

**To: Attorney General Josh Kaul**  
**From: Sarah E. Harebo and Quinn Williams**  
**Re: Investigation Report – Jayne Swingen**  
**Date: May 22, 2020**

**INVESTIGATION REPORT – Jayne Swingen**

This report addresses allegations that Jayne Swingen failed to act on multiple employee and supervisor reports of alleged harassment and workplace bullying by other employees; failed to act on reports of pay inequity based on protected class; and alleged potential discrimination based on protected class or perceived protected class in determining whether to investigate and take human resources action against an employee regarding allegations of misconduct. It is asserted that these allegations occurred at various points from January 2019 to December 2019. Jayne Swingen was given notice of the allegations and subsequent investigation on December 16, 2019.<sup>1</sup>

The Wisconsin Department of Justice (DOJ) obtained the services of the University of Wisconsin System Administration’s Title IX and Clery Administrator Sarah E. Harebo and General Counsel Quinn Williams as external investigators to conduct the fact-finding portion of the investigation. This report is limited only to determining whether it is more likely than not that an allegation occurred. DOJ will conduct a review of the fact-finding report for purposes of determining policy violations, if any, and appropriate next steps.

During the course of the investigation, the following individuals, in no particular order, were interviewed:

<b>Witnesses</b>	<b>Interview Date(s)</b>
Jayne Swingen	1/15/20; 2/11/20; 2/25/20
Eric Wilson	1/17/20; 2/26/20
██████████	2/19/20; 3/24/20
██████████ ██████████	1/17/20; 2/25/20
██████████ ██████████	1/22/20
██████████ ██████████	1/27/20; 2/21/20
Ashley Viste	1/29/20
██████████ ██████████	1/21/20

In addition, Sarah E. Harebo reviewed human resource materials/documents and emails provided by Jayne Swingen as well as emails provided by several witnesses. Jayne provided a list of witnesses or individuals to speak with in regard to her response to the allegations or issues being raised as part of the investigation. The witnesses interviewed were limited to those that could provide specific information as to the allegations. There were suggested witnesses that were not interviewed. In some cases, multiple witnesses were listed for specific issues or information. Individuals were not interviewed, if after thorough review and consideration, there was not a need for further information or if sufficient clarification was achieved through the interviews that were conducted or reviewed evidence.

The witnesses that were interviewed had the opportunity to review their statement and make proposed changes or clarifications. Due to the restrictions of the COVID-19 response, the witness statement reviews were done via videoconferencing. Each witness, including Jayne, had the ability to review their

<sup>1</sup> A copy of the Notice is attached hereto as Exhibit A.

statement via screenshare. The individuals were not permitted to download or take screenshots of the statements. All proposed changes or clarifications were reviewed by the external investigators to determine whether an adjustment would be made.

## **I. BACKGROUND**

Jayne Swingen is the Human Resources (HR) Director for the Wisconsin DOJ. She is responsible for directing the function of the human resources department that includes, but is not limited to payroll, benefits, hiring, retention, investigation of workplace issues, intake of reports of personnel issues, and resolution of workplace issues. She has served in this role since approximately June 2015.

On January 7, 2019, Attorney General (AG) Josh Kaul was sworn into office. This led to changes in leadership and reporting structure. From approximately January 2019 until October 2019, Jayne reported directly to Deputy Attorney General (DAG) Eric Wilson. Beginning November 2019, Jayne began reporting to the newly hired Division of Management Services Division Administrator (DA) Erika Monroe-Kane. The allegations of misconduct occurred at various points from approximately January 2019 to December 2019.

## **II. STATEMENT SUMMARIES**

Each witness was individually interviewed by the two external investigators. The following are summaries of the interviews, not factual findings, limited to the information related to the allegations:

### **a. Jayne Swingen**

Jayne Swingen became the HR Director for DOJ in June 2015. After the election of Attorney General (AG) Josh Kaul, she initially reported to DAG Wilson until Erika Monroe-Kane was hired in approximately November 2019 as the new DA of the Division of Management Services (DMS).

Jayne described her working relationship with DAG Wilson as excellent. When Jayne reported to DAG Wilson, she had weekly meetings with DAG Wilson. In her role, Jayne kept a running list of HR issues to discuss with DAG Wilson at their weekly meetings. Jayne also freely contacted DAG Wilson when personnel or HR issues arose. Jayne indicated that she does not have the authority to make decisions regarding employee discipline or next steps on reports of employee misconduct. Jayne asserted that she does not have the authority to begin a disciplinary process or investigation into issues of alleged discrimination or employee misconduct. Jayne stated that DAG Wilson and Chief of Staff (COS) Ashley Viste hold the decision-making authority regarding employee discipline, next steps on reports of employee misconduct, and investigations. Jayne stated that she provides input from the HR perspective. Jayne also indicated that Corey Finkelmeyer, Deputy Division Administrator (DDA) of the Division of Legal Services (DLS), is often consulted on employee discipline and personnel matters. Jayne described Corey as the go-to attorney for the DOJ regarding employment matters. Jayne said that DAG Wilson has made it clear that investigations occur only as a last resort. Jayne said that if she believes that a matter should be investigated, then she must check with DAG Wilson and get his approval before commencing an investigation. Jayne indicated that in matters involving investigations the average time from receiving a report to resolution is lengthy. Jayne expressed that she must go to DAG Wilson regarding basic personnel issues such as attendance. Jayne stated that under the prior administration she felt able to address minor personnel issues with supervisors.

Jayne provided two documents to support her lack of authority to address personnel matters and her assertion that DAG Wilson and COS Viste must be consulted on basic personnel issues. The first document is dated July 12, 2018 and is a letter providing an updated list of authority delegations within the Wisconsin DOJ under the former AG.<sup>2</sup> The first section of the letter provides authority to designated executive team members for all forms of employee disciplinary action including termination as well as leave without pay. The July 12, 2018 letter has a second section delegating authority to DAs “to take disciplinary action through employee suspension, but not including termination.” The July 12, 2018 letter also outlines a third section that delegates authority to Jayne and the Assistant HR Director to sign personnel documents regarding appointments, certifications, reclassification, reallocation, pay, LTE forms, moving expenses and the like. The second document is dated December 6, 2019 and is an updated list of authority delegations by AG Kaul that was issued in response to the hiring of Erika Monroe-Kane as DA of DMS.<sup>3</sup> The December 6, 2019 letter contains the same language as the July 12, 2018 letter issued under the prior administration. The December 6, 2019 contains only two sections. The first section provides that DAG Wilson and COS Viste have authority for all forms of employee disciplinary action including termination as well as leave without pay. The second section provides the same outlined authority as seen in the third section of the July 12, 2018 letter for HR. The third section delegates authority to the DA of DMS and Jayne to sign personnel documents regarding appointments, certifications, reclassification, reallocation, pay, LTE forms, moving expenses and the like. The December 6, 2019 letter does not provide any authority to DAs to handle employee discipline or personnel matters.

Jayne averred that there is no formal process outlining the decision-making process or the steps for determining when an investigation or a disciplinary process should or should not occur. Jayne stated that she presents the employee issue or reported misconduct to DAG Wilson and sometimes COS Viste and then DAG Wilson decides on next steps. Jayne indicated that this was done verbally at their regular weekly meeting or an additional scheduled meeting if necessary. Jayne asserted that she could move forward only after a decision from DAG Wilson, which often included a meeting with DAG Wilson and Corey. Jayne outlined the process as follows: a complaint/report comes in and she calls DAG Wilson, DAG Wilson will decide next steps on the telephone call or Jayne will present the complaint/report at a meeting or there may be a combination of phone calls and meetings. The meeting may include HR representatives and the employee’s direct supervisor as well as DAG Wilson and Jayne. Jayne noted that DAG Wilson may also hold a separate meeting to talk through the decision to proceed with an investigation.

Jayne asserted that the average decision time on personnel issues is lengthy and may involve multiple individuals’ review. Jayne gave an example of a current employee issue that had been going on approximately six weeks without resolution on next steps. Jayne acknowledged that this matter was complicated by the current ongoing investigations, but still noted the delay. Jayne said that there have been multiple meetings, but no resolution for the employee making the complaint. Jayne provided an additional example that occurred prior to the current investigations and without any related complications. Jayne stated that the employee issue was raised in approximately May or June 2019 and involved a male employee in the Division of Criminal Investigation (DCI). Jayne said that this matter was resolved approximately six months later in January 2020.

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<sup>2</sup> A copy of the July 12, 2018 letter is attached hereto as Exhibit B.

<sup>3</sup> A copy of the December 6, 2019 letter is attached hereto as Exhibit C.

Jayne gave an example of the number of people that may review an employee personnel issue. Jayne said there was a personnel issue reported by a member of the [REDACTED]. Jayne stated that the issue involved a female employee that potentially violated [REDACTED] policies. To the best of Jayne's recollection, Corey, Jayne, DAG Wilson, [REDACTED] and [REDACTED] went through the materials that [REDACTED] put together regarding the potential [REDACTED] policy violations. Jayne stated that an HR Specialist and [REDACTED] were assigned to review the matter. Jayne said the two primary individuals assigned as well as the attorneys, supervisors, and DAG Wilson determined that it was a performance issue. Jayne said individuals were poking around on this employee's desk and some items were taken. Jayne believes that a member of [REDACTED] directed that this employee's "stuff" be taken away, but Jayne was unsure of who approved that measure. Jayne said that the employee under review thought she was being harassed.

Jayne noted that [REDACTED] repeatedly raised an issue with her pay to Jayne but did not verbally allege discrimination regarding her pay until approximately November 2019. Jayne stated there were a few individuals who reported concerns regarding [REDACTED]'s pay. Jayne indicated that there is no formal State process for equity reviews of [REDACTED] employee salaries. Jayne said that [REDACTED] had been raising an issue with her pay since her [REDACTED] spoke with Jayne via telephone as she was [REDACTED] with AG Kaul. Jayne stated that she was not consulted by AG Kaul or any member of the executive leadership on pay ranges or salaries for any of the [REDACTED] state employees [REDACTED] beginning of this administration.

According to her recollection, [REDACTED] raised the pay issue again in late summer or early fall and said it was discrimination in approximately early November 2019. In October 2019, Jayne relayed [REDACTED]'s concerns in a meeting with COS Viste regarding the potential pay range for the [REDACTED]. Jayne indicated that she was not consulted by AG Kaul or any member of the executive leadership team regarding the salary for the [REDACTED]. Shortly thereafter, Jayne contacted DPM to identify possible solutions to raise the pay of an [REDACTED] in the bounds of the State pay process. Jayne asserted that she relayed to DAG Wilson that [REDACTED] specifically raised the issue of discrimination regarding her pay after the November 4, 2019 [REDACTED] meeting. Jayne commented that at this time she was still reporting to DAG Wilson. Jayne said that there were several discussions regarding potential ways that this could be remedied. Jayne stated that there was no discussion about whether the matter should be investigated as a complaint of discrimination, instead the focus was on mediation and remediation. [REDACTED], [REDACTED], [REDACTED]. Jayne said [REDACTED]'s complaint about her pay timed with the hiring of [REDACTED]. Jayne recalled [REDACTED] making comments that they better not be paying the [REDACTED] more than her and referenced her level of experience. Jayne discussed the pay discrepancy with COS Viste, AG Kaul, DAG Wilson, and Corey. Jayne stated that she went over options with AG Kaul and suggested that the administration meet with [REDACTED] on this issue. Jayne indicated that AG Kaul and COS Viste met with [REDACTED] regarding her pay. Jayne provided handwritten notes from her meetings with DAG Wilson that indicated topics that were covered in their meetings.<sup>4</sup> The notes show that the Jayne discussed [REDACTED]'s complaint about her pay on October 29, 2019, November 6, 2019, November 13,

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<sup>4</sup> A copy of the notes is attached hereto as Exhibit D.

2019, and November 20, 2019. The notes also contain reference to another issue that was reported regarding workplace behavior between two [REDACTED] Jayne brought up the concerns that were raised regarding treatment of a female identified [REDACTED] by a male identified [REDACTED] at her next weekly meeting with DAG Wilson. Jayne submitted the notes to show the timeliness of presenting issues to DAG Wilson. Jayne noted that she raised [REDACTED]'s complaint regarding her pay earlier in October 2019 at a meeting with COS Viste. Jayne also provide an accepted calendar invite dated November 13, 2019 that indicated a phone call with DOA to discuss potential ways to adjust an [REDACTED] employee's pay after [REDACTED]. This matter is still under review.

Jayne recalled that [REDACTED] [REDACTED] was investigated at DAG Wilson's direction after a complaint was relayed from Brian O'Keefe, DCI DA, regarding [REDACTED]'s treatment of one of [REDACTED] employees. Jayne said that the investigation resulted in a finding that no misconduct occurred. It is alleged that [REDACTED] was treated differently by HR than Brian, a white male identifying individual. Essentially that multiple issues of alleged workplace misconduct were reported against Brian and HR did not investigate the allegations. For example, there were reports of alleged issues related to payment for a dinner, the recording of [REDACTED] without her knowledge in the workplace, and certain behavior at conferences. Jayne stated that DAG Wilson addressed and handled the issues reported regarding Brian recording [REDACTED] without her knowledge in the workplace and his behavior at conferences. Jayne recalled that DAG Wilson authorized an investigation into allegations that Brian accepted payment for a dinner that he should not have. Jayne noted that the result of that investigation was that Brian had to pay for the dinner. Jayne said that those alleged issues and any others involving any employees were relayed to DAG Wilson. Jayne asserted that DAG Wilson then determined how those issues were handled as well as any corresponding HR action and that she did not have the authority to undertake any actions on her own. Jayne indicated that she followed the direction of DAG Wilson as to whether to investigate a complaint. Jayne said that only if she received the go ahead from DAG Wilson would she proceed with an investigation. Jayne stated that she relayed all complaints and issues to DAG Wilson or COS Viste and addressed them per DAG Wilson's direction. Jayne reiterated that she did not have the ability to determine employee discipline and that DAG Wilson decides all employee disciplinary action.

Jayne was directly involved in the hiring of a diversity law clerk and became aware of issues regarding classification and pay range. Jayne noted that this was the first time that DOJ was participating in the Wisconsin Bar Association's Diversity Law Clerk program. Jayne said there were several communications on classification, pay, and funding division for this program. At one point, due to funding parameters in DLS, it was determined that the Division of [REDACTED] [REDACTED] would have the law clerk position [REDACTED]. Jayne commented that she was not sure where it went off the rails, but [REDACTED] sent an email that insinuated that the discussions regarding pay range and classification were indicative of potential discrimination. Jayne denied that any action that was taken by HR was discriminatory in nature. Jayne said that the law clerk position was moved to DLS and they are on track with the program.

Jayne asserted that she did not fail to act within her authority based on the information she had at the time to take action on any employee or supervisor reports of alleged harassment, workplace bullying, or pay inequity based on protected class. Jayne denied discriminating against any

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<sup>5</sup> A copy of the calendar invite is attached hereto as Exhibit E.

employee based on protected class or perceived protected class in determining whether to investigate or take HR action against an employee regarding allegations of misconduct.

Credibility of Jayne Swingen: Jayne was honest, forthcoming, and sincere in answering the investigators' questions and providing requesting or supporting materials. Jayne has a vested interest in the portrayal of the issues raised. Regardless of this interest, Jayne is found to be a credible witness.

**b. Eric Wilson**

Eric Wilson is the DAG of the State of Wisconsin. DAG Wilson was appointed to this position by AG Josh Kaul. AG Kaul was sworn into office on January 7, 2019. The reporting structure outlines that all divisions and offices of the DOJ report to DAG Wilson.

DAG Wilson does not recall sitting down and discussing with Jayne her level of authority in relation to personnel actions. DAG Wilson indicated that he and COS Viste are the only individuals other than the AG Kaul that can fire someone. DAG Wilson stated that if there is an investigation, he trusts Jayne's judgement and she has discretion on how to conduct investigations in consultation with DOJ employment counsel. The decision-making process is a practice of consultation with DAG Wilson having the ultimate decision on whether to proceed with an investigation or other HR action. DAG Wilson asserted that the consultative decision-making process does not impact the length of time on responding to incidents. DAG Wilson referred to a current issue that was reported that is complicated by the ongoing investigation. DAG Wilson noted that the issue was addressed quickly and is currently being handled by Corey. In this instance, DAG Wilson suggested to COS Viste that it should be investigated, but left the final decision on whether to investigate and next steps to Corey and others based on conflicts with current issues.

DAG Wilson has addressed any issues reported to him as needed with Brian, a white male identifying individual. For example, DAG Wilson addressed an issue with Brian giving a television interview for a national news show with a verbal reprimand. DAG Wilson approved an investigation by HR into allegations that Brian accepted a dinner while on a high-profile case. DAG Wilson said that Brian averred that he protested when he realized the dinner had already been paid for when he went to pay. DAG Wilson made Brian remedy the situation by issuing a check to the restaurant for the meal. DAG Wilson could not recall whether anything was placed in Brian's file regarding the investigation into the dinner. DAG Wilson also verbally reprimanded Brian for his actions regarding a crime scene response request. DAG Wilson was aware of potential issues regarding Brian as well as concerns raised by [REDACTED]. DAG Wilson examined those reports and concerns as part of a performance review of Brian to move him from probationary to permanent status. After DAG Wilson's review, based on the overwhelming positive response the administration decided to move Brian to permanent status.

DAG Wilson said that Brian relayed a complaint of creating a hostile work environment against [REDACTED] that was made by one of [REDACTED] employees, a white female identifying individual. DAG Wilson approved an investigation into the complaint. DAG Wilson noted that he had received similar complaints regarding [REDACTED] from other employees. The investigation resulted in no finding of misconduct against [REDACTED]. As part of the investigation,

DAG Wilson became aware that Brian recorded █████ in the workplace without her knowledge, as did the employee who filed the complaint. DAG Wilson did not formally discipline Brian for this behavior █████ DAG Wilson and Corey met with Brian regarding this issue. At this meeting, DAG Wilson spoke to Brian about this conduct and directed that he is never to do that again. DAG Wilson noted that he held the meeting in his office rather than Brian's office, which it is his custom to meet with individuals in their office, to convey the importance of the conversation. DAG Wilson commented that Brian told him that █████ DAG Wilson noted that █████ and █████ █████ made allegations that Brian showed favoritism towards this employee, who is also the employee that filed a complaint against █████. DAG Wilson said that since he took office, he was only aware of allegations that DCI gave this employee access to the █████ Office. DAG Wilson had led an inquiry into this employee for potential █████ policy violations reported by █████ and █████. The result of this inquiry was that it was a performance management issue and not a misconduct issue. DAG Wilson indicated that █████ was pressing for discipline and then in a meeting with Corey and DAG Wilson █████ said she totally agreed that it was a management issue and that no discipline was necessary. DAG Wilson described █████ as doing a complete 180-degree with her thoughts on this issue.

DAG Wilson indicated that there were subsequent issues with this same employee regarding working with the █████ program and the █████ program and being asked to assist with tasks by individuals outside of █████ DAG Wilson said that █████ was working on trying to get a handle on those requests and how that would coincide with the employee's job requirements in █████. This employee was being called by Brian to go to things as well as a Chief that has contacted DAG Wilson to relay concerns about █████. DAG Wilson indicated that the concern was that this employee was engaging in those activities or being asked to do tasks outside of █████ without checking with her supervisor first. DAG Wilson stated that █████ wanted her off the █████ team. DAG Wilson communicated to █████ and █████ █████ to not remove this employee from the █████ team. DAG Wilson went on vacation and when he returned this employee was moved to a different bureau in █████ and was removed from the █████ team. █████ suggested that her name be put in this employee's place on the DOJ website referencing the █████ program in the interim. DAG Wilson had a meeting with that Chief, Brian, and █████ in which that Chief indicated that he wanted that employee on the █████ team. DAG Wilson turned to █████ in the meeting and said do you have anything to add and █████ responded █████ DAG Wilson recalled having a conversation with the Chief that contacted him directly regarding concerns with █████. DAG Wilson said that the Chief sent a somewhat cryptic email asking to speak with him directly, but he thought that it was regarding █████. DAG Wilson spoke with that Chief after consulting with COS Viste on the right approach to handle this request and it was determined that it was best if he met with this Chief alone. DAG Wilson stated that the conversation with the Chief mostly revolved around concerns with █████ DAG Wilson stated that the Chief also commented that the employee that volunteered for █████ can do whatever she wants on her own time. After the conversation, the Chief sent an email to █████ saying that he spoke with DAG Wilson and cc'd DAG Wilson. After he saw the email, DAG Wilson happened to see █████ in the hallway and told her that he spoke with the Chief and that he should have spoken to her first. DAG Wilson recalled █████ responding, █████ Wilson assumes that █████ would have preferred that he did not have that conversation with the Chief. After that, DAG Wilson received a text message from the Chief stating that DOJ cannot stop this employee from volunteering on her own time.

DAG Wilson spoke with [REDACTED] and suggested guidelines for this employee's work with the [REDACTED] program. In that meeting, DAG Wilson recalled [REDACTED] yelling at him about this Chief not being able to tell them what to do and was not in favor of DAG Wilson's suggestion of setting guidelines. DAG Wilson said that [REDACTED] flip-flopped in the course of the day in the way to handle this issue. DAG Wilson stated that the Chief communicated that the employee could not be stopped from volunteering with [REDACTED] if she does it on her own time. DAG Wilson said that the Chief asked that DOJ not be associated with [REDACTED] moving forward. DAG Wilson sent an email asking [REDACTED] what they should do now. [REDACTED] sent an email saying that they need to set clear guidelines, which was what DAG Wilson had suggested in the meeting earlier that day. DAG Wilson is currently working with others to navigate this employee's volunteer hours and her work hours with the DOJ to establish guidelines.

DAG Wilson discussed approving another investigation into one of [REDACTED] employees, a white male identifying individual. DAG Wilson stated that [REDACTED] raised an issue regarding [REDACTED] and his time recording. DAG Wilson said that he approved a formal investigation in this matter. DAG Wilson said the outcome was a letter [REDACTED] and [REDACTED] was upset that the letter was not more severe and accusatory. DAG Wilson recalled that [REDACTED] was consulted on the language of the letter and that there was a lot of back and forth. DAG Wilson asserted that he never directed [REDACTED] or forced her to do so. DAG Wilson commented that [REDACTED] had a dysfunctional relationship with [REDACTED] and that himself and COS Viste had tried to intervene to remedy it. DAG Wilson was working on finding a new role for [REDACTED] when this individual left the DOJ. DAG Wilson commented that there had been ongoing issues related to [REDACTED]'s [REDACTED]. [REDACTED] did not want this individual [REDACTED] and was ostracizing him and flat out refusing to work with him.

DAG Wilson recalled Jayne reporting to him that [REDACTED] had an issue with her pay. DAG Wilson stated that [REDACTED] never directly reported to him a concern with her pay. DAG Wilson indicated that the timing of [REDACTED]'s concern was related to the hiring of the [REDACTED]. Jayne reported to DAG Wilson that [REDACTED] said something to the effect that they better not pay her more than me. DAG Wilson was not involved in setting [REDACTED]'s pay or setting pay for any [REDACTED] State employee [REDACTED] pay in general. DAG Wilson indicated that COS Viste did ask him what they should pay the [REDACTED] and they discussed the previous individual in her role's salary with the proper government wage adjustment. DAG Wilson stated that there is no formal equity review process for [REDACTED] positions. DAG Wilson noted that he asked Jayne to explore ways to potentially address [REDACTED] pay issue if an adjustment is deemed warranted by AG Kaul. DAG Wilson noted that AG Kaul and COS Viste make decisions regarding [REDACTED] pay. DAG Wilson remembered suggesting to COS Viste that she and AG Kaul speak with [REDACTED] about this issue. DAG Wilson commented that [REDACTED] [REDACTED] also raised a concern regarding [REDACTED]'s pay and [REDACTED] compliance related to nondiscrimination. DAG Wilson recalled that [REDACTED] also raised a concern about Brian O'Keefe, DCI DA, and alleged he harassed [REDACTED] [REDACTED]. DAG Wilson thanked [REDACTED] for raising the concerns and told her that they would address them. DAG Wilson said that [REDACTED] followed-up this conversation with an email on November 15, 2019, to which he responded that they would respond to the concerns appropriately.<sup>6</sup> DAG Wilson does not recall

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<sup>6</sup> A copy of the November 15, 2019 email is attached hereto as Exhibit F.



that [REDACTED] raised discrimination as part of her concern with her pay, but did suggest to [REDACTED]  
[REDACTED]

Credibility of DAG Wilson: DAG Wilson willingly and fully participated in the investigation process. DAG Wilson has a vested interest in the portrayal of some aspects of the issues raised as there is an additional investigation in which he is the Respondent. Regardless of this interest, DAG Wilson appeared to be open and sincere in answering the investigators' questions and is found to be a credible witness.

c. [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] male [REDACTED] Brian O'Keefe.  
[REDACTED] AG Kaul and COS Viste [REDACTED]  
understanding that the DOJ was going to review the matter. [REDACTED] AG Kaul and

COS Viste that Brian did not respect her personally or professionally. [REDACTED] gave specific names of people to speak to and she believes that DAG Wilson did contact them, but she was concerned that people would be reluctant to participate and be concerned that their names would be released. [REDACTED] was not sure if an investigation of Brian was completed or if there was a report. It is her [REDACTED] Brian was on probation at the time and a decision needed to be made regarding transferring him from probationary to permanent status. [REDACTED] investigation should be done. [REDACTED] Jayne was aware of alleged issues with Brian's behavior from the previous administration [REDACTED] the prior AG asking questions when Brian was hired from DLES to be the DCI DA. [REDACTED] DAG Wilson that a decision had been made, which was supported by AG Kaul, that Brian would be staying. [REDACTED] regarding Brian was related to behavior in the workplace and was not personal.

[REDACTED] issues of potential favoritism regarding Brian and this employee. For example, Brian let this employee park in his parking space, this employee accompanied him to a [REDACTED] gave her access to the [REDACTED] and this employee was at a meeting for the [REDACTED] program outside of her job duties.

[REDACTED] Brian recorded conversations he had with [REDACTED] without her knowledge that became part of the investigation. There was no finding against [REDACTED] in this matter. [REDACTED] not aware of any disciplinary action taken against Brian for recording her without her knowledge in the workplace. [REDACTED] this employee participates in the [REDACTED] program which led to some issues regarding time, pay, and understanding of the interplay between DOJ and [REDACTED]'s

[REDACTED] knowledge, there have been no inquiries or actions taken regarding Brian's potential favoritism towards the employee in [REDACTED] that filed the complaint [REDACTED] the [REDACTED] program.

[REDACTED] at times adjustments were made for what was needed in the press memo on the [REDACTED] did not make any factual changes or acronym changes without having numerous collaborative conversations with leadership and the prior administration. [REDACTED] any changes made were related to how it was read in the press memo not the facts. [REDACTED] she was also tasked with attending [REDACTED] meetings and reviewing [REDACTED] correspondence from citizens. [REDACTED] the meetings were driven by her. [REDACTED] while she may have missed a few meetings, she did attend the meetings and communicated if she was not going to attend. [REDACTED] she responded to citizen inquiries and at times there were standard responses, but that each inquiry was handled individually.

Credibility of [REDACTED] willingly and fully participated in the investigation process. [REDACTED] appeared to be open and sincere in answering the investigators' questions and is found to be a credible witness.

d. [REDACTED]

[REDACTED] reported issues to DAG Wilson and COS Viste regarding discrimination/harassment. [REDACTED] one issue was Brian O'Keefe's alleged treatment of the [REDACTED] the other issues were alleged pay discrimination related to the [REDACTED] and DAG Wilson's treatment of [REDACTED]. [REDACTED] indicating that the issue may be related to race discrimination. [REDACTED] the alleged issue with [REDACTED] pay directly to DAG Wilson and COS Viste [REDACTED] on approximately Friday, November 8, 2019 due to Jayne not following up on those reports there was no response from DAG Wilson and COS Viste. [REDACTED] approximately Wednesday, November 13, 2019. [REDACTED]

[REDACTED] email on Friday, November 15, 2019 to DAG Wilson and COS Viste.<sup>7</sup> The November 15, 2019 email outlined the [REDACTED]

posted [REDACTED] a pay issue with minority identifying former supervisor [REDACTED] salaries of all female-identifying assistant attorney generals on a whole being paid less than their male counterparts.

Credibility of [REDACTED] willingly and fully participated in the investigation process. [REDACTED] appeared to be open and sincere in answering the investigators' questions and is found to be a credible witness.

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<sup>7</sup> A copy of the email trail is attached hereto as Exhibit G.

e. [REDACTED]

[REDACTED]

[REDACTED] an issue regarding another [REDACTED] for a series of alleged issues over the past approximately two years. [REDACTED] [REDACTED] made the initial report of [REDACTED]'s concerns. [REDACTED] stated that she discussed her concerns with DAG Wilson in October 2019. [REDACTED] indicated that [REDACTED] spoke with Jayne [REDACTED] to discuss the issues she was having and [REDACTED] Jayne said let me know if there is anything I can do to help.

[REDACTED]

[REDACTED] stated that at first, she was annoyed, but after reading the policy felt that [REDACTED] did the right thing in reporting [REDACTED]

Credibility of [REDACTED] [REDACTED]: [REDACTED] willingly and fully participated in the investigation process. [REDACTED] appeared to be open and sincere in answering the investigators' questions and is found to be a credible witness.

f. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

the pay and classification and did not want to put the DOJ in the position of paying this position less than others.<sup>8</sup> [REDACTED] the request to fill for this position was completed in his name, but he did not complete it and is not sure who did. [REDACTED]

[REDACTED]

[REDACTED]

meant that the position was removed from [REDACTED] discussed this as an example of the broken decision-making process at the DOJ and how decisions are made by individuals, in this case HR, without information that directly affects individuals. In this instance, [REDACTED] stated this type of action makes it difficult to understand what is happening at DOJ and why.

Credibility of [REDACTED], [REDACTED]: [REDACTED], [REDACTED] willingly and fully participated in the investigation process. [REDACTED] appeared to be open and sincere in answering the investigators' questions and is found to be a credible witness.

**g. Ashley Viste**

Ashley Viste joined the Wisconsin DOJ in approximately January 2019. She serves as the COS for AG Kaul. Ashley reports to AG Kaul.

COS Viste was involved with the hiring of the [REDACTED]. This individual oversees [REDACTED]. [REDACTED] COS Viste relayed that the individual that was hired was known by [REDACTED] and that they had worked together for former Governor Doyle. COS Viste recalled a meeting with herself, DAG Wilson, AG Kaul, [REDACTED], Jayne, and [REDACTED] to discuss the [REDACTED] position. COS Viste stated that it was at this meeting that they asked for feedback and decided that they didn't need a subject matter expert. COS Viste said that the executive team wanted to have a project manager in this role. Jayne was an applicant for the [REDACTED] position. COS Viste remembered talking to Jayne about the pay range and size of the [REDACTED] division. COS Viste stated that Jayne told them that more people report to [REDACTED] than [REDACTED]'s [REDACTED]. COS Viste acknowledged that Jayne had made her and DAG Wilson aware that [REDACTED] was having frequent conversations with Jayne to complain about her pay. COS Viste posited that [REDACTED] never contacted her directly to complain about her pay or file a complaint. COS Viste indicated that Jayne was working on and researching a way to potentially remedy the pay issue if it was warranted. COS Viste did confirm that there was a meeting with her, AG Kaul, and [REDACTED] to discuss pay issues. COS Viste said that pay issues related to [REDACTED] and two other appointees were discussed. COS Viste stated that in this meeting AG Kaul asked [REDACTED] directly whether she had any issues with her pay and [REDACTED] responded something to the effect of it is all good. On approximately December 10, 2019, COS Viste said that [REDACTED]

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<sup>8</sup> A copy of the email trail is attached hereto as Exhibit H.

<sup>9</sup> See Exhibit H.



h. [REDACTED]

[REDACTED]

[REDACTED] has known [REDACTED] approximately six years. [REDACTED] said that she began working more closely with [REDACTED] around late 2014, early 2015. [REDACTED] was tasked with attending weekly [REDACTED] meetings and [REDACTED] attended those as well as served as an on-call authority to answer questions on [REDACTED] requests. [REDACTED] said they became work friends in approximately 2016/2017. [REDACTED] indicated that there were times that [REDACTED] would reach out to her to discuss various concerns.

[REDACTED] she was negotiating her salary at her initial [REDACTED] recalls [REDACTED] being upset with the fact that she was paid less than the previous [REDACTED] purported that [REDACTED] after learning that the [REDACTED] was going to make more than [REDACTED] did and the [REDACTED] is managing a smaller [REDACTED] [REDACTED] makes less than every other [REDACTED] and makes less than the [REDACTED] DAG Wilson told [REDACTED] directly that [REDACTED] [REDACTED] believes that the [REDACTED] stated that she reported the potential issues with [REDACTED]'s pay and racial discrimination to [REDACTED] there was racial discrimination regarding the issue of her pay. [REDACTED] relayed that she thought [REDACTED] [REDACTED] was required to [REDACTED] [REDACTED] indicated that [REDACTED] agreed with her assessment. [REDACTED] race discrimination. [REDACTED]

Credibility of [REDACTED]: [REDACTED] willingly and fully participated in the investigation process. [REDACTED] appeared to be open and sincere in answering the investigators' questions and is found to be a credible witness.

### III. POLICY STATEMENT

As per the Notice, DOJ is responsible for investigating complaints or reports of behavior that may violate its policies. The alleged conduct may have violated the DOJ Discrimination and Harassment Prevention and Complaint Policy and/or the Wisconsin Human Resources Handbook Work Rules as outlined in Section 410.030.

The Discrimination and Harassment Prevention and Complaint Policy provides for the investigation of allegations pursuant to the complaint resolution process. DOJ retained the services of external investigators to conduct the fact-finding portion of the investigation. This reported is limited to

determining whether it is more likely than not that an allegation occurred. DOJ will conduct a review of the fact-finding report for purposes of determining whether policy violations occurred.

#### **IV. STANDARD OF REVIEW**

This fact-finding review will be made using the preponderance of the evidence standard. This standard requires that the information supporting a finding must weigh more heavily than the information in opposition such that the fact at issue is more likely than not to be true.

#### **V. REASONING AND ANALYSIS**

For organizational purposes, the reasoning and analysis is grouped by the three allegations: failure to act on multiple employee and supervisor reports of alleged harassment and workplace bullying by other employees; failure to act on reports of pay inequity based on protected class; and potential discrimination based on protected class or perceived protected class in determining whether to investigate and take human resources action against an employee regarding allegations of misconduct.

##### **1. Failure to act on multiple employee and supervisor reports of alleged harassment and workplace bullying by other employees.**

There were allegations that Jayne failed to act on multiple employee and supervisor reports of alleged harassment and workplace bullying by other employees. This investigation is limited to whether Jayne failed to act within the bounds of her authority and DOJ practice and procedure to respond to reports of employee misconduct. This investigation did not analyze the merits of the reports, corresponding HR actions or investigations, or the outcomes of the HR actions or investigations undertaken.

There was a perception that reports of employee misconduct involving Brian O’Keefe were not addressed. Jayne indicated that she relays to DAG Wilson any reports of employee misconduct that she receives. There were multiple reports of alleged issues related to payment for a dinner, the recording of [REDACTED] [REDACTED] without her knowledge in the workplace, and certain behavior at conferences. Jayne stated that DAG Wilson addressed and handled the issues reported regarding Brian recording [REDACTED] without her knowledge in the workplace and his behavior at conferences. Jayne recalled that DAG Wilson authorized an investigation into the payment for dinner and the result was that Brian had to pay for the dinner. Jayne stated that DAG Wilson determined how reported issues were handled as well as any corresponding HR action and that she did not have the authority to undertake any HR actions on her own. During an investigation into alleged workplace misconduct involving [REDACTED], it was discovered that Brian recorded [REDACTED] in the workplace without [REDACTED] knowledge. DAG Wilson stated that he did not formally discipline Brian for this behavior [REDACTED] DAG Wilson and Corey met with Brian regarding this issue. At that meeting, DAG Wilson indicated that he spoke to Brian about this conduct and directed that he is never to do that again. DAG Wilson noted that he held the meeting in his office rather than Brian’s office, which it is his custom to meet with individuals in their office, to convey the importance of the conversation. DAG Wilson’s statement corroborates that he addressed any issues reported to him regarding Brian as needed. In addition, DAG Wilson addressed an issue with Brian giving a television interview for a national news show with a verbal reprimand.

[REDACTED] questions about Brian O’Keefe. [REDACTED] AG Kaul and COS Viste regarding [REDACTED] understanding that the DOJ was going to review the matter. [REDACTED] AG Kaul and COS Viste that Brian did not respect [REDACTED] personally or professionally. [REDACTED] also provided specific individuals for them to speak to regarding Brian’s behavior in the workplace, but she was concerned that they would be



reluctant to speak with them. [REDACTED] Jayne was aware of alleged issues with Brian's behavior from the previous administration. COS Viste recalled [REDACTED] raising concerns that Brian is [REDACTED]. [REDACTED] COS Viste said that [REDACTED] also alleged that Brian is verbally abusive in the workplace and unfairly targets individuals that are not loyal to him. COS Viste stated that DAG Wilson conducted a performance review and spoke with a lot of Brian's direct reports. COS Viste noted that there was not a discussion or relay of concerns regarding Brian's conduct in the workplace from the prior administration. DAG Wilson stated that he was aware of potential issues regarding Brian as well as concerns raised by [REDACTED]. DAG Wilson indicated that he examined those reports and concerns as part of a performance review of Brian to move him from probationary to permanent status. DAG Wilson stated the feedback was overwhelmingly positive regarding Brian which led to the administration moving him from temporary to permanent status.

[REDACTED] was having with Brian O'Keefe about bullying and harassment. Jayne followed up with her [REDACTED]. [REDACTED] external investigators were being brought in to review the matter. Jayne relayed in her statement that she reported the concerns that were raised about Brian's treatment of [REDACTED].

Jayne asserted in her statement that it is not within the bounds of her authority to initiate an investigation. Jayne stated that she presents the employee issue or reported misconduct to DAG Wilson and sometimes COS Viste and then DAG Wilson decides on next steps. Jayne indicated that this was done verbally at their regular weekly meeting or an additional scheduled meeting if necessary. Jayne asserted that she could move forward only after a decision from DAG Wilson, which often included a meeting with DAG Wilson and Corey. DAG Wilson similarly indicated that the decision-making process is a practice of consultation with DAG Wilson having the ultimate decision on whether to proceed with an investigation or other HR action. DAG Wilson stated that if there is an investigation, he trusts Jayne's judgement and she has discretion on how to conduct investigations in consultation with DOJ employment counsel.

The witness statements indicate that it is more likely than not that Jayne acted on reports of employee misconduct and did so in a timely matter. In addition, it is more likely than not that Jayne took appropriate action within the bounds of her authority and DOJ practice and procedure, as Jayne does not have independent authority to initiate an investigation or any other potential HR action. DAG Wilson corroborated Jayne's assertion in his statement that he has the ultimate decision on whether to proceed with an investigation or other HR action. This is further evidenced by DAG Wilson's statement showing that he addressed the issues reported regarding Brian, not HR.

## **2. Failure to act on reports of pay inequity based on protected class.**

This investigation is limited to whether Jayne took appropriate HR action within the bounds of her authority and DOJ practice and procedure to respond to a report of pay inequity and whether her response was impacted by discrimination based on protected class. This investigation did not review whether there is in fact a pay inequity, so the interviews and materials were viewed through the limited lens of whether Jayne took appropriate action upon receiving reports of the alleged inequity.

The basis of this allegation is that Jayne received reports from [REDACTED] [REDACTED] and [REDACTED] [REDACTED] that alleged the inequity of [REDACTED]'s pay in comparison to other similarly situated [REDACTED] and that Jayne failed to act on the reports. Jayne indicated that [REDACTED] reported the alleged issue with [REDACTED]'s pay on November 5, 2019. Jayne stated that [REDACTED] had repeatedly raised issues with her pay from the time that she was hired but did

not allege discrimination until approximately November 2019. Jayne indicated that [REDACTED] raised the issue of her pay and discrimination when [REDACTED] was hired, [REDACTED]

[REDACTED] being hired. [REDACTED] salary as a [REDACTED] is less than [REDACTED] predecessor's and all the other [REDACTED] her pay is also less than the [REDACTED] which is a lower position than hers, is also believed to be white male identifying. Jayne stated that she went over options with AG Kaul and suggested that the administration meet with [REDACTED] on this issue. [REDACTED] recalled having a meeting with COS Viste and AG Kaul on approximately November 1, 2019 and they discussed her pay issue as well as pay issues with two other employees' salaries. COS Viste indicated that the meeting and conversation that [REDACTED] referenced was held.

Jayne indicated that she relayed the reports regarding [REDACTED]'s pay to COS Viste in approximately October 2019 during a meeting about [REDACTED]. Jayne also contacted DPM to identify possible solutions. Jayne asserted that she relayed to DAG Wilson that [REDACTED] specifically raised the issue of discrimination regarding her pay after the November 4, 2019 [REDACTED] Meeting. Jayne indicated that she discussed the pay discrepancy with COS Viste, AG Kaul, DAG Wilson, and Corey. Jayne provided handwritten notes from her meetings with DAG Wilson that indicated topics that were covered in their meetings.<sup>10</sup> The notes show that the Jayne discussed [REDACTED]'s complaint about her pay on October 29, 2019, November 6, 2019, November 13, 2019, and November 20, 2019. Jayne said that there were several discussions regarding potential ways that this could be remedied. Jayne stated that there was no discussion about whether the matter should be investigated as a complaint of discrimination, instead the focus was on mediation and remediation. Jayne also provide an accepted calendar invite dated November 13, 2019 that indicated a phone call with DOA to discuss potential ways to adjust an [REDACTED] employee's pay after [REDACTED]<sup>11</sup>

Jayne asserted in her statement that it is not within the bounds of her authority to initiate an investigation. Jayne stated that she presents the employee issue or reported misconduct to DAG Wilson and sometimes COS Viste and then DAG Wilson decides on next steps. Jayne indicated that this was done verbally at their regular weekly meeting or an additional scheduled meeting if necessary. Jayne asserted that she could move forward only after a decision from DAG Wilson, which often included a meeting with DAG Wilson and Corey. DAG Wilson similarly indicated that the decision-making process is a practice of consultation with DAG Wilson having the ultimate decision on whether to proceed with an investigation or other HR action. DAG Wilson stated that if there is an investigation, he trusts Jayne's judgement and she has discretion on how to conduct investigations in consultation with DOJ employment counsel.

The meeting notes Jayne provided, and corroborating witness statements indicate that it is more likely than not that Jayne acted in a timely matter to address the reports of discrimination related to [REDACTED]'s pay. Jayne's meeting notes and the witness statements indicate that there was very little delay in Jayne's receipt of the report to relaying it to DAG Wilson and other appropriate members of management. It is more likely than not that Jayne took appropriate action within the bounds of her authority and DOJ practice and procedure, as Jayne does not have independent authority to initiate an investigation or any

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<sup>10</sup> See Exhibit D.

<sup>11</sup> See Exhibit E.

other potential HR action. DAG Wilson corroborated Jayne's assertion in his statement that he has the ultimate decision on whether to proceed with an investigation or other HR action.

**3. Potential discrimination based on protected class or perceived protected class in determining whether to investigate and take human resources action against an employee regarding allegations of misconduct.**

There were allegations that Jayne may have acted in a discriminatory manner based on protected class or perceived protected class in determining whether to investigate and take HR action against an employee regarding allegations of misconduct. It was alleged that Jayne and HR investigated [REDACTED], an [REDACTED] without question and did not act or investigate Brian O'Keefe, a white male identifying individual, for allegations of workplace misconduct.

Jayne recalled that [REDACTED] was investigated at DAG Wilson's direction after a complaint was relayed from Brian regarding [REDACTED]'s treatment of one of [REDACTED] employees. Jayne said that the investigation resulted in a finding that no misconduct occurred. It is alleged that [REDACTED] was treated differently by HR than Brian, a white male identifying individual. Essentially that multiple issues of alleged workplace misconduct were reported against Brian and HR did not investigate the allegations.

Jayne indicated that she relays to DAG Wilson any reports of employee misconduct that she receives. There were multiple reports of alleged issues involving Brian related to payment for a dinner, the recording of [REDACTED] without her knowledge in the workplace, and certain behavior at conferences. Jayne stated that DAG Wilson addressed and handled the issues reported regarding Brian recording [REDACTED] without her knowledge in the workplace and his behavior at conferences. Jayne recalled that DAG Wilson authorized an investigation into Brian accepting dinner and the result was that Brian had to pay for the dinner. During the investigation into alleged workplace misconduct involving [REDACTED], it was discovered that Brian recorded [REDACTED] in the workplace without her knowledge. DAG Wilson said he did not formally discipline Brian for this behavior after consulting with DOJ employment counsel, Corey Finkelmeyer. DAG Wilson and Corey met with Brian regarding this issue. At this meeting, DAG Wilson spoke to Brian about this conduct and directed that he is never to do that again. DAG Wilson noted that he held the meeting in his office rather than Brian's office, which is his custom to meet with individuals in their office, to convey the importance of the conversation. DAG Wilson's statement corroborates that he addressed any issues reported to him regarding Brian as needed. In addition, DAG Wilson addressed an issue with Brian giving a television interview for a national news show with a verbal reprimand.

[REDACTED] asked questions about Brian. [REDACTED] AG Kaul and COS Viste regarding [REDACTED] concerns and it was [REDACTED] understanding that the DOJ was going to review the matter. [REDACTED] AG Kaul and COS Viste that Brian did not respect [REDACTED] personally or professionally. [REDACTED] specific individuals for them to speak to regarding Brian's behavior in the workplace, but [REDACTED] was concerned that they would be reluctant to speak with them. [REDACTED] asserted that Jayne was aware of alleged issues with Brian's behavior from the previous administration. COS Viste recalled [REDACTED] raising concerns that Brian is [REDACTED] [REDACTED] COS Viste said that [REDACTED] also alleged that Brian is verbally abusive in the workplace and unfairly targets individuals that are not loyal to him. COS Viste stated that DAG Wilson conducted a performance review and spoke with a lot of Brian's direct reports. COS Viste noted that there was not a discussion or relay of concerns regarding Brian's conduct in the workplace from the prior administration. DAG Wilson stated that he was aware of potential issues regarding Brian as well as concerns raised by [REDACTED]. DAG Wilson indicated that he examined those reports and concerns as part of a performance review of Brian to move him from probationary to permanent status. DAG Wilson stated the

feedback was overwhelmingly positive regarding Brian which led to the administration moving him from temporary to permanent status.

Jayne also indicated that DAG Wilson approved investigations into alleged misconduct by ██████████ DDA for ██████████ this individual is a white male identifying individual. DAG Wilson noted that he authorized an inquiry into potential ██████████ policy violations reported by ██████████ and ██████████ regarding the individual that filed the formal complaint against ██████████, with the assistance of Brian. This employee is a white female identifying individual. The result of this inquiry was that it was a performance management issue and not a misconduct issue.

We find that Jayne acted on reports of alleged employee misconduct and that the follow up action was taken without any indication of discrimination based on protected class. ██████████ was investigated for alleged employee misconduct just as Brian was investigated or verbally reprimanded as appropriate. In addition, Jayne and DAG Wilson indicated inquiry or investigation of employees allegedly engaged in employee misconduct, both of whom reported to ██████████, that were white identifying. Jayne asserted in her statement that it is not within the bounds of her authority to initiate an investigation. Jayne stated that she presents the employee issue or reported misconduct to DAG Wilson and sometimes COS Viste and then DAG Wilson decides on next steps. Jayne indicated that this was done verbally at their regular weekly meeting or an additional scheduled meeting if necessary. Jayne asserted that she could move forward only after a decision from DAG Wilson, which often included a meeting with DAG Wilson and Corey. DAG Wilson similarly indicated that the decision-making process is a practice of consultation with DAG Wilson having the ultimate decision on whether to proceed with an investigation or other HR action. DAG Wilson stated that if there is an investigation, he trusts Jayne's judgement and she has discretion on how to conduct investigations in consultation with DOJ employment counsel.

██████████  
Brian's potential favoritism towards of one of ██████████ employees in ██████████ DAG Wilson noted that ██████████ and ██████████ made allegations that Brian showed favoritism towards this employee, who is also the employee that filed a complaint against ██████████. DAG Wilson said that since he took office, he was only aware of allegations that DCI gave this employee access to the ██████████ Office. COS Viste stated that there seems to be a perception that Brian favors this employee ██████████. COS Viste confirmed that she has discussed this issue with DAG Wilson. COS Viste gave the examples of Brian reaching out to have this employee assist DCI even though she was in ██████████, which is ██████████'s ██████████ and noted that this employee has used Brian's purchasing card. ██████████

██████████ treated differently than Brian by HR and DAG Wilson in response to allegations of favoritism in that they attempted to remove ██████████. ██████████ COS Viste said that she did get the sense that DAG Wilson thought ██████████ was playing favorites with ██████████ and that there was a dispute over who ██████████ was going to report to after DAG Wilson ██████████. COS Viste recalled DAG Wilson saying something to the effect of ██████████ cannot report to ██████████ and that is the way it stayed. COS Viste did not recall DAG Wilson or anyone else insinuating an ██████████ ██████████

We find that ██████████ and Brian were not treated differently by Jayne in the handling of allegations of favoritism towards employees. There was never a formal complaint made regarding favoritism and there was not any formal HR action taken in either case. Moreover, DAG Wilson was aware of the perceptions

of favoritism and did not authorize or approve an investigation into the allegations. ██████'s assertion that she was treated differently due to the potential removal of ██████ did not come to fruition. Based on COS Viste statements, the change in supervisor was related to ██████ and the comments regarding ██████ not reporting to ██████ came from DAG Wilson, not from HR.

We find it is more likely than not that Jayne acted on reports of employee misconduct and did so in a nondiscriminatory timely matter. It is more likely than not that Jayne took appropriate action within the bounds of her authority and DOJ practice and procedure, as Jayne does not have independent authority to initiate an investigation or any other potential HR action. DAG Wilson corroborated Jayne's assertion in his statement that he has the ultimate decision on whether to proceed with an investigation or other HR action.

## **VI. CONCLUSION**

Upon review of all the witness interviews, emails, and materials provided by Jayne and witnesses, we find by a totality of the circumstances using a preponderance of the evidence standard of review no facts that would support the allegations that Jayne failed to act on multiple employee and supervisor reports of alleged harassment and workplace bullying by other employees; failed to act on reports of pay inequity based on protected class; and alleged potential discrimination based on protected class or perceived protected class in determining whether to investigate and take human resources action against an employee regarding allegations of misconduct.