not direct his comments at [REDACTED] or any County employee he interacts with in the course of his daily work as Supervisor. Supervisor Serna directed his posts at Trump supporters and the Republican Party generally. While some County employees, including [REDACTED]

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<sup>7</sup> Sacramento County Policy # 601, Discrimination in County Employment, was in effect at the time of Supervisor Serna’s January 3, 2021 Facebook posts. **Attachment 7.** However, before the posts on January 3, 2021, the County drafted a revised version, which was adopted in February 2021. Because the prior policy lacked guidance or definition (causing the County to revise it), we looked to the language of the revised policy. **Attachment 7.** We also looked to other reliable sources for definitions related to harassment, including the Society for Human Resource Management (SHRM), a reliable and established national association for Human Resources. See [https://www.shrm.org/resourcesandtools/tools-and-samples/policies/pages/cms\\_000551.aspx](https://www.shrm.org/resourcesandtools/tools-and-samples/policies/pages/cms_000551.aspx). SHRM uses language similar to the County’s revised policy.

<sup>8</sup> Supervisor Serna stated his January 3, 2021 posts closely followed Trump’s publicized communication with the Georgia Secretary of State. Per Supervisor Serna, he found it “repulsive” that Trump “attempted to sway” the Georgia Secretary of State to find more Trump votes.

<sup>9</sup> I considered that, in addition to identifying himself as a husband, chef, and photographer on his personal Facebook, Supervisor Serna also identifies himself as a County Supervisor on his personal page. Whether this changes the personal nature of his post is the subject of a legal analysis outside the scope of this investigation.

were among those supporters Serna targeted, I do not find this converts his posts to County employment-related activity.

Similarly, Supervisor Serna's conduct did not impact [REDACTED]'s employment in an adverse way, as prohibited by Sacramento County Policy # 601, Discrimination, Harassment, and Retaliation.<sup>10</sup> His posts did not impact the terms and conditions of [REDACTED]'s employment (by way of an employment action or decision) because of [REDACTED]'s political affiliation.

For these reasons, I find Supervisor Serna did not violate Sacramento County's policies prohibiting harassment based upon political affiliation as it relates to [REDACTED]

This was an admittedly difficult analysis. In reaching these findings, I recognize Supervisor Serna used language that is reasonably considered inflammatory. He stated Trump supporters are "irrelevant," "dead to me," and "traitors," and referred to Republicans as "liars," "cheats," and "cowards." Much of the country is politically divided. Even if you are not aligned with the Republican Party or Trump supporters, the language Supervisor Serna used was understandably upsetting to those such as [REDACTED]

## VI. SCDSA's January 7, 2021 And January 8, 2021 Complaints

### A. SCDSA's Allegations

#### 1. Discrimination

Sergeant [REDACTED] and Sergeant [REDACTED] on behalf of SCDSA, alleged Supervisor Serna "discriminated" against "conservative/Trump supporters" by way of his Facebook posts beginning on January 3, 2021. SCDSA's complaint referenced the following Facebook posts made by Supervisor Serna.



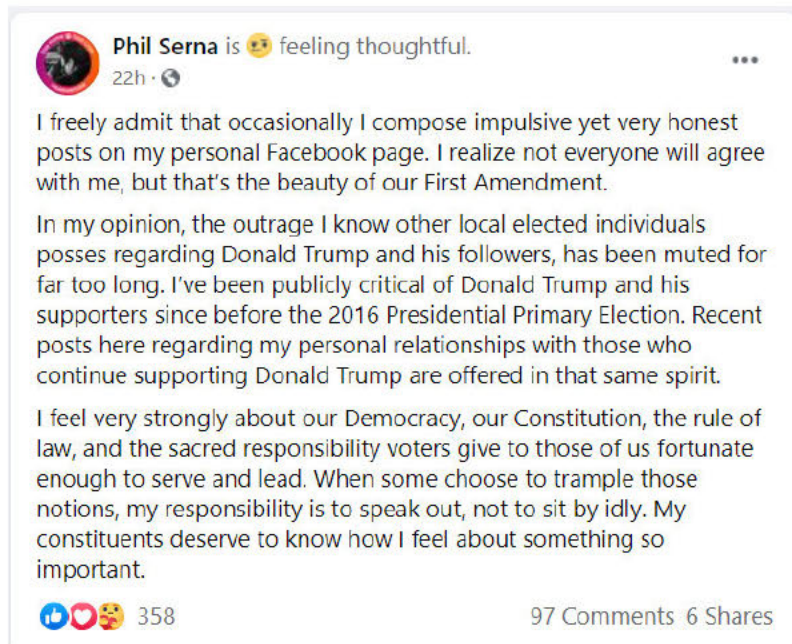
<sup>10</sup> This reference is to the revised County policy. **Attachment 7.**



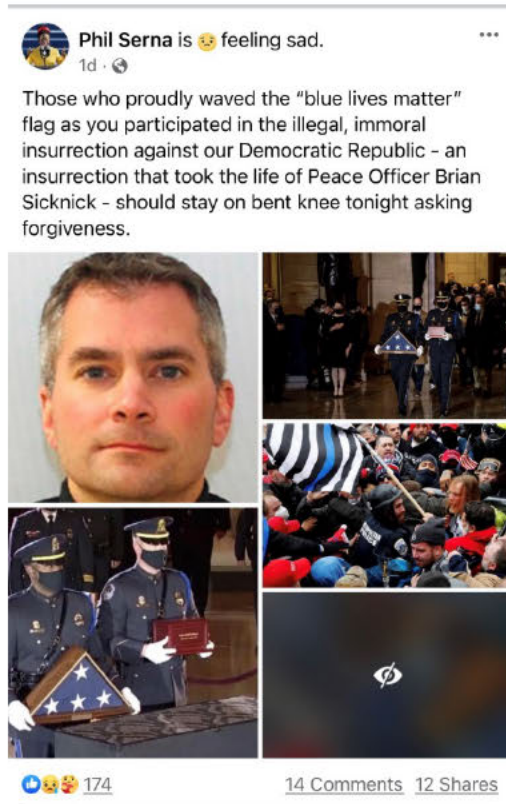


11

<sup>11</sup> Supervisor Serna later edited this January 3, 2021 post and replaced the middle finger emoji with a sick face emoji and a vomiting emoji. **Attachment 6.**



SCDSA also claimed Supervisor Serna expressed “anti-law enforcement” sentiment by way of the following Facebook post.



Specifically, SCDSA alleged within its complaint that Supervisor Serna “used social media to distribute and display slurs and derogatory comments about Trump supporters.” SCDSA also wrote that this conduct likely violated the County’s discrimination policies.

SCDSA felt Supervisor Serna’s posts were made in his capacity as a public official, not as a private citizen. SCDSA claimed Supervisor Serna “was a public figure, demeaning and discriminating against a segment of society and county employees he is charged with representing.” Sergeant [REDACTED] elaborated that he found Supervisor Serna’s posts “disheartening, disappointing.” Sergeant [REDACTED] would expect someone in Supervisor Serna’s position to be more open to differing opinions.

Per the SCDSA, Supervisor Serna’s posts illustrated another fissure in an already contentious relationship between him and the SCDSA. Sergeant [REDACTED] explained there is currently no communication or working relationship between them, at Supervisor Serna’s choosing. Per Sergeant [REDACTED] Supervisor Serna created tension by pushing for a “defund” of the Sheriff’s Department. In response, SCDSA targeted him and two other Supervisors to sway their votes on the budget.

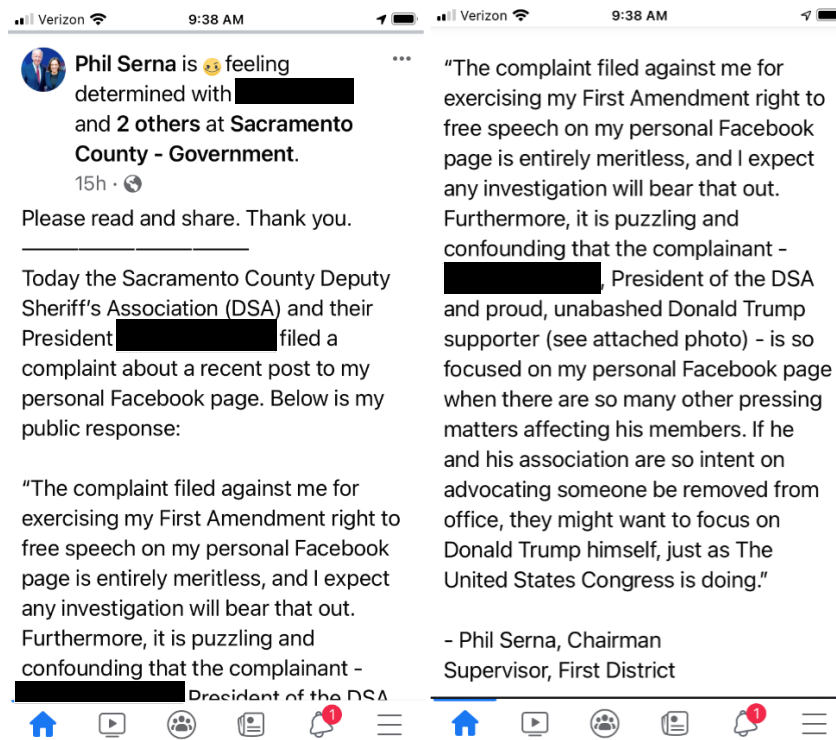
SCDSA’s primary concern with Supervisor Serna’s posts was the potential impact of Supervisor Serna’s opinions on SCDSA’s contract negotiations. Sergeant [REDACTED] stated Supervisor Serna is “so biased towards [him]” that he could see him voting “no” on SCDSA’s contract as a result. Sergeant [REDACTED] was also concerned Supervisor Serna will be “tainting” other members of the Board as to SCDSA. Overall, SCDSA was concerned Supervisor Serna has already made up his mind about issues involving the SCDSA as a result of the political opinions he expressed.

Sergeant [REDACTED] also expressed his concern that Supervisor Serna’s posts will not be taken as seriously because the protected characteristic is political affiliation, as opposed to another protected class. He stated if Supervisor Serna’s posts pertained to another protected class, they would be a major concern to anyone.

## 2. Retaliation

SCDSA alleged Supervisor Serna posted a January 7, 2021 Facebook post in retaliation for SCDSA’s January 7, 2021 complaint. On January 8, 2021, SCDSA sent the County screenshots of Supervisor Serna’s January 7, 2021 Facebook post referencing the SCDSA complaint. The screenshots as are follows. **Attachment 2.**





- Phil Serna, Chairman  
Supervisor, First District



Sergeant [redacted] stated he felt the post was retaliatory because Supervisor Serna made comments about him and included a picture of him in a "Trump 2020" mask.<sup>12</sup> Sergeant

<sup>12</sup> Sergeant [redacted] first posted the picture of himself in the "Trump 2020" mask on his personal Facebook page when "COVID was new."

██████████ also thought the post was retaliatory because Supervisor Serna tagged Sacramento Bee Reporter ██████████ ██████████, with whom Sergeant ██████████ has a contentious relationship.<sup>13</sup>

Sergeant ██████████ felt the post was retaliation against him and Sergeant ██████████. He was concerned and disappointed Supervisor Serna seemed to “double down” on his position instead of apologizing for making a mistake. Sergeant ██████████ felt tagging ██████████ was retaliatory on Supervisor Serna’s part because ██████████ is “anti-██████████ ██████████ ██████████”

## B. Supervisor Serna’s Response

### 1. Discrimination

As an overall matter, Supervisor Serna denied any intention to treat any County employees differently based on their political affiliation. He stated that has never been and never will be his intent.

Supervisor Serna stated he posted his political opinions on his personal Facebook page as a private citizen. He clarified if he had wanted to explain how he feels as “Supervisor Serna at the dais,” he would have posted on his professional Facebook page. He considers his personal Facebook a “non-professional Facebook arena” in which he posts on a wide spectrum of subjects.

Supervisor Serna denied his post referencing the “insurrection” was meant to be anti-law enforcement. He explained his post was an observation about the irony of “Blue Lives Matter” flags being waved during the “insurrection” wherein a police officer was killed.

As to his relationship with Sergeant ██████████ and the SCDSA generally, Supervisor Serna stated he does not think the relationship will be particularly affected by his posts. This is because the relationship was already strained. He explained he has had “strong disagreements” with Sheriff ██████████ ██████████, and with Sergeant ██████████ by extension. Per Supervisor Serna, these disagreements were not necessarily based on politics, but rather about things like public policy and use of resources. He provided the example of his disagreement with Sheriff ██████████’ decision to issue “carry concealed weapon permits like they’re candy” and his reluctance to obtain body cameras.

In response to SCDSA’s concerns about Supervisor Serna voting on their contract, he stated he does not interject his politics into decisions about public policy and resource allocation. Supervisor Serna bases his decisions on the merits of the policy. He seeks to balance the needs of the County. Supervisor Serna acknowledged SCDSA’s perspective, that they might have concerns as to his opinions. However, he made clear his politics have not and will not affect his decisions on items pertaining to SCDSA. Supervisor Serna also indicated he was not attempting to influence other Supervisors against Sergeant ██████████

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<sup>13</sup> Sergeant ██████████ thinks Supervisor Serna tagged ██████████ because Sergeant ██████████ does not trust ██████████ and refuses to talk to him. ██████████ has also posted the same picture of Sergeant ██████████ in the “Trump 2020” mask multiple times.



## 2. Retaliation

Supervisor Serna denied retaliating against the SCDSA or Sergeant [REDACTED]. He stated he found their claim to be “ludicrous.”

Specifically, Supervisor Serna denied his January 7, 2021 Facebook post was retaliatory. He also stated it was not intended to be retaliatory. Rather, it was meant to explain his feelings about the fact that there was an investigation instigated by SCDSA’s complaint. His post was also intended to shed light on Sergeant [REDACTED]’s own politics, given that SCDSA made Supervisor Serna’s posts very public and a news story. Supervisor Serna characterized his January 7, 2021 post as his attempt to give his side of the story.

Supervisor Serna stated he included the picture of Sergeant [REDACTED] in the post because he wanted his followers to see who the complaint was coming from. Supervisor Serna tagged [REDACTED] because [REDACTED] “has a particular interest in the Sheriff’s Department overall.” Supervisor Serna also wanted the local media to know SCDSA was behind the complaint.

### C. Other Relevant Evidence

#### 1. Discrimination

I reviewed five submissions SCDSA or the County received in support of SCDSA’s complaint against Supervisor Serna. I also reviewed around 15 submissions Supervisor Serna received in support of his Facebook posts and against the SCDSA’s complaint. My review of these materials illustrates that both sides received support for their positions.

**SCDSA Support Submissions.** I reviewed an email submission SCDSA received dated February 9, 2021 from [REDACTED]. It stated, “[Supervisor Serna’s] hateful speech is absolutely disgusting and he should be removed from his position.” [REDACTED] stated, “The fact that he’s still a member of the Sacramento Board of Supervisors after these statements is not ok.” Attachment 8.

Sacramento citizen and U.S. military veteran [REDACTED] submitted an email on January 10, 2021. He identified with concerns raised by both SCDSA and Supervisor Serna. [REDACTED] stated Supervisor Serna’s frustrations “could have been better articulated.” He also noted the “lack of condemnation by sufficient unions representing deputies/officers” as to law enforcement taking part in the “insurrection and murder at our Capitol.” Attachment 8.

I reviewed an email Sacramento citizen [REDACTED] sent Supervisor [REDACTED] on January 8, 2021. [REDACTED] opined that Supervisor Serna telling half his constituents he will not represent them is “disheartening.” He feels censuring Supervisor Serna would be appropriate, as he should be publicly held accountable. Attachment 8.

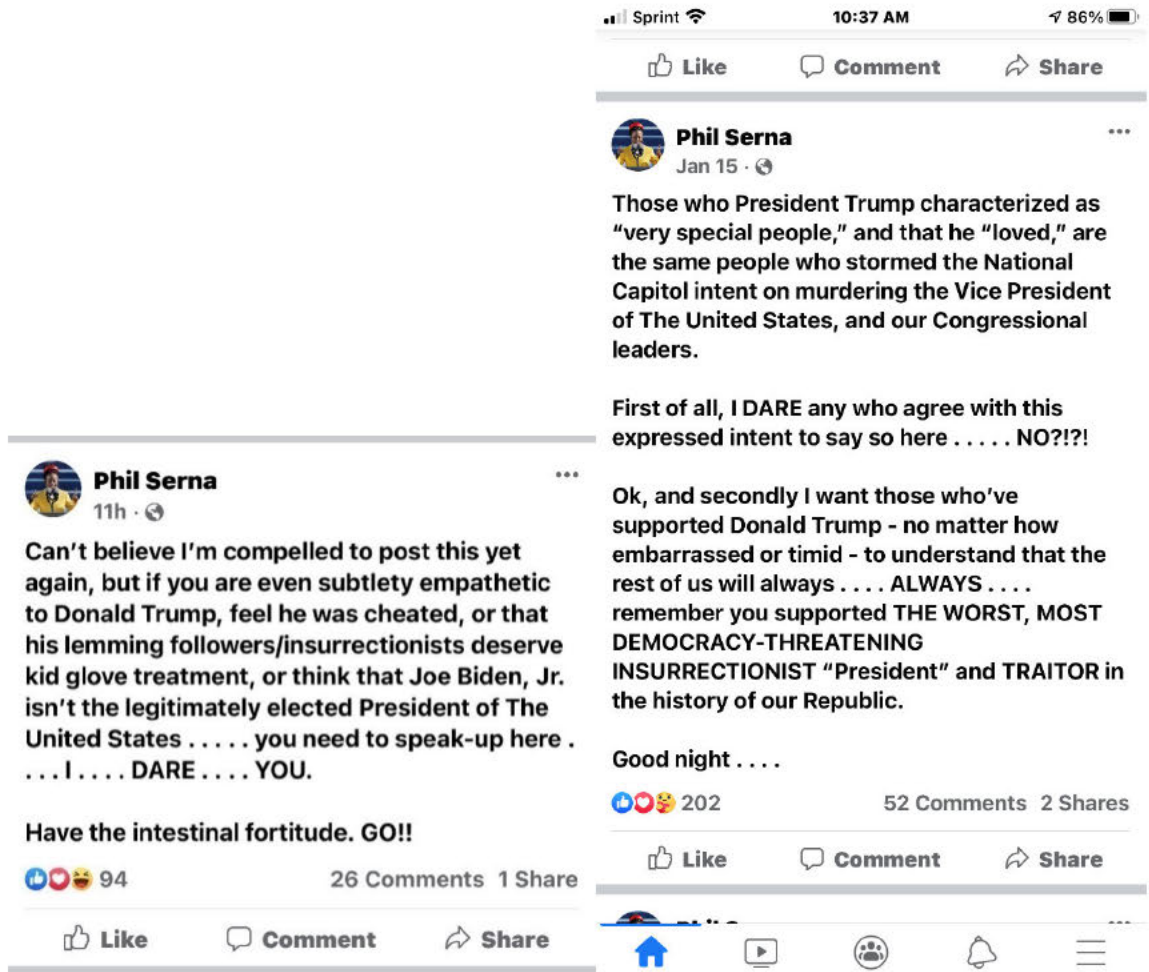
I also reviewed two emails [REDACTED]<sup>14</sup> sent to Supervisors Serna, [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. In the first email, dated January 7, 2021, [REDACTED] stated he does not support Trump, but feels Supervisor Serna should be unbiased. He also feels Supervisor

<sup>14</sup> I note that [REDACTED] has the same last name as Sergeant [REDACTED]. I asked the County whether the two men are related and the County did not know.



Serna should represent all of the people in Sacramento County, not just those who agree with his opinions. He referenced language Supervisor Serna used to describe Trump supporters in his January 3, 2021 posts, such as “traitor” and “irrelevant.” Attachment 8.

██████████ stated in a second email on January 25, 2021 that Supervisor Serna continued to degrade people that disagreed with him, which is “disgusting.” ██████████ opined that allowing a County Supervisor to speak about Trump supporters in this way “honestly scares” him. This email also included the following Supervisor Serna Facebook posts. Attachment 8.



“#StandWithSerna” Support Submissions. Supervisor Serna provided a Facebook post that illustrated “an unsolicited show of solidarity organized by the head of the Central Labor Council, ██████████.”<sup>15</sup> ██████████ posted an “action alert” calling for people to “#StandWithSerna” at the next Board of Supervisors meeting. He explained this was in response to SCDSA’s call for an investigation and for Supervisor Serna’s resignation. Attachment 9.

<sup>15</sup> The Central Labor Council, per its website, is “a democratically governed council of 90 unions, each with its own distinct membership and unique voice.” The Council is committed to “the constitutional right of freedom of association and the expression of opinion.”

█████ also submitted a letter to the Board in support of Supervisor Serna. Within this letter, █████ stated "Supervisor Serna services all his constituents. Period." He also stated, about Sergeant █████ "It is concerning that any sworn officer of the law would identify themselves with such a disgraceful lot" as to Trump supporters. **Attachment 10.**

I reviewed numerous other letters submitted in support of Supervisor Serna labeled with "#StandWithSerna," as follows. Sacramento residents █████ and █████ submitted a support letter for Supervisor Serna. They called for an investigation of SCDSA, asking that any racists within their ranks be removed. They stated SCDSA's actions made them question their safety and that of their community. **Attachment 10.**

Sacramento County resident █████ submitted a statement of support for Supervisor Serna to the Board. He opined that SCDSA "is siding with and providing material effort & assistance [...] for the actions of Trump and Trump's treasonous supporters." █████ stated his safety is in question and called for an investigation of SCDSA. He asked that any racists "within their ranks" be removed immediately. **Attachment 10.**

█████, a resident of Sacramento, also submitted written support of Supervisor Serna. She stated she is proud that he represents her on the Board. She, too, called for an investigation into SCDSA and asked for any "racist people and procedures" to be removed. █████ also questioned how she can trust law enforcement who seek to "'cancel' dissent." **Attachment 10.**

█████ submitted a Supervisor Serna support email to the Board on January 9, 2021. █████ stated an investigation would be a "ridiculous endeavor." She also stated she "wholeheartedly" agrees with Supervisor Serna's post wherein he suggested Sergeant █████ should focus on removing Trump from office. **Attachment 10.**

Sacramento resident █████ emailed in support of Supervisor Serna. He questioned SCDSA's actions and called for an investigation. █████ also expressed concerns for his safety. Sacramento residents █████ and █████ sent very similar emails supporting Supervisor Serna. **Attachment 10.**

█████ sent the Board an email stating he believes Supervisor Serna does a "great job for our community." He asked the Board to support Supervisor Serna. **Attachment 10.**

## 2. Retaliation

I reviewed documents provided by SCDSA and Supervisor Serna, including one citizen submission to the County, as well as multiple comments to Supervisor Serna's Facebook posts. Each side provided examples of support for their respective positions from the community. I also reviewed SCDSA's two press releases pertaining to Supervisor Serna's Facebook posts.

█████ January 7, 2021 email outlined above included his statement that Supervisor Serna "tried to turn people against █████ by creating another Facebook post." He likely referenced Supervisor Serna's Facebook post that included a photo of Sergeant █████ in a "Trump 2020" mask. **Attachment 8.**



I also reviewed multiple comments to Supervisor Serna's January 7, 2021 Facebook post provided by Supervisor Serna. The majority of the comments supported Supervisor Serna's posts and opinions. One comment read, "Your posts let me know that there are good people in our government. People who care about our country, community and human beings!" Another comment stated, "Keep on posting your beliefs – silence is approval." **Attachment 11.**

I reviewed SCDSA's website and found two press releases pertaining to Supervisor Serna's Facebook posts. The first press release stated it was for immediate release on January 6, 2021. This press release called for the resignation of Supervisor Serna as a result of his January 3, 2021 Facebook posts. The second press release stated it was for immediate release on January 8, 2021. This press release stated SCDSA had filed a formal discrimination complaint against Supervisor Serna. The written complaint SCDSA submitted to the County on January 7, 2021 was attached. It also stated SCDSA requested an independent investigation into Supervisor Serna's conduct. **Attachment 12.**

#### D. Analysis And Findings

##### 1. Discrimination

As noted above, Supervisor Serna's conduct is not in dispute. Instead, I resolve whether Supervisor Serna's conduct violated any County policy. For many of the same reasons I did not find Supervisor Serna violated any policy related to [REDACTED] or County employees, I find by a preponderance of the evidence that Supervisor Serna did not violate County policies as to SCDSA. I make this finding for the following reasons.

After a thorough review of the evidence, and using a preponderance of the evidence standard, I find Supervisor Serna's conduct does not unreasonably interfere with SCDSA's or its members' ability to do their jobs. I reach this finding for the following reasons.

First, I find Supervisor Serna's conduct was disconnected from SCDSA, and thereby does not unreasonably interfere with the organization's ability to fully represent its members. It can continue to fully and properly function. I considered Sergeant [REDACTED]'s concern that Supervisor Serna will vote on SCDSA's contract. I gave weight to the importance of SCDSA's ability to participate in good faith labor negotiations. However, as of the date of this Report, there is no evidence Supervisor Serna has taken any negative action related to SCDSA or its contract. Ultimately, SCDSA's concern is not yet ripe. The record does not include evidence Supervisor Serna already allowed, or intends to allow, his personal political opinions to impact his duties as Supervisor.<sup>16</sup> Similarly, the evidence does not demonstrate Supervisor Serna's posts unreasonably interfered with any SCDSA member's ability to do his or her job.

Second, I find Supervisor Serna did not make the Facebook posts while performing his official duties. Instead, he was expressing his political opinions on his personal Facebook page, and not within the scope of his official duties as a County Supervisor. His posts were about the U.S.

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<sup>16</sup> To that point, I note Supervisor Serna's statement that he does not insert his personal politics into policy and resource allocation decisions as Supervisor.



political climate and the presidency, which are matters of political concern to the community – not SCDSA.

On this point, it is noteworthy that Supervisor Serna’s decision to post the messages on his personal Facebook page – not his professional Facebook page – reflects his intention to separate his personal political activity from the County’s workplace and his official role as Supervisor. The existence of Supervisor Serna’s dedicated professional Facebook page highlights his intention to distinguish between personal and professional posts.<sup>17</sup>

Next, Supervisor Serna did not direct his comments at SCDSA or any of its members he interacts with in the course of his daily work as Supervisor. Supervisor Serna directed his posts at Trump supporters and the Republican Party generally. Supervisor Serna knew Sergeant [REDACTED] was a Trump supporter. However, Supervisor Serna and Sergeants [REDACTED] and [REDACTED] are not in contact in their daily work. They are not co-workers. They do not work together closely such that personal loyalty and confidence are necessary for the proper functioning of SCDSA and its members.

Further, there is no evidence Supervisor Serna’s conduct negatively impacted any of SCDSA’s employees’ employment (by way of an employment action or decision), as outlined by revised Sacramento County Policy # 601, Discrimination, Harassment, and Retaliation.

Finally, I considered SCDSA’s assertion that Supervisor Serna’s “insurrection” post expressed anti-law enforcement sentiment. However, I find the post was not directed at law enforcement, but rather people at the “insurrection” waiving “Blue Lives Matter” flags. This suggests Supervisor Serna was expressing a political opinion about the “insurrection,” as opposed to an anti-law enforcement sentiment. The act of mentioning the “Blue Lives Matter” flag here does not equate to an expression of anti-law enforcement sentiment. To the contrary, Supervisor Serna’s post acknowledged and expressed sadness about the loss of a member of the law enforcement community.

For these reasons, I find Supervisor Serna did not violate Sacramento County’s policies prohibiting discrimination based upon political affiliation as it relates to SCDSA.<sup>18</sup>

In reaching these findings, I repeat my earlier comment – that Supervisor Serna’s posts were understandably upsetting to SCDSA members who are Republicans and/or Trump supporters. It should not have been unexpected that addressing the issues using such inflammatory language would raise concerns about Supervisor Serna’s objectivity towards SCDSA members who are Republicans and/or Trump supporters.

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<sup>17</sup> As noted above, I considered that, in addition to identifying himself as a husband, chef, and photographer on his personal Facebook, Supervisor Serna also identifies himself as a County Supervisor on his personal page. Whether this changes the personal nature of his post is the subject of a legal analysis outside the scope of this investigation.

<sup>18</sup> I considered the submissions from concerned citizens. Some supported SCDSA’s position. Others supported Supervisor Serna’s position. The submissions reflect a political divide. County residents support SCDSA’s position calling for an investigation into Supervisor Serna’s posts. County residents also support an investigation into SCDSA’s practices. I therefore did not give any weight to this evidence.

## 2. Retaliation

Revised County Policy # 601, Discrimination, Harassment, and Retaliation provides, “It is a violation of this policy to retaliate or engage in any form of retaliation because a person has filed a complaint of, participated in an investigation of, or opposed discrimination.” The revised policy further provides the following definition of retaliation: “Retaliation is when an individual suffers adverse action in response to making a claim of, participating in the investigation of, or opposing discrimination or harassment.”<sup>19</sup> **Attachment 7.**

Here, it is undisputed SCDSA filed a January 8, 2021 complaint protesting what it perceived as retaliation by Supervisor Serna. It is also undisputed Supervisor Serna posted a January 7, 2021 message on his personal Facebook account because of SCDSA’s January 7, 2021 discrimination complaint. Indeed, he specifically referenced the complaint in his post. Supervisor Serna also posted a photo of Sergeant [REDACTED] in a Trump mask, tagging reporter [REDACTED]

What is disputed, however, is whether Supervisor Serna’s actions constitute a violation of County policy. I find by a preponderance of the evidence Supervisor Serna’s actions were not a policy violation. I reach this finding for the following reasons.

First and most compellingly, the evidence does not demonstrate that SCDSA or its members have suffered an adverse action. As noted above, any concerns that Supervisor Serna will take any negative action related to SCDSA or its contract are premature – that has not occurred to date. At present, Supervisor Serna’s Facebook post about SCDSA’s complaint is the extent of his action concerning SCDSA’s complaint.

Second, I reiterate my earlier analyses in which I find Supervisor Serna’s conduct was done in his personal capacity, not his professional capacity as a Supervisor.

Next, and specific to Sergeant [REDACTED] I find he likewise has not been subjected to any adverse action. While Sergeant [REDACTED] understandably disliked having Supervisor Serna reference him in this manner on Facebook, the evidence demonstrates Sergeant [REDACTED] himself publicly posted the photo of himself in the Trump mask. Supervisor Serna did not post anything that was not already posted on Facebook by Sergeant [REDACTED] himself. I also note that Supervisor Serna and Sergeant [REDACTED] who both hold leadership roles within the County, post expressions of their political affiliation.<sup>20</sup>

For these reasons, I find Supervisor Serna’s post did not violate the County’s policies prohibiting retaliation.

<sup>19</sup> Sacramento County Policy # 601, Discrimination in County Employment, was in effect at the time of Supervisor Serna’s January 7, 2021 Facebook post. **Attachment 7.** However, before the post on January 7, 2021, the County drafted a revised version, which was adopted in February 2021. Because the prior policy lacked guidance or definition (causing the County to revise it), we looked to the language of the revised policy. **Attachment 7.** We also looked to other reliable sources for definitions related to retaliation, including SHRM, a reliable and established national association for Human Resources. SHRM uses language similar to the County’s revised policy. **Attachment 7.**

<sup>20</sup> During his interview, Supervisor Serna stated that Sergeant [REDACTED] had a photo of the “Gadsden” flag on his personal Facebook page. Supervisor Serna sent me a screenshot of Sergeant [REDACTED]’s Facebook page with the photo of the “Gadsden” flag as his background photo. Supervisor Serna’s understanding is that this flag symbolizes intolerance, hate, and even racism. **Attachment 13.**



This concludes the investigation.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Sarah Tobias', with a horizontal line underneath.

Sarah Tobias



## Appendix – Methodology

I conducted the investigation using specific methodology following industry standards. This section provides an overview of the investigative processes.<sup>21</sup>

### A. Witnesses

I interviewed the following witnesses:

Name of Interviewee	Title	Date(s) of Interview*
██████████	Sergeant/ SCDA President	February 4, 2021
██████████	Sergeant/ SCDSA Vice President	February 4, 2021
Phil Serna	Sacramento County Supervisor, First District	March 1, 2021
██████████	Senior Civil Engineer	January 22, 2021

\*Due to the Firm’s policy instituted in response to COVID-19, all interviews were conducted via videoconference.

I admonished interviewees that they were subject to governing policies prohibiting retaliation for either bringing a claim or participating in an investigation.

Witness statements were recorded. Interview recordings are attached separately via Dropbox link. **Attachment 14**. The conclusions in this Report are drawn from the totality of the evidence and a thorough analysis of all the facts, and where necessary, credibility determinations are made.<sup>22</sup>

Quotations in this Report are not verbatim recitations of witness statements. Quotations are cited as accurately as possible from typewritten notes taken contemporaneously during the interview and from interview transcripts.

Prior to reaching findings, the credibility of the witnesses was assessed. Although some differences exist in the statements provided by witnesses, the material aspects of the statements were similar, making it more likely than not that the differences are attributable to differing perceptions, passage of time, and/or memory considerations, as opposed to purposeful misrepresentations.

<sup>21</sup> The Firm was retained to use its legal skills to assist the County in developing a response to the allegations. Specifically, the Firm has used its expertise in employment law to arrive at findings based on its professional evaluation of the evidence.

<sup>22</sup> I considered and gave appropriate weight to information that might be considered to be hearsay in legal proceedings.

**B. Documents**

I reviewed several documents. The documents should be read in their entirety in conjunction with this Report to fully understand the underlying reasoning and findings herein.

Attachment	Document
1	██████'s Complaint
2	Sacramento County Deputy Sheriff's Association's Complaints
3	Supervisor Serna's Training History
4	"Troll" Facebook Messenger Message to Supervisor Serna
5	Comments to Supervisor Serna's January 3, 2021 Post
6	Edited Version of Supervisor Serna's January 3, 2021 Facebook Post
7	Relevant Policies
8	Submissions in Support of SCDSA
9	"Action Alert" Facebook Post from ██████
10	"#StandWithSerna" Submissions in Support of Supervisor Serna
11	Comments on Supervisor Serna's January 7, 2021 Facebook Post
12	SCDSA Press Releases Regarding Supervisor Serna
13	Screenshot of Sergeant ██████'s Personal Facebook Page
14	Witness Interview Recordings and Transcripts

**C. Evidentiary Standard**

I reviewed, compared and analyzed evidence under a preponderance of the evidence standard to determine whether the allegations were with or without merit. "Preponderance of the evidence," for purposes of this Report, means that the evidence on one side outweighs, or is more than, the evidence on the other side. This is a qualitative, not quantitative, standard.

**D. Independence**

Independence is an important component of this investigation. The County and its representatives allowed me discretion to conduct the investigation as I determined to be necessary. I was given complete access to all requested witnesses and documents. No person interfered with, or attempted to influence, the findings in this Report.

**E. Timing**

The timing in which this investigation was initiated and conducted is determined to be reasonable, given all the factors involved, including the complexity of the issues; the expanding investigation; scheduling and coordination of witness interviews; the length of time required to transcribe multiple witness interviews; and, the time needed in preparing a thorough report.



This concludes the Appendix.