BUTZEL
ATTORNEYS AND COUNSELORS

MEMORANDUM

[redacted]

TO: Andrew McKinnon, Macomb County Deputy County Executive

FROM: Butzel Long

DATE: July 8, 2022

RE: Workplace Investigation Report – Prosecutor's Office

INTRODUCTION

This memorandum constitutes the final report of the workplace investigation regarding the Macomb County Prosecutor's Office by Butzel Long. This memorandum includes three parts: (i) a description of the scope of the investigation; (ii) the fact allegations and findings of the investigation; and (iii) the Investigator's recommendations.

SCOPE OF THE INVESTIGATION

Butzel Long was engaged to conduct an investigation regarding a number of workplace complaints pertaining to the Macomb County Prosecutor's office. Under Michigan and federal law, when an employee, or in this case multiple employees, make allegations of unlawful behavior, the law requires and places a duty on an employer to investigate those allegations. If those allegations are substantiated, the law requires and places a duty on the employer to take action to remediate the unlawful behavior.

Andrew McKinnon directed Butzel Long to identify any workplace complaints/allegations, investigate those complaints/allegations, present findings of fact and make recommendations. The Investigator interviewed employees and other individuals over a period of several months. At the outset of the investigation, Butzel Long was provided with: (i) disciplinary and grievance documents regarding [redacted] and [redacted] (ii) disciplinary documents regarding [redacted]; and (iii) a written complaint submitted to Macomb County HR by [redacted].

Andrew McKinnon was Butzel Long's primary source of contact throughout the investigation. Brian Jacks assisted with contacting employees at the Investigator's request to facilitate individual meetings with employees. Neither Mr. McKinnon nor Mr. Jacks were aware of the subject matter of any interviews with employees.

During the course of the investigation, the Investigator interviewed sixteen (16) current and former employees of the Macomb County Prosecutor's Office. The Investigator also attempted to interview Macomb County Prosecutor Peter Lucido, but through his legal counsel, Prosecutor Lucido refused to appear for an investigatory interview.

Mr. McKinnon specifically requested that, except when necessary or unavoidable, Butzel Long not disclose in its investigation report, the name(s) of any persons interviewed during the course of the investigation. In other words, Mr. McKinnon requested that the Investigator report the substance of the complaints being made, but not the identity of the individuals making the complaints. With few exceptions, Butzel Long was able to honor this request. During the course of the investigation, each person was advised by the Investigator that his or her name would not be identified in the investigation report, except (i) for allegations of unlawful conduct; or (ii) where the circumstances of the allegation or complaint made it unlikely or impossible that the Investigator could conceal the identity of the witness reporting the allegation or complaint. In addition, several employees gave their consent to the Investigator to reveal their names in connection with the investigation report.

This memorandum of the investigation report is presented in an executive summary format. All of the Investigator's handwritten notes taken during the investigation have been preserved but are not being provided to anyone at Macomb County.

No one at Macomb County identified any topics or issues as being 'off-limits' or outside the scope of the investigation. No one at Macomb County placed restrictions on the Investigator's ability to gather facts during the investigation, although as a practical matter, the Investigator did not have unfettered access to emails and other documents. No one at Macomb County attempted to interfere with, or influence the results of, this investigation in any manner. The Investigator had the freedom to follow the facts wherever they led. No one from Macomb County has previewed this report or any drafts.

COMPLAINTS/ALLEGATIONS, FINDINGS AND RECOMMENDATIONS

1. Workplace Conduct Involving APAs [redacted], [redacted] And [redacted]

COMPLAINTS/ALLEGATIONS:

Seven (7) employees reported that Prosecutor Lucido was intent on "breaking up" a perceived group of senior Assistant Prosecuting Attorneys (APAs) in the Prosecutor's Office, including [redacted], [redacted], and [redacted]. The employees reported that Prosecutor Lucido began this course of action almost immediately after assuming office following his election. Some of these employees reported their suspicion that Prosecutor Lucido was motivated to "break up" this group based on a recommendation from James Langtry, the former Chief of Operations under former Prosecutor Eric Smith's administration.

The reported examples of Prosecutor Lucido's efforts to "break up" this perceived group include: removing [redacted] from the Chief of Homicide position, laying off [redacted] (prior to [redacted] exercising his union bumping rights), disciplining and/or attempting to discipline [redacted], [redacted] and [redacted], and moving Messrs. [redacted] and [redacted] to "inferior" offices which are traditionally reserved for new APAs and other employees.

The Investigator learned that [redacted] was disciplined by Prosecutor Lucido for allegedly: (i) failing to advise Prosecutor Lucido about a Request for Investigation from the Attorney Grievance Commission ("AGC"); (ii) failing to advise Prosecutor Lucido regarding a Notice of Hearing before the Attorney Discipline Board ("ADB"); and (iii) submitting a time off request after taking the time off. During his investigatory interview, [redacted] conceded that he did not advise Prosecutor Lucido about the Request for Investigation or the Notice of Hearing. [redacted] also reported however, that Prosecutor Lucido was well aware of the Request for Investigation and Notice of Hearing because it was Prosecutor Lucido who submitted the Request

for Investigation to the AGC. Several individuals reported to the Investigator that Prosecutor Lucido repeatedly denied that he submitted, or caused to be submitted, a Request for Investigation to the AGC. However, at least one email provided to the Investigator confirms that Prosecutor Lucido's Chief of Staff did in fact submit the Request for Investigation to Mike Goetz[1] at the AGC. Against this background, [redacted] reported that there was no need to report the information to Prosecutor Lucido because he was already well aware of it. With respect to the time off request, [redacted] reported that he obtained permission to take the time off in advance of taking the time off, and that the system for submitting time off requests was new. [redacted] also reported that other individuals failed to use the new system to request time off, but did not provide the names of any such individuals.

The Investigator further learned that [redacted] was disciplined by Prosecutor Lucido on or about January 19, 2022 for allegedly: (i) giving [redacted] permission to attend a show cause hearing in Macomb County Circuit Court relating to a FOIA dispute in which Mr. VanLaan previously appeared; and (ii) telling [redacted] to file an answer to a Request for Investigation from the AGC on behalf of APA [redacted] [redacted] reported that she told [redacted] that he could appear at the show cause hearing on County time because the genesis of the show cause hearing related to work he previously performed for the County. [redacted] also reported that she advised [redacted] that he had several options for responding to the Request for Investigation, including having [redacted] represent him. [redacted] reported, and [redacted] confirmed through statements and emails, that [redacted] had been regularly representing APAs in grievance proceedings long before Prosecutor Lucido assumed his office. According to [redacted], there was nothing unusual about advising [redacted] that one option in responding to the Request for Investigation was having [redacted] represent him.

The Investigator also learned that [redacted] was disciplined by Prosecutor Lucido: (i) for his appearance at the show cause hearing in the FOIA dispute; (ii) for failing to promptly move his office to a newly assigned office; and (iii) for representing [redacted] in response to the Request for Investigation from the AGC. As previously described, [redacted] had permission from his direct supervisor, [redacted], to appear at the show cause hearing in the FOIA dispute and to respond to the Request for Investigation on behalf of [redacted]. [redacted] admitted during his investigatory interview that he did not promptly relocate his office within the time provided by Prosecutor Lucido. [redacted] also admitted that, while he did not agree with Prosecutor Lucido's direction to relocate his office, he should have moved his office as directed and then pursued a grievance.

In addition, Ms. Cloud reported that on or about December 30, 2020, she was called to a meeting with Prosecutor Lucido at his cousin's insurance office. At this meeting, [redacted] reports that Prosecutor Lucido told her that he would like her to be the Chief of Circuit Courts and Trials and that James Langtry would be the Deputy Chief Assistant. [redacted] reported that Prosecutor Lucido provided her with a draft press release which identified her as the new Chief of Circuit Courts and Trials and which contained a comment regarding James Langtry which was attributed to her (a comment with which [redacted] did not agree). [redacted] reported that she advised Prosecutor Lucido that she was not comfortable with the draft press release, at which time Prosecutor Lucido handed her an "Option B" press release. [redacted] reported that the "Option B" press release did not identify her as the new Chief of Circuit Courts and Trials, but instead, identified her simply as an Assistant Prosecuting Attorney. [redacted] reported that she understood the "Option B" press release to be a threat. [redacted] reported that Prosecutor Lucido told her to take a break to think about it. [redacted] reported that when she returned to the meeting

[1] Three individuals reported that Prosecutor Lucido hired Mike Goetz' wife in exchange for Mr. Goetz causing a Request for Investigation against Prosecutor Lucido to be dismissed. The Investigator did not investigate these allegations, and accordingly, makes no findings or recommendations based on them.

room following the break, Prosecutor Lucido told her that he needed her decision as the press release would be sent out soon. [redacted] reported that she reluctantly chose the initial press release, but that she now feels like she "sold her soul to the devil."

The Investigator confirmed through investigations with numerous individuals that Prosecutor Lucido regularly re-assigned individuals to new offices. Some of these individuals reported that the frequent office moves were chaotic. Some of the individuals also reported that it was unusual to assign the "inferior" windowless offices to employees with the experience of [redacted] and [redacted].

Some individuals also reported that Prosecutor Lucido was motivated to take action against [redacted], [redacted] and [redacted] because of their roles (perceived or actual) in the process which led to James Langtry being laid off from his former position with the Prosecutor's Office during [redacted] interim Prosecutor role prior to Prosecutor Lucido's election. These individuals also reported that Prosecutor Lucido was upset with the rights and protections afforded to [redacted], [redacted] and [redacted] under the terms of the applicable collective bargaining agreement(s).

FINDINGS:

The Investigator concludes Prosecutor Lucido subjected [redacted], [redacted] and [redacted] to increased scrutiny. However, based on the information available during the investigation (as well as Prosecutor Lucido's refusal to appear for his interview), the Investigator is unable to determine Prosecutor Lucido's motive for this increased scrutiny. The Investigator concludes it is possible that Prosecutor Lucido desired to remove or minimize the roles of individuals who were in senior positions during Prosecutor Eric Smith's administration and simply exercised his discretion as an elected official to reorganize the roles in the Prosecutor's Office. It is also possible that Prosecutor Lucido retaliated against these individuals due to their roles (actual or perceived) in the process which led to James Langtry being laid off, or retaliated against these individuals because they exercised their rights under the applicable collective bargaining agreement(s).

Although the Investigator was not able to make a finding as to Prosecutor Lucido's exact motivation for taking action against these individuals, the Investigator finds that, based on past practice, Prosecutor Lucido had no legitimate basis for attempting to discipline [redacted]. The Investigator finds credible the statements by several individuals that [redacted] participation in the show cause hearing in the FOIA dispute and his representation of [redacted] was entirely consistent with past practices in the Prosecutor's Office and was well within [redacted] discretion as the Chief of Circuit Courts and Trials. For the same reasons, the Investigator further concludes that Prosecutor Lucido had no legitimate basis to discipline [redacted] for his participation in the FOIA show cause hearing or in representing [redacted] in response to the Request for Investigation. However, the Investigator concludes that [redacted] had no legitimate basis for failing to timely re-locate his office as directed by Prosecutor Lucido, and accordingly, the Investigator concludes that Prosecutor Lucido had a legitimate reason for disciplining [redacted] for his conduct.

With respect to [redacted], the Investigator concludes that [redacted] did not report the Request for Investigation to Prosecutor Lucido, did not report the ADB Notice of Hearing to Prosecutor Lucido and did not follow the new process for submitting a time off request. At the same time, the Investigator concludes that Prosecutor Lucido's conduct toward [redacted] is suspect. When he assumed office, Prosecutor Lucido eliminated [redacted] Chief of Homicide position, encouraged [redacted] to retire, expressed anger when [redacted] exercised his union bumping rights following his initial layoff, requested the AGC to investigate [redacted] (and

subsequently denied making the request) and re-assigned [redacted] to an office typically assigned to new employees despite [redacted] experience and role as a senior member of the Prosecutor's Office. Viewing this information as a whole, the Investigator concludes that Prosecutor Lucido was in fact "targeting" [redacted], but again, the Investigator is not able to conclude what motivated Prosecutor Lucido's conduct.

RECOMMENDATION:

The Investigator recommends that Prosecutor Lucido be provided training and information regarding the existing collective bargaining agreements and related statutory union rights including anti-retaliation provisions.

2. Age Discrimination Complaint [redacted]

COMPLAINTS/ALLEGATIONS:

In one of his grievances, [redacted] alleged that Prosecutor Lucido took disciplinary and other actions against him because of his age. During his interview, however, [redacted] stated that he no longer believed that Prosecutor Lucido took the disciplinary and other actions against him because of his age.

FINDINGS:

Based on the statements made by [redacted] during his investigatory interview, the Investigator concludes that Prosecutor Lucido did not discriminate against [redacted] on the basis of his age as alleged in the grievance.

RECOMMENDATION:

None.

3. Female Staff

COMPLAINTS/ALLEGATIONS:

Nine (9) individuals reported that Prosecutor Lucido treats the female administrative staff members in an offensive manner and less favorably than male staff members. Prosecutor Lucido's conduct toward female staff was described as "rude," "curt," "unprofessional" and "brutal." One individual reported that Prosecutor Lucido treats the female administrative staff like "slaves." One individual reported that Prosecutor Lucido can be "boisterous" when speaking to male employees, but that he treats female administrative staff much worse.

Two (2) individuals reported that, on Valentine's Day, Prosecutor Lucido said that he would "like some kisses from his ladies." Another individual reported that, after a newspaper article was published about a photo of Prosecutor Lucido touching a woman on her backside during a fundraising event, Prosecutor Lucido stated, "where was I supposed to put my hand, she has a big ass."

Two (2) individuals reported that Prosecutor Lucido once referred to a female employee as "Double-D." One individual reported being offended by Prosecutor Lucido's statement because the individual believed Prosecutor Lucido was referencing the female employee's

breasts. The female employee about whom the statement was made reported that she was not offended by Prosecutor Lucido's comment and did not believe he was referencing her breasts.

Another individual reported that Prosecutor Lucido once told a former female employee that he really liked the shoes she was wearing and that she was "kicking up some smoke." This individual also reported that Prosecutor Lucido asked the female employee to wear those shoes again before her last day of work.

FINDINGS:

Based on the multiple and consistent reports made by several individuals, the Investigator concludes that Prosecutor Lucido treats female employees in an offensive manor and less favorably than male employees. In addition, the Investigator concludes that Prosecutor Lucido has made inappropriate statements containing sexual comments and/or sexual innuendo.

RECOMMENDATIONS:

The Investigator recommends that Prosecutor Lucido be provided training concerning the Elliott-Larsen Civil Rights Act and applicable Macomb County policies. If Prosecutor Lucido does not agree to undergo training and modify his behavior, the Investigator recommends that the County engage legal counsel for possible legal action to force Prosecutor Lucido to comply with applicable law and any applicable County employment policies.

4. [redacted]

COMPLAINTS/ALLEGATIONS:

Two (2) individuals reported that, when APA [redacted] volunteered to return to a District Court role, Prosecutor Lucido asked her whether she would still fit into her "court clothes." In addition, [redacted] reported that, on or about March 14, 2022, she was called into a meeting with Don Fresard and Prosecutor Lucido. [redacted] reported that when she entered the meeting, Mr. Fresard hugged her without her consent. [redacted] also reported that Prosecutor Lucido came very close to her and asked how close someone had to be in order to get a reaction. [redacted] reported that Prosecutor Lucido was talking about a specific case, but he was demonstrating his point by getting uncomfortably close to her. [redacted] also reported that Prosecutor Lucido kept using the phrase "agent provocateur" and was told by Mr. Fresard to stop. [redacted] reported that Mr. Fresard stated that when he typed the phrase into an internet search engine, it returned results for a lingerie website. [redacted] reported that Prosecutor Lucido then stated that [redacted] would probably have her husband go to the website and have things boxed up for her.

FINDINGS:

Based on the consistent statements from two individuals, the Investigator concludes that Prosecutor Lucido made the inappropriate comment to Ms. Meisel regarding whether her court clothes would still fit. Because of Prosecutor Lucido's refusal to cooperate with the investigation, the Investigator is unable to corroborate whether Prosecutor Lucido and/or Mr. Fresard made the additional comments as alleged by [redacted]

RECOMMENDATIONS:

The Investigator recommends that Prosecutor Lucido be provided training concerning the Elliott-Larsen Civil Rights Act and applicable Macomb County policies. If Prosecutor Lucido does not agree to undergo training and modify his behavior, then the Investigator recommends that the County engage legal counsel for possible legal action to force Prosecutor Lucido to comply with applicable law and any applicable County employment policies.

5. [redacted]

COMPLAINTS/ALLEGATIONS:

Five (5) individuals reported that Prosecutor Lucido stated during a meeting that he intended to assign a Black APA to the warrant division following the so-called "Shelby Five" incident involving Black Lives Matter protestors. Although the individuals could not recall Prosecutor Lucido's exact words, they reported that Prosecutor Lucido wanted a Black APA in the warrant division because "those people" could not complain that Prosecutor Lucido was not being fair if a Black APA was making the decisions.

Several individuals reported that [redacted] (a Black APA) had been actively requesting to be assigned to the warrant division, but Prosecutor Lucido instead assigned [redacted] (also a Black APA) to the warrant division, even though [redacted] did not request the assignment. Two individuals reported that Prosecutor Lucido stated to them that Prosecutor Lucido did not want to assign [redacted]

[redacted] also reported that he was once standing in the doorway of an office when Prosecutor Lucido walked up. [redacted] reported that he asked Prosecutor Lucido for time to speak about his request to work in the warrant division. [redacted] also reported that Prosecutor Lucido looked at him, shook his head and walked away without saying anything. One other individual confirmed [redacted] allegations regarding this encounter.

The Investigator understands that, since Mr. Jacques resigned from the Prosecutor's Office, [redacted] has assumed a position in the warrant division.

FINDINGS:

Based on the reports from the individuals interviewed as part of this investigation, the Investigator concludes that Prosecutor Lucido used race as a factor to determine which APA he would assign to the warrant division. The Investigator further concludes it is likely that Prosecutor Lucido previously refused to assign [redacted] to the warrant division based on [redacted].

RECOMMENDATIONS:

The Investigator recommends that Prosecutor Lucido be provided training concerning the Elliott-Larsen Civil Rights Act and applicable Macomb County policies. If Prosecutor Lucido does not agree to undergo training and modify his behavior, then the Investigator recommends that the County engage legal counsel for possible legal action to force Prosecutor Lucido to comply with applicable law and any applicable County employment policies.

6. APA Candidate

COMPLAINTS/ALLEGATIONS:

Two (2) individuals reported that Prosecutor Lucido made comments about an APA candidate after interviewing him. The individuals reported that the candidate was an APA in Wayne County. The individuals further reported that Prosecutor Lucido commented that something was "off" with the candidate (or that something was "odd" or "not right"). The individuals also reported that Prosecutor Lucido commented that the candidate was from Ferndale, but added "That's okay" and went on to say that his wife goes for pizza in Ferndale. The individuals reported their understanding that Prosecutor Lucido was suggesting the candidate was homosexual. The individuals also reported that Prosecutor Lucido was advised at this time that the candidate is known to have a hearing disability.

FINDINGS:

Based on the information reported by the individuals, the Investigator concludes that Prosecutor Lucido made the inappropriate comments regarding the APA candidate.

RECOMMENDATIONS:

The Investigator recommends that Prosecutor Lucido be provided training concerning the Elliott-Larsen Civil Rights Act and applicable Macomb County policies. If Prosecutor Lucido does not agree to undergo training and modify his behavior, then the Investigator recommends that the County engage legal counsel for possible legal action to force Prosecutor Lucido to comply with applicable law and any applicable County employment policies.

7. Campaign And Personal Activities On County Time

COMPLAINTS/ALLEGATIONS:

Four (4) individuals reported that Prosecutor Lucido has used, or is suspected of using, Macomb County personnel and resources to conduct campaign-related and other personal activities. The individuals reported the following (but not all individuals made all of the reports):

- Using Macomb County employees to review local newspapers and clipping articles to identify potential recipients of campaign-style notes for those individuals/entities (these were referred to as "Happy Notes" and "Tributes);
- Using Macomb County employees to draft Happy Notes and Tributes;
- Using Macomb County employees to prepare certificates congratulating local high school seniors on their graduations;
- Using Macomb County resources (including postage) to mail Happy Notes, Tributes and certificates;
- Using Macomb County personnel and resources to work on campaign issues, such as water bottles and press releases and printing off campaign invoices; and
- Using Macomb County personnel and resources to work on non-Prosecutor Office business, such as work on Trustee documents and/or obtaining access for Prosecutor Lucido as Trustee to a Trust.

In addition to these reports, the Investigator learned that former Chief of Staff [redacted] sent an email to certain Macomb County employees working in the Prosecutor's office requesting their personal email addresses so that the communications were not available on the Macomb County email servers (at least in part). The Investigator also reviewed, and in some

cases, obtained, copies of emails which appear to support some of the reports made by these individuals.

FINDINGS:

Based on the reports made to the Investigator, along with emails which were reviewed by the Investigator during the investigation, the Investigator concludes that Prosecutor Lucido used Macomb County personnel and other resources for personal and some campaign-type activities. Without the benefit of interviewing Prosecutor Lucido, the Investigator is unable to conclude whether or not there is an explanation which could result in a finding that at least some of the reported activities did not violate applicable Michigan law or Macomb County policies.

RECOMMENDATIONS:

The Investigator recommends that the County refer these allegations to the Michigan Secretary of State pursuant to the Michigan Campaign Finance Act, MCL 129.201, *et seq*. (with respect to the reported campaign-type activities) and/or the Macomb County Ethics Board (with respect to the use of County personnel and resources for personal purposes).

***** END OF MEMORANDUM *****