SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	December 13, 2019 / 6:55 pm / Facebook
Date/Time of COPA Notification:	December 13, 2019 / 9:44 pm
Involved Officer #1:	Officer Daniel Lombard / Star #10022 / Employee ID#▇▇▇ / DOA: June 25, 2001 / Unit: 124 / DOB: ▇▇▇▇▇▇, 1969 / Male / White
Involved Individual #1:	▇▇▇▇▇▇▇▇▇ / DOB: ▇▇▇▇▇▇, 1973 / Male / Asian
Case Type:	01B – Verbal Abuse

I.   ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Daniel Lombard	1. Referring to Mr. ▇▇▇▇▇▇ as a "chinaman" or words of similar effect in a comment on a Facebook post, in violation of Rule 6.	Sustained / 10-day suspension.

II.   SUMMARY OF EVIDENCE[1]

Mr. ▇▇▇▇▇▇▇ and Officer Daniel Lombard met at the Department firing range where Officer Lombard[2] identified himself as a department member. After meeting, ▇▇▇▇ and Officer Lombard entered a mutually beneficial business arrangement that resulted in a monetary dispute.[3] As a result of the dispute ▇▇▇▇ and Officer Lombard publicly, via Facebook,[4] belittled each other.[5] During the course of the public dispute Officer Lombard posted a public comment, to a third party, on ▇▇▇▇ Facebook page in which he referred to ▇▇▇▇ as a "chinaman."[6]

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[1] COPA conducted a full and complete investigation of this matter, including the interview of all pertinent civilian and officer witnesses, and the collection and review of digital, documentary, and forensic evidence. As part of COPA's ongoing efforts to increase case closure capacity, certain cases are summarized more succinctly in a Modified Summary Report of Investigation.

[2] Officer Lombard is the owner of a tactical firearms training business that is independent from the Department.

[3] The Bureau of Internal Affairs is investigating the underlying business dispute and allegations related to professionalism under logs: 2019-4907; 2019- 5115; and 2020-0846.

[4] COPA reviewed Officer Lombard's Facebook page, but did not locate any posts or comments that required additional investigation. Additionally, COPA could not locate any posts or comments that made Officer Lombard's status as a department member readily apparent.

[5] For example, Officer Lombard accused ▇▇▇▇ of selling imitation products and ▇▇▇▇ accused Officer Lombard of an extramarital affair. Att. 5.

[6] The specific comment is "Leitner-Wise if you were smart enough and did a background check on your chinaman we would not be having this conversation, check my profile, I do not suffer fools lightly[.]" Att. 5, pg. 3. Additionally, the term "chinaman" is an "often offensive" word meaning "a native of China." *See* https://www.merriam-webster.com/dictionary/Chinaman.

During his statement Officer Lombard admitted to posting the comment but explained that his intent was to convey ████████ business influence by using the Chicago specific meaning behind the term "chinaman."[7] Finally, Officer Lombard explained that he is aware of Department policy governing social media activity and that he did not believe his comment violated any policy because of his intent behind the message.[8]

III.   LEGAL STANDARD

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

1. <u>Sustained</u> - where it is determined the allegation is supported by a preponderance of the evidence;

2. <u>Not Sustained</u> - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;

3. <u>Unfounded</u> - where it is determined by clear and convincing evidence that an allegation is false or not factual; or

4. <u>Exonerated</u> - 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.

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 ¶ 28.

IV.   ANALYSIS AND CONCLUSION

COPA finds the allegation against Officer Lombard is **sustained**. Department members who use social media, such as Facebook, are required to follow guidelines established by the Department.[9] These guidelines prohibit members from "posting … any communication that

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[7] Att. 19 at 6:55 to 7:07 and 7:55 to 8:31. Additionally, the term "chinaman" in the Chicago lexicon is defined as "an epithet for political mentors and backers" in "politics of Chicago…." *See* https://en.wikipedia.org/wiki/Chinaman_(politics)

[8] Att. 19 at 7:55 to 8:31.

[9] G09-01-06

discredit[s] or reflect[s] poorly on the Department, it missions or goals"[10] and the "posting [of]… content that is disparaging to a person … based on race, religion, sexual orientation or any other protected class."[11] Here is it is undisputed that █████was aware of Officer Lombard's status as a Department member when Officer Lombard posted his disparaging comment referring █████as a "chinaman." While Officer Lombard asserts that his comment was not intended to be a disparaging of █████ethnicity, the comment was posted on a publicly visible platform, Facebook, in reference to a user, █████who displays Chinese surname. While Officer Lombard's explanation of his intent may be genuine, it does not reduce the likelihood that his post would be perceived by others, to include █████as disparaging of Chinese ethnicity. Therefore, COPA finds that Officer Lombard's comment was in violation of Department policy.

V.   RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a.   Officer Daniel Lombard

i.   Complimentary and Disciplinary History

Officer Lombard's Disciplinary and Complimentary Histories have been reviewed, which include 91 Honorable Mentions, 5 Complimentary Letters, a Unit Meritorious Performance Award, and other accolades totaling 122 awards. There is no applicable Disciplinary History.[12]

ii.   Recommended Penalty, by Allegation

1.   Allegation No. 1 – 10-days suspension

Here, Officer Lombard acknowledged making the comment and admitted to its inappropriate nature. However, COPA recognizes that Officer Lombard's offensive comment was preceded by █████numerous provocative insults on Facebook. In addition, this was a private matter that was not directly related to Officer Lombard's employment with the Department, Officer Lombard is a representative of Chicago Police Department.

Approved:

████████████████

_____   6-24-2021

Angela Hearts-Glass   _____
Deputy Chief Investigator   Date

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[10] G09-01-06 (V)(C)(1).

[11] *See* G09-01-06 (V)(C)(2). Government employer limits on employees' public comments are permitted to ensure "[t]he effectiveness of a city's police department [which] depends importantly on the respect and trust of the community and on the perception in the community that it enforces the law fairly, even-handedly, and without bias." *Pappas v. Giuliani*, 290 F.3d 143, 146 (2d Cir. 2002) (internal citations omitted). Additionally, "if the police department treats a segment of the population of any race, religion, gender, national origin, or sexual preference, etc., with contempt, so that the particular minority comes to regard the police as oppressor rather than protector, respect for law enforcement is eroded and the ability of the police to do its work in that community is impaired." *Id*. at 146-7.

[12] Att. 20.

Appendix A

Assigned Investigative Staff

Squad#:	8
Investigator:	Garrett Schaaf
Supervising Investigator:	Jessica Ciacco
Deputy Chief Administrator:	Angela Hearts-Glass