



2. Digitally penetrated [REDACTED] vagina without her consent.	<b>SUSTAINED / Separation</b>
3. Failed to intervene when [REDACTED] digitally penetrated [REDACTED] vagina without her consent.	<b>NOT SUSTAINED</b>
4. Stated words to the effect of, "Have you ever had a foursome?" to [REDACTED].	<b>SUSTAINED / 10 days</b>
5. On or about January 14, 2019, at approximately 8:45 a.m., at the COPA offices, located at 1615 W. Chicago Ave., Chicago, Illinois, [REDACTED] provided material and willful false statements to COPA relative to physical contact between himself and [REDACTED] on or about September 1, 2018 at or near the location of [REDACTED]s [REDACTED], approximately between the hours of 2:00-3:08 p.m.	<b>SUSTAINED / Separation</b>
6. On or about January 14, 2019, at approximately 8:45 a.m., at the COPA offices, located at 1615 W. Chicago Ave., Chicago, Illinois, [REDACTED] provided material and willful false statements to COPA relative to who was in the pool with himself and [REDACTED] on or about September 1, 2018 at or near the location of [REDACTED] as [REDACTED], approximately between the hours of 2:00-3:08 p.m.	<b>SUSTAINED / Separation</b>
7. On or about January 14, 2019, at approximately 8:45 a.m., at the COPA offices, located at 1615 W. Chicago Ave., Chicago, Illinois, [REDACTED] provided material and willful false statements to COPA relative to when he exited the pool on or about September 1, 2018 at or near the location of [REDACTED] [REDACTED], approximately between the hours of 2:00-3:08 p.m.	<b>SUSTAINED / Separation</b>

	<p>8. On or about September 5, 2018, [REDACTED] displayed an inattention to duty in that he failed to mention the fact that [REDACTED] grabbed his penis in his To-From Report dated September 5, 2019, to Commander [REDACTED] of the [REDACTED] District.</p>	<p><b>UNFOUNDED</b></p>
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**IV. APPLICABLE RULES AND LAWS**

Rules

Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 3: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.

Rule 5: Failure to perform any duty.

Rule 9: Engaging in any unjustified verbal or physical altercation with any person while on or off duty.

Rule 10: Inattention to duty.

Rule 14: Making a false report, written or oral.

General Orders

1. G08-01-02, II, A, 5: Specific Responsibilities Regarding Allegations of Misconduct

## V. INVESTIGATION

### a. Interviews

COPA made several unsuccessful attempts to contact the victim, [REDACTED]. Therefore, COPA obtained an override affidavit.<sup>1</sup>

COPA conducted a phone interview with [REDACTED]<sup>2</sup> on March 21, 2019. [REDACTED] stated that on the date of the incident, she was the [REDACTED] in [REDACTED], [REDACTED]. [REDACTED] stated she and her friends were by the side of the pool at the time of the incident. [REDACTED] noticed a girl in the pool, now known as [REDACTED]. [REDACTED] believed she initially observed [REDACTED] at approximately 1:00 or 2:00 p.m. [REDACTED] stated that [REDACTED] had friends outside of the pool but could not recall where specifically they were located. [REDACTED] noticed [REDACTED] was in the pool with a male individual wearing a blue hat (now known as PPO [REDACTED] who had a distinctive tattoo on his chest. [REDACTED] stated that another male, who she believed to be PPO [REDACTED] friend based on her observations of them, was also in the pool with PPO [REDACTED] and [REDACTED]. [REDACTED] stated she did not observe the parties enter the pool and only observed them once they were already in the pool.

[REDACTED] stated that between 3:00 and 4:00 p.m., the pool began to clear, and she left the poolside to use the restroom. When she returned, she observed her friends helping [REDACTED] out of the pool and consoling her. [REDACTED] described [REDACTED] demeanor at the time as distraught and crying. [REDACTED] stated her friends told her the girl was “fingered” by the male in the blue hat. When asked about her handwritten statement to the [REDACTED] (hereafter [REDACTED] where she appears to be present for [REDACTED] initial outcry, [REDACTED] clarified that she was present when [REDACTED] stated that she had been “fingered” by the male in the blue hat. After [REDACTED] made this statement, [REDACTED] told [REDACTED] to wait for security. [REDACTED] went to get security and immediately returned with the security officer. [REDACTED] then walked around the club to find the male in the blue hat. [REDACTED] observed him standing with another group of people and took a picture of him on her phone. [REDACTED] showed the photo<sup>3</sup> to the security officer.

[REDACTED] estimated that [REDACTED] had been in the pool for “hours” by the time she came out and was crying. [REDACTED] stated that she observed [REDACTED] and PPO [REDACTED] dancing, hugging, and kissing while they were in the pool together, which made her believe they were a couple. [REDACTED] stated [REDACTED] and PPO [REDACTED] kissed a couple of times. [REDACTED] stated she did not see any situation in which [REDACTED] was angry at PPO [REDACTED].

COPA conducted an interview with PPO [REDACTED] on January 14, 2019 and an additional interview on June 11, 2019.

In his **January 14, 2019 statement to COPA**<sup>4</sup> PPO [REDACTED] stated that he was visiting [REDACTED], while off-duty on September 1, 2018. PPO [REDACTED] stated he and his friends had a

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<sup>1</sup> Att. 18

<sup>2</sup> Att. 34

<sup>3</sup> Att. 37

<sup>4</sup> Att. 30 & 33

flight to return to Chicago that day, so they packed their bags and went to eat lunch before arriving at the [REDACTED]. PPO [REDACTED] denied having any alcohol prior to arriving at [REDACTED], and stated he had water and only one drink after arriving at the club. PPO [REDACTED] confirmed that he had a beard at the time and was wearing turquoise shorts with palm trees and a sky-blue hat. PPO [REDACTED] initially stated that while at [REDACTED], he was approached by a girl, [REDACTED], as he and his friends walked past her and her friends, and [REDACTED] told him it was her birthday. PPO [REDACTED] later stated he was unsure whether he approached her, or she approached him first. PPO [REDACTED] stated [REDACTED] asked him to buy her a drink. He agreed and continued walking to the bar. [REDACTED] and her friend, who PPO [REDACTED] recalled was named [REDACTED] (now known as [REDACTED]), also walked to the bar where he bought the two women shots of alcohol as well as alcoholic drinks for himself and his friends, who he referred to as [REDACTED] and [REDACTED]. PPO [REDACTED] stated that while standing at the bar, [REDACTED] began dancing in front of him, with the back of her body facing and touching his chest, at the bar for approximately 10 minutes. PPO [REDACTED] described [REDACTED] as “grinding” on him with her behind touching the front of his body. PPO [REDACTED] stated they talked briefly, and he informed [REDACTED] he was going to the pool. PPO [REDACTED] stated [REDACTED] asked her friend to come to the pool with them, but her friend said no. PPO [REDACTED], [REDACTED], and her friend walked to the pool together, but PPO [REDACTED] and [REDACTED] got into the pool by themselves. PPO [REDACTED] denied that any of his friends got into the pool with them. Officer [REDACTED] stated [REDACTED], whom he described as a tall Caucasian wearing a Lakers jersey, never went into the pool. Officer [REDACTED] stated there were other individuals in the pool, but he did not know them.<sup>5</sup>

Once in the pool, PPO [REDACTED] and [REDACTED] continued dancing, with her backside moving against his pelvis in a “grinding” manner, for approximately 30-40 minutes. PPO [REDACTED] related that at in the beginning of their time in the pool, [REDACTED] came to the pool to check with [REDACTED] if everything was ok, at which time [REDACTED] responded with a thumbs up and [REDACTED] left. PPO [REDACTED] stated that he and [REDACTED]s never danced facing each other. PPO [REDACTED] stated that when [REDACTED] was dancing with other men, she may have been turned facing him, but they never danced face to face.<sup>6</sup> After 15 minutes of dancing, [REDACTED] moved to dance with other male individuals approximately two arms lengths away. PPO [REDACTED] claimed he did not know the other male individuals that [REDACTED] danced with<sup>7</sup> and he believed [REDACTED] was intoxicated. PPO [REDACTED] stated that [REDACTED] danced with these other men in the same manner as with PPO [REDACTED]. [REDACTED] came back to PPO [REDACTED] after she was done dancing with the other male individuals some time later.

PPO [REDACTED] stated that he and [REDACTED] never kissed, nor did he ask her if he could kiss her.<sup>8</sup> PPO [REDACTED] stated he never asked [REDACTED] if she had ever had a foursome or a threesome.<sup>9</sup> He stated that, at some point while dancing, [REDACTED] grabbed, squeezed, and released his penis over his shorts. PPO [REDACTED] stated [REDACTED] had her back towards him at that time. He could not recall at what point during their interaction that [REDACTED] grabbed his penis.<sup>10</sup> PPO [REDACTED] initially stated he did not signify to her in any way that he wanted her stop. PPO [REDACTED] later stated that, after [REDACTED] grabbed his penis, he took a step back, was caught off guard, and told her “no”.<sup>11</sup> He stated his

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<sup>5</sup> Att. 33 at 41

<sup>6</sup> Id. at 46

<sup>7</sup> Id. at 45

<sup>8</sup> Id. at 46

<sup>9</sup> Att. 30 at 1:15:45

<sup>10</sup> Att. 33 at 48

<sup>11</sup> Id. at 66 – 67

hands could have come into contact with her hip and thigh area when he was pushing himself back after she grabbed his penis, but denied that he touched or “caressed” her inner thigh or vagina.<sup>12</sup> PPO ██████ claimed that the only reason he touched her thigh was to push ██████ away from him.<sup>13</sup> PPO ██████ denied caressing ██████ thigh or touching her vagina.<sup>14</sup> PPO ██████ stated he did not want to be involved in that situation, so, shortly after ██████ grabbed his penis, he told ██████ he was going to step out to get a drink, and ██████ said she would wait there. When he got out of the pool, he went back to his friends.

Approximately 30 minutes later, he was greeted by a security guard who asked him to step out and speak with him for a moment. PPO ██████ stepped out with the security guard who took him to a ██████ police officer, who asked for his information. PPO ██████ asked what this was about and was read his Miranda rights before being told that he was being accused of penetrating ██████. PPO ██████ told the ██████ police officer that he never touched ██████ inappropriately, nor did he penetrate her; they only danced at the pool. PPO ██████ stated that he told the officer that while in the pool ██████ grabbed his genital area, but that he never touched her inappropriately. After making this statement, PPO ██████ identified himself as a Chicago police officer to the ██████ police officer. PPO ██████ stated he cooperated with the officer, even after being told he did not have to provide a statement, because he had done nothing wrong. PPO ██████ informed the ██████ officer of the manner of which they were dancing and how ██████ grabbed his penis. PPO ██████ claimed he did not tell the ██████ officers that he caressed her thigh and only told them that he never touched her inappropriately.<sup>15</sup> PPO ██████ also claimed that he explained to the ██████ officer that he pushed ██████ away after she grabbed his penis.<sup>16</sup> PPO ██████ stated the ██████ police officer told him that they had reviewed the video footage and he was released to go because ██████ was not cooperating. When he returned to work the next day, he informed his superiors of what had occurred in ██████.<sup>17</sup> After speaking with his Lieutenant, he was instructed to write a To-From Report to state what had happened. PPO ██████ stated he sought legal advice as to what he should include in the report. PPO ██████ stated every fact that had happened that day was included in the To-From report.<sup>18</sup>

In his **June 11, 2019 statement to COPA**,<sup>19</sup> PPO ██████ stated he wrote a To-From Report to state the factual points of the incident that occurred on September 1, 2018. PPO ██████ stated this was his first-time drafting a To-From Report, other than practicing in the academy. PPO ██████ stated that he learned in the academy to keep a To-From Report short and to the point, while only including necessary details. PPO ██████ submitted this report to his Lieutenant, ██████, who helped revise it and reiterated to keep it brief and straightforward. PPO ██████ stated that initially his report was longer, but his Lieutenant told him to keep it brief. When asked if he had a copy of the lengthier version of this report, PPO ██████ stated he was unsure. When asked if he included the fact that ██████ accused him of digitally penetrating him, PPO ██████ stated he did not recall whether he mentioned the digital penetration. When asked if he included the fact that

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<sup>12</sup> Att. 30 at 54:00 – 57:30

<sup>13</sup> Att. 33 at 53

<sup>14</sup> Att. 30 at 1:08:05 -1:08:35

<sup>15</sup> Id. at 1:12:26 – 1:13:05

<sup>16</sup> Id. at 1:11:57 – 1:12:26

<sup>17</sup> Id. at 1:20:25

<sup>18</sup> Id. at 1:21:40

<sup>19</sup> Att. 43 – 45

he told the [REDACTED] that [REDACTED] grabbed his penis, PPO [REDACTED] stated that he did not include that his penis was touched.<sup>20</sup> In response to being asked why he failed to mention that [REDACTED] grabbed his penis in the report, he stated that it was because he did not feel that it was necessary to include it, but he mentioned it to Lieutenant [REDACTED].

During his statement, PPO [REDACTED] stated he wanted to clarify that, although he wrote in the report that the entire group went into the pool, he meant to say that the original plan was for the entire group to go into the pool. He stated that, after giving his statement on January 14, 2019, he remembered that only [REDACTED] and himself entered the pool.<sup>21</sup> PPO [REDACTED] stated that, a couple of minutes later, [REDACTED] and [REDACTED], friends of [REDACTED] [REDACTED], came into the pool. PPO [REDACTED] described [REDACTED] as a Latino male, approximately 6 feet 4 inches tall with short hair and some facial hair. PPO [REDACTED] described [REDACTED] as a Latino male, approximately 5 feet 10 inches tall with short hair and a goatee. PPO [REDACTED] stated that he could now remember, after reviewing the Body Worn Camera video from [REDACTED], that [REDACTED] was wearing black shorts, but he could not recall what [REDACTED] was wearing.

PPO [REDACTED] stated [REDACTED] was dancing with [REDACTED] and [REDACTED].<sup>22</sup> When he told the [REDACTED] officers that there were three other people in the pool, he was referring to [REDACTED] [REDACTED], and another individual that he had never seen before. He did not recall how long they were in the pool with [REDACTED] and himself. When he told the officers that he had witnesses, he was referring to [REDACTED], [REDACTED], and [REDACTED] friends. He stated they were witnesses to [REDACTED] dancing, asking for a drink, and them going to the pool. When asked why he told COPA investigators during his January 14, 2019 interview that his friends did not go into the pool with him, he stated he did not recall every detail when he gave that statement to COPA.<sup>23</sup> When asked why he never mentioned to COPA during his interview on January 14, 2019 that his friends were in the pool with him, PPO [REDACTED] stated he did not remember that [REDACTED] and [REDACTED] came into the pool until he saw the video.<sup>24</sup> When asked why he told COPA during his interview on January 14, 2019 that he did not know the other individuals that [REDACTED] was dancing with, PPO [REDACTED] justified his omission because he does not know the third individual, and he does not associate with [REDACTED] and [REDACTED].<sup>25</sup>

PPO [REDACTED] stated he was dancing in the pool with [REDACTED] for more than 30 minutes but could not recall at what point (beginning, middle, or end) [REDACTED] grabbed his penis.<sup>26</sup> He later stated [REDACTED] grabbed his penis toward the end of them being in the pool.<sup>27</sup> PPO [REDACTED] stated that [REDACTED] grabbing his penis was part of the reason he exited the pool. He also left the pool because she was somewhat intoxicated, and he did not want to be around her.<sup>28</sup> PPO [REDACTED] stated he does not recall telling any of his friends that [REDACTED] grabbed his penis.

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<sup>20</sup> Att. 45 at 7:55

<sup>21</sup> Att. 43 at 8:48

<sup>22</sup> Att. 44 at 14:40

<sup>23</sup> Id at 21:25

<sup>24</sup> Id. at 22:25

<sup>25</sup> Id. at 25:50

<sup>26</sup> Id. at 5:25

<sup>27</sup> Id at. 6:10

<sup>28</sup> Id at 6:30

PPO ██████ acknowledged that he did not tell ██████ that the reason he left the pool was because ██████ grabbed his penis but stated this was because they did not ask him why he left the pool. However, he also acknowledged that he told the officer that, after ██████ grabbed his penis, he “caressed” her thigh. He then corrected himself when speaking to the officer and told them that he did not “caress her thigh but did touch her thigh”.<sup>29</sup> PPO ██████ acknowledged that he never told the officer that after she touched his penis, he left the pool. PPO ██████ stated he may have touched ██████ on the thigh when she was “grinding” on him and when he exited the pool, but he never touched her inappropriately. He may have touched her outer thigh, but never penetrated her.<sup>30</sup> The gesture he made on the BWC when explaining to the officer the way he touched ██████ after she grabbed his penis was that he touched her outer thigh on the side of her leg. He may have touched the front of her leg when they were dancing.<sup>31</sup> He acknowledged that he never told the officers that he moved ██████ away from him after she touched his penis. PPO ██████ acknowledged that he told the officers that he touched her inner thigh area between her legs and stated that this was while he was dancing with her. He also acknowledged telling COPA that he denied touching ██████ on the inner thigh, claiming that he meant that he never touched her inappropriately.<sup>32</sup> PPO ██████ stated, repeatedly, that in his January 14, 2019 interview with COPA, he related all information he could remember at the time of that interview.

#### b. Digital Evidence

██████████ provided COPA with the **photo of PPO ██████**<sup>33</sup> that she took on the date of the incident at 3:03 p.m. The photo depicted a male individual with a beard wearing a blue hat and striped blue shorts, with a large tattoo on his upper right chest.

██████████ **Officer ██████ Body Worn Camera (BWC)**<sup>34</sup> video shows him asking ██████ questions about the incident, while she is sitting next to two friends, now known as ██████ and ██████. ██████ is seen crying throughout the duration of this video. The video shows Officer ██████ asking ██████ to give him a detailed account of what happened. ██████ explained that it was her birthday and PPO ██████ was going to buy her a shot. ██████ came with them. ██████ stated PPO ██████ bought her a double shot. ██████ stated that, prior to having the shot, she consumed a margarita and a pina colada. After drinking the shot, ██████ went back to her group of friends near the DJ station. ██████ stated that PPO ██████ followed her and was pressuring her to get into the pool with him by asking multiple times if her friends would “allow her” to go with him. ██████ stated her friends kept telling him no. ██████ also said no, because she did not want to go into the pool. ██████ stated she eventually entered the pool with PPO ██████, an unknown male (who she believed to be his cousin), and one other unknown male individual. ██████ described PPO ██████ as a light skinned Hispanic male, a few inches taller than herself, wearing a blue hat and matching blue shorts, with a tattoo, a beard, and short hair. ██████ described the cousin as a light skinned, tall male with a muscular build, from Puerto Rico, wearing no hat, with short hair and without tattoos.

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<sup>29</sup> Id. at 11:25 – 12:45

<sup>30</sup> Id at 24:24 – 28:50

<sup>31</sup> Id at 34:25 – 35:25

<sup>32</sup> Id. at 38:40 – 40:20

<sup>33</sup> Att. 37

<sup>34</sup> Att. 16, ██████

█████ stated they entered the pool at the corner near the stairs. █████ stated that she was dancing on PPO █████ in the pool but denied grabbing any of his body parts. █████ stated that, during the time she was in the pool, █████ came to check to see if she was okay, and █████ responded that she was okay. When asked by Officer █████ why she told her friend that she was okay instead of asking for help, █████ responded that she had never been in this situation before and did not want to cause a scene or a confrontation. █████ stated that, while she was dancing with PPO █████, she was trying to get away and tried to communicate that to the three girls sitting on the side of the pool. While in the pool, Officer █████ asked if he could kiss her, and she responded no. █████ stated both PPO █████ and his cousin digitally penetrated her vagina, and that PPO █████ did so by entering from the front of her body. █████ stated that she was face-to-face with PPO █████ when he digitally penetrated her with his right hand. PPO █████ then passed her off to his cousin, who also digitally penetrated her. █████ stated each put their finger inside of her vagina one time. PPO █████ asked her if she had ever had a foursome before, to which █████ responded no. █████ stated she began whispering to three girls sitting on the side of the pool to save her. The girls pulled █████ out of the pool and sat her on the corner. █████ stated that once she was out of the pool a friend of the three girls wrapped her in a blanket, while PPO █████ asked if she would like another shot. █████ responded that she was okay and that she would stay with the three girls. After PPO █████ left, she went back to her group of friends near the DJ booth and told them what happened. █████ stated that, although she was intoxicated, she did not give consent to PPO █████ or his cousin and told them she had a boyfriend.

Also shown in the video is Officer █████ interview of █████. █████ stated she saw █████ with a man (now known a PPO █████). █████ said the two were together for a while. █████ stated █████ was floating, and PPO █████ was holding her initially. █████ said that █████ eventually stood up straight. █████ stated that approximately an hour later, █████ was crying, and PPO █████ left the area quickly. █████ stated █████ then came over to █████ and her friends while crying and said that PPO █████ “fingered” her. █████ stated that she went to find someone (a security guard). █████ stated she found PPO █████ and took a picture of him. █████ stated that she showed █████ the photo and █████ confirmed that was the person who digitally penetrated her.<sup>35</sup>

█████ Officer █████ **Body Worn Camera (BWC)**<sup>36</sup> video captures PPO █████, wearing a blue hat and blue shorts, being questioned about the incident on September 1, 2018. PPO █████ first identifies himself as a Chicago police officer. He further stated that it is █████ (now known as █████) twenty-first birthday, and he bought her and her friend (now known as █████ a shot. He was going to the pool and asked if she wanted to come. PPO █████ stated █████ did not initially come to the pool, but later her friends told her it was fine for her to go with him to the pool.<sup>37</sup>

PPO █████ related that once in the pool, he and █████ were dancing, and she grabbed his penis. None of her friends were in the pool with them. PPO █████ stated █████ danced with one

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<sup>35</sup> Officer █████ BWC also shows footage of his transport of █████ to the police station. However, this portion of the BWC does not show any additional relevant information for this investigation.

<sup>36</sup> Att. 16, █████ Discs 1 & 2

<sup>37</sup> Att. 16, █████ Disc 1, Clip 2 at 5:18

his good friends for a while. At one point while he and ██████ were dancing in the pool, ██████ came and asked her if she was good, and ██████ responded with a thumbs up. PPO ██████ uses the word “caress” to describe his contact with ██████ twice during his conversation with Officer ██████. Initially, PPO ██████ states, “Hey man. When I, when I started, I’m telling you when I started like touching her, like caress, like you know. She tells me stop. I let go. And that’s when I’m like I’m gonna go grab a drink. Do you wanna come?”<sup>38</sup> Although the video does not fully capture PPO ██████ body below his waist (PPO ██████ is seated in a chair), it appears that while making this statement, PPO ██████ placed both of his hands on his thighs and moves them in a stroking motion up the thighs towards his waist. PPO ██████ used the word “caress” a second time to describe his conduct with ██████ when he stated, “So we went to the pool, and we started dancing in the water. She grabbed me real hard. I started caressing her, you know touched her body. She didn’t say nothin. You know she’s dancing with my friends.”<sup>39</sup> PPO ██████ again makes the same movement with his hands on his thigh, as previously described. When asked by Officer ██████ what he meant when he said he was “caressing” her, PPO ██████ states, “I mean just, not not caressing, like you know I touched, I put my hand on her thigh you know. And then I touched her too. I touched her, too, just, you know, like quick. She didn’t say nothin’ you know.”<sup>40</sup> PPO ██████ again makes the same movement with his hands on his thigh, as previously described. When asked where he touched her, PPO ██████ said he touched her on her legs. When Officer ██████ asks PPO ██████ if he touched her genital area at all, PPO ██████ says “no, just her inner thighs”.

PPO ██████ stated that ██████ grabbed his penis while she was dancing with someone else. He stated that, after ██████ grabbed his penis, he “was like, you know, what’s up” and grabbed her thigh.<sup>41</sup> PPO ██████ was smiling as he made that statement. After being asked if he did anything with his fingers in her body, PPO ██████ appears to repeat the thigh motion described above again while stating, “Yeah, I touched it, I, I touched her. She told me to stop. She didn’t even tell me to stop, you know what I’m saying. She grabbed me too.”<sup>42</sup> PPO ██████ also stated that he was not under the impression that they would be “hooking up” later and thought they were just having a good time. PPO ██████ stated he told ██████ he was going to get a drink, and ██████ asked him to get her a drink, too. He later stated he told ██████ he was going to get a drink, and ██████ told him she would stay there, so he began walking around.

PPO ██████ stated their entire interaction, in and out of the pool, lasted about an hour. PPO ██████ asked the officer repeatedly if he would also talk to his two friends that were also in the pool. PPO ██████ gave Officer ██████ information and described him as about 6’6”, weighing around 200 pounds, Hispanic male, wearing black board shorts and with a beard. He described his friend, ██████ as African American male, medium complexion, about 5’6”, approximately 200 pounds, with a tattoo on his arm. PPO ██████ gave ██████ information and described him as Hispanic male, dark skinned, with no tattoos or beard, about 5’11”, weighing around 180, possibly wearing blue shorts. PPO ██████ described his friend, ██████ as 6’0”, around 200 pounds, Caucasian male, with a beard. PPO ██████ described ██████ friend, ██████, as 5’9”, about 200 pounds, with short hair and dark skin. PPO ██████ states all of

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<sup>38</sup> Att. 16, ██████ Disc 1, Clip 2 at 1:10

<sup>39</sup> Id at 5:25

<sup>40</sup> Id. at 5:44

<sup>41</sup> Att. 16, ██████ Disc 2, Clip 3 at 2:10

<sup>42</sup> Id. at 2:18

these people were present when he interacted with [REDACTED], but only [REDACTED], [REDACTED], and himself were dancing with [REDACTED] in the pool.

PPO [REDACTED] was handcuffed, placed in the back of the police vehicle and transported to the [REDACTED] station.<sup>43</sup>

**Video footage obtained from the [REDACTED]<sup>44</sup>** shows glimpses of a male, now known as PPO [REDACTED], wearing a blue hat dancing with a female, now known as [REDACTED], in the bottom left corner of the pool. [REDACTED] is seen entering the pool with PPO [REDACTED] following. A male wearing a yellow Lakers jersey, now known as [REDACTED], is also seen outside the pool, but never appears to enter the pool. PPO [REDACTED] and [REDACTED] appear to be dancing with [REDACTED] back against PPO [REDACTED] front side. The two can also be seen having face-to-face interactions. There does appear to be a tall male with a medium complexion that is near [REDACTED] and PPO [REDACTED] in the pool. [REDACTED] is later seen out of the water and is sitting at the edge of the pool with a group of females. [REDACTED] appears to be crying. PPO [REDACTED] is then seen exiting the pool without [REDACTED]. PPO [REDACTED] then walks away from the pool, comes back into view near the pool and leaves again.<sup>45</sup>

### c. Physical Evidence

**Medical records obtained from [REDACTED]<sup>46</sup>** for patient [REDACTED] show that she was transported to the hospital by [REDACTED] for treatment on September 1, 2018 at approximately 7:07 p.m. Once at the hospital, [REDACTED] related to hospital staff that at approximately 3:30 p.m., she was digitally penetrated by two males at the [REDACTED]. [REDACTED] described one of the men as approximately 5 feet 7 inches, wearing a blue hat with a closely shaved beard, and light complexion. She believed his name is [REDACTED] (now known as PPO [REDACTED]). [REDACTED] reported he was in front of her and pulled her swim suit to the side while she was dancing with him in the pool. [REDACTED] reported he placed a finger into her vagina. [REDACTED] reported she did not have pain from this. [REDACTED] reported that he asked if she had ever had a foursome before. She told him no. [REDACTED] reported she was not interested. She reported that a male cousin of PPO [REDACTED] was behind her and put a finger in her vagina also. She reported he was taller with a muscular build and told her he was Puerto Rican. She reported no pain during that event either. [REDACTED] reported PPO [REDACTED] tried to kiss her, and she told him no many times. [REDACTED] reported she was telling the girls who were in the pool to help her. She reported the males left to go get more shots of alcohol. She asked the girls for help and the girls got her out of the pool. [REDACTED] reported one of the females went to notify a security guard, who then escorted [REDACTED] away to take a report from her. A physical examination showed no visible signs of physical trauma to [REDACTED].<sup>47</sup>

The records further document that [REDACTED] reported she drank a limeade with 1 shot of vodka at approximately 12:00 p.m. Additionally, when she arrived at [REDACTED], she

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<sup>43</sup> Att. 16, [REDACTED] Disc 2, Clip 2 at 17:55 through Clips 3 & 4

<sup>44</sup> Att. 16, [REDACTED] Discs 1 & 2

<sup>45</sup> Id. at Disc 1, Video Clips 1-5

<sup>46</sup> Att. 19

<sup>47</sup> Id at 8

consumed a pina colada. [REDACTED] also had a margarita but did not finish that drink. [REDACTED] reported that PPO [REDACTED] bought her and [REDACTED] double shots of vodka.<sup>48</sup>

#### d. Documentary Evidence

The [REDACTED] Case Report # [REDACTED]<sup>49</sup> documents that on September 1, 2018 at approximately 3:08 p.m. two [REDACTED] police officers, Officer [REDACTED] and Officer [REDACTED], were notified of a possible sexual assault at the [REDACTED] located at [REDACTED] security officer, [REDACTED], notified the officers and brought Officer [REDACTED] to a backroom where they met a female, identified as [REDACTED]. [REDACTED] stated to the officer that she met a group of men, including a male, later positively identified as [REDACTED], who bought her a double shot and asked if she wanted to go into the pool with him. [REDACTED] followed PPO [REDACTED] into the pool but stated she did not feel comfortable leaving her friends. While in the pool, PPO [REDACTED] asked [REDACTED] if she had ever had a foursome and asked if they could kiss. [REDACTED] responded no to both questions and became uncomfortable around PPO [REDACTED] and his friend, later positively identified as [REDACTED].<sup>50</sup> [REDACTED] also stated she was face-to-face with [REDACTED] when he digitally penetrated her vagina with his finger. Afterwards, PPO [REDACTED] passed her to [REDACTED] who then digitally penetrated her vagina with his finger. [REDACTED] stated it was nonconsensual and did not provoke it. [REDACTED] could not recall which hand was used to penetrate her, nor how many times she was penetrated. After the incident, [REDACTED] stated she asked a female in the pool, later identified as [REDACTED], to contact security.

The case report documents that Officer [REDACTED] spoke with PPO [REDACTED] who denied digitally penetrating [REDACTED]. PPO [REDACTED] related that he was dancing with [REDACTED] in the pool when she grabbed his penis. PPO [REDACTED] related that he responded by rubbing her inner thigh. The case report documents that [REDACTED] was also detained due to [REDACTED] statement.

The case report documents that the officers spoke with [REDACTED] at [REDACTED], who stated she did not see the sexual assault take place but did observe [REDACTED] and PPO [REDACTED] together in the pool and observed another male to be present. When [REDACTED] helped [REDACTED] get out of the pool, she observed [REDACTED] crying and was told by [REDACTED] that she was sexually assaulted. [REDACTED] knew which male [REDACTED] was referring to and went to take a picture of him with her camera. [REDACTED] contacted security, and PPO [REDACTED] was escorted to the back room.

The case report documents that the officers spoke with [REDACTED] friend, [REDACTED], who stated she went to check on [REDACTED] earlier when she was in the pool with PPO [REDACTED], but [REDACTED] stated she was fine, and [REDACTED] left. [REDACTED] other friend, [REDACTED], was also present and stated she observed PPO [REDACTED] and [REDACTED] talking to each other but did not observe any sexual assault take place as she was not in the pool with them.

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<sup>48</sup> Id. at 9

<sup>49</sup> Att. 4

<sup>50</sup> It should be noted that the case report does not document how this positive identification was made.



returned and said he would take care of [REDACTED] and that she was in good hands. [REDACTED] then agreed to go. [REDACTED] related that PPO [REDACTED] friend told them that PPO [REDACTED] was not a bad guy. [REDACTED] related [REDACTED] later returned to them and was crying.

The statement of [REDACTED] relates that PPO [REDACTED] approached [REDACTED] and asked to buy her a shot. [REDACTED] told [REDACTED] that it was her decision. [REDACTED] asked [REDACTED] to accompany her, and [REDACTED] agreed. PPO [REDACTED] bought each of them a double shot. [REDACTED] and [REDACTED] returned to their group and were dancing, when PPO [REDACTED] approached them again and asked [REDACTED] to join his group. [REDACTED] related that [REDACTED] declined at first, but eventually went after being asked several times. [REDACTED] related that she kept going to the pool to check on [REDACTED]. [REDACTED] related [REDACTED] initially said that she was okay. [REDACTED] stated that PPO [REDACTED] friend told her that PPO [REDACTED] name was [REDACTED] and that PPO [REDACTED] was fine. [REDACTED] related that she did not believe the friend, so she repeatedly went back to the pool. [REDACTED] related that [REDACTED] eventually returned with a security guard and was crying and related that PPO [REDACTED] violated her. [REDACTED] related that PPO [REDACTED] and his cousin digitally penetrated her without her permission.

The statement of Security Officer [REDACTED] relates that he observed a group of women at [REDACTED], including [REDACTED], who was crying. [REDACTED] approached and learned that [REDACTED] was stating that she was sexually assaulted in the pool. [REDACTED] related that he attempted to locate the male subjects but was unable to locate them initially. [REDACTED] took a picture of one of the men, who matched the description given by [REDACTED]. [REDACTED] stated that [REDACTED] described the other man as wearing a yellow Labron James, Lakers jersey. [REDACTED] related [REDACTED] was interested in pressing charges.

The statement of [REDACTED] relates that she was with her friends when PPO [REDACTED] asked her to go get shots with him, because it was her birthday. [REDACTED] related that she was sober at that time and thought PPO [REDACTED] was going to get her a single shot, but he bought her a double shot. PPO [REDACTED] asked her to go to the pool, but she wanted to stay with friends. [REDACTED] related PPO [REDACTED] brought her to the pool. [REDACTED] related that from where she was located in the pool, she could not get help. [REDACTED] stated that the man who bought her drinks, PPO [REDACTED], “fingered her” in the pool and was rubbing her body through her bathing suit. [REDACTED] related that PPO [REDACTED] “passed her” to his cousin, who also “fingered her.” [REDACTED] stated she asked the girls on the side of the pool for help and was taken back to her friends. [REDACTED] stated that she did not consent to them taking her to the pool and that she said she wanted to go back to her friends. [REDACTED] stated she said she was in a relationship.

[REDACTED] related essentially the same information in her handwritten statement as she did to [REDACTED] officers on scene.

In a **To-From Report dated September 05, 2018, Officer [REDACTED] # [REDACTED]** stated that had traveled to [REDACTED] for a short vacation with friends. On September 01, 2018, the last day of their trip, they went to the [REDACTED] to go the pool. While at the pool, their group met a group of women. The entire group went into the pool to cool off. When PPO [REDACTED] exited the pool, they were getting ready to leave when he was approached by security who asked to speak with him. PPO [REDACTED] agreed and was brought to a [REDACTED] police officer who told him a girl had made an accusation that he had touched her while inside the pool. He denied the accusation

and informed the [REDACTED] officer that he was a Chicago police officer. They “asked him to accompany them to the police department,” and PPO [REDACTED] agreed. Once at the department, PPO [REDACTED] informed them that he did dance with the girl, but never touched her inappropriately other than dancing. Soon after, the police returned and told PPO [REDACTED] that the girl was intoxicated and being uncooperative and was told he was free to leave. PPO [REDACTED] restates he never touched anyone inappropriately, he only danced with a girl in the pool. PPO [REDACTED] relates that his understanding is that the police reviewed the exterior videos, and his statement was confirmed.

## VI. VI. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A preponderance of evidence can be described as evidence indicating that it is more likely than not that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.<sup>55</sup>

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true.” *Id.* at ¶ 2

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<sup>55</sup> The preponderance of the evidence standard applies even if some PPO [REDACTED] alleged misconduct may also constitute criminal conduct. *See Board of Education v. State Bd. of Education*, 113 Ill. 2d 173, 189 (1986); *Clark v. Board of Fire & Police Comm'rs*, 245 Ill. App. 3d 385, 390-92 (3d Dist. 1993). Moreover, while PPO [REDACTED] conduct may constitute criminal conduct, COPA has not specifically alleged any violations of the law and rather focuses on how PPO [REDACTED] conduct violated Department rules and directives.

## VII. ANALYSIS

### a. Credibility Assessment

While some facts are consistent among the accounts of [REDACTED] and PPO [REDACTED] (i.e. that PPO [REDACTED] bought [REDACTED] a shot, that [REDACTED] checked on [REDACTED], and the two were in the pool together), other material facts are entirely divergent. [REDACTED] described an encounter where PPO [REDACTED] repeatedly pursued her and made unwanted sexual advances against her, culminating in PPO [REDACTED] digitally penetrating her without her consent. In contrast, PPO [REDACTED] initially described a largely consensual and positive encounter, then a somewhat consensual encounter that ended in [REDACTED] making undesired sexual contact with him that offended him. PPO [REDACTED] has consistently denied digitally penetrating [REDACTED] without her consent.

The credibility of an individual relies primarily on two factors: 1) the individual's truthfulness and 2) the reliability of the individual's account. The first factor addresses the honesty of the individual making the statement, while the second factor speaks to the individual's ability to accurately perceive the event at the time of the incident and then accurately recall the event from memory. In this case, PPO [REDACTED] account is so divergent from [REDACTED] account that the variances can only be explained by either PPO [REDACTED] or [REDACTED] purposefully lying and misrepresenting the facts of the incident.

#### i. [REDACTED] Account

A preponderance of the evidence demonstrates that [REDACTED] account of the incident is credible.

*First*, [REDACTED] account remained consistent and was corroborated, in part, by other witnesses. Although [REDACTED] did not provide a statement to COPA for this investigation, [REDACTED] made numerous statements reporting this incident: a statement to Officer [REDACTED] on body worn camera, a handwritten statement, outcry statements to [REDACTED] and [REDACTED], and statements to [REDACTED] medical staff. Those statements are consistent within themselves and amongst each other. Specifically, [REDACTED] consistently reported that PPO [REDACTED] made unwanted sexual advances towards her and sexually assaulted her by digitally penetrating her vagina without her consent. [REDACTED] stated that, on the date of the incident, PPO [REDACTED] approached her and asked to buy her a drink because it was her twenty-first birthday. [REDACTED] and [REDACTED] accompanied PPO [REDACTED] to the bar, where he purchased a double shot for each woman. PPO [REDACTED] then repeatedly asked [REDACTED] to go with him to the pool. [REDACTED] initially said no, but eventually agreed and went to the pool with PPO [REDACTED]. PPO [REDACTED] repeated attempts to convince [REDACTED] to go with him were corroborated by both [REDACTED] and [REDACTED] in their handwritten reports to [REDACTED].<sup>56</sup> In fact, PPO [REDACTED] also told Officer [REDACTED] on body worn camera that he bought her and [REDACTED] a shot, and asked [REDACTED] to go to the pool, but she initially would not go with him,<sup>57</sup> though PPO [REDACTED] story notably changed on this topic in later statements.

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<sup>56</sup> See Att. 11

<sup>57</sup> Att. 16, [REDACTED] Disc 1, Clip 2 at 5:18

█████ related that, once in the pool, PPO █████ asked to kiss her and asked her if she had ever had a foursome. █████ stated that she told him “no” and that she had a boyfriend. █████ related that despite telling PPO █████ that she did not want to even kiss him, PPO █████ proceeded to digitally penetrate her vagina without her consent. █████ described PPO █████ as facing her and placing his finger in her vagina. PPO █████ then passed her over to a friend of his, who also digitally penetrated her without her consent. █████ was eventually able to ask the girls on the side of the pool, including █████, for help. █████ corroborated █████ account stating █████ approached █████ and her friends, while crying and immediately told them that PPO █████ digitally penetrated her. █████ previously observed █████ and PPO █████ in the pool together. █████ was able to quickly locate PPO █████ and take a photograph of him, which she provided to COPA. █████ was an independent witness who knew neither █████ or PPO █████. █████ maintained throughout her statements that PPO █████ sexual advances were unwanted, repeatedly saying she did not consent to the penetration. █████ identified PPO █████ as the perpetrator.

*Second,* █████ account was plausible, and her emotional disposition and immediate outcry support her reliability. COPA recognizes that sexual assault often occurs in a manner that makes witnesses to the assault unlikely and requires the investigator to use the surrounding events to determine whether the conduct occurred. Though this incident occurred in a public space, the conduct occurred in a concealed fashion. Specifically, the extremely crowded venue and loud music made it unlikely that other patrons would notice an incident occurring in the pool and under water. It is plausible that PPO █████ could quickly and discretely digitally penetrate █████ under water without anyone observing this conduct. Furthermore, █████ emotional state immediately following the incidents enhances her credibility. █████, an independent witness, stated that █████ came over to the side of the pool and was crying. █████ also appeared to be distraught on the security footage as she approaches the girls at the side of the pool, including █████. █████ can be seen crying during her statement that was recorded on body worn camera. Additionally, █████ outcry was immediate. █████ immediately reported this incident to the girls at the pool, █████ security, █████ officers, and hospital staff. Though many victims of sexual assault do not immediately report these incidents, █████ did do so, which only enhances the likelihood that her account of the incident was truthful and easily recalled from fresh memory. Finally, █████ does not appear to have a motive to lie about this incident or fabricate this story. █████ did not know PPO █████ previously, and there is no evidence to suggest she knew he was a police officer.

## ii. █████ Account

A preponderance of the evidence demonstrates that PPO █████ account is *not* credible.

*First,* PPO █████ account of the incident is inconsistent both within each statement and between the statements.

When speaking to Officer █████ on body worn camera, PPO █████ described an overall positive and mutually consensual encounter with █████. PPO █████ described buying █████ a shot for her twenty-first birthday and inviting her to the pool, which was initially rejected by █████. PPO █████ stated that eventually █████ friends told her she could go with him to the

pool. Once in the pool, PPO [REDACTED] states that [REDACTED] grabbed his penis, and he responded to by “caressing” her. At no point did PPO [REDACTED] state that he moved [REDACTED] away from him after she grabbed his penis or that he found the contact offensive. In fact, PPO [REDACTED] described his reaction as a positive, reciprocal touch to her thigh. PPO [REDACTED] describes his contact with [REDACTED] using the word “caress” two times during his conversation with Officer [REDACTED]. When asked to describe what he means by “caress,” PPO [REDACTED] says he did not caress her but touched her thigh. PPO [REDACTED] repeatedly demonstrates his contact with [REDACTED] by placing both of his hands on his thighs and moving them in a stroking motion up the thighs towards his waist. PPO [REDACTED] also tells Officer [REDACTED] that he touched [REDACTED] inner thigh. Moreover, PPO [REDACTED] becomes inconsistent in his story to Officer [REDACTED] when he states twice that [REDACTED] told him no or to stop, and later saying she did not tell him to stop. Initially, PPO [REDACTED] states, “Hey man. When I, when I started, I’m telling you when I started like touching her, like caress, like you know. She tells me stop. I let go. And that’s when I’m like I’m gonna go grab a drink. Do you wanna come?”<sup>58</sup> PPO [REDACTED] denied digitally penetrating [REDACTED]. Additionally, PPO [REDACTED] states that his friends, [REDACTED] and [REDACTED] were in the pool with he and [REDACTED]. PPO [REDACTED] describes [REDACTED] and [REDACTED] also dancing with them.

On September 5, 2019 in his To-From Report, PPO [REDACTED] stated that, while at the pool, his group met a group of women and the entire group went into the pool to cool off. PPO [REDACTED] describes that he spoke to [REDACTED] officers and denied the accusation that he touched [REDACTED] inappropriately. PPO [REDACTED] stated that officers asked him to accompany them to the police department, and he agreed.<sup>59</sup> Once at the department, PPO [REDACTED] informed them that he did dance with the girl, but never touched her inappropriately. Soon after, the police returned and told PPO [REDACTED] that the girl was intoxicated and being uncooperative and was told he was free to leave. PPO [REDACTED] stated he never touched anyone inappropriately, he only danced with a girl in the pool. PPO [REDACTED] did not mention that [REDACTED] grabbed his penis or that she accused him of digitally penetrating her.

On January 14, 2019, PPO [REDACTED] gave a statement to COPA, where he described a different account of his interaction with [REDACTED]. PPO [REDACTED] described [REDACTED] as approaching him and asking for a drink. PPO [REDACTED] later stated that he does not recall whether [REDACTED] spoke to him first or he spoke to her first. PPO [REDACTED] described his attitude towards her at the time as nonchalant, noting he did not even stop to wait for her, but rather he kept walking expecting [REDACTED] to follow him. PPO [REDACTED] noticed [REDACTED] was with him at the bar when he turned around.<sup>60</sup> PPO [REDACTED] described purchasing a shot for [REDACTED] and [REDACTED] and described [REDACTED] as suddenly dancing on him while at the bar,<sup>61</sup> a fact he never mentioned to Officer [REDACTED] in a statement he provided right after the incident. PPO [REDACTED] admitted that he asked [REDACTED] to go to the pool with him but denied that [REDACTED] ever indicated that she did not want to go with him.

When describing what occurred in the pool, PPO [REDACTED] related that [REDACTED] continued to “grind” on him in the pool. PPO [REDACTED] denied that they ever danced with each other while facing

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<sup>58</sup> Att. 16, [REDACTED] Disc 1, Clip 2 at 1:10

<sup>59</sup> COPA notes that [REDACTED] police officers arrested PPO [REDACTED] for the offense of sexual assault (NRS 200.3662B). See Att. 8

<sup>60</sup> Att. 33 at 10

<sup>61</sup> Id. at 11.

each other. PPO █████ stated that █████ also danced with other individuals but denied knowing who they were and denied that any of his friends entered the pool with them. During this statement, PPO █████ denied digitally penetrating █████. PPO █████ stated that █████ grabbed his penis but could not recall when this occurred while they were in the pool. PPO █████ initially stated he did not signify to █████ in any way that he wanted her stop, but later stated that, after █████ grabbed his penis, he took a step back, was caught off guard, and told her no.<sup>62</sup> PPO █████ stated he touched her thigh and hip area to push her away from him. PPO █████ denied caressing █████ thigh, touching her inner thigh, or touching her vagina. PPO █████ denied telling █████ officers that he caressed █████ and claimed that he told the officers that he pushed her away after he grabbed his penis.

*Second,* PPO █████ explanation for his inconsistent statements lacks credibility. On June 11, 2019, PPO █████ gave a second statement to COPA. During this statement, PPO █████ attempted to explain the inconsistencies in his prior statements. PPO █████ stated that the reason he did not include key details in his To-From Report, such as █████ grabbing his penis and her accusing him of digitally penetrating her vagina without consent, was because he was advised by his attorney and Lieutenant █████ to keep it brief. However, PPO █████ admitted that he was unsure if these key details were in his original draft of this report. Moreover, █████ accusation that he digitally penetrated her without her consent was the basis of his arrest, and thus plainly a material fact that had to be included. The To-From Report does not even reference that PPO █████ was arrested and attempts to describe his detention as consensual encounter. PPO █████ account is clearly contradicted by the █████ police reports which state that PPO █████ was taken in custody. His misleading and incomplete statements demonstrate an attempt to deceive the Department and downplay the seriousness of the incident. General Order 08-01-02(II)(A)(5) requires officers to include “all facts relating to the incident known or reported to the member.” Additionally, PPO █████ stated that the reason he wrote that the entire group went into the pool was because that was the initial plan. PPO █████ claimed he forgot during his first statement with COPA that █████ and █████ were in the pool with him and stated that they are not friends of his, despite having previously described them as friends to █████ on the day of the incident. Considering the extraordinary nature of this incident, COPA finds that it defies logic that he would have forgotten that potential witnesses to his proclaimed lack of misconduct existed, especially after his repeated request of █████ officers to speak to these individuals.

Additionally, PPO █████ attempted to explain why he did not tell Officer █████ that he exited the pool because █████ grabbed his penis. PPO █████ stated he did not say this because Officer █████ did not ask him why he left the pool. PPO █████ also attempted to say that he “corrected” himself on his use of the word “caress” when speaking to Officer █████, by stating he only touched her thigh. PPO █████ stated he may have touched her thigh while dancing. PPO █████ attempted to explain the lack of consistency regarding this conduct by stating he meant that he never touched her inappropriately. COPA finds this explanation lacks credibility.

*Third,* no evidence exists to corroborate PPO █████ account. Believing his account would require finding that █████, █████, and █████ lied. As explained above, COPA finds █████ credible and that her account of the initial interaction between herself and PPO █████ is consistent

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<sup>62</sup> Id. at 66 – 67

with both [REDACTED] and [REDACTED]. [REDACTED] also corroborated [REDACTED] immediate reaction to the incident. These witnesses provided logical, consistent, and plausible accounts of the incident.

For these reasons, the evidence demonstrates that the incident did not occur as PPO [REDACTED] alleged. Based upon an analysis of the evidence as reflected above, PPO [REDACTED] statements are so inconsistent with the facts and the actions of a reasonable officer that they reflect a material willful misrepresentation of the incident for the purpose of protecting himself.

### b. Allegations

COPA finds that **Allegation #1, 2 and 4** against PPO [REDACTED] that he made unwanted sexual advances towards [REDACTED] that he digitally penetrated [REDACTED] vagina without her consent, and that he stated words to the effect of, "Have you ever had a foursome?" to [REDACTED] are **SUSTAINED**. As previously discussed, COPA finds that [REDACTED]' account was consistent, credible, and was corroborated in part by other witnesses. COPA finds by a preponderance of evidence the following occurred. PPO [REDACTED] approached [REDACTED], bought her a shot, and repeatedly asked her to go to the pool with him, to which she replied "no." PPO [REDACTED] asked [REDACTED] if he could kiss her and she refused. PPO [REDACTED] asked [REDACTED] if she had a foursome, and she said "no." PPO [REDACTED] proceeded to digitally penetrate [REDACTED] without her consent, causing her to feel violated, begin crying, outcry to the nearby individuals, security, police, her friends, and medical professionals. At no point, did [REDACTED] grab PPO [REDACTED] penis. Therefore, based on a preponderance of the evidence standard, COPA finds that **Allegation #1** against PPO [REDACTED] that he made unwanted sexual advances towards [REDACTED], is **SUSTAINED**. Based on a preponderance of the evidence standard, COPA finds that **Allegation #2** against PPO [REDACTED] that he digitally penetrated [REDACTED] vagina without her consent is **SUSTAINED**. Based on a preponderance of the evidence standard, COPA finds that **Allegation #4** against PPO [REDACTED] that he stated words to the effect of, "Have you ever had a foursome?" to [REDACTED] is **SUSTAINED**.

COPA finds that **Allegation #3** against PPO [REDACTED] that he failed to intervene when [REDACTED] digitally penetrated [REDACTED] vagina without her consent is **NOT SUSTAINED**. COPA finds this allegation is not sustained solely because COPA cannot determine if [REDACTED] was the other individual to digitally penetrate [REDACTED] without her consent. [REDACTED] detained [REDACTED] as a suspect for this offense, citing in their report that he was positively identified as the second individual to digitally penetrate [REDACTED]. However, the report does not specify how this identification was made (i.e. show up, line up, etc.). Furthermore, [REDACTED] described the second individual when she was speaking to Officer [REDACTED] on body worn camera, and [REDACTED] does not appear to match that description. [REDACTED] described this individual as a light skinned, tall male with a muscular build, from Puerto Rico, without a hat, with short hair and without tattoos. Security Officer [REDACTED] stated that [REDACTED] described the individual as wearing a yellow [REDACTED], Lakers jersey, which matches the description of [REDACTED]. It is possible [REDACTED] described this individual as a friend of PPO [REDACTED] but not as the perpetrator. Furthermore, [REDACTED] security video captured [REDACTED] outside of the pool, while [REDACTED] and PPO [REDACTED] were inside the pool. [REDACTED] denied ever entering the pool with the two. PPO [REDACTED] described [REDACTED] as a Latino male, approximately 6 feet 4 inches tall with short hair and some facial hair, and states that he was in the pool with [REDACTED] and himself. Therefore, COPA finds there is insufficient evidence to determine whether PPO [REDACTED] failed to

intervene when [REDACTED] digitally penetrated [REDACTED] without her consent and therefore this allegation is **NOT SUSTAINED**.<sup>63</sup>

COPA finds that **Allegation #5** against PPO [REDACTED] that on or about January 14, 2019, at approximately 8:45 a.m., at the COPA offices, located at 1615 W. Chicago Ave., Chicago, Illinois, [REDACTED] provided material and willful false statements to COPA relative to physical contact between himself and [REDACTED] on or about September 1, 2018 at or near the location of [REDACTED], [REDACTED], approximately between the hours of 2:00-3:08 p.m. is **SUSTAINED**. As previously discussed, although PPO [REDACTED] denied digitally penetrating [REDACTED], PPO [REDACTED] initially described a largely positive encounter between himself and [REDACTED] to Officer [REDACTED]. PPO [REDACTED] described himself as caressing [REDACTED], [REDACTED] grabbing his penis, and him responding positively to this action. In his To-From Report, PPO [REDACTED] denied touching [REDACTED] inappropriately besides simply dancing together and failed to mention that she grabbed his penis. Upon being interviewed by COPA, PPO [REDACTED] described [REDACTED] suddenly dancing on him outside of the pool and continuing once they were in the pool. PPO [REDACTED] denied caressing her. He stated he touched her thigh and hip area to push her off him upon her grabbing his penis. He denied touching her inner thigh or vagina. Furthermore, as previously discussed, COPA finds [REDACTED] account credible. The nature of PPO [REDACTED] physical contact with [REDACTED] is clearly a material fact as he is accused of digitally penetrating her vagina without consent. COPA does not find PPO [REDACTED] explanation for these inconsistencies credible and finds that his false statements were made willfully in attempt to avoid discipline. Therefore, based on a preponderance of the evidence standard, COPA finds that Allegation #5 is **SUSTAINED**.

COPA finds that **Allegation #6** against PPO [REDACTED] that on or about January 14, 2019, at approximately 8:45 a.m., at the COPA offices, located at 1615 W. Chicago Ave., Chicago, Illinois, [REDACTED] provided material and willful false statements to COPA relative to who was in the pool with himself and [REDACTED] on or about September 1, 2018 at or near the location of [REDACTED], [REDACTED], approximately between the hours of 2:00-3:08 p.m. is **SUSTAINED**. Immediately following his interaction with [REDACTED], PPO [REDACTED] spoke with Officer [REDACTED]. During that conversation, PPO [REDACTED] provided the officer with the names of [REDACTED] and [REDACTED] as individuals who were present in the pool with himself and [REDACTED]. PPO [REDACTED] gave full descriptions of these individuals and described them as dancing with himself and [REDACTED]. In the To-From Report, he stated that the "entire group" went into the pool. During his first statement with COPA, PPO [REDACTED] denied that any of his friends were in the pool or that he knew who [REDACTED] was dancing with. Upon being confronted with Allegation #6, PPO [REDACTED] claimed he simply forgot that they were in the pool when he spoke with COPA. As previously discussed, COPA does not find this explanation credible, especially as he was directly asked if his friends were in the pool or if he knew who [REDACTED] was dancing with. PPO [REDACTED] did not simply fail to mention these individuals. Rather, he willfully provided false statements. Additionally, this information is material as it could provide additional witnesses to the incident as well as an additional perpetrator against [REDACTED]. Thus, based on a preponderance of the evidence standard, COPA finds that Allegation #6, that he provided material and willful false statements relative to who was in the pool with himself and [REDACTED] is **SUSTAINED**.

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<sup>63</sup> COPA does find [REDACTED] credible and consistent in her assertion that a second male and associate of PPO [REDACTED] digitally penetrated [REDACTED] without her consent and that PPO [REDACTED] failed to intervene.

COPA finds that **Allegation #7** against PPO [REDACTED] that on or about January 14, 2019, at approximately 8:45 a.m., at the COPA offices, located at 1615 W. Chicago Ave., Chicago, Illinois, [REDACTED] provided material and willful false statements to COPA relative to when he exited the pool on or about September 1, 2018 at or near the location of [REDACTED], approximately between the hours of 2:00-3:08 p.m. is **SUSTAINED**. During his interview with COPA, PPO [REDACTED] claimed that he exited the pool immediately after [REDACTED] grabbed his penis. However, he does not describe this to [REDACTED] Officer [REDACTED], which would have been extremely material and relevant to [REDACTED], had it occurred in the manner described to COPA. In fact, he indicated to Officer [REDACTED] that he was okay with [REDACTED] grabbing his penis and caressed her leg. [REDACTED] denied grabbing PPO [REDACTED] penis at all, but rather stated that PPO [REDACTED] exited the pool after he digitally penetrated her, passed her to his friend, and she asked for help. Again, COPA finds PPO [REDACTED] account to not be credible and [REDACTED] account as credible and that PPO [REDACTED] willfully provided false statements about when he left the pool in an attempt to bolster his assertion that he found [REDACTED] actions offensive. Thus, based on a preponderance of the evidence standard, COPA finds that Allegation #7, that he provided material and willful false statements relative to when he exited the pool is **SUSTAINED**.

COPA finds that **Allegation #8** against PPO [REDACTED] that on or about September 5, 2018, [REDACTED] displayed an inattention to duty in that he failed to mention the fact that [REDACTED] grabbed his penis in his To-From Report dated September 5, 2019, to Commander [REDACTED] of the [REDACTED] District is **UNFOUNDED**. PPO [REDACTED] does not mention anywhere in his To-From that [REDACTED] grabbed his penis. However, as previously discussed, COPA does not find PPO [REDACTED] account of this incident credible. This credibility determination extends to his allegation that [REDACTED] grabbed his penis. When asked by [REDACTED] Officer [REDACTED] if she grabbed any parts of PPO [REDACTED] body, [REDACTED] denied that she did so. PPO [REDACTED] presented COPA with no other witnesses to corroborate that this occurred and stated that he did not tell any of his friends that this occurred. Thus, based on a preponderance of the evidence standard, COPA finds that Allegation #8, that he displayed an inattention to duty that he failed to mention that [REDACTED] grabbed his penis in his To-From Report is **UNFOUNDED**.

## **VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**

### **a. Probationary Police Officer [REDACTED]**

#### **i. Complimentary and Disciplinary History**

- 1. Complimentary:** 3 Honorable Mentions
- 2. Disciplinary:** None

#### **ii. Recommended Penalty, by Allegation**

- 1. Allegation No. 1:** Separation
- 2. Allegation No. 2:** Separation

- 3. **Allegation No. 4:** 10 days
- 4. **Allegation No. 5:** Separation
- 5. **Allegation No. 6:** Separation
- 6. **Allegation No. 7:** Separation

PPO ██████ made unwanted sexual advances against ██████. He sexually assaulted her by digitally penetrating her vagina without consent. He then proceeded to make material and willful false statements about his contact with her, who was present, and when he departed the pool. This conduct is severe and egregious. The conduct is unbecoming of any individual and especially a sworn member of the Chicago Police Department charged with protecting and serving the public. Such conduct warrants separation from the Department.

**IX. CONCLUSION**

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding / Recommendation
Officer ██████	<ol style="list-style-type: none"> <li>1. Made unwanted sexual advances towards ██████.</li> <li>2. Digitally penetrated ██████ vagina without her consent.</li> <li>3. Failed to intervene when ██████ digitally penetrated ██████ vagina without her consent.</li> <li>4. Stated words to the effect of, "Have you ever had a foursome?" to ██████.</li> <li>5. On or about January 14, 2019, at approximately 8:45 a.m., at the COPA offices, located at 1615 W. Chicago Ave., Chicago, Illinois, ██████ provided material and willful false statements to COPA relative to physical contact between himself and ██████ on or about September 1, 2018 at or near the location of ██████, approximately between the hours of 2:00-3:08 p.m.</li> </ol>	<p><b>SUSTAINED / Separation</b></p> <p><b>SUSTAINED / Separation</b></p> <p><b>NOT SUSTAINED</b></p> <p><b>SUSTAINED / 10 days</b></p> <p><b>SUSTAINED / Separation</b></p>

	<p>6. On or about January 14, 2019, at approximately 8:45 a.m., at the COPA offices, located at 1615 W. Chicago Ave., Chicago, Illinois, [REDACTED] provided material and willful false statements to COPA relative to who was in the pool with himself and [REDACTED] on or about September 1, 2018 at or near the location of [REDACTED], approximately between the hours of 2:00-3:08 p.m.</p> <p>7. On or about January 14, 2019, at approximately 8:45 a.m., at the COPA offices, located at 1615 W. Chicago Ave., Chicago, Illinois, [REDACTED] provided material and willful false statements to COPA relative to when he exited the pool on or about September 1, 2018 at or near the location of [REDACTED], approximately between the hours of 2:00-3:08 p.m.</p> <p>8. On or about September 5, 2018, [REDACTED] displayed an inattention to duty in that he failed to mention the fact that [REDACTED] grabbed his penis in his To-From Report dated September 5, 2019, to Commander [REDACTED] of the [REDACTED] District.</p>	<p><b>SUSTAINED / Separation</b></p> <p><b>SUSTAINED / Separation</b></p> <p><b>UNFOUNDED</b></p>
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Approved:

[REDACTED]

August 2, 2019

Andrea Kersten  
*Deputy Chief Administrator – Chief Investigator*

Date

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	█
<b>Supervising Investigator:</b>	██████████
<b>Deputy Chief Administrator:</b>	Andrea Kersten