The City of New York

POLICE DEPARTMENT

April 20, 2018

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In the Matter of Charges and Specifications :

- against - :

Lieutenant Luis Machado	:	Case Nos.
Tax Registry No. 940403	:	2016-15570, 2016-15791, 2016-16797
Housing Borough Manhattan	:	
Police Officer Miguel Rodriguez	:	Case No.
Tax Registry No. 942460	:	2016-16796
60th Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Samuel Yee, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For the Respondents: Eric Sanders, Esq.
30 Wall Street, 8th Floor
New York, NY 10005

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

Charges and Specifications:

Respondent Luis Machado
Disciplinary Case No. 2016-16797

1. Said Lieutenant Luis Machado, while on duty and assigned to the 71st Precinct, on or about March 9, 2016, wrongfully failed to render reasonable aid to an adult requiring care due to the arrest of the person responsible for her care.

P.G. 216 01, Page 1, Paragraph 1	AIDED CASES GENERAL PROCEDURE AIDED CASES

2. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on or about March 9, 2016, wrongfully failed to properly supervise his subordinates during an incident involving the stop and arrest of a person in the vicinity of [redacted] in Kings County by failing to ensure a subordinate was properly uniformed, failing to ensure an arrestee's residence was secured, or failing to ensure the well-being of an arrestee's mother.

P.G. 203-05, Page 1, Paragraph 1	PERFORMANCE ON DUTY - GENERAL GENERAL REGULATIONS
P.G. 202-12, Page 1, Paragraphs 5 & 7	SPECIAL OPERATIONS LIEUTENANT DUTIES AND RESPONSIBILITIES

3. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on or about March 9, 2016, wrongfully failed to wear the proper uniform.

P.G. 204-01	GENERAL UNIFORM REGULATIONS UNIFORMS AND EQUIPMENT
P.G. 204 03	UNIFORM- UNIFORMS AND EQUIPMENT
Plain Clothes Assignments	CHIEF OF PATROL MEMORANDUM PSB No.7-6s15 - DATED JANUARY 30, 2015

4. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on or about March 9, 2016, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Lieutenant wrongfully failed to secure an arrestee's residence once said arrestee said that he may have or had left his stove turned on in his residence.

P.G. 203 10, Page 1, Paragraph 5	PUBLIC CONTACT - PROHIBITED CONDUCT GENERAL REGULATIONS
P.G. 202-21, Page 1, Paragraph 8	POLICE OFFICER DUTIES AND RESPONSIBILITIES

Respondent Luis Machado
Disciplinary Case No. 2016-15570

1. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on or about March 17, 2016, while transporting a prisoner in a Department vehicle, wrongfully failed to secure said prisoner with a seat-belt.

P.G. 208-06	ARRESTS - SECURITY MEASURES ARRESTS

2. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on or about March 17, 2016, while working as the Special Operations Lieutenant, wrongfully failed to wear the proper uniform.

P.G. 204-01	GENERAL UNIFORM REGULATIONS UNIFORMS AND EQUIPMENT
P.G. 204-03	UNIFORM UNIFORMS AND EQUIPMENT
Plain Clothes Assignments	CHIEF OF PATROL MEMORANDUM PSB No.7 6s15 – DATED JANUARY 30, 2015

3. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on or about March 17, 2016, wrongfully failed to secure and safeguard the property of a prisoner, to wit: United States Postal Service vehicle and its contents, in that said Lieutenant left said property unsecured at the location of arrest.

P.G. 218-01	INVOICING PROPERTY - GENERAL PROCEDURE PROPERTY GENERAL

4. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on or about March 17, 2016, having become aware of an allegation of misconduct involving a federal employee, wrongfully failed to report said allegation to the Internal Affairs Bureau, as required.

P.G. 207-22, Page 1, Paragraph 2	ALLEGATIONS OF CORRUPTION AGAINST CITY EMPLOYEES OTHER THAN MEMBERS OF THE NEW YORK CITY POLICE DEPARTMENT – COMPLAINTS

5. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on or about March 17, 2016, abused his authority as a member of the New York City Police Department in that he stopped Glen Grays without sufficient legal authority.

P.G. 212-11	INVESTIGATIVE ENCOUNTERS: REQUESTS FOR INFORMATION, COMMON LAW RIGHT OF INQUIRY AND LEVEL 3 STOPS - COMMAND OPERATIONS

6. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on or about March 17, 2016, wrongfully failed to properly supervise his subordinates during an incident involving the stop, arrest, and summonsing of a federal employee.

P.G. 203 05, Page 1, Paragraph 1 PERFORMANCE ON DUTY – GENERAL
GENERAL REGULATIONS

7. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on or about March 17, 2016, wrongfully caused inaccurate entries to be made in a Department record, in that said Lieutenant allowed inaccurate information to be incorporated into a Police Accident Report.

P.G. 203-05, Page 1, Paragraph 4 PERFORMANCE ON DUTY - GENERAL
GENERAL REGULATIONS

8. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on or about March 17, 2016, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Lieutenant made or caused to be made inaccurate or misleading statements to New York City Police Department Sergeant Charles Alcantara in that said Lieutenant provided or allowed the providing of inaccurate information as to the circumstances of a collision involving a Department vehicle.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT - PROHIBITED CONDUCT
GENERAL REGULATIONS

9. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on or about March 17, 2016, while on duty, wrongfully failed and neglected to make Activity Log entries as required.

P.G. 212-08, Page 1, Paragraph 1 ACTIVITY LOGS
COMMAND OPERATIONS

10. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on or about March 17, 2016, while on duty and having assumed the role of the 71st Precinct Desk Officer, wrongfully failed to notify the Operations Unit of the arrest of a United States Postal Service employee.

P.G. 208-69, Page 1, Paragraph 1 NOTIFICATIONS IN CERTAIN ARREST
SITUATIONS
ARRESTS

11. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on or about March 17, 2016, while on duty and having assumed the role of the 71st Precinct Desk Officer, wrongfully failed to prepare an Unusual Occurrence Report.

P.G. 212-09, Page 1, Paragraph 7 UNUSUAL OCCURRENCE REPORTS
COMMAND OPERATIONS

12. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on or about March 17, 2016, improperly failed to transmit the disposition or interim disposition to the radio dispatcher immediately upon completion of an assignment and before leaving the scene of assignment.

P.G. 202-23, Page 1, Paragraph 7 RADIO MOTOR PATROL RECORDER DUTIES
AND RESPONSIBILITIES

Respondent Luis Machado
Disciplinary Case No. 2016-15791

1. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on approximately eight (8) occasions between January 1, 2016 and March 31, 2016, while on duty, was absent from his assignment without permission or police necessity and wrongfully failed to submit leave of absence reports (UF-28) for said absences for approximately two hundred seventeen (217) minutes.

P.G. 203-05, Page 1, Paragraphs 1, 2 PERFORMANCE ON DUTY - GENERAL
GENERAL REGULATIONS

2. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on multiple occasions between January 1, 2016 and March 31, 2016, while on duty, wrongfully made or caused to be made inaccurate entries in Department records, in that said Lieutenant improperly had himself designated as present for duty in the 71st Precinct Command Log when he was not, in fact, working at the time indicated.

P.G. 203 05, Page 1, Paragraph 4 PERFORMANCE ON DUTY - GENERAL
GENERAL REGULATIONS

3. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on multiple occasions between January 1, 2016 and March 31, 2016, while on duty, wrongfully made inaccurate entries in his Activity Log.

P.G. 212-08, Page 1, Paragraph 1 ACTIVITY LOGS
COMMAND OPERATIONS

4. Said Lieutenant Luis Machado, while assigned to the 71st Precinct, on multiple occasions between January 1, 2016 and March 31, 2016, while on duty, wrongfully made inaccurate entries in Department records in that said Lieutenant improperly submitted overtime slips stating that he had arrived on-time for his scheduled tour when he actually had arrived late.

P.G. 203-05, Page 1, Paragraph 4 PERFORMANCE ON DUTY - GENERAL
GENERAL REGULATIONS

Respondent Miguel Rodriguez
Disciplinary Case No. 2016-16796

1. Said Police Officer Miguel Rodriguez, while on duty and assigned to the 71st Precinct, on or about March 9, 2016, wrongfully failed to render reasonable aid to an adult requiring care due to the arrest of the person responsible for her care.

P.G. 216-01, Page 1, Paragraph 1 AIDED CASES GENERAL PROCEDURE
AIDED CASES

2. Said Police Officer Miguel Rodriguez, while on duty and assigned to the 71st Precinct, on or about March 9, 2016, wrongfully failed and neglected to make Activity Log entries as required.

P.G. 212 08, Page 1, Paragraph 1 ACTIVITY LOGS
COMMAND OPERATIONS

3. Said Police Officer Miguel Rodriguez while assigned to the 71st Precinct, on or about March 9, 2016, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer wrongfully failed to secure an arrestee's residence once said arrestee said that he may have or had left his stove turned on in his residence.

P.G. 203-10, Page 1, Paragraph 5 — PUBLIC CONTACT - PROHIBITED CONDUCT GENERAL REGULATIONS

P.G. 202-21, Page 1, Paragraph 8 — POLICE OFFICER DUTIES AND RESPONSIBILITIES

SUMMARY OF FINDINGS AND RECOMMENDED PENALTY

The above-named members of the Department appeared before the Court on November 15, 2017, December 12, 2017 and January 19, 2018. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. The Department called Glen Grays, Hakim St. Clair, Kevin Holdip, Elrick St. Clair, Jack Medina, Sergeant Samuel Dorisme, Sergeant Charles Alcantara, Sergeant Joseph Flynn, Lieutenant John Grecchia and Sergeant Peter Thall as witnesses. Respondents called Sergeant Fitzroy Vigilance, Police Officer Lazo Lluka, and Police Officer Triston Trunk, and testified on their own behalf. After reviewing the evidence presented at the hearing, assessing the credibility of the witnesses, I find Respondent Machado Guilty of specification 1, Guilty in part of specification 2, and Not Guilty of specifications 3 and 4 in Case No. 2016-16797; Guilty of specifications 1, 2, 3, 4, 5, 6, 9, 10, 11 and 12, and Not Guilty of specifications 7 and 8 in Case No. 2016-15570; and Guilty of specifications 1, 2, and 4, and Guilty in part of specification 3 in Case No. 2016-15791. I find Respondent Rodriguez Guilty of specifications 1 and 2, and Not Guilty of specification 3 in Case No. 2016-16796.

It is recommended that Respondent Machado forfeit 45 vacation days. I further recommend that Respondent Rodriguez forfeit 10 vacation days. It is further recommended that Respondent Machado be DISMISSED from this Department but that such dismissal be held in abeyance for a period of one year, pursuant to Section 14-115(d) of the Administrative Code,

during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

ANALYSIS

DISCIPLINARY CASE NOS. 2016-16796 & 2016-16797

The charges and specifications in Case Nos. 2016-16796 & 2016-16797 arise from an incident that occurred on March 9, 2016, involving both Respondent Machado and Respondent Miguel Rodriguez. The following facts regarding that incident are not in dispute.

On March 9, 2016, Respondent Machado was the assigned 71st Precinct Special Operations Lieutenant and Respondent Rodriguez was his operator (T. 392, 413-414). Both Respondents were dressed in plainclothes (T. 393, 414).

At approximately 1700 hours on March 9, 2016, Hakim St. Clair was sitting outside his house located at [redacted] in Brooklyn with his friend, Person A, smoking marijuana and drinking alcohol (T. 76 77). At the time, Hakim lived with [redacted] Person B, and [redacted] in the first-floor apartment of the house (T. 74-75). His [redacted] lived above them in the second-floor apartment (T. 75. 117). Person B suffers from Alzheimer's disease (T. 75, 82). During the day, an attendant cared for Person B; in the evenings, either Hakim or [redacted] acted as her caregivers (T. 91, 119). On the evening of March 9, 2016, Hakim was responsible for [redacted]'s care (T. 92, 119).

Shortly after 1700 hours. Respondents Machado and Rodriguez were driving along [redacted] and both smelled an odor of marijuana (T. 393-393, 414). Upon realizing that the source of the odor was two men smoking in front of [redacted], Respondent Rodriguez stopped the vehicle and both Respondents approached Hakim and Person A (T. 393, 414-415). When Respondents asked Hakim and Person A for identification, Person A produced out-of-state identification and Hakim told Respondents that his identification was inside the house (T. 79,

394, 396, 416). Because Hakim's identification was inside the house, Respondents conducted a name search using Department databases (T. 79). Respondents took note of Hakim's prior arrest record and told him that they needed to take him to the 71st Precinct in order to issue him a desk appearance ticket for smoking marijuana in public (T. 79-80).

Respondent Rodriguez called Police Officer Triston Trunk and asked him to respond to the scene to arrest Hakim (T. 416-417). Shortly thereafter, Police Officers Trunk, Lluka and Savella, arrived in an unmarked vehicle, all dressed in uniform (T. 81, 310, 395, 401). Officer Trunk handcuffed Hakim and he was brought back to the 71st Precinct (T. 312). Person A was not arrested (Dept. Ex. 3A, p. 11). Respondent Rodriguez did not make any Activity Log entries regarding the interaction (T. 204, Dept. Ex. 5).

While his arrest was being processed at the 71st Precinct, Hakim was lodged in a holding cell (T. 86, 312-313). Sometime thereafter, the Desk Officer alerted Officer Trunk to the fact that there was a fire at [redacted] Officer Trunk then returned Hakim's cell phone to him so that he could make a call (T. 87, 313-314). After Hakim confirmed that there had been a fire at his house, he threw his cell phone and damaged one of the precinct's computer screens (T. 87, 313).

Hakim's [redacted] who was in his apartment upstairs, had called 911 when he began smelling smoke. Firefighters responded to [redacted] and, with [redacted]'s permission, broke down the door to the first floor apartment. After entering the apartment, firefighters found Person B in the back room and brought her outside; she was then placed in the care of [redacted] who lived nearby (T. 119-122). Following an investigation by Jack Medina, a Fire Marshal assigned to the FDNY's Chief Fire Marshal's Confidential Investigations Unit, it

was determined that the fire was accidentally caused by an open flame from the stove in the first-floor kitchen (T. 135, 148-149; Dept. Ex. 2).

At issue in these particular disciplinary cases is: (1) whether Respondents had sufficient information regarding Person B's capacity to care for herself; and (2) whether the possibility of an unattended stove being on in Hakim's apartment triggered a duty to investigate further and, if necessary, take appropriate action to ensure Person B's well-being and secure the premises before departing.

Hakim alleged that prior to and during his arrest, he repeatedly told Respondents that [redacted] was alone inside the house (T. 82). Both Respondent Machado and Respondent Rodriguez denied Hakim's claims and asserted that Hakim made no mention at the scene of his arrest that [redacted] was unattended inside the house (T. 398-399, 419).

At trial, Hakim recounted his version of events from that evening. He testified that when he arrived home from work on March 9, 2016, the first thing he did was preheat the oven in preparation of cooking dinner for himself and [redacted] (T. 77). Person B was sleeping inside the house while he was outside with Person A (T. 76-77, 102).

According to Hakim, his interaction with Respondents was "cordial," stating at trial that Respondents were initially "polite and respectful" (T. 79, 99). Hakim testified that upon being told that he would be taken to the precinct he said, "[F]ine, but can I go inside and lock up and check on [redacted] before I leave[?]" (T. 80). He also claimed that he told Respondents numerous times that he had to check on Person B before he left, specifying about three times before being handcuffed that "she was elderly with Alzheimer's" and that he was the only person in the house to take care of her (T. 82, 84). Hakim even asked Respondents if they would accompany him inside so that he could lock up and check on [redacted] before going to the

precinct, but Respondents would not allow it (T. 80). According to Hakim, Respondents allowed him to close the gate just outside the basement door of the house, but it remained unlocked (T. 91). On cross-examination, however, St. Clair conceded that before he left his house with the police, he "pulled [his] door in" and that it was locked (T. 102).

After he was handcuffed and on his way to the precinct, Hakim testified that he "kept saying that same thing" about [redacted] and asking why he could not just be issued a desk appearance ticket at the scene (T. 84-85). Hakim admitted that the fact that he had left the stove on had "slipped [his] mind until [he] reached the precinct" because he was "mainly concerned with [redacted] being alone" (T. 85). As a result, Hakim did not alert either Respondent Machado or Respondent Rodriguez that he may have left the kitchen stove on; instead, he alerted "another officer inside the precinct" when he remembered (T. 103-104).

Hakim stated that neither the alcohol he drank nor the marijuana he smoked affected his ability to remember or perceive the incident and Hakim asserted that marijuana has no effect on him (T. 89). Additionally, Hakim testified that when he was speaking with Respondents, there was nothing going on that could have distracted them or kept them from hearing what he was telling them (T. 90). According to Hakim, Person A did not interfere with or interrupt the conversation (*Id.*). Hakim testified that while Respondents seemed to have heard his request, they did not respond to him verbally. Instead, he stated that their response was "nonchalant" and "the demeanor the way [Respondent Rodriguez] said 'I have to take you to the precinct' was that he didn't understand or he didn't care of what I was saying" (T. 90-91).

Sergeant Samuel Dorisme of Internal Affairs Group 32 conducted a recorded interview with Person A as part of an investigation into the incident[1] (T. 156 157; Dept. Ex. 3-3A). Person A stated during his interview that prior to being handcuffed, Hakim asked Respondents to allow him to go inside to check on [redacted] and told them that he "left something on the fire" (Dept. Ex. 3A. p. 5-6, 12). Person A admitted, however, that he could not recall whether or not

Hakim specified to Respondents that [redacted] had Alzheimer's, stating, "I can't say that I exactly remember what he was saying to [Respondents] because I was engaged with the other officer at the time" (Dept. Ex. 3A, p.12-13).

When asked why he did not go into Hakim's apartment to check on Person B despite being aware of Hakim's concern, Person A told investigators that he thought that the attendant who cares for her during the day was still with her (Dept. Ex. 3A, p. 5).

Officer Trunk testified that Hakim did not mention that [redacted] was left unattended inside the house at the scene of his arrest. However, on cross-examination he acknowledged that Hakim requested to go back into his house to lock up (T. 314, 325).

Respondent Machado 2016-16797 – Specifications 1 & 4
Respondent Rodriguez 2016-16796 –Specifications 1 & 3

Patrol Guide Procedure 216-01, directs Uniformed Members of Service, "[u]pon arrival at the scene of an aided incident, to render reasonable aid to sick or injured person." The definition of "aided case" includes "[a]ny occurrence coming to the attention of a uniformed member of the service which requires that a person, OTHER THAN A PRISONER, receive medical aid or assistance because such person is [an] "[a]dult requiring care due to arrest . . . of parent/guardian/person responsible for care."

[1] Sergeant Dorisme also interviewed Hakim during his investigation but his testimony regarding Hakim's statements was conclusory without any supporting detail. Accordingly, the tribunal will not consider Sergeant Dorisme's testimony in this regard, as it is lacking in probative value.

Patrol Guide Procedure 203-10, paragraph 5, prohibits, as a general matter, Uniformed Members of Service from "[e]ngaging in conduct prejudicial to good order, efficiency, or discipline of the Department."

Patrol Guide Procedure 202-21, paragraph 8, requires police officers to "[r]ender all necessary police service in assigned area and as otherwise directed."

Resolution of the above mentioned charges rests on an assessment of credibility of the witness statements regarding what Hakim told Respondents at the scene of his arrest. This tribunal credits Hakim's in-court testimony that he repeatedly mentioned that his mother was inside the house. I credit this testimony in part because it was corroborated to some extent by Police Officer Trunk's concession that Hakim asked to go back inside to lock up. I further credit Hakim's testimony because of his candid admission that he did not recall the stove being on, and therefore could not have mentioned that fact to police officers, until he reached the 71st Precinct. Person A' statement, while credible, does little more than to corroborate facts which are not in dispute. Furthermore, he was unable to corroborate Hakim's claim that Respondents were made aware that [redacted] suffered from Alzheimer's.

I do not credit Respondent Machado's or Respondent Rodriguez' denials, as they appear tailored to avoid responsibility for their actions at the scene of Hakim's arrest.

Based on the foregoing, this tribunal finds that both Respondents failed to render aid to Person B following Hakim's arrest. While it is understandable that Respondents did not want to let Hakim back into the house for safety reasons, other police officers could have entered the premise to check on Person B. Even though the Tribunal does not necessarily find that Hakim told Respondents that [redacted] suffered from Alzheimer's, his level of concern, probably brought on by the realization that he had to leave his house, in conjunction with the

statements he did make about her was a sufficient basis to trigger a duty for Respondents to further investigate the situation. As a lieutenant at the scene, Respondent Machado should have exercised the prerogatives of his rank to ensure that someone checked on Person B, even if he did not personally conduct the check.

With respect to Respondents alleged failure to secure the premises, Hakim conceded under oath that he did not remember that the stove had been left on until he was inside the holding cell and in the custody of another officer. Respondents Machado and Rodriguez therefore cannot be found guilty of "failing to secure an arrestee's residence once said arrestee said that he may have or had left the stove turned on in his residence."

Accordingly, Respondents are each found Guilty of failure to render aid to Person B (Machado 2016 16797, specification 1; Rodriguez 2016-16796, specification 1). Respondents are each found Not Guilty of failing to secure the premises (Machado 2016 16797, specification 4; Rodriguez 2016 16796, specification 3).

Respondent Rodriguez 2016-16796 – Specification 2

Respondent Rodriguez is also charged with failing to make Activity Log entries regarding the incident.

Patrol Guide Procedure 212-08 requires MOS *below the rank of captain to make entries in their Activity Logs.* Respondent Rodriguez acknowledged at trial that he did not make any Activity Log entries regarding the incident with Hakim and Person A, as evidenced by the applicable excerpts from his Activity Log from March 9, 2016 (T. 397-98, 406; Dept. Ex. 5). Contrary to Respondent Rodriguez' position at trial, the decision to make an entry is not left to the discretion of the police officer; as clearly stated in Patrol Guide Procedure 212-08, the purpose of Activity Logs is "[t]o accurately record activities of uniformed members of the

service and aid in the evaluation of such members." As such, Respondent Rodriguez is found guilty of specification 2.

Respondent Machado 2016-16797 – Specifications 2 & 3

Patrol Guide Procedure 204-01 [eff. 3/23/15] mandates that MOS "Wear uniform of the day." *See also P.G. Procedure 204-03, Uniforms.* Furthermore, the January 30, 2015, Chief of Patrol Memorandum regarding plain clothes assignments states in relevant part that, "All personnel assigned to precinct conditions units must be in uniform at all times, wearing uniform of the day. The only exception is for police officers performing special operations (i.e., **losing propositions**, fencing, and underage drinking operations) and only under the direct supervision of the Special Operations Lieutenant" (PSB#7-6s15). Additionally, Patrol Guide Procedure 203-05 paragraph 1 directs all MOS to "[p]erform all duties as directed by competent authority."

At trial, Respondent Machado testified that he was authorized to work in plain clothes on March 9, 2016. He stated specifically that he "was free to go out in plainclothes unit whenever [he] deemed necessary to do so" and that the Commanding Officer of the 71st Precinct "did not object" (T. 413, 421, 423). He further stated, "[The Commanding Officer] knew that I would go out in plain clothes with my guys whenever I deemed necessary. So he would never object" (T. 423).

That day, both he and Respondent Rodriguez were conducting surveillance, rather than enforcement, and were "trying to be hidden," so they were dressed in plain clothes (T. 424). Respondent Machado testified that he "touched base" with his Commanding Officer every day to inform him of the plans for the day. As a result, the Commanding Officer "knows if [Respondent Machado] is wearing a uniform or plain clothes" (T. 453). On days when the Commanding Officer is not in the office, Respondent Machado stated that he makes his own

determination and notifies the Commanding Officer afterwards (T 453). Respondent Machado acknowledged that during his March 29, 2016, official Department interview, when asked whether or not anyone had authorized the decision, he stated, "No, sir...I took initiative" (T. 455).

Respondent Machado's assertion that his Commanding Officer merely acquiesced to his uniforming decisions once he made them is not implausible, given the discretion inherent in the position of Special Operations Lieutenant with respect to other police operations of greater significance. The tribunal therefore finds that the Department has failed to meet its burden of proof by a preponderance of the credible evidence and finds Respondent Machado Not Guilty of specification 3.

Specification 2 alleges that Respondent Machado failed to adequately supervise his subordinates with respect to wearing the proper uniform, failing to ensure an arrestee's residence was secured, or failing to ensure the well-being of an arrestee's mother. As a supervisor, Respondent Machado had a duty to not only ensure that his subordinates complied with the Patrol Guide and other lawful directives, but to exercise the discretion inherent in his rank to act upon information of which he was aware to direct further action by his subordinates.

As set forth above, I find that Respondent Machado's perception of his authority to direct the uniforming of his subordinates was sufficiently plausible that he cannot be found Guilty of failing to supervise his subordinates in that regard. Based upon the Department's failure to meet its burden of proving that Respondent Machado failed to secure Hakim's premises, as charged in specification 4, he cannot be found Guilty of failing to supervise his subordinates in that regard. I do find, however, that he failed to adequately supervise his subordinates with respect to ensuring Person B's well-being before they departed the premises. Respondent Machado had

sufficient information in his possession to compel him to investigate; furthermore, there were no circumstances present which would have made an expedient departure from the area necessary. Since he summoned uniformed officers to take custody of Hakim and transport him to the precinct, Respondent Machado could have remained on the scene and supervised additional officers while they ascertained whether Person B would respond to a knock on the door or if there were any other persons present inside the premises. Even if Respondent Machado had elected not to remain on the scene, he had the authority to ensure that other officers from the 71st Precinct followed up until Person B's safety was adequately ensured. Accordingly, I find him Guilty, in part, of specification 2.

DISCIPLINARY CASE NO. 2016-15570

Respondent Machado is charged with twelve separate specifications in connection with the arrest of Glen Grays. The following facts are not in dispute.

On March 17, 2016, at around 1600 hours, Respondent Machado was on-duty with Officers Rodriguez, Lluka and Savella as part of the 71st Precinct Business Conditions Unit (T. 456). The unit was conducting surveillance in plain clothes while driving an unmarked RMP (T. 425-426). Rodriguez was the operator; Respondent Machado was seated in the front passenger seat; and Officers Lluka and Savella were seated in the rear (T. 425-430).

That day, Grays was on-duty as a United States Postal Service (USPS) parcel truck driver, driving a large "two ton truck," with Postal Service insignia, and delivering packages (T. 13-14). He was dressed in full USPS uniform: cold resistant pants, USPS sweatshirt, and a USPS baseball hat (T. 14, 450). In order to deliver a package to [redacted] Street in Brooklyn, Grays pulled his truck over to the opposite side of the street and double-parked (T. 13 14). He then began exiting the truck on the passenger side by going down the truck's steps

backwards, while facing inside the truck, as he had been trained to do in an effort to release pressure and weight from his kneecaps (T. 15, 68).

As Grays started to exit the USPS truck, Respondent Machado and the unmarked RMP drove past him, almost striking Grays, and causing him to step back into the truck. The unmarked RMP then stopped about one car length in front of the USPS truck. Grays exchanged words with the occupants of the RMP as he crossed the street carrying a box under his left arm, walking toward [redacted] (T. 17-18). As Grays approached the door of [redacted], the unmarked RMP reversed and stopped in the middle of the street in front of the building. Respondent Machado, Officer Lluka and Office Savella exited the RMP; the group then approached Grays on the sidewalk asked for his identification (T. 18-20, 107-08). Grays told the officers that his identification was in his USPS truck parked across the street (T. 19).

An argument ensued causing a crowd to form on the sidewalk, a number of whom loudly expressed their displeasure at the officers' actions. Grays was eventually rear handcuffed and arrested by Officers Lluka and Savella for "refus[ing] to give his ID" (T. 18-19, 431; Dept. Ex. 1). Officer Lluka took the box that Grays had been holding and threw it into the parked USPS truck through the open passenger window (T. 22, 457; Dept. Ex. 1). Grays was then brought to the unmarked RMP and seated in the middle of the backseat, flanked by Officers Lluka and Savella (T. 432). Grays was not secured with a seatbelt (T. 23, 432). His USPS truck was left at the scene of his arrest (T. 23, 436, 460-461). No radio transmissions regarding Grays' stop or arrest were made over the Department radio (T. 278, 358; Dept. Ex. 19).

While driving back to the 71st Precinct, the unmarked RMP was involved in a collision in the vicinity of Empire Boulevard and Bedford Avenue, in which it struck the rear end of the

vehicle being driven by a civilian in front of it (T. 25, 434). No radio transmissions were made in connection with the collision (T. 280-81, 359; Dept. Ex. 20).

Shortly thereafter, Grays was brought to the 71st Precinct by Respondent Machado and the other members of the Conditions Unit (T. 27, 332). The desk officer at the time was Sergeant Peter Thall (T. 331). During his processing, Grays complained of shoulder pain; Respondent Machado spoke to him directly about the injury and inquired whether he needed medical treatment (T. 333, 468-469).

Respondent Machado later asked Sergeant Alcantara, the assigned administrative sergeant, to speak to Rodriguez and then complete a police accident report in connection with the vehicle collision (T. 166-167). Alcantara electronically filled out a police accident report while Rodriguez stood next to him and dictated the responses (T. 167-168; Dept. Ex. 4). Rodriguez was the only person interviewed regarding the collision (T. 172, 174). The completed accident report stated that Grays had been wearing a lap belt at the time, even though he was not (T. 170).

Two videos were entered into evidence depicting portions of this incident. The first recording appears to be a video taken by a bystander. The video begins as Respondent Machado and the Conditions team approach Grays on the sidewalk in front of [redacted] (Dept. Ex. 1, file 1458604565452_71). The second recording is footage without audio obtained from a surveillance camera on the other side of [redacted] Street (Dept. Ex. 1, file 1458760757l0_5).

Officers Rodriguez, Lluka, and Savella received charges and specifications in connection with Grays' arrest; all have resolved their disciplinary cases at the Command level (T. 359-360; Dept. Exs. 26-28).

Grays filed a notice of claim against the Department in connection with his arrest on March 28, 2016, seeking one million dollars in damages (T. 55, 284; Resp. Ex. B).

At issue in this case is whether: (1) Respondent Machado had sufficient legal authority to stop Grays; (2) Respondent Machado adequately supervised his subordinates with respect to arrest procedures arising from Grays being taken into custody; and (3) Respondent Machado made appropriate notifications and official entries as a result of Grays' arrest.

SUMMARY OF VIDEOS

(Dept. Ex. 1, file 1458604565452_71; Tr. 241)

[Grays is standing in front of 999 President Street carrying a box as POs Savella and Lluka approach. Respondent Machado appears in the frame shortly thereafter holding a coffee cup, standing a few feet back from Grays, Lluka and Savella.]

- 00:00 – 00:08 – Grays says, "You want my ID? My ID is right there on the side of the truck."
- 00:08 – 00:12 – PO Savella says, "Let's go get your ID."
- 00:12 00:15 Grays says, "I'm delivering my parcel." [other unintelligible speech]
- 00:15 – 00:23 – Respondent Machado says, "I don't want to talk to [redacted]"
- 00:35 – 01:25 – Grays is handcuffed by Lluka and Savella
- 00:43 – Savella and Lluka say, "Stop resisting," as Savella grabs Grays' left arm while Lluka holds onto him from behind in a bear hug.
- 00:52 – Grays tells Lluka that he is not resisting and Lluka says, "Yes you are."
- 00:57 – Savella says "You're going to get hurt unless you give me your fucking hands."
- 1:00 1:33 Officers Savella, Lluka and Rodriguez work together to get Grays' hands behind his back and then handcuffed.
- 01:33 – 01:50 – Grays is walked to the unmarked RMP.
- 01:50 – 02:09 – Savella frisks Grays while they stand on the rear passenger side of the car.
- 02:17 Grays enters the back seat of the RMP.

(Dept. Ex. 1, file 1458760757 10_5)

[surveillance footage]

- 00:16 00:28 Black unmarked RMP makes a right turn onto President Street, drives past Grays' USPS truck, and stops one car length ahead of the truck.
- 00:32 – Grays walks across the street holding a box under his left arm. His head is turned to the left in the direction of the unmarked RMP, as it slowly moves forward down the street.

- 00:41 – 00:45 – RMP reverses down the street. Grays is standing on the sidewalk with his back up against the entrance to [redacted] and facing the RMP.
- 01:01 – 01:06 – The box Grays is holding falls to the ground, he picks it back up and turns toward the building in front of him, turning his back to the RMP.
- 01:17 – 01:27 - Respondent Machado, POs Savella and Lluka exit the RMP and approach Grays on the sidewalk while Rodriguez pulls the RMP over to the left side of the street.
- 04:24 RMP drives off.

Grays testified at trial that when he exited his USPS truck by reversing out, he noticed a black Impala driving towards his truck in his peripheral vision (T. 15-16). He also noticed that the driver of the Impala did not appear to see him exiting, so he "jumped back on to the steps" of the truck (T. 16-17). According to Grays, the vehicle came within inches of his body. After it passed, he jumped out of the truck and shouted, "Watch where the hell you're going," precipitating a shouting match between him and the occupants of the Impala (T. 17-18). The car then stopped and reversed down the street. Grays walked toward the safe box for [redacted] to retrieve a postal key. He was then "surrounded" by two men, one of whom repeatedly shouted at him, "What the fuck is your problem?" (*Id.*). Grays responded by asking what the man meant and stated that they had almost hit him with their car (T. 18).

At that point, Grays did not know that the men were police officers because they were dressed in plainclothes and no shields were visible (T. 18-19). They then asked Grays for identification, to which he replied that it was on his USPS truck. Grays testified that one of the officers was yelling in his ear as he and the other officer grabbed Grays' arms, causing the package he was holding to fall to the ground (T. 20).

When Respondent Machado came closer, Grays saw the shield around his neck and asked, "Could we talk?" However, Officer Savella was "just in [his] ear telling [him] shut the fuck up or you are going to get hurt" (T. 20). At one point, Respondent Machado put his hand on Grays' chest and told him to calm down (T. 20). Before he was placed in the unmarked RMP,

Grays testified that he asked the officers to close the doors and the windows on his USPS truck, but nothing was done (T. 23).

During the drive to the 71st Precinct, Grays testified that he informed the officers that [redacted] worked in the 84th Precinct protecting Borough President Eric Adams. The officers then made disparaging remarks about his [redacted] assignment, and told Grays that he was "just a lucky nigger with a uniform that has a federal job delivering cardboard boxes" (T. 24).

According to Grays, just prior to the collision with the other vehicle, Rodriguez turned around while the RMP was moving and told Grays to "shut the fuck up a couple of times" (T. 25). When Rodriguez turned back around, he accelerated into the rear of the car in front, causing Grays to strike his left shoulder on the back of the driver's seat and his cheek on the armrest (T. 25). As a result, Grays testified that he was crying because he was "really in pain," but Officer Savella told him to "shut the fuck up and stop bitching" (T. 25-26).

Grays acknowledged at trial that during the course of his interaction with Respondent and the other officers, he mentioned that his [redacted] was a police officer but denied threatening Respondent Machado or the other officers that his [redacted] could get them fired from the Department (T. 70).

Respondent Machado testified that at the time of Grays' arrest, he was conducting surveillance with Officers Rodriguez, Lluka, and Savella in an unmarked vehicle (T. 425-426). As they drove along President Street, his attention was focused on his right side, but noticed Grays when he appeared "in the middle of the street screaming" (T. 427). Due to what Respondent Machado characterized as Grays' disproportionate reaction to what he described as "a simple misunderstanding," Respondent Machado became suspicious that Grays was purposely

attempting to draw attention to the Conditions team so that others in the area would be aware of the police presence (T. 427).

According to Respondent Machado, he and his Conditions team later left the scene of the vehicle collision "[b]ecause the prisoner was still being irate in the back, and [he] didn't want him given another chance to keep acting out" (T. 435).

Respondent Machado conceded that he played an active part in the processing of Grays at the 71st Precinct, even though Sergeant Thall was the desk officer (T. 468). When Grays complained about his shoulder, Respondent Machado spoke to him about receiving medical attention (T. 468). He completed a pedigree information form for Grays, but still had not made a determination regarding whether or not he would receive a desk appearance ticket (T. 469).

Specification 5 –

Respondent Machado is charged with stopping Glen Grays without sufficient legal authority. The Patrol Guide provision applicable at the time of this incident permits a police officer to stop and detain an individual when he "reasonably suspects a person has committed, is committing or is about to commit a felony or a Penal Law misdemeanor" (P.G. § 212 11 [eff. 08/01/13]).

Respondent Machado testified that Grays was stopped because he was observed "standing in the middle of the street screaming and cursing and there was [*sic*] vehicles behind him and the way he threw the package" (T. 429, 488-489). According to Respondent Machado, he "just wanted to find out what's wrong" but Grays' continued behavior "confirmed that he was very disorderly" (T. 489). Respondent Machado added that he could have also charged Grays with resisting arrest also because he "refused to put his hands behind his back" (T. 487).

Police action beyond a request for information requires an elevated level of suspicion regarding criminal activity. Respondent Machado asserted that Grays was committing the offense of disorderly conduct when he was stopped, so he was justified in requesting Grays' identification and asking for an explanation of his conduct.

Reasonable suspicion has been defined as "the quantum of knowledge to induce an ordinarily prudent and cautious [officer] under the circumstances to believe criminal activity is at hand" *People v. Cantor*, 36 N.Y.2d 106, 112-13 (1975). As articulated by the courts, reasonable suspicion "may not rest on equivocal or innocuous behavior that is susceptible of an innocent as well as a culpable interpretation" *People v. Brannon*, 16 N.Y.3d 596 (2011)(*internal quotations omitted*), *citing People v. Carrasquillo*, 54 N.Y.2d 248 (1981).

Upon review of the record, including the video evidence, this Court is convinced that Respondent Machado's justification for stopping Grays is unworthy of belief. Particularly troubling were Respondent Machado's assertions that Grays stood in the middle of the street screaming and used profanity in such way as to disrupt the flow of traffic of vehicles on the street behind him. On cross-examination, Respondent Machado also further claimed that Grays threw the box he was holding down onto the ground while standing in the middle of the street before picking it back up and walking toward over to the building (T. 451, 488-489).

Contrary to Respondent Machado's assertions, Grays did not stand in the middle of the street, nor did he throw the box in the middle of the street, as can clearly be seen in the surveillance footage. Rather, once the RMP had passed, he walked across the street and onto the sidewalk in the opposite direction of the RMP, eventually turning his back to the RMP. Grays was also not blocking traffic, in fact, the unmarked RMP was able to reverse down the street

precisely because there were no other cars. While the box does fall to the ground at one point, it appears to be more of an accidental drop rather than a deliberate throw.

It is undisputed that Grays expressed displeasure and frustration in the direction of the RMP as it drove past. Respondent Machado's version of events, however, is not supported by the evidence, and instead has the markings of a convenient after-the-fact justification.

According to Respondent Machado, Grays "was threatening the officers about his [redacted] being on the job and how she knows Eric Adams and that he was going to have our jobs" (T. 430). Even crediting Respondent Machado's assertion that Grays made that statement, which did not allude to threats of violence, such statement only occurred after the interaction had escalated (T. 430). It is therefore equally insufficient to justify the stop.

In sum, the preponderance of the credible, relevant evidence shows that Respondent Machado acted punitively and in bad faith because he did not appreciate Grays' commentary and reaction (*See Disciplinary Case No. 2014-12197* signed Mar. 2, 2016). Therefore, this Court finds that Grays' reaction to nearly being struck by the RMP did not provide a reasonable basis to suspect criminal activity and finds Respondent Machado Guilty of Specification 5.

Specification 6 –

Respondent Machado is charged with failing to properly supervise his subordinates during the incident involving the stop, arrest, and summonsing of Grays. Patrol Guide Procedure 203-05, paragraph 1, directs all Members of the Service to "[p]erform all duties as directed by competent authority."

On direct examination, Respondent Machado testified that he did not direct Rodriguez to stop the unmarked RMP, stating, "...we just act. We were already working together so long that

people just know what to do" (T. 429). He testified further that while he did not direct that Grays be arrested, he "didn't object to it" (T. 431).

As the highest ranking officer at the scene, Respondent was responsible for supervising his subordinates. In allowing Officers Savella and Lluka to arrest Grays without probable cause, Respondent Machado failed to perform his duties as the supervisor of the Conditions team. As set forth above, there was no valid justification for stopping Grays in the first instance. His subsequent arrest and summonsing were similarly lacking in justification. By allowing his subordinates to surround Grays and arrest him on the basis of what was nefarious reasoning, Respondent Machado failed in his role as a supervisor; I therefore find him Guilty of Specification 6.

Specification 1 –

Respondent Machado is further charged with failing to secure Grays with a seat belt during his transport. There is no dispute that Grays was not secured with a seat belt while being driven to the 71st Precinct (T. 23, 432). Patrol Guide Procedure 208 06 [eff. 08/01/13], states that "Seat belts will be used to secure prisoners, when practical, in non-emergency situations."

The question presented to this Tribunal then, is whether or not it was practical at the time to secure Grays with a seat belt. According to Respondent Machado, it was not practical because Grays "was acting too irate" and "seemed unstable" (T. 432-433). As a result, Respondent Machado "wanted both officers to sit close to him so we could take him back to the precinct and find out what was wrong with him" (T. 433). Grays, on the other hand, testified at trial that he requested to be seat-belted, but his request was ignored (T. 23). Having found that Respondent Machado's description of Grays' alleged misconduct precipitating his stop was fabricated, this

tribunal again finds that the reasoning provided for Grays' failure to be secured is similarly self-serving and convenient.

The description of Grays as "irate," with no further detail, is dubious. In fact, when Respondent Machado was questioned on direct examination regarding what he meant when he described Grays as "irate," he replied only, "He was still - - he seemed unstable" (T. 433). Respondent Machado provided no objective evidence of Grays' allegedly "irate" demeanor in the RMP or Grays' alleged instability (T. 432-433). Respondent Machado's counsel claimed that Grays' behavior was similar to that of an Emotionally Disturbed Person, and that Respondent Machado had done "Mr. Grays a favor" by not bringing him directly to the hospital as is required in situations with Emotionally Disturbed Persons, a claim this tribunal rejects for lack of evidence (T. 501-502).

Furthermore, there was no evidence presented to this Court to suggest that the transport of Grays to the 71st Precinct was an emergency situation. Though Respondent Machado was not seated next to Grays in the back of the RMP, as the highest ranking member of service in the vehicle, he was responsible for making sure that the Conditions team adhered to the provisions set out in the Patrol Guide for the transportation of prisoners. Respondent Machado is therefore found Guilty of Specification 1.

Specification 3 –

In Specification 3, Respondent Machado is charged with failing to secure Grays' USPS vehicle and its contents following his arrest. At trial, Respondent Machado testified that neither he, nor the other members of his Conditions team, were qualified to move the truck because they did not hold CDL licenses (T. 437). Furthermore, according to his understanding of Department

policy, Respondent Machado was unsure if he was authorized to move a federal government vehicle (T. 437).

Patrol Guide Procedure 218-01 [eff. 09/24/14] states that MOS are required to notify the desk officer upon taking a vehicle into custody. Furthermore, "If property is a vehicle unable to be driven, inform desk officer to request authorized tow/rotation tow, as appropriate."

According to Respondent Machado, he "was going to send somebody right away to get [the truck]" and referenced the hostile crowd that had developed during Grays' arrest as reason for hastily leaving the scene (T. 489). When asked why he did not request that another UMOS come to the scene and guard the truck, Respondent Machado stated, "It would have took [*sic*] longer for me to get a cop out there and leave him because I wouldn't risk leaving one of my cops there because they're already amped up because of the people there" (T. 489). When questioned as to whether or not he had any concerns about leaving a postal truck containing mail on the street, Respondent Machado's answered, "if a truck is secured, it constitutes a building. If somebody breaks in, it would be a burglary" and furthermore, "the mail place is like two blocks away from the precinct" (T. 489-490). I find both these answers, under oath, to be non-responsive and evasive.

Respondent Machado further testified that Officer Lluka locked the USPS truck window. He also testified that he knew the truck's doors were already locked from "previous knowledge" that such doors lock automatically (T. 458). Respondent Machado admitted, however, that neither he, nor any other member of his team checked each of the doors on the truck, which he knew contained USPS mail, before leaving the scene (T. 459-460). On re-direct examination, Respondent Machado admitted that he assumed that the doors to the truck automatically locked, "[t]hat's why [he] did not check" (T. 486-487).

Respondent Machado was not only present at the scene of Grays' arrest, he was the ranking officer. It should have been apparent to any MOS, let alone a lieutenant, that the USPS mail truck and its contents constituted property of the United States government. The necessity for safeguarding the truck and its contents was manifest without regard to a particular provision of the Patrol Guide. Simply relying on what he believed the locking mechanisms on USPS trucks to be is an insufficient basis upon which to base an operational decision.

Even crediting, for the sake of argument, Respondent Machado's assertion that a "hostile" crowd was gathering, he should have exercised the discretion and authority of his rank to ensure the deployment of sufficient police resources to safeguard the federal property before he departed. As the Special Operations Lieutenant, he had several units under his direct authority which he could have called upon at a moment's notice. While officer safety is always a legitimate concern, its invocation by Respondent Machado as a rationale for neither remaining on the scene nor summoning other police officers to the scene came across as contrived and self-serving.

Accordingly, Respondent Machado is found Guilty of Specification 3.

Specification 4 –

Respondent is charged with failing to report an allegation of misconduct involving a federal employee to the Internal Affairs Bureau. It is undisputed that Respondent Machado did not notify IAB himself, or instruct any of his subordinates to notify IAB, that he stopped Grays or that Grays had been arrested. He argued that based on his understanding of Department policy, he was not required to do so (T. 463, 483).

Patrol Guide Procedure 207-22, states that when a MOS receives or becomes aware of an allegation of misconduct against a federal employee, he or she must telephone the IAB

Command Center, identify him or herself, provide a telephone call back number, provide preliminary facts, and comply with any instructions of a ranking IAB officer.

Given that Respondent Machado knew Grays was a USPS employee, a position he acknowledged knowing was with the federal government, he was required to notify IAB as set forth in the Patrol Guide. Respondent's attorney argued that the Patrol Guide mandates the reporting of specific crimes committed by federal employees, and disorderly conduct is not one of the specified crimes (T. 505). Counsel's interpretation of Patrol Guide Procedure 207 22, the applicable Patrol Guide procedure, is erroneous: an examination of its plain language reveals that the procedure does not list specific crimes that must be reported, instead referring to "corruption and/or serious misconduct and/or misconduct." Accordingly, Respondent Machado is found Guilty of specification 4.

Specification 2 –

In Specification 2 of Case No. 2016-15570, Respondent Machado is charged with failing to wear the proper uniform on March 17, 2016. As previously discussed above, MOS are required to be in the uniform of the day, unless certain conditions precedent are met (Patrol Guide Procedure 204-01 [eff. 3/23/15]; Patrol Guide Procedure 204-03, Uniforms; January 30, 2015, Chief of Patrol Memorandum). As already discussed in Case No. 2016-16797, this tribunal held that Respondent Machado's assertion that his Commanding Officer merely acquiesced to his uniforming decisions once he made them was not implausible.

Respondent Machado testified that as a Special Operations Lieutenant, he is allowed to operate in plainclothes when conducting operations as long as other team members are plainclothes qualified (T. 413). Based upon the credible testimony of Lieutenant John Orecchia,

assigned to IAB Group 32: (1) all operations must be documented in the Activity Log; and (2) there was no entry in Respondent Machado's Activity Log regarding an operation for that day.

At trial, Respondent provided no explanation of why it was impractical for him to be in uniform that day. Even though this tribunal has previously found that Respondent Machado may have been vested by his Commanding Officer with great discretion in choosing the uniform for his subordinates, in this case, the tribunal is unable to afford him the benefit of the doubt since the condition precedent for the exercise of such discretion is the existence of an operation. Since there is no documentary evidence in the record to support Respondent Machado's assertion that there was an operation that day, I find his assertion self-serving and unreliable. Accordingly, I find him Guilty of specification 2.

Specifications 7 & 8 –

In Specifications 7 and 8, Respondent is charged with causing inaccurate information to be incorporated into the Police Accident Report for the vehicle collision and causing false representations to be made to Sergeant Alcantara prior to the provision of inaccurate information as to the circumstances of the collision. Patrol Guide Procedure 203 05 paragraph 4 directs all Members of the Service to "[m]ake accurate, concise entries in Department records in chronological order, without delay . . ." and Patrol Guide Procedure 203-10, paragraph 4, generally prohibits Members of Service from "[e]ngaging in conduct prejudicial to the good order, efficiency or discipline of the Department."

According to Respondent Machado, he did not fill out a Police Accident Report for the accident while at the 71st Precinct because he was involved in the collision, stating "[t]hat would be borderline corruption if I did" (T. 435). Instead, Respondent Machado testified that "Sergeant

Alcantara was instructed to conduct his own investigation," and the results of the report were "solely up to him" (T. 436).

Based upon Respondent Machado's own admission, it is not disputed that Grays was not seat-belted during his transportation to the 71st Precinct. It is similarly not disputed that the accident report contained a false assertion that Grays was seat belted. It is further not disputed that Respondent Machado's name does not appear on the completed report, either as the preparer or the reviewer. There was no evidence offered at trial to suggest that Respondent Machado himself made any false or misleading assertions to Sergeant Alcantara regarding the information necessary for completion of the accident report, nor is there any evidence suggesting that he directed anyone else, particularly Rodriguez, to do so. The issue then is whether Respondent Machado had a duty to review the completed accident report for accuracy. I find under these circumstances that he did not.

The preparer of the report, Sergeant Alcantara, would have lacked any personal knowledge of the circumstances of the accident and would have had to rely upon the narrative provided by Rodriguez, which he had a right to presume was accurate. While it would have been the better practice for Respondent Machado to have reviewed the report, given the unusual chain of events beginning with Grays' arrest, the Patrol Guide does not impose such a duty upon him. Accordingly, I find Respondent Machado Not Guilty of specifications 7 and 8.

Specification 9 –

Respondent Machado is charged with failing to make Activity Log entries on March 17, 2017. Specifically, Respondent is alleged to have failed to make an entry regarding an inspection during roll call of units he was turning out that day (T. 282; Dept. Ex. 22).

At trial, Respondent Machado testified that he was carrying an Activity Log and made entries regarding the interaction with Grays' "to a certain extent" (T. 436). He testified further that he believes that he made entries about the RMP accident. Examination of his Activity Log for the time period in question indicates that Respondent Machado noted the stop of Grays at 1600 hours. At 1615 he made an entry indicating the one arrest had been made and that there was a subsequent vehicle collision (Dept. Ex. 22).

Patrol Guide Procedure 212-08 states that MOS must record in their Activity Log, "Required information from roll call, before start of tour, including: (1) Day, date and tour (2) Assignment (post, sector, RMP number, etc.) to primary conditions to be addressed within sector/post, if applicable." Based upon the totality of the trial record, I find that Respondent Machado omitted significant, relevant information from his activity log entry.

As a supervisor in this Department, Respondent Machado is expected to set an example for his subordinates. By neglecting to include all pertinent information from roll call, as well as important information from Grays' arrest, Respondent Machado failed in this regard. Accordingly, he is found Guilty of specification 9.

Specifications 10 & 11 –

Respondent Machado is charged with failing to notify the Operations Unit of the arrest of a U.S. Postal Service employee and failing to prepare an Unusual Occurrence Report, having assumed the role of 71st Precinct desk officer. At trial, Respondent Machado testified that while he did report Grays' arrest, he could not recall what unit he reported it to. He testified that he believed he notified Patrol Borough Brooklyn South, but did not remember if he notified Operations (T. 464-465). Additionally, he testified that he did not fill out an Unusual Occurrence Report because he notified his captain and was not told to complete one, and he

assumed that the captain would take care of it (T. 437-38). Respondent Machado testified that based on his understanding of Department policy, because he notified his duty captain of the incident, the duty captain assumed responsibility for completing the necessary Unusual Occurrence Report. According to Respondent Machado, if the duty captain had directed him to complete the report on his behalf, only then would it have been his responsibility.

Patrol Guide Procedure 208-69, paragraph (1)(c)(3), states that the desk officer shall "[n]otify Operations Unit DIRECT for arrests involving . . . [a]ny offense, and prisoner is an employee of: . . . US Postal Service."

Patrol Guide Procedure 212-09, paragraph 1, states that whenever an unusual incident occurs, the desk officer will [p]repare [a] preliminary report on typed letterhead or unusual occurrence report addressed to the Chief of Patrol, and forward it to required offices within the Department. Paragraph 8 continues that the Commanding Officer or Duty Captain will, "Report results of investigation on Typed Letterhead addressed to the Chief of Patrol." It further states, "If preliminary report has been forwarded, prepare supplementary report indicating results of investigation and attach a copy of the ICAD Event Information, if documented, to supplementary report."

Though Sergeant Thall was the assigned Desk Officer at the 71st Precinct on the day that Grays was brought into the precinct, he testified that Respondent Machado "was supervising the whole processing in front of the desk" while Thall "was basically transposing the information to the command log..." under the "direct supervision of Lieutenant Machado" (T. 333-334).

It is undisputed that Respondent Machado took an active role in the processing of Grays' arrest. However, it is the opinion of this Tribunal that the Department failed to prove that Respondent Machado's active role in the arrest conferred upon him every single responsibility of

the desk officer. Such a transfer of responsibility would seemingly absolve Thall, the assigned desk officer, of his responsibilities under the Patrol Guide. If not, then according to the Department's position Thall and Respondent Machado would both be responsible for making identical notifications and ensuring the proper processing of the incident.

On the other hand, as a lieutenant with personal knowledge of the facts surrounding Grays' arrest, Respondent Machado need not have sought his commanding officer's direction on the need for him to write an Unusual Occurrence Report: any competent supervisor in his position should have done so. Following Respondent Machado's logic, any such report to be completed by his commanding officer would still require his active participation, since his commanding officer would only be in a position to reduce to writing what Respondent Machado would tell him about the incident. Under those conditions, a more professional approach would have been to draft the report and submit it for either the commanding officer's adoption or submission under Respondent Machado's own signature. For Respondent Machado to suggest that the completion of the report was rendered unnecessary because his commanding officer did not direct him to complete one is disingenuous.

Based on the circumstances presented in this case, there was insufficient evidence presented to find that Respondent Machado had fully assumed the role of the 71st Precinct desk officer during Grays' arrest. There is, however, sufficient evidence to find that Respondent Machado, by virtue of his rank and his possession of personal knowledge of Grays' arrest, had a professional obligation to make the proper notification to Operations, as well as drafting an Unusual Occurrence Report. As a result of these findings, Respondent Machado is found Guilty of Specifications 10 and 11.

Specification 12 –

Finally, Respondent Machado is charged with failing to transmit the disposition or interim disposition to the radio dispatcher in a timely manner.

Patrol Guide Procedure 202-23, paragraph 7, requires the RMP Recorder to "[t]ransmit disposition or interim disposition to radio dispatcher immediately upon completion of assignment and before leaving the scene of assignment."

It is undisputed that there were no radio transmissions made by either Respondent Machado or his subordinates, regarding either the stop and arrest of Grays or the subsequent vehicular collision. According to Respondent Machado, there was no radio transmission regarding the stop of Grays or his subsequent transport in a Department vehicle because "[Grays] was being too irate" and "there was [*sic*] too many people on the scene for [him] to get on the radio" (T. 438). Furthermore, while in the RMP, "[Grays] was too loud and it would probably just create more chaos in the radio" (T. 439).

As the front-seat passenger in the unmarked RMP, Respondent Machado was responsible for conducting the duties of RMP Recorder, which include transmitting dispositions to the radio dispatcher. The justifications provided by Respondent Machado for his failure to make such radio transmissions were similar to those he gave for not securing Grays with a seatbelt. His reasoning again appeared contrived, forced and unworthy of belief. I therefore, find Respondent Machado Guilty of Specification 12.

DISCIPLINARY CASE NO. 2016-15791

The final charges against Respondent Machado arise from allegations that on eight occasions between January 1, and March 31, 2016, he inaccurately represented, in both the 71st Precinct Command Log and his Activity Log, that he was present for duty at the 71st Precinct when he was not, in fact, present at the times indicated.

Lieutenant Orecchia also investigated the allegations of time abuse made against Respondent Machado (T. 240, 247). During the course of his investigation, Orecchia conducted CityTime computer checks showing present-for-duty times, reviewed the 71st Precinct Command Logs, and overtime records, as well as Respondent's Leave/Absence reports (T. 247). The Command Log was then compared to data collected from license plate readers on the Verrazano-Narrows Bridge for two vehicles registered to Respondent: a [redacted], and a [redacted].

The Department Advocate entered into evidence eight license plate reader printouts and the corresponding Command Log entries made on those dates.

- **Dept. Ex. 9** – Photograph from license plate reader indicating that on January 5, 2016, Respondent Machado crossed the [redacted]-bound side of the [redacted] at [redacted] at 0944 hours. The corresponding Command Log entry indicates that he was present for duty at 0940 hours.
- **Dept. Ex. 10** – Photograph from license plate reader indicating that on January 16, 2016, Respondent Machado crossed the [redacted] side of the [redacted] at [redacted] at 0953 hours. The corresponding Command Log entry indicates that he was present for duty at 0945 hours (T. 250)
- **Dept. Ex. 11** – Photograph from license plate reader indicating that on February 2, 2016, Respondent Machado crossed the [redacted] side of the [redacted] at [redacted] at 0929 hours. The corresponding Command Log entry indicates that Respondent was present for duty at 0930 hours.
- **Dept. Ex. 12** – Photograph from license plate reader indicating that on February 12, 2016, Respondent crossed the [redacted] side of the [redacted] at [redacted] at 1127 hours. The corresponding Command Log entry indicates that he was present for duty at 1130 hours.
- **Dept. Ex. 13** – Photograph from license plate reader indicating that on February 19, 2016. Respondent Machado crossed the [redacted] side of the [redacted] at [redacted] at 1008 hours. There is no corresponding Command Log entry which indicates he was present for duty on this date.
- **Dept. Ex. 14** – Photograph from license plate reader indicating that on February 20, 2016, Respondent Machado crossed the [redacted] ide of the [redacted] at [redacted] at 1131 hours. The corresponding Command Log entry indicates that Respondent was present for duty at 1115 hours.
- **Dept. Ex. 15** – Photograph from license plate reader indicating that on February 27, 2016, Respondent crossed the [redacted] side of the [redacted] at [redacted] at 1127 hours. The corresponding Command Log entry indicates that he was present for duty at 1130 hours.

- **Dept. Ex. 16** – Photograph from license plate reader indicating that on March 17, 2016, Respondent crossed the [redacted] side of the [redacted] at [redacted] at 1248 hours. The corresponding Command Log entry indicates that he was present for duty at 1245 hours.
- **Dept. Ex. 17-A** – spreadsheet prepared by Internal Affairs (T. 372)

Respondent Machado resides [redacted] and commuted to the 71st Precinct using his personal vehicles from January 1 to March 31, 2016 (Dept. Ex. 8-A, p. 8). Lieutenant Orrechia testified at trial that he was familiar with Respondent Machado's commute because he had commuted from [redacted] to the 71st Precinct by car from 2010 and 2014 (T. 355). He agreed with Respondent's assertion made during his May 4, 2016, Official Department Interview that the travel time from the point where the license plate reader is on the [redacted] to the 71st Precinct is 10-15 minutes (Dept. Ex. 8-A, p. 12).

Based on his investigation, including the interview of Respondent Machado, Lieutenant Orecchia determined that Respondent Machado was, in fact, not at the command when the seven entries in Department Exhibits 9, 10, 11, 12, 14, 15 and 16 indicated that he was present (T. 260).

At trial, Respondent Machado testified that any discrepancies between the license plate reader times and the times reflected in the command log were unintentional, as he relied upon the clock located behind the desk in the precinct to sign in and he could not be assured of its accuracy (T. 440). In addition, Respondent asserted that because neither the time-stamps generated on the license plate readers nor the CityTime records had been independently verified, the documentary evidence was unworthy of belief.

Respondent conceded that he had admitted in his Department interview that the vehicles depicted in the photographs were his and that he was the person operating them at the times the photographs were taken (T. 441, 443).

Respondent initially denied that he admitted during his Department interview that he had been late on any of the dates alleged, then testified that he did not recall whether he had admitted being late (*Id.*). On cross-examination, the Department Advocate then confronted Respondent Machado with his interview responses for each of the alleged time inconsistencies. His responses during his Department interview included the following:

- "I saw the time, and I didn't -- maybe I didn't want to block the, the, the sergeant? You know, sometimes that, you know, that happens. No malicious reasons. It's just minutes" (Dept. Ex. 8-A, p. 18, Dept. Ex. 10)
- "No reason. I was late" (Dept. Ex. 8-A, p. 20, Dept. Ex. 11)
- No reason to explain that he crossed [redacted] 3 minutes before he signed in (Dept. Ex. 8 A, p. 20, Dept. Ex. 12)
- No log entry "I always sign in" (Dept. Ex. 8-A, p. 22, Dept. Ex. 13)
- "No reason sir" (Dept. Ex. 8 A, p. 23, Dept. Ex. 14)
- "I don't remember calling anybody" to [ask that a line be saved] (Dept. Ex. 8 A, p. 25, Dept. Ex. 15)
- "When I drive [redacted] to the hospital, I take the, the truck." That day, he "was going to drop off [redacted] and [redacted] at home," but he called the precinct to say he was running late. (Dept. Ex. 8-A, p. 26-27, Dept. Ex. 16). He then switched cars and drove [redacted] to the precinct.

Specifications 1 & 2 –

Respondent is charged with being absent from his assignment without permission or police necessity on eight occasions between January 1, 2016, and March 31, 2016, for a total of 217 minutes. Respondent is also charged with making inaccurate entries in Department records by improperly designating himself as present for duty in the 71st Precinct Command Log when he was not, in fact, working at the time indicated.

Patrol Guide Procedure 203-05, paragraphs 1 and 2, require Members of Service to "[p]erform all duties as directed by competent authority" and to "[r]emain on post until properly relieved, except for police necessity, personal necessity, or meal period."

Patrol Guide Procedure 203-05, paragraph 4, requires Members of Service to "[m]ake accurate, concise entries in Department records in chronological order, without delay."

Respondent Machado's attempts at trial to divorce himself from the responses he gave during his Department interview were troubling, as well as obviously duplicitous. The tribunal is mindful that even while taking into consideration Respondent's factual assertions, the burden of proof remains with the Department. The evidence presented by the Department detailing the time inconsistencies, in conjunction with Respondent Machado's Department interview responses, has proven by a preponderance of the credible evidence that Respondent Machado engaged in the alleged misconduct. He is therefore found Guilty of specifications 1 and 2.

Specification 3 –

Respondent is charged with, on multiple occasions between January 1, 2016, and March 31, 2016, making inaccurate entries in his Activity Log. Specifically, that on March 17, 2016, the date of Hakim St. Clair's arrest, Respondent Machado made an inaccurate entry in his Activity Log that he was present for duty at 1245 hours. As previously discussed with respect to Department's Exhibit 16, Respondent's vehicle was photographed travelling [redacted] across [redacted] at 1248 hours (T. 529; Dept. Ex. 17-A).

As previously noted, Patrol Guide Procedure 212-08 states that MOS must record in their Activity Log, "Required information from roll call, before start of tour, including: (1) Day, date and tour (2) Assignment (post, sector, RMP number, etc.) two primary conditions to be addressed within sector/post, if applicable."

While the Department charges Respondent Machado in this specification with making inaccurate entries in his Activity Log on multiple occasions, it has provided evidence of only one such inaccurate entry (Dept. Ex. 22). As a result, this tribunal finds that the Department has failed to prove that Respondent Machado made inaccurate entries on multiple occasions between January 1, 2016, and March 31, 2016. Instead, the tribunal finds that Respondent made one

inaccurate entry in his activity log on March 17, 2016. Accordingly, Respondent is found Guilty, in part, of Specification 3.

Specification 4 –

Respondent is further charged with improperly submitting overtime slips stating that he had arrived on time for his scheduled tour when he had actually arrived late.

The CityTime records for Respondent Machado's work schedule for January 1st through March 31st, 2016, indicate the tours of duty he was compensated for, including overtime earned. In order for any such overtime to be incorporated into Respondent's CityTime records, an overtime slip must have been completed and approved by Respondent Machado's supervisor. Accordingly, it can be inferred that the overtime indicated in the CityTime records, as approved, was awarded following Respondent Machado's submission of inaccurate overtime slips.

As previously discussed, Patrol Guide Procedure 203-05 paragraph 4 directs all Members of the Service to "[m]ake accurate, concise entries in Department records in chronological order, without delay . . ."

Having found Respondent Machado guilty of being absent from his assignment for a total of 217 minutes and improperly designating himself as present for duty for that amount of time when he was not actually at work yet, it is therefore the tribunal's position that any overtime credited to Respondent Machado on those dates was gratuitous. By signing into the 71st Precinct's Command Log at times when he was, in fact, still travelling to the precinct, Respondent Machado began earning overtime compensation on six of the aforementioned dates before he was eligible to do so (T. 339-340, Dept. Ex. 24).

Similarly to his defense to the misconduct alleged in specifications one and two in this case, at trial Respondent Machado asserted that Lieutenant Orrechia had no independent

knowledge of whether or not the time stamps presented in the Department's records were fair and accurate (T. 374). Furthermore, Respondent Machado contended that Lieutenant Orrechia had provided no evidence that any other MOS independently established whether or not he was present at the 71st Precinct at the referenced Command Log times (T. 377).

As previously stated, the burden of proof remains with the Department even as the tribunal considers evidence offered by the Respondent in defense of the charge. I find that the Department has established by a preponderance of the credible relevant evidence that Respondent submitted inaccurate overtime slips, resulting in overtime being awarded to him which he did not earn; I therefore find him guilty of Specification 4.

Penalty

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent Machado was appointed to the Department on January 9, 2006 and Respondent Rodriguez was appointed to the Department on July 10, 2006. Information from their personnel records that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Department Advocate has recommended that Respondent Machado forfeit 35 vacation days, 15 suspension days, 217 minutes from his time/leave balances, pay $79.57 in restitution, and be placed on one year dismissal probation as a penalty in the aforementioned disciplinary cases brought against him. I find that the recommended penalty, under the circumstances, is excessive.

In a relevant case, an eleven-year lieutenant with one prior formal adjudication negotiated a penalty of 45 vacation days, 15 suspension days without pay, forfeiture of 7 hours and 32 minutes of time/leave balances, and one-year dismissal probation for, while holding the rank of captain, (i) failing to assume the command and perform the functions of the commanding officer

during absence, when informed that two UMOS were shot and failing to coordinate the precinct's Hospital Emergency Response Plan, (ii) being negligent in the performance of his duties when he failed to respond to the hospital to activate the Hospital Emergency Response Plan, after being notified that two UMOS were shot and being removed to the hospital, (iii) failing to respond and supervise an unusual police occurrence within the command, when informed two UMOS were shot, (vi) making misleading or inaccurate statements during an official Department interview, (v) failing to confer with DCPI prior to addressing the media and conducting an interview, (vi) being absent from his assignment without permission or police necessity on approximately 17 separate occasions for a total of 7 hours and 32 minutes, (vii) failing to supervise by not visiting precincts, PSAs, transit districts or borough court section facilities location within his patrol borough while assigned as the Duty Captain on five occasions, (viii) failing to make numerous entries in the Command Log when reporting on or off-duty, (ix) failing to inspect the Activity Logs of platoon commanders and special operations lieutenants at least once per month, and (x) performing unauthorized tour changes on more than 40 occasions without permission or authority (*Disciplinary Case No. 2016-15782* [September 28, 2017]; *see Disciplinary Case No. 2011-5059* [February 6, 2015][Twelve-year sergeant with no prior disciplinary record forfeits 30 vacation days for failing to do his duty as a supervisor by failing to intervene or take some other action to stop police officers from using unnecessary physical force against a handcuffed prisoner and failing to timely notify IAB about the misconduct he had personally observed. Respondent then aggravated the misconduct he committed at the scene by making false and misleading statements at an official Department interview concerning his knowledge of what had taken place at the scene]; *Disciplinary Case No. 2016-15561* [October 16, 2017][Ten-year sergeant, with no prior disciplinary history, negotiated

a penalty of twenty-five (25) vacation days for (i) wrongfully failing to render reasonable aid to a sick or injured person; (ii) having become aware of an allegation of misconduct against another Member of the Service, wrongfully failing to report said allegation immediately to IAB, as required; (iii) wrongfully failing to properly supervise subordinate Members of the Service under his command by immediately investigating a use of force by a Member of the Service or immediately checking on the condition of or rendering aid to the civilian who had been the subject of a use of force; and (iv) making inaccurate, incomplete, or misleading statements during an official Department interview regarding his observations of a use of force by another Member of the Service]; *Disciplinary Case No. 2016-16204* [October 16, 2017][Twenty-three-year sergeant with no prior disciplinary history negotiated a penalty of 20 vacation days for, (i) failing to properly supervise MOS under his supervision, in that he failed to direct that property be safeguarded and vouchered, and (ii) failing to properly investigate a complaint]; *Disciplinary Case No. 2014 12714* [February 17, 2016][Thirteen-year lieutenant with no prior disciplinary history negotiated a penalty of 30 vacation days and will receive re-training for failing to take police action, failing to supervise other MOS under her supervision, and making inaccurate and misleading statements to investigators during official Department interviews]; *Disciplinary Case No. 2015-14795* [December 7, 2017][Twenty-two year officer, with one prior adjudication, forfeited 30 vacation days for: (i) failing to promptly report the disposition of a radio call; (ii) failing to return to post after expiration of meal period; and (iii) failing to make required entries in his activity log]).

Respondent Machado has been found guilty of serious misconduct representing a pattern of leadership failure, lack of candor and seemingly casual disregard of Department regulations. Specifically, the most serious misconduct involved his active participation in violations of the

Patrol Guide while acting in his position of Special Operations lieutenant, an assignment which calls for judgment, leadership and, above all, integrity. Respondent's apparent flouting of authority, some of which was for personal gain, is inconsistent with good order, efficiency and discipline in this Department.

This tribunal, therefore, recommends that Respondent Machado be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one (1) year, pursuant to Section 14-115(d) of the Administrative Code, during which he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. It is further recommended that he forfeit 45 vacation days. While not the prerogative of this tribunal to recommend restitution, it is of the opinion that Respondent Machado should also be held accountable for the income he unlawfully earned.

The Department Advocate has recommended that Respondent Rodriguez forfeit 10 vacation days as a penalty for his misconduct in Case No. 2016-16796. Respondent Rodriguez has been found Guilty of failing to render reasonable aid to an adult requiring care due to the arrest of the person responsible for her care and failing to make Activity Log entries on March 9, 2016. Though Respondent Rodriguez has been found Guilty of two (2) out of three (3) specifications, the forfeiture of 10 vacation days remains reasonable.

Respectfully submitted,

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

JUL 06 2018

JAMES P. O'NEILL
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT LUIS MACHADO
TAX REGISTRY NO. 940403
DISCIPLINARY CASE NOS. 2016-15570, 2016-15791 & 2016-16797

Respondent Machado was appointed to the Department on January 9, 2006. On his last three annual performance evaluations Respondent received the following ratings: in 2016, he received an overall rating of 3.5 "Highly Competent/Competent," and in both 2014 and 2015, he received an overall rating of 4.5 "Extremely Competent/Highly Competent." He has been awarded 14 medals for Excellent Police Duty, 6 medals for Meritorious Police Duty, and one Commendation. [redacted]

From April 7, 2008, to April 14, 2010, Respondent was subject to Level 1 Force monitoring as the result of having three or more CCRB complaints in one year. On March 31, 2016, Respondent was placed on modified duty in connection with the above cases, which remains ongoing. Additionally, on May 23, 2016, Respondent became subject to Level 1 Discipline monitoring; that monitoring also remains ongoing.

Respondent has no prior formal disciplinary history.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MIGUEL RODRIGUEZ
TAX REGISTRY NO. 942460
DISCIPLINARY CASE NO. 2016-16796

Respondent Rodriguez was appointed to the Department on July 10, 2006. On his last three annual performance evaluations Respondent twice received an overall rating of 4.5 "Extremely Competent/Highly Competent" and once received an overall rating of 4.0 "Highly Competent." He has been awarded two medals for Excellent Police Duty and two medals for Meritorious Police Duty. [redacted]

He has no prior formal disciplinary history.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials