

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

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COMMISSION ON
JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE VALERIANO SAUCEDO

CJP NO. 194

SPECIAL MASTERS FINDINGS OF
FACT AND CONCLUSIONS OF LAW

The Commission on Judicial Performance (the Commission) charged Tulare County Superior Court Judge Valeriano Saucedo with one count of willful misconduct, prejudicial conduct, and/or improper action under article VI, section 18 of the California Constitution.

The Chief Justice of the California Supreme Court appointed this panel as Special Masters to hear and take evidence in this matter. Having presided over a trial of the charges, the Special Masters submit this final report containing factual findings and legal conclusions. (Rules of the Commission on Judicial Performance, Rule 129(c).)¹

¹ The citations to the record are as follows: "Ans." refers to Judge Saucedo's Answer to First Amended Notice of Formal Proceedings. "EB" refers to the Examiner's Proposed Finding of Facts and Conclusions of Law. "Exh." (numeric) refers to the Examiner's Exhibits. "Exh." (alphabetic) refers to the Respondent's Exhibits. "JSB" refers to Judge Saucedo's Proposed Findings of Facts and Conclusions of Law. "RT" refers to the reporter's transcript of the Special Masters' hearing held April 6 through April 10, 2015. "RTH" refers to the reporter's transcript of the oral argument held April 27, 2015.

I. SUMMARY OF ALLEGATIONS AND CONCLUSIONS

Judge Saucedo has been a superior court judge for about 14 years. He has a well-deserved reputation as a hard-working and compassionate judge who has devoted many hours to giving back to the community. Before the current allegations, Judge Saucedo had a strong and unblemished record of service.

The Commission's allegations concern Judge Saucedo's conduct during a two-month period, from mid-September 2013 to mid-November 2013. The conduct began when an unsigned, sexually explicit letter arrived by mail at Judge Saucedo's home, accusing his courtroom clerk Priscilla Tovar of having an affair with a court bailiff. The next day, the judge informed Tovar of the letter and offered a plan to help. During the next two months, Judge Saucedo sent Tovar about 445 text messages, gave her approximately \$26,000 in gifts, including a BMW automobile and a Disneyland trip package for her family, and provided legal advice to her son. The conduct ended in mid-November when Judge Saucedo accused Tovar of extortion after depositing \$8,000 into her bank account. There is no claim these events impacted any case Judge Saucedo adjudicated.

In its charging pleading, the Commission alleged Judge Saucedo wrote the unsigned September 2013 letter and mailed it to himself for the purpose of creating a closer personal relationship with Tovar, and then engaged in a course of conduct that placed undue pressure on Tovar to maintain a "special friend" relationship with him. The Commission alleged Judge Saucedo engaged in numerous additional improper acts relating to these efforts. In his answer, Judge Saucedo denied he wrote the September

2013 letter, and stated his actions reflected only a sincere desire to mentor Tovar through a difficult period. He claimed Tovar then turned on him and took advantage of his charitable nature. He also argued his conduct did not warrant judicial discipline because it involved only personal out-of-court matters and did not impact judicial decisionmaking.

As we shall explain, we find by clear and convincing evidence the account of the Examiner's primary witness (courtroom clerk Tovar) was largely accurate and credible. Tovar's testimony was corroborated by numerous documents, including Judge Saucedo's text messages, emails, and notes, and bank deposit slips and transaction receipts. In contrast, portions of Judge Saucedo's testimony lacked credibility. On important matters, his testimony was often evasive, inconsistent with the documentary evidence, and impeached by his own prior statements and admissions.

Based on our evaluation of the entire evidentiary record, we find the Examiner proved by clear and convincing evidence that Judge Saucedo created the unsigned September 2013 letter, used it as a basis to foster a close, personal relationship with Tovar on the pretext he intended to help her, and then inappropriately pressured her to maintain this relationship by giving her valuable gifts knowing she had limited financial resources and was vulnerable to these offers. Although the evidence also shows Tovar at times exercised poor judgment in responding to Judge Saucedo's overtures, her actions do not excuse or explain Judge Saucedo's behavior. It is Judge Saucedo's conduct that is at issue here, not Tovar's.

We determine the Commission met its burden to prove Judge Saucedo violated Canons 1, 2A, 2B(1), 3(C)(5) and 4(G) of the California Code of Judicial Ethics. From mid-September to mid-November, Judge Saucedo violated canons requiring judges to adhere to "high standards of conduct," preserve the "integrity" of the judiciary, and "act at all times in a manner that promotes public confidence in the integrity . . . of the judiciary." (Canons 1, 2A.) He also violated judicial canons by engaging in the practice of law on one occasion, making a false representation about Tovar's claimed overtime work, and improperly interfering with an administrative matter to further his own personal agenda. (Canons 2B(1), 3C(5), 4(G).)

Viewing the entire course of events, we determine Judge Saucedo brought the judicial office into disrepute by acting in a manner that an objective observer would find harmful to the public esteem for the judicial office, thus engaging in prejudicial misconduct. We also find on three specific occasions Judge Saucedo engaged in willful misconduct.

This report is organized as follows. We first briefly summarize the generally applicable legal principles (pages 5-6). We next describe the evidence presented by the Examiner (pages 6-53) and by Judge Saucedo (pages 54-71), and the procedural summary (pages 71-74). We then state our factual findings (pages 74-97) and legal conclusions (pages 97-109), and explain the basis for these determinations. Finally, we identify mitigating and aggravating factors (pages 109-110).

II. GENERALLY APPLICABLE LEGAL PRINCIPLES

A. Burden of Proof

The examiner has the burden to prove the charges against Judge Saucedo by clear and convincing evidence. (*Doan v. Commission on Judicial Performance* (1995) 11 Cal.4th 294, 313.) "Evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. [Citations.] The evidence need not establish the fact beyond a reasonable doubt." (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1090 (*Broadman*).)

B. Levels of Misconduct

In making the required legal findings, the Special Masters must determine whether any misconduct committed by Judge Saucedo constitutes willful misconduct, prejudicial misconduct or improper action. We apply the following legal standards.

"To commit willful misconduct in office, a judge must (1) engage in conduct that is unjudicial and (2) committed in bad faith, (3) while acting in a judicial capacity." (*Broadman, supra*, 18 Cal.4th at p. 1091.) In this context, a "judge acts in bad faith only by (1) performing a judicial act for a corrupt purpose (which is any purpose other than the faithful discharge of judicial duties), or (2) performing a judicial act with knowledge that the act is beyond the judge's lawful judicial power, or (3) performing a judicial act that exceeds the judge's lawful power with a conscious disregard for the limits of the judge's authority." (*Id.* at p. 1092.)

"Prejudicial conduct is distinguishable from willful misconduct in that a judge's acts may constitute prejudicial conduct even if not committed in a judicial capacity, or, if

committed in a judicial capacity, not committed in bad faith. Prejudicial conduct is 'either "conduct which a judge undertakes in good faith but which nevertheless would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to public esteem for the judicial office" [citation] or "willful misconduct out of office, i.e., unjudicial conduct committed in bad faith by a judge not then acting in a judicial capacity" [citation].' " (*Broadman, supra*, 18 Cal.4th at pp. 1092-1093.)

Improper action generally equates with a canon violation that does not rise to the level of willful or prejudicial misconduct. (See *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 899; see also Rothman, Cal. Judicial Conduct Handbook (3d ed. 2007), § 12.74, pp. 659-660.)

III. SUMMARY OF EVIDENCE PRODUCED BY THE PARTIES

A. Examiner's Case

1. Summary of Witnesses and Documents Presented

To prove its case, the Examiner called Tovar, Judge Saucedo, sheriff's deputies/court bailiffs Jeremy Knoy and Scott Ballantyne, superior court executive secretary Ellen Kennedy, and the Judicial Council's workplace investigator, attorney Lisa Buehler. The parties stipulated to the testimony of additional Examiner witnesses, including court administrative employees (Dee Dee Hernandez, Doreen Vitale, Remigia Contreras, Sherry Pacillas, and Deon Whitfield (the court's computer specialist)), sheriff's deputy/court bailiff Eddie Cibrian, and several third parties, including a travel coordinator, automobile sales employee, and computer forensic consultant. (Exh. 48)

The parties also stipulated to the admissibility of numerous documents, many of which were authored by Judge Saucedo. The most important documents from an evidentiary standpoint were the cell phone text messages (texts) obtained from cell phones used by Tovar and court reporter Kim Werth. The superior court's computer specialist was able to retrieve the content of a portion of those text messages from Tovar's phone: (1) text messages between Judge Saucedo and Tovar from October 27 through November 3, 2013; and (2) text messages between Tovar and court reporter Werth from September 25 through November 20, 2013. (Exh. 9, 11A, 48) Werth also produced text messages from her cell phone reflecting text messages between herself and Tovar from September 27 through November 20, 2013. (Exh. 11B; RT 817) The parties agreed there were certain gaps in the text messages from both phones. The Examiner additionally submitted phone company records showing the dates and times (but not the content) of text messages sent between Tovar and Judge Saucedo from September 2013 through November 2013. (Exh. 8; RT 54-56, 62-63, 679-682)

In the sections below, we summarize the Examiner's evidence in a chronological fashion. Because of the nature of the charges and the need for the Commission to understand the grounds for our factual conclusions, it is necessary that we set forth the evidence in some detail.

2. Background

Judge Saucedo (now age 64) was appointed to the superior court in 2001. (RT 218; Exh. 4 at CJP 18) In 2010 he was assigned to Department 6 in the main courthouse

in Visalia. (Ans. at 1) In 2013, his staff included court reporter Kim Werth and court clerks Priscilla Tovar and Theresa ("Tessie") Velasquez. (RT 447, 456, 874-876, 1137)

Tovar began working for Judge Saucedo when he was first assigned to Department 6. (RT 447-448) Tovar performed all clerical functions associated with Judge Saucedo's cases, except for the specialty calendars, such as mental health and recovery court. (RT 446-449, 777-778, 876) Velasquez performed the clerical duties associated with these calendars. (RT 876, 1135, 1139)

Tovar (now age 42) is married and has four children. (RT 463-464; Exh. J) Her husband's name is Hilario Tovar; his nickname is Lalo (a common nickname for Hilario). (RT 670) Several years earlier during a marital separation in about 2007 and 2008, she had a romantic involvement with court bailiff Jeremy Knoy, who is currently assigned to the adjacent department (Department 5). (RT 394, 482, 493, 767-768) The fact that Tovar and Knoy had previously had a romantic relationship was well known among court staff. (RT 381-382, 482, 491-492, 984-986) Tovar lived "paycheck to paycheck" and frequently had trouble meeting her financial obligations. (RT 708, 203, 755-756)

Court reporter Werth has worked for Judge Saucedo since his 2001 appointment, and was still working for him at the time of the Special Masters' hearing. (RT 93, 457, 868-870, 874) She was Tovar's close confidant during most of the relevant times, but the two had a falling out shortly before Tovar transferred from Judge Saucedo's chambers in early December 2013. (RT 661-662, 970)

Judge Saucedo presided over a busy criminal department, where he was regarded as a hard-working and demanding judge who strictly controlled his courtroom. (RT 219,

376, 783, 880-881) But Judge Saucedo maintained a comfortable, social, family-like environment for the staff. (RT 218-219, 455, 459-460, 878-879, 981-982; Exh. N at 15) Judge Saucedo, Werth, and Tovar would occasionally go to lunch and would discuss personal matters. (RT 455, 458-460, 981-982) Everyone got along very well. (RT 460, 981-982, 1140) They would have potlucks at work and would celebrate birthdays. (RT 458, 697-698, 878, 915, 981)

Judge Saucedo's chambers was behind the courtroom, and he generally left his chambers door open. (RT 456) Tovar and the other Department 6 clerk (Velasquez) had work desks facing each other directly outside the judge's chambers. (RT 450-453, 587; Exh. 47) Tovar and Velasquez would frequently talk about personal matters while they were at their desks. (RT 454-455, 587, 1141-1157) In 2013, these conversations included that Tovar previously had an affair with bailiff Knoy; her husband was having an extramarital affair; she owed bailiff Knoy money pertaining to a vehicle purchased by her sister; and her husband had recently started a new job at a nearby medical center. (RT 515, 1143-1157) Tovar's and Velasquez's desks were part of a large open common room shared by Departments 5 and 6; the two staffs frequently interacted. (RT 219, 248-249, 409, 874-877, 1138, 1141)

3. Late Summer 2013

In August 2013, Judge Saucedo gave Tovar \$50 for her birthday. (RT 467-470, 698) She testified she was surprised because he had never previously given her money for her birthday. (RT 470, 698) When she tried to return the gift, Judge Saucedo said it was for her birthday and she should spend it on herself. (RT 470, 698-699, 164-165) Judge

Saucedo also gave her \$50 for her teenage son's athletic fundraiser. (RT 698, 466, 468, 165)

The next month, in early September, Judge Saucedo, who for many years drove an older Volvo vehicle, told Werth and Tovar he had purchased a red two-seater Mercedes convertible, and wanted them to come see the car at lunchtime. (RT 241-242, 260, 471-472, 973) Later that day, Judge Saucedo took Tovar on a 15-minute ride in the car. (RT 472, 973) During the ride, Judge Saucedo said " 'Who knows, maybe one day you can own a car like this,' " or "You'll own a car like this." (RT 472, 79)

About two weeks later, on Friday September 13, Judge Saucedo gave Tovar about \$50 or \$100 to buy a new cell phone because her phone screen was broken. (RT 165-166, 476-477) Tovar responded she did not need a new phone and had not intended to buy a new phone, but he insisted. (RT 477-479) Judge Saucedo texted her during the weekend, asking if she purchased a new phone, and she told him she had not done so. (RT 477-478)

The next Monday (September 16), Judge Saucedo gave Tovar more money for a new phone, and Tovar accepted this money because "He wouldn't take it back." (RT 478-479) Judge Saucedo said she should " 'consider it . . . an additional birthday gift.' " (RT 479) He told her to text him after she purchased the phone. (RT 481, 634, 81)

Later that evening, Tovar purchased the new phone, and stopped by Knoy's house on the way home to visit his dog (a dog previously owned by Tovar's family). (Exh. 17; RT 401, 481, 493, 497, 919) Later that night, Tovar and Judge Saucedo exchanged several text messages about the new phone. (RT 63, 481)

4. September 18: Judge Saucedo Discloses Receipt of "Anonymous Letter"

Two days later, on Wednesday September 18 at about 8:15 a.m., Judge Saucedo called Tovar into his chambers and told her to close the door. (RT 498) Judge Saucedo showed her an unsigned letter he said he received at his home the previous night (the Anonymous letter). (RT 82) The typewritten letter read:

"Hilario Tovar
c/o Tulare Regional Medical Center

You probably already know and approve. Your wife Priscilla has been having an affair with Jeremy Knoy the bailiff in Department 5 of the Courthouse. She fucks him after work. He brags that she is a good fuck and you get sloppy seconds. He brags about her tattoos, and big boobs and tight ass. The only thing he complains about is her c-scar.

Sent this to her judge

JK's Friend" (Exh. 15)

According to Tovar, this letter was attached to Judge Saucedo's typed cover letter stating the unsigned letter would be upsetting and she should remain calm and he would help her if she wanted him to do so. (RT 500, 732-733)

Tovar testified she was "shocked" and "upset" after reading the Anonymous letter. (RT 500, 762) Judge Saucedo told her the letter had been sent to her husband's work. (RT 500-501) When Tovar responded " 'What do you mean?' " and " 'How do you know,' "

Judge Saucedo said " 'Look at the top,' " where it identifies her husband's name and place of employment. (RT 501) Tovar began crying, saying she needed to report the letter to court administration or law enforcement and she had no idea "who would do this." (RT 501, 762) Judge Saucedo responded she could not " 'tell anybody' " about the letter, including court reporter Werth, because they did not know who wrote the letter. (RT 86, 501, 1034-1035) Judge Saucedo said Tovar could get fired if she reported the letter, and that the letter "had to be somebody from law enforcement" because law enforcement would be the only possible source for his home address. (RT 502, 762-763)

When Tovar continued to insist the letter needed to be reported, Judge Saucedo said he would call Tovar's husband's employer and "tell them that it was a jury letter or jury certificate sent in error, and he was calling on behalf of the Court," and that he would ensure the letter would be intercepted if she "trust[ed] him completely." (RT 502, 94) Judge Saucedo kept the letter in his chambers and told Tovar to meet him in a conference room at noon in the court's law library. (RT 503)

About one or two hours later, during courtroom proceedings, Judge Saucedo handed Tovar a note stating he had communicated with someone named "John," the human resources manager, "at the hospital" (where Mr. Tovar worked) and that "everything was going to be okay." (RT 504-505, 511-512) Judge Saucedo later told Tovar that when he called the hospital, "John" told him "the [Anonymous] letter was sitting on his desk" and he "was wondering who Hilario Tovar was because the name didn't sound familiar to him." (RT 511-512) Judge Saucedo said that John "shredded the letter" during this phone conversation. (RT 512; Exh. 49 at CJP 193) At the Special

Masters' hearing, Judge Saucedo admitted he told Tovar that the hospital had destroyed the letter, but he also acknowledged he never contacted, and made no attempt to contact, the hospital or anyone at Mr. Tovar's place of employment. (RT 98-99)

At noon that day, Tovar met with Judge Saucedo in a law library conference room located in the basement of the courthouse. (RT 95) Judge Saucedo testified he had reserved the room earlier that morning because it was a "more private setting" than his chambers. (RT 94-95, 505, 1212) During this meeting, Judge Saucedo again showed Tovar the Anonymous letter and suggested that Knoy wrote the note, but Tovar denied that he would have done so. (RT 506) Judge Saucedo then said that if Tovar wanted him to help her, she needed to be "completely honest with him" and tell him "everything about [her] relationship with [Knoy]." (RT 507) Judge Saucedo wanted to know if she was "intimate" with Knoy, and the nature of their relationship. (RT 507) Tovar responded that she and Knoy were just friends and were no longer romantically involved. (RT 507) She said Knoy was assisting with her sister's car payments for a vehicle (a Jeep) that Tovar sometimes drove. (RT 507-508, 705, 760-761, 396-400) Judge Saucedo asked when was the last time she had met with Knoy, and Tovar answered that she went to his house after buying the new phone for about 30 or 40 minutes. (RT 508-509) Judge Saucedo asked: " 'Are you sure you weren't intimate with him . . . at that time?' " (RT 509) Tovar said she was not. (RT 509)

Tovar testified that Judge Saucedo then told her she should no longer take any money from Knoy and that she "was to cut all communication with him because we don't know who sent this letter." (RT 508) Judge Saucedo said he would take over the car

payments, and would give her \$200 per month for the Jeep payment. (RT 508, 512) When Tovar said she did not want him to do this, Judge Saucedo responded " 'No. You're going to take this money if you want me to help you. You are to cut off all communication with [Knoy]." (RT 508) At this point in the conversation, both Judge Saucedo and Tovar were crying. (RT 508) Judge Saucedo said he did not know "why anybody would do this," and suggested that someone was possibly attempting to get Tovar or her husband "fired." (RT 508) Tovar again said the letter should be turned over to court administration, and Judge Saucedo responded " 'No. No one is to know about this letter. No one needs to know anything about this. You just need to trust me completely.' " (RT 508, 961) Judge Saucedo hugged her at the end of the meeting. (RT 513)

5. Next Five Days: Cash Gifts; Misrepresentations re Tovar's Overtime; Advice Letter to Tovar's Son; Statement re Brother's Financial Support

The next day, Judge Saucedo left \$200 cash in an envelope on Tovar's desk. (RT 167, 523, 700) Tovar said she did not need the money, but Judge Saucedo replied, " 'I said I would give it to you, and you need to take it.' " (RT 523-524)

Later that day, when bailiff Knoy came into the Department 6 courtroom, Judge Saucedo motioned Tovar to come to the side of the bench and then told her that Knoy was not allowed in the courtroom anymore. (RT 520) Judge Saucedo said he was " 'going to call the sergeant. I do not want him in here at all.' " (RT 520)

The next day, on Friday September 20, when Tovar was finished with her work at about 4:45 or 4:50 p.m., Judge Saucedo asked Tovar to come into his chambers and close

the door. (RT 524-525, 133) Judge Saucedo said he wanted to talk to her about "what had happened" and that he "didn't have anybody else to talk to" about the Anonymous letter. (RT 526) He told her to keep watching her home mail because the letter could have been sent to her home address. (RT 527) He also said he continued to believe Knoy wrote the letter and he could get Knoy fired because he is a very powerful man. (RT 526-527) During this conversation, Judge Saucedo was crying and said he was upset and hurt because he cares about Tovar. (RT 528) Tovar responded that she wished she could just report the letter to court administration and that she did not feel comfortable. (RT 527) Judge Saucedo told her not to do this because she might get "in trouble." (RT 527)

Tovar testified that during this discussion she told Judge Saucedo she needed to clock out on her computer to avoid overtime pay, which needed to be approved by a supervisor. (RT 527-528, 774-775) She said Judge Saucedo responded that she should not worry, that he would take care of it. (RT 528-529, 785) At the end of the conversation, Judge Saucedo said he would contact Tovar's supervisors and tell them they were working on a case. (RT 529) Tovar said that Judge Saucedo hugged her as she left the chambers, which made her feel uncomfortable. (RT 564) When Tovar returned to her computer, she had an email from her supervisor asking why she was working overtime. (RT 529) Tovar called out to Judge Saucedo that she had received this email, and Judge Saucedo said " 'Just tell them that we've been working on a case,'" and he would send an email to the supervisor. (RT 529) Tovar then clocked out at 5:16 p.m., after emailing her supervisor that she had been in chambers " 'regarding a case.' " (RT 529, 781, 790-791)

On Monday morning, Judge Saucedo sent an email to Tovar's supervisor stating he wanted to confirm Tovar worked after 5:00 p.m. the previous Friday at his request. (Exh. 19B) He stated: "Among other tasks that we needed to complete were orders to the jail ordering prescriptions be issued to inmates who were going to be released pursuant to court order. Pricilla is a wonderful clerk, always willing to do extra things to assist the court." (Exh. 19B; RT 136-137) The Examiner presented evidence (discussed below) refuting Judge Saucedo's explanation that he was working on prescription orders or other court matters during this after-hours meeting.

That same Monday morning, Judge Saucedo gave Tovar a typewritten note with his brother's name and phone number. (Exh. 24; RT 537, 792) According to Tovar, Judge Saucedo said that over the weekend he had been thinking about his statement to Tovar that he would take care of her, and then started thinking about what if something happens to him. (RT 538) Tovar replied " 'don't think that way.' " (RT 538) But Judge Saucedo said: " 'I'm serious. If anything ever happened to me, I need to make sure that you're taken care of like I promised.' " (RT 538, 792) He said he had talked with his brother (a physician), and told his brother "everything" and that she should call his brother if she ever needed anything.² (RT 538)

Later that same day, Judge Saucedo gave Tovar a letter written to her teenage son concerning an alcohol-related citation he had received. (Exh. 20; RT 64) Tovar had

² In his interview with Judicial Council investigator Lisa Buehler, Judge Saucedo confirmed he had made these statements. (RT 332-333)

previously told Judge Saucedo about the citation. (RT 541) The lengthy letter was entitled "Privileged and Confidential Communication." The first paragraph states:

"I am Valeriano Saucedo, a California Superior Court Judge sitting in Department 6 in Tulare County. Your mother, Priscilla, is my clerk and friend. I write for two reasons: One, to give you legal advice at your mother's request on your recent citation alleging a violation of Business and Professions Code section 25667 [minor in possession of alcohol in a public place]. Two, to give you a personal and judicial perspective which hopefully will enable you to gain from this experience and to better exercise leadership in your home, school, baseball team and community." (Exh. 20)

In the next several pages, Judge Saucedo detailed the potential penalties for the offense, identified several potential defenses to the charge, and said that if a further notice to appear was issued, he would "find out and let you know how Fresno County handles minor in possession of alcohol cases whether filed as infractions or misdemeanors." (Exh. 20 at CJP 102) Judge Saucedo additionally commented on Tovar's work at the court, stating she is "hardworking," and "brilliant," and he "trust[s] her implicitly and completely." (Exh. 20 at CJP 102) Judge Saucedo concluded the letter by discussing his own background and the importance of working hard to "realize your dreams." (Exh. 20 at CJP 103) He also stated: "You may contact me at my chambers in court or on my personal cell [phone number] to discuss the legal advice in this letter and to arrange to meet. . . ." (Exh. 20 at CJP 103)

Judge Saucedo told Tovar she should give the letter to her son that evening, and she should text him back to let him know what her son's thoughts were regarding the letter. (RT 543, 64, 823) Tovar testified that when she first told Judge Saucedo about her son's citation, Judge Saucedo told her to find out who the judge was "because he thought

maybe he could put in a good word for my son." (RT 541) Tovar testified she was very surprised to receive the letter and that it was "unexpected" because she never asked him to write the letter. (RT 542, 798) She testified that there was no follow-up on the letter because her son never received a notice-to-appear for the ticketed offense. (RT 543, 800)

6. The Next Week: Flowers and More Cash Gifts

Two days later, on Wednesday September 25, when Tovar came into work, she found flowers on her desk that had been delivered to her the day before. (RT 552, 562; Exhs. 21A, 21B) The card was unsigned and stated "NEW DAY, NEW WEEK, NEW BEGINNING." (Exh. 21A) Tovar had no idea who sent her the flowers, but later that day Judge Saucedo called her into chambers and said he had sent them to her. (RT 552) Judge Saucedo told her to tell everyone they were from her husband. (RT 555) Judge Saucedo said he wanted to send a message to the person who sent the Anonymous letter that the letter had not "gotten to" Tovar and that she was in a happy marriage relationship. (RT 556) Judge Saucedo later gave her a typed note stating:

"As for the flowers, simply say that things are wonderful between you and Lalo and that Lalo sent the flowers. (A little white lie won't hurt anyone.) Word will get out and Jeremy [Knoy] will get the clear message. Remember always operate from a position of strength." (Exh. 22; Ans. at 4; RT 153-154)

The florist's order form contained Judge Saucedo's request that his identity not be revealed and stated: "Arrangement small and understated. For her desk." (Exh. 21B) (Capitalization omitted.)

Later that day Tovar told Judge Saucedo she did not feel comfortable with him sending her flowers and helping her financially and that although she appreciated it, she

did not need help and it made her feel uncomfortable. (RT 555-556) Tovar testified that Judge Saucedo responded: "[W]e didn't have anybody else to talk to about the letter, that we couldn't tell anybody at that point; if he told his wife about it, that she would [ask] him why didn't he go to [court] admin[istration] because there's a lot of slander there And he thought of me as a daughter, that I should just let him help me because he was willing to help me. . . . [H]e wanted me to trust him and he didn't want me to feel uncomfortable." (RT 556)

Later that evening, Werth texted Tovar and asked what time Judge Saucedo left for the day. (Exh. 11A at CJP 246) Tovar texted back that they left at about 6:15, and that "we talked and I feel better." (Exh. 11A at CJP 246)

About one or two days later, Judge Saucedo left an envelope with \$500 in cash on Tovar's desk. (RT 18, 167-168, 562-563) Tovar told Judge Saucedo she did not need the money. (RT 563) He responded she should go shopping and she needed to "change [her] wardrobe . . . the way [she] dressed." (RT 563) Judge Saucedo asked her to send him a photograph of herself while she was shopping. (RT 567; Ans. at 4)

On Friday September 27, Judge Saucedo sent Tovar an email with the subject line "Cases," stating "May we spend a few minutes talking before you leave." (Exh. 25) Tovar responded: "I can[']t today, I am meeting my sisters for dinner." (Exh. 25) At the hearing Tovar testified she was not actually meeting her sister, but she did not want to talk to him because she was feeling uncomfortable with their interactions. (RT 563-564) She said there were no cases to discuss on Friday after work. (RT 564) Later that evening, Judge

Saucedo sent Tovar several texts, the last of which was at 8:15 p.m. (Exh. 8B; RT 121, 566)

That weekend, Judge Saucedo and Tovar exchanged several more texts. According to Tovar, in those texts Judge Saucedo asked whether Tovar had any continuing contact with Knoy, and whether she had gone shopping with the money he had given her. (RT 567, 216, 337)

7. Judge Saucedo's September 30 Note to Tovar

On the following Monday (September 30), Judge Saucedo handed Tovar a one-page typewritten note while she was at her clerk's desk in the courtroom (the September 30 note). (Exh. 26) The note stated:

"I support you completely and unequivocally in all of your endeavors.

Reflecting back on this last week, I am concerned that I have not yet fully earned your complete trust and confidence. Two examples come to mind. Last week, until I probed, you did not voluntarily tell me that you only had \$10.00 in your checking account. Clearly, this was not enough money to make it through the rest of the week and weekend until Tuesday of this week, your payday. You should have voluntarily told me. Once I learned of your financial pressure, I initially gifted you \$200 and then \$500. I was happy to do so but what concerned me is that you did not voluntarily tell me. The second example is Saturday when I asked you about Jeremy [Knoy]. I again felt like I probed when we had agreed that you would voluntarily let me know if he contacted you about the loan payment.

I truly want to earn your trust and feel badly that I have not yet done so. What else do I need to do? I voluntarily took a risk to protect you because you have earned my trust and respect. I have no regrets that I took the risk. It was absolutely the right thing to do. You have my utmost respect and trust and always will. I was upset with myself this weekend, notwithstanding your forgiveness, because sometimes I still feel that I am hurting and not helping you enough.

This month and every month I will gift you \$200 for the loan. However, I am happy to meet your other financial needs. As I've told you, from here on out, you will no longer have any financial worries. However, you must trust me unconditionally and voluntarily tell me everything. Don't be like my former clients. They didn't lie to me. Sometimes they forgot to tell me important things. Don't feel embarrassed or like a burden. I can handle anything.

Looking at the future, I want to earn your complete trust and have you voluntarily tell me what is going on in your life. I am willing to do anything to earn your trust and confidence. I want to support your every endeavor but I cannot know your endeavors unless you tell me. In this connection, I find texting is fine but I find these notes and form of communication unsatisfying and incomplete. They do not fully inform me on what is going on. I prefer to talk to you and would like to know whether you wish to talk and when. Sometimes I feel like you would prefer to avoid me altogether and not talk to me. Perhaps, you don't even like me, want to talk to me or have me involved. I hope not. Let's work on these issues together, planning for your financial future (including a two seater—although you seem skeptical about this promise). As you know, I do not make promises I cannot keep. Frankly, my biggest concern is how you would explain a two seater gift to Lalo. (By the way, what did you say and what did he say about the flowers? Just curious.)

Finally, I, too, am human and have an ego. Feel free, if you wish, to compliment me if you like things I do or wear, or, if you wish, you may treat me like the Maytag repair man.

Please respond. Always your genuine friend and supporter." (Exh. 26; Ans. at 5)

Tovar testified that after reading the note she thought "this is . . . just getting out of hand." (RT 569) She felt "uncomfortable" and "disgusted" by the letter, particularly the portion of the letter where he told her to feel free to compliment him on "things he does or wears." (Exh. 26; RT 571, 806) She said she never asked for money and his mention of

a "two seater" must have referred to their conversation when Judge Saucedo took her for a ride in his car and asked whether she would like to have a new car. (RT 571)

After Tovar read the note, Judge Saucedo asked her to return it to him, but she did not immediately give it back and instead covertly made a copy. (RT 569) When she returned the original to him toward the end of the day, Judge Saucedo asked if she had a response to the letter. (RT 569) She thanked him, but said she did not want any more help from him and she did not want him to give her any more money. (RT 569, 806) She attempted to make clear to Judge Saucedo "that I was fine, and that I just didn't . . . feel comfortable." (RT 569) Judge Saucedo responded in an angry manner, stating " 'What do you mean you don't want my help anymore? So you mean the [Anonymous] letter is true? So it is true about you and Jeremy? Maybe your husband does need to know about the [Anonymous] letter.' " (RT 569-570, 807) Judge Saucedo then left the courtroom, and Tovar heard a door slam near the stairwell. (RT 570)

Tovar testified this conduct scared her and she decided she needed advice from Werth. (RT 575, 710) Tovar then told Werth about the Anonymous letter and showed her the September 30 note. (RT 575, 929-931) According to Tovar, Werth responded: " 'This . . . is wrong. This is not right. Something is going on with him.' " (RT 575) Werth told Tovar she needed to get a copy of the Anonymous letter. (RT 575) Tovar said she thought it was in Judge Saucedo's desk and she would attempt to obtain a copy later that day. (RT 575-576) Werth told Tovar that she would text her when Judge Saucedo had left for the day, so Tovar would know it would be safe to search his office for the letter. (RT 731, 735-737)

At about 6:20 that evening, Tovar texted Werth to let her know she was "snooping" in Judge Saucedo's office, and was worried she was "going to be in big trouble." (Exh. 11B at p. JVS 96; RT 577, 732) After Tovar found the Anonymous letter, she texted Werth with a photograph of the letter and then made a copy of the letter and returned the original to Judge Saucedo's desk. (RT 734, 934; Exh. 11B at JVS 97; Exh. T) A few hours later, Tovar sent a text to Werth stating that Judge Saucedo had sent a text message to her "apologizing" for his behavior earlier in the day. (RT 578, 808; Exh. 11B at JVS 97)

8. The Next Week: Werth Opines that Judge Saucedo Wrote Anonymous Letter and Judge Saucedo Provides Assistance with Tovar's Car Problems

The next day, October 1, Tovar showed Werth a copy of the Anonymous letter. (RT 695-696, 734-735) Tovar testified that Werth immediately responded that Judge Saucedo wrote the letter, and that she knew this based on working with him for almost 10 years, "reading his pleadings and his rulings" (RT 578, 694, 696) When Tovar said she did not believe Judge Saucedo could have written it, Werth said she was " 'positive. I know him too well.' " (RT 578, 599) Tovar still had a hard time believing it. She testified: "I trusted him. He was a judge. He was, like, my boss."³ (RT 697)

³ Investigator Buehler similarly testified that Werth told her she thought Judge Saucedo wrote the letter. (RT 1213) At the Special Masters' hearing, Werth denied making these statements to Tovar and Buehler. (RT 937, 961-962) As explained below, we find Tovar's and Buehler's testimony regarding Werth's statements more credible than Werth's later denials. (RT 961-962, 987-988, 1011-1012)

Later that day, Judge Saucedo called Tovar into his chambers. Judge Saucedo apologized for his behavior the day before and said it would not happen again. (RT 808) He also indicated he had overheard her talking about car problems (with her Ford Focus) and asked why she had not taken her car to a mechanic. (RT 579-580, 586, 760) She replied that she is a woman and does not know any mechanics in the area. (RT 580) Judge Saucedo responded that he knew a mechanic who could possibly work on the vehicle, and that he would take her car to this mechanic if she wanted him to do so. (RT 579-580) Tovar agreed to meet Judge Saucedo the next day at his mechanic's shop.

That evening, Werth and Tovar had the following text message exchange:

"[Werth:] You really think it's a good idea to drop your car off tomorrow and be further into debt with him?"

"[Tovar:] I know I've been thinking about it."

"[Werth:] Totally up to you But I think you're sending [some] mixed messages . . . in that you tell him you're good, no more help then you take it He says why won't you be my friend, etc. . . . See what I mean?"

"[Tovar:] So what do I say [¶] I should have had you pick me up. I will cancel the [appointment]"

"[Werth:] [Y]ou do what you think is right, I don't want to tell you what to do"

"[Tovar:] Ugh"

"[Werth:] I'm sorry I know it's difficult But the thing is, you can't have it both ways Can't say no, I don't need your help anymore, basically stop bugging me then turn around and say I need help with my car He's getting mixed signals."

"[Tovar:] I didn't ask for help again he would not take no. I'm going to pay for it. Not going to say anything out loud anymore. I'm

seriously thinking of [asking] to be moved. Maybe it was meant for me to[,] its time."

"[Werth:] I'm sorry you feel that way and I hope you reconsider that decision I know you didn't ask for any of this to happen! This is NOT your fault! I hope you KNOW that and BELIEVE it"

"[Tovar:] I do but I'm having to watch every conversation I have and it's not fair. And I don't like that"

"[Werth:] I can imagine how you must feel, and you're right, it's not fair Let's brainstorm more tomorrow We're gonna figure this thing out!" (Exh. 11B at JVS 99-100)

The next morning, Wednesday October 2, Tovar met Judge Saucedo at his mechanic's shop and dropped off her car. (RT 582-583) While at work, Judge Saucedo twice emailed Tovar about the car (he titled one of the emails "Case Files"). (Exh. 27; RT 589-590) Later that day, she picked up the car because a part needed to be ordered, and agreed to bring the car back to the shop on the next Monday, October 7, which she did. (RT 583, 67)

In the afternoon of October 7, Judge Saucedo told Tovar her car would need to remain overnight at the shop, and he would give her a ride home. (RT 583-584) After she declined the ride offer, Judge Saucedo said he asked the mechanic to " 'put a rush on it' " and the car was in fact ready to be picked up. (RT 583-585) Tovar said she would pick up the car and would pay the \$328 bill. (Exh. 28 at CJP 378; RT 584) Judge Saucedo replied that she should not worry, he had already paid for it (in addition to an earlier \$205 bill). (RT 584, 169; Exh. 28) That evening Judge Saucedo texted Tovar, asking whether she made it home safely. (RT 590, 823)

At some point near this time period, Judge Saucedo handed Tovar a note while she was at her clerk's desk in the courtroom, stating "Don't share with anyone any information. I assume you have not told anyone about Jeremy and the letter. Correct" (Exh. 23) Tovar looked up at Judge Saucedo who was sitting on the bench and indicated that she had not told anyone. (RT 522) She then stepped away and secretly made a copy of the note. (RT 522) Pursuant to Judge Saucedo's explicit directions, she returned the note to him. (RT 522-523) She testified that "[e]very time he gave me a letter, he wanted it back" (RT 522) "so he could shred" the document. (RT 560)

9. Mid-October: More Cash Gifts; Disneyland Planning; Car Offer

The next four days (October 8-11), Judge Saucedo sent Tovar numerous text messages, often during the evening hours. (Exh. 8B at 17-22) Tovar sometimes (but not always) responded to the texts. (Exh. 8B at 17-22) During the following weekend, the two continued to exchange text messages. (Exh. 8B at 22)

At about this time, Tovar told Werth that things were getting "better" with Judge Saucedo. (Exh. 11B at JVS 100-101; RT 593) In a later text message, Tovar indicated Judge Saucedo probably had not continued to "bother[] her" because he felt bad about the way he had acted on September 30 when she told him she did not want his help. (Exh. 11B, JVS 102; RT 599)

However, Judge Saucedo soon renewed his efforts to assist Tovar. He asked Tovar if she had been shopping and Tovar said she could not afford to buy anything. (RT 600-601) Judge Saucedo then asked for her bank account number so he could put money in her savings account. (RT 600-601) When she said she did not need the money, Judge

Saucedo told her she needed to trust him. (RT 601) Tovar testified she gave him her bank account number because she felt pressured to do so. (RT 600-601)

At some point during this same month, Tovar and Velasquez were at their desks talking about Disneyland and during the conversation Tovar said she has always wanted to go to Disneyland for Christmas. (RT 593-594) Judge Saucedo then called Tovar into chambers and asked why Tovar did not plan a trip to Disneyland for Christmas. (RT 594) She said she did not have the time or money to go on that type of a trip. (RT 594) Judge Saucedo responded: " 'You're going. You and your family are going to go for Christmas. That's going to be your gift from me.' " (RT 594) Tovar testified that she replied she did not want to accept the gift, that she did not need to go, and that it was too expensive. (RT 594) Judge Saucedo said not to worry about it, that he was going to pay for everything and she just needed to give him some dates and he would work on a budget for her and her family. (RT 595) When Tovar continued to protest, Judge Saucedo said " 'Do you want your husband to find out about the [Anonymous] letter?' " (RT 595) Tovar did not say anything after that. (RT 595)

Soon after, Judge Saucedo and Tovar met at an American Automobile Association (AAA) office during lunch hour to discuss arrangements for the Disneyland trip. (RT 606) Judge Saucedo ultimately purchased a Disneyland vacation trip package for Tovar's family (\$1,862), and then purchased an additional vacation package for Tovar's sister and her family (\$1,340). (RT 607-608; Exh. 9 at CJP 215-216; Exhs. 36B, 36C) Judge Saucedo promised to pay for all trip expenses, including meals and souvenirs. (RT 610-611, 629) Tovar testified that Judge Saucedo told her to tell her family she was paying for

the trip with overtime earnings, and not to tell anyone he was paying for the trip. (RT 608) She complied, and her family did not know Judge Saucedo was funding the trip. (RT 714) The AAA trip documentation states Judge Saucedo requested the travel agent "not to have any [additional] contact" with him regarding the trip purchase. (Exh. 34A)

Shortly after this lunch meeting, Judge Saucedo gave Tovar a note ("AAA note") attaching a deposit slip showing he had deposited \$500 into her bank account and asking for his "texting privileges" to be "reinstated." (Exh. 32; RT 73-74) The note read:

"AAA

Here is your temporary AAA card. You must sign and keep the temporary card. Keep it with you. The hard plastic card along with your free gift, the movie Turbo, will be mailed to your Selma address. We should upgrade the card to a premium level in about 90 days. This will give you better protection. Keep in mind that the card runs with you not your car. This means that it will provide you with personal protection no matter which car you are in.

CitiBank

Attached is proof of deposit for \$500. The funds are available immediately. The teller said that you simply needed to get on line and confirm that the deposit was made. Please confirm that the deposit was credited. Enjoy!!

Roseville

Be careful if you drive to Roseville. It is quite far and you should take appropriate precautions to be safe. You know this already and do not need me to tell you. However, I will worry about you. As always, I am ready to help you with anything. If your car breaks down and AAA is not sufficient or you need to get lodging and cannot afford it, call me. Remember—anything.

Texting

With your permission, I would like to have my texting privileges reinstated. I promise to use greater discretion and not make you feel as if I am being controlling. As I have explained, that is not my intention. I simply enjoy knowing that you are happy enjoying your new financial freedom. If you feel that this is not a good idea, let me know. I will understand. I appreciate your candor.

Have a wonderful weekend and I hope you feel better." (Exh. 32)

Regarding the "reinstate[ment]" of texting privileges, Tovar testified she asked him on several different occasions not to text her. (RT 603-604) She said he was doing it "a lot, all the time" and he would "get upset if I wouldn't text him back right away or text him back at all." (RT 603) She repeatedly told him the texting was too much and she did not feel comfortable with it. (RT 607, 604, 712)

10. Tovar's Brief Meeting with Court Manager

In early to mid-October, Tovar had a brief meeting with Dee Dee Hernandez, a court manager. (RT 588; Exh. 48) Tovar said she was feeling "overwhelmed" and could not get her work done and "maybe it was time for me to move" to another department. (RT 588, 784; Exh. 48) Hernandez expressed surprise because she said Judge Saucedo speaks very highly of Tovar. (RT 588) Tovar responded that it is "just becoming too much . . . ," but did not tell her the true reason (that she was feeling uncomfortable with Judge Saucedo's conduct toward her). (RT 588-589, 783-784; Exh. 48) In response to Tovar's question, Hernandez said Judge Saucedo would have to be told Tovar was requesting the move. (RT 588-589) At that point, Tovar decided not to proceed with the

transfer request. (RT 588-589) Hernandez recalled having this general discussion with Tovar. (Exh. 48)

11. Mid-October: Ballantyne Report

At some point in mid-October, Judge Saucedo learned Tovar had received a disciplinary action regarding her handling of a criminal minute order two months earlier (RT 60, 235) The discipline was based on a report submitted by Sheriff's Deputy Scott Ballantyne, a court bailiff. (RT 236-237) In the report, Ballantyne stated that an August 2013 minute order prepared by Tovar did not properly reflect that Judge Saucedo had ordered a defendant released from custody, and the matter was not corrected until the following day when defense counsel (accompanied by bailiff Ballantyne) brought it to Tovar's attention while she was sitting at her desk in the common area near Judge Saucedo's chambers. (Exh. L; RT 370-371) The report stated that when the defense counsel contacted Tovar, Tovar did not initially recall the release order, and she then checked with Judge Saucedo:

"Tovar took the file to Judge Saucedo, who was sitting in his chambers with the door open. I overheard Tovar ask Judge Saucedo if he remembered the case from the previous day and he said, 'Yes'. She then asked the judge if the [defendant] was to have been released and the judge said, 'Yes'. I then overheard Tovar say, 'Oops'. As Tovar exited the judge's chambers she said to [defense counsel] 'Sorry. I'll print up an amended order right now.' " (Exh. L at SCT 91)

Ballantyne prepared the report after speaking with his supervisor and concluding the late prisoner-release information should be documented for "liability reasons." (RT 373-374)

Based on the report, Tovar was given a deferred two-day suspension without pay in October 2013. (Exh. L)

After Tovar told Judge Saucedo about this disciplinary action, Ballantyne came into Judge Saucedo's courtroom while court was in session to check court monitors about a possible disturbance near the courtroom. (RT 71, 235, 374-375, 390-391) Judge Saucedo immediately called Ballantyne's supervisor (Sergeant Gordon O'Rafferty) to the bench and spoke briefly to him, telling him Ballantyne was not permitted to be in his courtroom. (RT 1172) Sergeant O'Rafferty then tapped Deputy Ballantyne on the shoulder and told him " 'You need to leave now,' " which he did. (RT 375)

Later that day, Sergeant O'Rafferty told Ballantyne that Judge Saucedo had complained about Ballantyne's eavesdropping on a conversation between him and his clerk and documenting it in a report, and that Ballantyne should stay out of Judge Saucedo's courtroom and stay away from the common areas behind the courtroom. (RT 237, 375-376, 386-388) Sergeant O'Rafferty told him "the judge was upset with [him] and [Judge Saucedo] felt that [Ballantyne] was dishonest, untrustworthy and should lose [his] job" because of the report. (RT 375, 1172) Ballantyne suffered no discipline for writing the report. (RT 376)

12. October 28-31: Judge's Efforts To Buy Car and Create Closer Relationship⁴

On October 28, Judge Saucedo texted Tovar numerous times asking whether she and her sister were happy, and mentioned a car that he might be buying for her. (Exh. 9 at CJP 215-216) Tovar told him she appreciated his offer, but did not need a new car. (RT 612)

On October 29, in the morning before work, Judge Saucedo sent several texts to Tovar. At 7:27 a.m., he wrote:

"Good morning. Follow up to our conversation. Every morning wake up feeling wonderful and beautiful. No pressure, no worries."
(Exh. 9 at CJP 217)

Six minutes later, he wrote:

"You do not need body sculpting [sic]. You are gorgeous and in fine shape as you are. However if it would help your self esteem, let's discuss it in March or April. We have lots on our plate right now, Disney, the car, etc." (Exh. 9 at CJP 217; RT 609)

Three minutes later, he wrote:

"Lalo [Tovar's husband] should not criticize you unless he is willing to pay for your body sculpt[i]ng. I am willing to pay." (Exh. 9 at CJP 217; RT 609)

One minute later, he wrote:

"I am working on a Disney budget." (Exh. 9 at CJP 216-217)

⁴ Our description of the relevant events during the next week is more detailed because the record contains the content of the texts between Tovar and Judge Saucedo from October 27 through November 3. (See, *infra*, section III.A.18.)

Regarding the body sculpting reference, Tovar testified she "was having a conversation with the girls in the common area. I believe it was a commercial on the radio, and we started talking about the commercial and plastic surgery And a few minutes later [or later that day] [Judge Saucedo] called me into chambers and started talking about [body sculpting]." (RT 609-610) She told him that she did not want to "do that." (RT 610)

Later that day (October 29) during working hours, Judge Saucedo sent Tovar several messages about the Disneyland trip and a possible new car for Tovar. (Exh. 9 at CJP 217-218) Tovar responded that she told her daughters about Disneyland and they were "excited" about the trip, and that she "looked" at the car (apparently on the Internet), and that it was "nice," but if "it doesn't work out that's ok." (Exh. 9 at CJP 217-218)

That same day and into the evening, the two had the following text message exchange:

At 1:15 p.m., Judge Saucedo wrote to Tovar:

"I am very excited and happy for you. I understand about the car but I also do not like failure. Our friendship makes me happy. Seeing you happy and self assured also makes me happy." (Exh. 9 at CJP 218)

Five minutes later, Judge Saucedo wrote to Tovar:

"Did everything go well at your medical appointment?" (Exh. 9 at CJP 218)

At 4:41 p.m., Judge Saucedo wrote to Tovar:

"You seemed aloof and unhappy today. Everything okay?" (Exh. 9 at CJP 218)

Thirty minutes later, Tovar responded:

"A lot of work . . . I'm behind so I'm feeling overwhelmed is all. It was nice not having to be in court is all." (Exh. 9 at CJP 219)

At 5:21 p.m., Judge Saucedo wrote to Tovar:

"I understand. Is there anything I can do? I try to brighten up your day with positive thoughts. Everyday love, kindness and respect." (Exh. 9 at CJP 219)

Four minutes later, Judge Saucedo again wrote to Tovar:

"I truly appreciate everything you do. Too bad we can't talk very much. I had a wonderful conversation with my brother about you. Just doing financial planning. You don't know how well you are covered." (Exh. 9 at CJP 219)

Fourteen minutes later, Tovar replied:

"Not to be picky but on the car issue I wouldn't mind a 4 seater sports car. . . I don't mind a 2 door convertible . . . Hope that's not rude" (Exh. 9 at CJP 219)

Nineteen minutes later, Judge Saucedo responded:

"Not rude at all. BMW makes a beautiful 4 seater convertible. I found one in LA and another in SLO but did not think it would work. It is a rag top. Did you have a particular model in mind?" (Exh. 9 at CJP 219)

Two minutes later, Judge Saucedo wrote:

"I want you to be happy and I don't want to get a car that won't work for you. I am talking to three dealers. Hope to make this happen soon. As you know, I am serious about everything I do." (Exh. 9 at CJP 219-220)

Tovar testified she told Judge Saucedo she appreciated the car purchase offer, but did not need it or want it. (RT 612) After he repeatedly pressed the issue, she decided to accept his offer. (RT 611-613) Although he wanted to buy her a two-seater, she told him she would prefer a four-door car because of her family. (RT 612)

The next morning, October 30, Judge Saucedo sent Tovar text messages about a meeting at the AAA office over the noon hour regarding the Disneyland trip. (Exh. 9 at CJP 220) When Tovar said she did not have much time, Judge Saucedo texted her: "I understand but I detect some attitude. There are a few things I would like to talk to you about but sounds like you may not want to talk to me. Is everything truly okay?" (Exh. 9 at CJP 220) There is no indication Tovar responded to this message.

Tovar testified that as they were leaving one of their AAA appointments, Judge Saucedo told Tovar he wanted to have more contact with her. (RT 607) Tovar responded she did not "feel comfortable," and asked him to limit his texting, stating that "the texting was just too much" (RT 607)

Later that afternoon, Judge Saucedo sent Tovar several texts about the car he intended to buy for her. (Exh. 9 at CJP 221) The two then exchanged several text messages during a three-hour period in the early evening hours (from about 4:15 p.m. to 8:30 p.m.). These messages were as follows:

"[Judge Saucedo:] It's silly but still feeling under appreciated. It's silly because you don't owe me anything. I am doing this for my own soul because it makes me happy."

"[Tovar:] I'm not doing anything different and I'm not sure why you are feeling that way. . . I truelyly [sic] do appreciate everything."

"[Judge Saucedo:] I am feeling out of balance. I appreciate you are not doing anything different. Feeling today like a one sided friendship. My feelings are momentary and episodic. I'll be fine. Everything is on line and on course. No change. Just expressing my feelings. Said I am always honest in my feelings and dealings with everyone."

"[Judge Saucedo:] Just a silly man."

"[Judge Saucedo:] I need to reflect and strike a balance. Embarrassed about my feelings."⁵

"[Judge Saucedo:] The sedan is a silver 4 door, sun roof, blue tooth, black interior. Some wear and tear but not bad. 80,000 miles. . . ."

[Judge Saucedo:] Did you hook up with Lalo in Visalia?"

"[Tovar:] I did not meet Lalo. He decided not to come up so I went home."

"[Judge Saucedo:] Ed [the BMW salesperson] has made a very generous offer on the sedan. \$15[,000] out the door. We need to think about this one. If I can forward his email you will see the offer. "

"[Tovar:] When can I see the car?"

"[Judge Saucedo:] When would you like to see it?"

"[Tovar:] Maybe tomorrow at lunch"

"[Judge Saucedo:] Did you receive the [emailed] offer [regarding the sedan vehicle]?"

"[Tovar:] Busy with [my youngest son]. So I would have a car payment?"

"[Judge Saucedo:] Absolutely correct. I would make all of the payments. You would be responsible for an increase, if any, for insurance but I would certainly help. Remember this would be my gift to you. We would work out other reasonable accommodations. For example, if you decided you no longer wanted the car or wished to sell it we would decide what to do with the proceeds. It would be yours as long as you and only you owned it."

⁵ When asked at the Special Masters hearing what he was "embarrassed about," Judge Saucedo said: "My feelings about mortality," and "coming to grips" with the fact that many of his friends and colleagues were suffering from serious health problems. (RT 199)

"[Judge Saucedo]: *Have I not taken care of you without asking anything in return? Things would not change. You would just have to put up with my silliness like today.*" (Italics added.)

"[Judge Saucedo:] You could have a new car within days." (Exh. 9; at CJP 222-225)

When Tovar did not respond to this last text, at about 9:30 p.m., Judge Saucedo sent Tovar a text asking for "Feedback?" (Exh. 9 at CJP 225) The two then had the following text message exchange during the next 30 minutes.

"[Tovar:] Yes was watching the game with my family and also thinking about the car. The issue with that is the payments I know you said you would take care of it and I trust you but my issue is its not free and clear. [S]omething hanging over my head to worry about. Just like today you felt unappreciated I can't always text back immediately, I'm not always going to be in the best mood and that bothers you, I am simply being me. This is unexpected and a lot to think about. Please don't take it the wrong way."

"[Judge Saucedo:] I understand. As you said, we are human. It is always question of trust. I hope you trust me and that I have done enough to earn your trust. I am a stupid and silly man but I would never hurt you financially or otherwise. I would never exploit you."

"[Judge Saucedo:] I would also not want you to be nice simply because of our financial arrangement. That's why I sometimes ask whether you like me and respect me. It is important to have a friendship that extends beyond a financial connection. I will respect any decision you make."

"[Tovar:] I respect you and our friendship way beyond financial reasons I've never even thought or think about that sorry this has crossed your mind a couple of times I'm hurt because you bring that up often. I've always been respectful to you even before your offer. Good night Lalo is now questioning me about who I'm texting this late." (Exh. 9 at CJP 225-226)

Early the next morning (before 8:00 a.m.), Judge Saucedo sent Tovar three additional messages (there is no indication that Tovar responded to any of these messages):

"[Judge Saucedo] True friends forgive each other for their mistakes and failures. *I sincerely apologize for everything I said and did yesterday that was offensive or hurtful. I should not have communicated while off balance.* Those are my worst moments. I wish to continue our friendship. I hope you will continue on this journey. In good faith, check your savings balance later today. Let me know if our friendship continues." (Italics added.)

"[Judge Saucedo:] Texting is imperfect. Like the AAA incident you do n[o]t know the entire picture. The car offer is part of an overall financial plan annualized over the next year. You will own the car free and clear in one year, not four years as projected. The expenses over the next year are 2.4 for the jeep, 12 for savings and 12 for the car for a total of \$26,400. This does not include other possible special expenses such as trips to see [your son] play [baseball] next summer or to visit him in college, body sculpting, etc."

"[Judge Saucedo:] In sum, I am committed to helping you financially if you wish. I will make mistakes and so will you including both of us being moody at times. But the test of friendship is overcoming these minor differences and reaching a better understanding. We can not walk away over a simple misunderstanding. My goal is to help you succeed in your marriage and personal and professional life."

"[Judge Saucedo:] Let me know how you wish to proceed." (Exh. 9 at CJP 226-227)

Several hours later at noon, Tovar went with Judge Saucedo to the BMW dealership to see the car he had discussed the night before (a four-door used BMW). (RT 614-616, 621) After she test drove the car, Judge Saucedo asked the salesperson to allow him to have a private conversation with Tovar. (RT 614-616, 124) The salesperson told them they could use a private staff break room. (RT 616-617)

Tovar testified that during this conversation in the break room, Judge Saucedo told Tovar to tell her husband that the car was Judge Saucedo's wife's "old car." (RT 616-617) Judge Saucedo also asked Tovar "what [she] thought about everything." (RT 617) Tovar told him she appreciated it, and "was in shock." (RT 617) Judge Saucedo said he wanted to have more communication with her, and that he wanted Tovar to "tell him . . . how [she] felt all the time, what [she] was thinking, what [her] plans were." (RT 617) He wanted "to know [her] happiness; he wanted [her] to be emotional with him." (RT 628, 841-842) Tovar testified she told Judge Saucedo the texting "was becoming too much," and that she was not comfortable with having an emotional relationship with him. (RT 617-618, 620, 628) Tovar said she asked whether Judge Saucedo "was asking me for an affair, emotional affair, and he said . . . no." (RT 620, 841-842) At that point, the salesperson came in and said the employees needed to use the break room, and Judge Saucedo became angry, stating "I'm not done here." (RT 620) Judge Saucedo and Tovar then continued discussing her complaint about his text messages and his desire to become closer to her. (RT 620) Shortly after, the two left the car dealership and went back to work.

Less than one hour later, at 1:54 p.m., Judge Saucedo sent the following text message to Tovar:

"This is the most difficult message I have ever written. We will always be friends and my financial commitment to you will continue unchanged. But I'm done. I cannot overcome my embarrassment over my childish, stupid and silly behavior. You owe me nothing, including emotional support. This is my last text. I will also not call

you. You may text or call if you like. I am angry with myself."⁶
(Exh. 9 at CJP 227-228; RT 620-621)

Six minutes later, Judge Saucedo sent another message to Tovar:

"Here's the schedule. I will deposit into your account at the beginning of each month and in the middle for the jeep payment. You may also let me know of other needs. *I told you I would never hurt you but it is obvious my behavior is negatively impacting you. If you want the car it is yours.* We simply need to work out the details. Please forgive me and continue to be my friend on your terms. Check your account. (Exh. 9 at CJP 227-228) (Italics added)

Seven minutes later, Tovar responded back:

"I would love the car, don't be upset, it will all be ok. I will check my account in a few minutes." (Exh. 9 at CJP 228)

Judge Saucedo immediately texted back stating: "Now shows a deposit of \$600." (Exh. 9 at CJP 228) The evidence includes a deposit slip showing \$500 was deposited into Tovar's bank account at 2:09 p.m. that same day. (Exh. 37 at CJP 1452)

At the hearing, Tovar testified that at that point she "felt confident" she could accept the gift of the car and the funds because she believed she had "put [her] foot down" during the discussion in the break room at the car dealership. (RT 621-622)

However, later that evening, at 6:14 p.m., Judge Saucedo began a text exchange with Tovar, stating: "I feel stupid for breaking my rule. Critical development on the car. Must talk tonight. Teaching class. Can you call me around 8:15. Critical!!" (Exh. 9 at CJP

⁶ At the Special Masters hearing, Judge Saucedo testified that this email concerned the fact that he "was angry with myself" because he had revealed his feelings about the health of his friends and colleagues, and "I was also dealing with . . . the Ballantyne incident." (RT 201)

228) Tovar responded that she would "try" to call. (Exh. 9 at CJP 228) About one hour later, Judge Saucedo texted back:

"Don't call. I have slowed down the process. If we want the car and put down a nonrefundable deposit of 1000, Ed will hold the car for 10 days. This is perfect. We can get everything lined up and not rush through this. We must be certain that we want this car with this deal or, if we don't follow through we lose the \$1000. Are you sure you want this car?" (Exh. 9 at CJP 229)

When Tovar did not respond, Judge Saucedo sent her another message stating he was "doing this" because he "care[s] about you and your family" and wanted her "in a safe car." (Exh. 9 at CJP 229) Judge Saucedo then sent another message stating "This car will be yours," and Tovar finally responded that she "agree[d]" with the plan. (Exh. 9 at CJP 229)

The next day, on November 1, Tovar and Judge Saucedo returned to the dealership for Judge Saucedo to put the \$1,000 down payment on the car and for Tovar to discuss needed repairs before the car would be picked up. (RT 616, 618) According to Tovar, as they were walking out of the dealership in the parking lot, Judge Saucedo brought up the issue of a "romantic relationship." (RT 618, 843-844) Tovar testified:

"[Judge Saucedo] said that he had a conversation with his accountant . . . about having to cash stocks in to get the car or something like that, and his accountant asked him . . . who was I. Who buys a car for a person? Who gives them a Disneyland trip? And was he sure I wasn't more than just a special friend; was I his mistress? . . . [¶] And then [Judge Saucedo] said that . . . if my husband didn't find out and his wife didn't find out, if he would consider having a romantic relationship with me. And I looked at him, and I said, 'What?' And he says 'If they wouldn't know about it, would you have a romantic relationship with me?' And I said, 'Is that what this is all about' I said, 'No I wouldn't.' And he says, 'Why? Because of my age?' I said: 'I've never looked at you like that. . . . I'm married, and you're

my judge. I work for you. I would never look at you this way. And if this is what this is all about, then I don't want the car; just forget it.' " (RT 618-619)

Judge Saucedo responded by hugging her, and saying " 'No. Okay. I'm sorry. I'm sorry. The car is yours.' " (RT 619)

13. Weekend of November 2-3: Text Messages About Car Purchase and Parties' Relationship, and Judge's Claimed Suicide Attempt

The next day, on Saturday November 2, Tovar initiated a text exchange, and the two then texted throughout the day as follows:

"[Tovar:] Hope your game of golf was good. I had a question about the tint on the car. I called Ed but he's not returning my call. I wanted to make sure it was dark. Sorry to bother"

"[Judge Saucedo:] Tessie [Velasquez] is coming over to my house."

"[Tovar:] How nice"

"[Judge Saucedo:] I was busy with Tessie and did not have a chance to directly respond to your earlier text. *She might be next.* Thank you for asking about golf. It's always wonderful. I truly enjoy it. . . . Your texts are never a bother. I have information from Ed about the molding and tinting. Your comment begs the question. You are focused on the end result and not the process. The process is more important." (Italics added.)

"[Judge Saucedo:] Covered by accountant-client privilege, I spoke with my accountant again. He said I didn't realize I had already been seriously hurt and will only experience more hurt in the future. After I told him about the \$5 in savings and the car, he said 'wow and not even a thank you'. No texting, no calls, a few hurried conversations, you initiate all communication, 'what's in it for you' he commented. [¶] . . . Not even a text or a call on whether the car closed. It's a friendship in your mind and at most, a one sided friendship he said. Think about it he asked. I spoke to him because I needed an objective assessment. Is his assessment right?"

"[Tovar:] I thought we talked about all this. I'm not sure where your going with this issue. We are friends always were and as far as I see we will be. I'm thankful and appreciate everything. I don't know what you mean when you say hurt I have never hurt you. Really stressing me with all this."

"[Judge Saucedo:] I shared with you the conversation with my accountant. I wanted reassurance everything is fine and he is wrong. It is not a challenge of your values. I appreciate this causes stress but I too [am] stressed. I am about to gift you \$15[,000] and he is right in some respects. You texted about the tinting but never asked either yesterday or today whether the deal closed or any other details. I understand you are thankful but it would be so nice to receive a simple 'thank you' or statement about how this feels or how excited you are. Simple things make a difference. Love, kindness and respect everyday."

"[Judge Saucedo]: Where is this going? You will have a beautiful car before or on or about November 12. That's where this is going. . . . [¶] I promised it and I deliver on my promises. It's that simple."

"[Tovar:] I thought it was done or closed sorry. I'm excited but then when I get texts like the one [e]arlier from you it makes me stress. I didn't know you needed reassurance. . . . I was in a great mood all day. You know I'm super excited a car and a trip who gets that. . . ."

"[Judge Saucedo:] How would I know you were in a great mood today without you telling me? How would I know you are super excited without you telling me? T[h]at's the point. You know knowing you *are* happy makes me happy. *It's the mental part that is important to me. Or as you describe it, the emotional part.*" (Italics added.)

"[Judge Saucedo:] Aren't you interested in the final details?"

"[Judge Saucedo:] *I want you to savor the moment. Its real now. You did not believe me when I first broached the subject. You wrote flowers, a car? Because you did not believe. Now the moment is here and I want you to reflect on the journey and acknowledge it has been great.*" (Italics added.)

"[Judge Saucedo:] Feedback? Comments? My accountant is right—texting is a wholly unsatisfactory way of communicating." (Exh. 9 at CJP 230-233)

There is no evidence that Tovar responded to these last four text messages. But the next day, at about noon on Sunday November 3, Judge Saucedo sent two texts to Tovar in which he continued to discuss his relationship with Tovar:

"[Judge Saucedo:] After reflection, I understand it. You think of me as an ordinary friend like Kim [Werth] or others. Indeed, you have said in the past you want to go back the way it was. *But I am not an ordinary friend.* As you said 'a car and a trip who gets that'. No other ordinary friend has in the past given you or will give you in the future a valuable car, a trip for you and your sister and your families or a commitment to support you financially. Is this what an ordinary friend does? No. Only a special friend does this. An ordinary friend would provide only moral support. *If you want me to be an ordinary friend like I was before September, I will provide only moral support. But if you want me for a special friend, everything is on line with full financial and moral support going forward. Special friend means you want to make time and effort to share thoughts and experiences with me.*" (Italics added.)

"[Judge Saucedo]: These are my feelings. I am always honest and truthful. Am I an ordinary or special friend?" (Exh. 9 at CJP 233)

Less than 10 minutes later, Tovar responded by text, stating: "Correct me if I'm wrong, are you once again asking for an emotional affair?" Judge Saucedo responded "Absolutely not" and "Why do you ask that question?" (Exh. 9 at CJP 234) Over the next hour, Judge Saucedo and Tovar had an exchange of texts that began with Tovar's statement that she thought it was "time" to tell her husband "absolutely everything" about Judge Saucedo's conduct and she could not "handle it anymore":

"[Tovar]: That's what you mean when you say special friend? I think it's time I tell Lalo absolutely everything from the letter, financial gifts, the trips, the car, I can't handle it anymore, I'm shaking, I'm sick, I'm an emotional mess and I have not bothered anyone in my life. I can't handle this no longer. The lies to my

family and friends its not worth how I'm feeling right now I can't focus on my family since your texts yesterday."

"[Tovar]: And they don't deserve this. I will also seek a therapist tomorrow just so you know. This has gone bad."

"[Judge Saucedo:] Please calm down and think about this. Think before you act. What should I tell Ed [the BMW salesperson]?"

"[Judge Saucedo:] Please think and slow things down."

"[Judge Saucedo:] Please call me."

"[Judge Saucedo:] Based on your text, I will resign as Judge tomorrow. My career is toast. We can still save this. Please call." (Exh. 9 at CJP 235; RT 629)

More than three hours later, Tovar texted Judge Saucedo demanding that he "follow through" with his promised gifts of a Disneyland vacation and a car:

"I take it that you will follow through with the cost of my family trip and the car, I will not come out of this as a failure without either. I do not want to hear anymore of our relationship status, Not one word. I am an emotional wreck as I text this. I will consider you a friend and nothing else just as I consider 'Kim'. I am still going to seek a therapist as damage has been done. I did not think this was going to end up this way." (Exh. 9 at CJP 235)

Judge Saucedo responded "Call me please," and Tovar countered with "No phone calls. No more texts after this. Please" (Exh. 9 at CJP 235) Three minutes later, Judge Saucedo wrote: "I understand but I am concerned about my career. It is toast unless you talk to me. [I am] [i]n the garage committing suicide. Have the red car running with the door down. Please call." (Exh. 9 at CJP 236) Tovar replied she would call 911, and then

she said "*I'm not going to say anything. If you follow through with what I asked.*"⁷ (Italics added.) (Exh. 10 at CJP 1329; RT 631, 653-654, 832-833) She told him to "stop calling." (RT 654) Judge Saucedo then sent a text message stating: "Thank y[o]u for sparing my life and career. Absolutely I will follow through on the car, trip, and not another word as you request. Your text was timely because I was ending my life. Thank you for the gift of life." (Exh. 9 at CJP 236)

14. November 4-November 18: Judge Saucedo Continues with Gifts and Werth Attempts To Repair Relationship; Tovar Meets with Judge Saucedo

The next day, Monday November 4, Judge Saucedo called Tovar into his chambers and said he was going to resign. (RT 655, 977) He told her he had given an undated resignation letter to the court's executive secretary, Ellen Kennedy.⁸ (Exh. 49 at CJP 198; RT 1011, 1166, 1178-1179)

Two days later, Judge Saucedo paid the remaining purchase price (\$14,000) for the BMW automobile, and registered the vehicle in Tovar's name. (Exhs. 44B, 44C) Judge Saucedo wrote a \$14,000 personal check to BMW of Visalia. (Exh. 44 at CJP 328)

⁷ It is not entirely clear from the record whether this statement was made in a text or in a phone call, but it is undisputed Tovar communicated these words to Judge Saucedo. (See Exh. 10 CJP at 1329; RT 217, 280, 305-306, 631, 653-654, 832-833) Exhibit 10 is a document prepared by Judge Saucedo reflecting the content of certain text messages previously contained on his phone (that he later deleted). (RT 281-282)

⁸ In her testimony, Kennedy denied Judge Saucedo had given her this letter, or had discussed his resignation or retirement with her. (RT 427-428) Investigator Buehler testified that Judge Saucedo told her he discussed the possibility of his retirement with Kennedy. (RT 340)

About one week later, on November 12, bailiff Eddie Cibrian was in the courtroom after the calendar was completed to obtain a minute order and he then began talking with Tovar. (RT 658-660) Judge Saucedo came into the courtroom and told Cibrian to leave and that he needed to speak with Tovar. (RT 659, 1168; Exh. 48) Judge Saucedo then said to Tovar, " 'I'm just letting you know all your financial privileges are reinstated. I made a deposit in your account.' " (RT 659; Exh. 49 at CJP 198) Tovar became very upset and responded: " 'Why? Why did you do that? You said you were done.' " (RT 659) Later that day, Judge Saucedo deposited \$200 into Tovar's bank account. (RT 656; Exh 38 at CJP 1572) Tovar testified she did not ask for these funds. (RT 656)

Two days later, on November 14, Tovar sent a text to Werth saying: "I'm sick of all this [w]hy doesn't he just leave it alone . . . he told Eddie to leave the court room so he could talk, . . . why put me in that position and [a]t work Just leave it alone already ugh It's sick . . . I'm disgusted . . . I want to so bad file harassment but I know that's bad." (Exh. 11A at CJP 257)

Later that day, Werth met with Judge Saucedo in an attempt to act as a "go-between" to assist Judge Saucedo and Tovar to repair their relationship. (RT 1001) Werth testified she "thought the world of both of them" and she did not want Judge Saucedo to be "taken advantage of" and she did not want Tovar "to be uncomfortable." (RT 1001) She said she was aware that Judge Saucedo's "texts were getting too much [for Tovar], that it was affecting her." (RT 1003)

In text communications to Tovar shortly before the meeting, Werth said she had "a feeling once [Judge Saucedo] know[s] [the] cats outta the bag, he'll stop," but she said she was not sure he would fully "come clean." (Exh. 11B at JVS 109) She also noted that "if AFTER he starts talking and explaining [that] everything he's doing [is] outta the kindness of his heart and not expecting anything in return, that's when I'm gonna challenge him He's gonna know that we've spoken even without me saying it. . . . My response to your talking to me will be he should be pretty fucking lucky she's confided in me and no one else!" (Exh. 11B at JVS 110)

According to Werth, during her ensuing meeting with Judge Saucedo, she told him she knew about the text messages and the gifts, and that Tovar did not want him to send her any more text messages or give her any more money or gifts. (RT 971, 1008, 1029) Judge Saucedo agreed he would "stop texting, [have] no more communication . . . there was going to be no more gifts." (RT 1006, 1008-1009, 1029, 191) Werth believed that by the end of the meeting Judge Saucedo "was looking at [the situation] in a different light." (RT 1030) Werth also testified that during the meeting she was surprised to learn that Judge Saucedo had paid for the entire purchase price of the car (\$15,000), whereas Tovar had told her he paid only the down payment. (RT 1031) Werth had also been unaware Judge Saucedo had been depositing cash directly into Tovar's account. (RT 1030-1032)

When Werth confronted Tovar about her failure to tell her the truth about the car purchase and the direct deposits, Tovar began crying and said she had not disclosed this information because she had been too embarrassed. (RT 1031-1032)

The next day, Friday November 15, Judge Saucedo called Werth, Tovar, and Velasquez into his chambers and said he had decided not to retire or resign. (RT 1166, 656-657, 1207; Exh. 4 at CJP 32) He said he had been "going through something," and that he is better now and everything is going to be okay. (RT 656-657, 977, 1010-1011, 1166) According to Velasquez, Judge Saucedo said "he values our team and that he trusts us more than anybody in the courthouse and that he respected our work ethics and how we all worked together and he just wanted us to know how much he trusted us." (RT 1166)

Tovar was upset upon learning that Judge Saucedo would not be leaving because she felt that Judge Saucedo would continue to act inappropriately towards her. (RT 657-658) Over the weekend, Tovar was emotionally distraught and decided she could no longer work in Judge Saucedo's department. (RT 659-660) She testified: "It was just tearing me apart inside, knowing I was having to go to work and deal with all of this." (RT 660)

Tovar testified that the next Monday (November 18), she went into Judge Saucedo's chambers and told him the Disneyland trip was coming up and she would need the trip expense money by Wednesday November 20, and that she was "going to be going to HR to ask for my transfer out of that department." (RT 660, 661; Exh. 49 at CJP 199) She told him she had already spoken with her "supervisors way before" and they told her she needed "to inform him of my . . . request to be transferred." (RT 660) She denied identifying a specific amount, and said she asked only for the Disneyland expense money

that he had already promised and that was necessary for her family to go on the trip. (RT 662)

Tovar said that Judge Saucedo replied " 'Okay,' " and then he briefly spoke with Werth. (RT 660) Werth testified that Judge Saucedo told her that Tovar was demanding that \$6,000 or \$8,000 be deposited into her bank account. (RT 967)

After Judge Saucedo left for the day, Werth confronted Tovar and said " 'Did you demand money from Judge and [say] you were going to go to HR if he didn't give it to you?' " (RT 661) Tovar responded that she did not say that, and instead she merely asked him for the Disneyland expense money because the trip was coming up, he had already promised to pay for the incidentals, and she could not afford to go to Disneyland without these funds. (RT 661-662, 968-969) She said that if she was forced to cancel the trip, "it was just going to be a mess at home, and I was going to have to explain why we weren't going on this trip we already had planned." (RT 661) Werth and Tovar then had a heated argument as they walked down the hallway, which other court employees overheard. (RT 661-662, 970) Tovar received permission from her supervisor to go home because she could not stop crying. (RT 661-662)

15. November 19: Judge Saucedo Accuses Tovar of Extortion

The next day, during a criminal proceeding, Judge Saucedo handed Tovar a typewritten note in an envelope while she was sitting at her courtroom desk. (RT 662-663, 975-976) The note stated:

"Yesterday, November 18, 2013, you threatened to go to HR unless I deposited \$8,000.00 into your savings account by Wednesday. The deposit slip for \$8,000.00 is enclosed. Please stop. It is done.

Enough is enough. It ends today. No more money will be paid out. Confirm through Kim [Werth].

Penal Code 518.

Extortion is the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.

Penal Code 519.

Fear, such as will constitute extortion, may be induced by a threat, either: [¶] 1. To do an unlawful injury to the person or property of the individual threatened or of a third person; or, [¶] 2. To accuse the individual threatened, or any relative of his, or member of his family, of any crime; or [¶] 3. To expose, or to impute to him or them any deformity, disgrace or crime; or [¶] 4. To expose any secret affecting him or them." (Exh. 39)

Attached to the note was a bank deposit slip showing Judge Saucedo had deposited \$8,000 into Tovar's bank account at noon that day. (Exh. 39 at CJP 374)

Regarding the circumstances in which she received the note, Tovar testified:

"We were in the middle of the hearing, and [Judge Saucedo] said something like, 'Off the record,' and he handed me an envelope down this way (gesturing), and I grabbed it. And I said something like this—'Does this need to go to the attorneys?' He says, 'No. Open . . . it [and] read it.' So I opened it. And . . . it was this letter. And I said, 'Do you want me to read this on the record?' And he says, 'no. Back on the record.' And they finished the court record and he took off." (RT 663)

Tovar testified she never threatened Judge Saucedo or asked him for \$8,000, but she said she asked him for the Disneyland expense money because she could not go on the trip without the additional promised funds. (RT 663-664) Tovar said she regretted taking and keeping the money and she wished she had not done so. (RT 664) She said "[i]t was already done and over with. And I thought if I gave him back the \$8,000, he

was going to say that I was admitting to this, that I was guilty of all of this. I was scared. I didn't know what to do." (RT 664-665) Tovar never returned any of Judge Saucedo's money or the BMW vehicle. (RT 663-664, 688-689)

16. Mid-November to Mid-December: Tovar Reports Judge Saucedo's Claimed Improper Conduct

Shortly after she received the November 19 "extortion" note, Tovar filed a request to be transferred out of Department 6. (Exh. 40 at CJP 381) While this request was pending, on December 6, Tovar asked to meet with human resources manager Doreen Vitale, and during a highly emotional meeting summarized the events of the past two months. (Exh. 49; RT 716-717) Vitale took notes, and then typed the notes into a document, which Tovar reviewed and signed. (RT 717) With minor exceptions, the typed summary is consistent with Tovar's testimony. (Exh. 49) Tovar told Vitale that Judge Saucedo is very powerful and she was afraid of losing her job and of retaliation. (Exh. 49 at CJP 192) Tovar said she did not report the conduct earlier because she was hoping Judge Saucedo's conduct would "all stop and go away," but it did not. (Exh. 49 at CJP 192)

Tovar later filed two administrative claims, one with the Judicial Council and one with the Department of Fair Employment and Housing, alleging Judge Saucedo engaged in unlawful sexual harassment and seeking damages for the harassment. (RT 671-678) She also filed (or is considering filing) a lawsuit, but she testified she is not sure she is going to maintain this action. (RT 672, 678) She said that other than the hugs, Judge Saucedo's conduct was not "sexual" in nature. (RT 676)

17. Evidence Regarding Anonymous Letter

The parties stipulated that the Anonymous letter envelope was postmarked Monday September 16, 2013, and was processed at the Santa Clarita Sectional Center Facility that evening. (Exh. 48; Exh. 16) The Santa Clarita facility processes mail sent from numerous zip codes around the state, including mail sent from the Tulare County Superior Court and the Visalia area (where Judge Saucedo lives). (Exh. 48)

A forensic search was conducted of Judge Saucedo's work computer (but not his home computer) for several documents, including: (1) the various undated notes from Judge Saucedo to Tovar; (2) Judge Saucedo's letter to Tovar's teenage son; and (3) the Anonymous letter. (Exh. 48) No evidence was located of the Anonymous letter or Judge Saucedo's letter to Tovar's son. Of the five or six undated notes, the search uncovered portions of two of those notes. One was embedded in a computer file bearing the name of Judge Saucedo's daughter. (Exh. 48)

Regarding the information in the Anonymous letter, the Examiner presented evidence showing Judge Saucedo had prior knowledge of Tovar's personal details sufficient to have written the letter. We describe this evidence in the factual conclusions section below.

18. Evidence Regarding Text Message Retrieval

The day after Tovar met with human resources director Vitale, Vitale requested that the court's information technology director, Deon Whitfield, retrieve text messages from Tovar's phone. (Exh. 48; RT 683-684) Using a computer program, Whitfield inputted Judge Saucedo's cell phone number and successfully downloaded 122 texts sent

between Tovar and Judge Saucedo during an eight-day period, from October 27, 2013 through November 3, 2013. (Exh. 48) Whitfield also inputted Werth's cell phone number, and was able to retrieve approximately 172 text messages between the two women from September 25, 2013 through November 20, 2013. (Exh. 48) Whitfield was unable to retrieve the content of any other text communications between these parties. However, phone company records established the number of texts sent between Judge Saucedo and Tovar during the relevant time period. (Exh. 8; RT 41)

B. Judge Saucedo's Defense Case

1. Overview

At the hearing, Judge Saucedo admitted that during the two-month period he provided Tovar with gifts totaling about \$26,000, and offered additional gifts, including to pay for body sculpting for Tovar and trips to visit her son in college. (RT 48, 309) Judge Saucedo also acknowledged he wrote: (1) the undated note seeking confirmation that Tovar had not told anyone about the Anonymous letter; (2) the note telling Tovar to lie about the flowers; (3) the September 30 note; (4) the AAA note; (5) the letter to Tovar's son; (6) the extortion accusation note; and (7) all of his text messages discussed above. (RT 103-104, 153-154, 271, 73-74, 64-65, 194) Judge Saucedo also admitted that during the two-month time period, he sent about 445 texts to Tovar, and Tovar sent him about 237 texts. (RT 41)

However, Judge Saucedo denied these communications and gifts were improper or reflected that he wanted a "closer" or "emotional" or "intimate" relationship with Tovar. (RT 163, 78, 179, 278) He said his actions arose solely from his strong desire to "mentor"

Tovar with the goal of working on her self-esteem and assisting her to improve her life and marriage relationship. (RT 51, 161, 302; Exh. 4 at CJP 19; JSB at 44-45) Judge Saucedo acknowledged his "handling of these personal matters" may have been "imperfect" because they "gave the appearance of being too familiar," but he claimed his conduct was "at all times well-intentioned, in good faith, and in line with [his] . . . obligation to help those in need, where [he] can." (Exh 4 at p. CJP 35; JSB at 43, 68; RTH at 52, 62, 67, 71) He argued Tovar was to blame for many of the problems because she took advantage of his actions and charity. (See RTH 53-54; RT 52; Exh 4 at CJP 19) He also asserted his conduct did not suggest a violation of a judicial canon because it involved purely private conduct that did not impact his decisionmaking or any aspect of the judicial system. (Exh. 4 at CJP 35)

In support of this defense, Judge Saucedo provided explanations for his conduct and called three defense witnesses to corroborate his version of the events: his wife (Teresa Saucedo), court reporter Werth, and courtroom clerk Velasquez. He also testified about his personal background, and his long and successful history of mentoring numerous individuals, particularly those from underprivileged circumstances. Judge Saucedo also presented an impressive array of character witnesses and supporting declarations, including numerous judges, community leaders, community members, religious leaders, attorneys with whom he had worked, defense attorneys, prosecuting attorneys, court staff, and former mentees.

We summarize this evidence below.

2. Judge Saucedo's Testimony About the Relevant Events⁹

2.a. The Anonymous Letter

Judge Saucedo testified that the Anonymous letter was delivered to his home through the mail on September 17. (RT 82, 222) He said that after reading the letter, he was: "Shock[ed], stunned. I was repulsed by it. . . . I thought it was vile" and "ugly." (RT 82, 222, 243) Judge Saucedo said he showed the letter to his wife, and told her he would talk to Tovar about it the next day. (RT 223)

When asked whether he wrote the Anonymous letter, Judge Saucedo said "[a]bsolutely not." (RT 228)

Judge Saucedo denied knowing the details set forth in the letter. He said that although he was aware "Hilario Tovar" was Tovar's husband and that Mr. Tovar worked for a healthcare provider, he did not know Mr. Tovar worked at the Tulare Regional Medical Center. (RT 224-226, 296-297) Judge Saucedo said he was also unaware that Tovar and Knoy had a prior romantic relationship. (RT 226) He denied discussing private matters with his staff and said he had "no information as to whether [Tovar] had tattoos or not." (RT 226-227, 298) Judge Saucedo additionally testified that when he read the Anonymous letter he did not understand the meaning of the phrase "C-scar," and was unaware that Tovar had had a Caesarian section. (RT 227) He also said he had never heard Knoy referred to as J.K. (RT 228, 243) Judge Saucedo denied he prepared the

⁹ Judge Saucedo's testimony was elicited during both the Examiner's case (when Judge Saucedo was called as an adverse witness) and during Judge Saucedo's direct examination.

envelope that contained the Anonymous letter. (RT 229) He said he did not know how to prepare a typewritten envelope at home or at work, and he did not have the ability to print documents at his residence. (RT 229) He denied he gave Tovar a cover letter when showing her the Anonymous letter. (RT 223)

2.b. Judge's Meetings with Tovar After Receiving Anonymous Letter

Consistent with Tovar's testimony, Judge Saucedo said he first showed Tovar the Anonymous letter before the court calendar on September 18 and told her not to tell anyone about the letter (including Werth). (RT 88-89) Judge Saucedo acknowledged he later told Tovar he had contacted Mr. Tovar's employer and a hospital official had agreed to intercept and destroy the letter. (RT 98-100) He conceded these statements were false—he made no effort to contact the hospital. (RT 98) Judge Saucedo testified that he made these false statements to Tovar "to make her feel better . . . it was a reaction out of human compassion at the time." (RT 99, 100-101)

Judge Saucedo testified he understood the Anonymous letter could trigger a domestic violence incident and had security implications for the court, but he nonetheless decided not to report the letter to court administration or law enforcement. (RT 82-86, 244) He testified that he did not "completely reason through that" and acknowledged that in "retrospect . . . I should have pushed it upstairs." (RT 90) He also acknowledged that he made no attempt to determine the author's identity or preserve the envelope or letter for forensic examination. (RT 88)

In a prehearing interview with investigator Buehler, Judge Saucedo said he thought he had the only copy of the Anonymous letter. (RT 215, 340) When asked at the

hearing why he did not give Tovar a copy of the letter, Judge Saucedo responded: "I didn't want multiple copies out there. *Only one had been sent.* And at the time, I just wanted to hold onto it. And she didn't ask me for a copy." (RT 215) (Italics added.)

Judge Saucedo testified that during their noon meeting in the library conference room, he learned Tovar had an unhealthy financial dependence on Knoy, and Tovar's husband was not aware of this relationship. (RT 97-98, 244-245) Judge Saucedo said he and Tovar then developed "the beginnings of a plan" in which Judge Saucedo would provide assistance to Tovar to eliminate her "entanglement with Deputy Knoy" and allow Tovar to reconcile with her husband. (RT 101-103) Judge Saucedo said at the conclusion of the meeting he committed to paying Tovar \$200 per month. (RT 101-103) He testified: "[Tovar] was a friend in need at that moment and I wanted to help her" and "given who I am, I couldn't turn my back on a friend." (RT 101-102, 246-247)

Judge Saucedo explained that he and Tovar jointly agreed to embark on a "mutual venture" or partnership to solve the problems raised by the Anonymous letter:

"[T]his relationship started from that [A]nonymous letter that I received. And when I received the [A]nonymous letter, I listened to Ms. Tovar, heard her concerns about her relationship with Mr. Knoy, Deputy Knoy, how that impacted her marriage. And the idea here was to reconcile her marriage with her spouse. It was something that was important to her. It is a value that I believe in because I think that marriage is very important and that people should raise their children together. And so when she raised it, I said, yes, that I would help her . . . [¶] . . . It was more involved than that because there was a financial component as well to that. But my objective with her . . . was to have her reconcile, to assist her through this process. And I thought we had laid a framework for those values, and I wished to work within that framework in a process that I thought we had agreed upon." (RT 51, 233)

Judge Saucedo said his relationship with Tovar later fell apart because Tovar did not understand she must take an "active" role in the mentoring relationship. (RT 274-276) Judge Saucedo said he became frustrated with Tovar because "I'm goal oriented, task oriented," whereas Tovar improperly focused on details and not "the process." He explained: "[A]n example that comes to mind is that at the dealership, she was concerned about whether they were going to replace the tinting she wanted, limousine tinting, and that was not the purpose of that discussion. The purpose was, you know, this is only one aspect of the bigger picture which is to put you in a safe car, build your self-esteem, create better opportunities for you. And so the frustration was that we were not in sync. We're were not communicating on what the objective was. And the objective was . . . reconstruction, reformation, achieving a better result." (RT 276)

2.c. Sending Flowers to Tovar

Judge Saucedo admitted at the hearing he sent flowers to Tovar on September 24 (about one week after showing Tovar the letter), and said he did so as a "nice gesture" to remember the anniversary of Tovar's brother's death.¹⁰ (Exh. 21B at CJP 1440; RT 149-152) He testified that before he sent the flowers, he asked Tovar if it would be " 'okay' " if he sent flowers for the anniversary of her brother's death, "and she said yes." (RT 152) Judge Saucedo acknowledged he told Tovar that she should lie and tell others that her

¹⁰ In prehearing documents, Judge Saucedo denied sending Tovar the flowers on September 24 and instead identified the date as October 1, 2013, which is a date closer to the anniversary of Tovar's brother's death. (Ans. at 4; Exh. 4 at CJP 25; RT 554)

husband had sent her the flowers "to send a message" that "she had a wonderful relationship with [her husband]." (RT 152, 154)

2.d. Letter Written to Tovar's Teenage Son

Judge Saucedo admitted he wrote the letter to Tovar's son regarding an alcohol citation the son had received. (RT 65; Exh. 20) He said he did so at Tovar's request. (RT 65) Although initially equivocating about the nature of the letter, Judge Saucedo acknowledged that the letter "does provide legal advice" and conceded the "Privileged and Confidential Communication" statement at the top of the letter referred to an "attorney-client" privilege. (RT 65-66; Exh. 4 at pp. CJP 153-154) However, Judge Saucedo testified that an attorney-client relationship had never been formed between himself and Tovar or Tovar's son. (RT 66)

2.e. September 20 and 23 Representations Regarding Tovar's Overtime

Judge Saucedo admitted that on Monday September 23 he sent an email to Tovar's supervisors saying their after-hours discussions on Friday September 20 were work related. (RT 112, 133-136; Exh. 19B) At the hearing, he testified that he and Tovar were discussing a jury verdict returned the prior day and prescriptions for jail inmates being released. (RT 133-147) In response to the Examiner's questions at the hearing, Judge Saucedo said he specifically recalled discussing the "Arrizon" case with Tovar at the end of the day on September 20 because "we were trying to make sure that before [this defendant] was released that he had appropriate medications." (RT 137-138, 141) He later acknowledged, however, that a medication order for this defendant had been filed earlier that day.

During his counsel's direct examination question, Judge Saucedo was shown an order involving defendant Joshua Phillips, and Judge Saucedo said this refreshed his recollection that this was a matter that he and Tovar were also discussing after hours on September 20. (RT 265-266; Exh. S) However, in response to the Special Masters' questions, Judge Saucedo suggested that this order was actually filed "sometime midday" and "finalized" in the early afternoon, but then confusingly said that he was working on the Phillips case "late in the day." (RT 291-293)

2.f. September 30 Note

Judge Saucedo admitted he wrote the September 30 note and that he gave it to Tovar. (RT 157, 271)

In explaining what he meant when he said he "voluntarily took a risk to protect you," he testified he was referring to the fact that he did not report the Anonymous letter to court administration. (Exh. 26; RT 159) However, during his earlier interview with investigator Buehler, he stated the "risk" in the September 30 note referred to the fact that he had attempted to "intercept[]" the Anonymous letter from the hospital. (RT 159-160, 332-336) When asked at the Special Masters hearing about this inconsistency, Judge Saucedo replied: "One was a real risk, and that is the failure to push it upstairs. The other one, at the time in my mind, was not a real risk because I hadn't done it." (RT 160)

Regarding his statement in the note that he is "willing to do anything to earn [Tovar's] trust and confidence," Judge Saucedo testified that the "thought behind" this sentence was that he "wanted to continue to mentor" Tovar. (RT 160-161) He denied the purpose of the note was to seek a closer personal relationship with Tovar, and he said he

wrote the note "in the context of mentoring . . . to be able to effectively communicate so that we could work within the framework that we had discussed." (RT 163)

2.g. AAA Note

Judge Saucedo admitted he wrote the AAA note, but denied the note reflected he was placing undue pressure on Tovar. (RT 73-74)

Regarding his statement that "I promise to use greater discretion and not make you feel as if I am being controlling," Judge Saucedo denied this remark reflected his awareness that Tovar believed he was too controlling. (RT 75) Judge Saucedo testified:

"The [reference to] controlling arose under a different context. There was an incident where [Tovar] told me that she was thinking of confronting Deputy Knoy about his, at that time, presumed behavior in the [A]nonymous letter. There was some suggestion that maybe he had spoken to someone about their relationship, and she made remarks to me about how she intended to confront him and slap him in the face. And I said that would not be a good idea and that she should exercise greater control. And I was being very firm about that because I thought that was outside the context under which we were trying to address this issue." (RT 75)

2.h. Bank Deposits/Cash Gifts

Judge Saucedo acknowledged he repeatedly deposited funds in Tovar's bank account. (RT 73-77, 166-173) He said he did so initially as part of his mentorship relationship with Tovar, but that towards the end of the relationship he deposited the funds because Tovar was requesting or demanding these gifts. (RT 73-77, 174-176)

When asked whether he thought it was proper to give money and gifts to someone with whom he had a supervisory relationship, Judge Saucedo testified that he did not think

about it at the time. (RT 158-159) He testified it was Tovar who volunteered her bank account information. (RT 77)

With respect to his October 31 text message to Tovar in which he stated his "overall financial plan" was to pay her "a total of \$26,400" in expenses, he denied that this text meant he intended to give Tovar these funds. (RT 78; Exh. 9 at CJP 227) When asked to explain, Judge Saucedo testified:

"October 31st was when—there was a convergence of things that were going on about that time period. My financial situation was changing and here we were sketching out some of the possibilities. Later on, there was a correction based on some things that we discussed at the car dealership. And so this was a moment in time and does not reflect what subsequently occurred. And there was a discussion about changing my financial—my financial picture was changing. And I told her that." (RT 78)

2.i. Body Sculpting Offer

Regarding the body sculpting offer, Judge Saucedo said this offer arose after Tovar told him that her husband said she was "fat" but was unwilling to pay for body sculpting. (RT 49-50, 129) Judge Saucedo testified:

"I did say that if Lalo was unwilling to pay for body sculpting that I would. But it was a purely—it was a matter of just trying to help her because, again, the point was that she had gone through a conflict with her husband about that, and I wanted to make sure that she was okay with her husband and that they had a good relationship between them. But it certainly was not because I wanted body sculpting for her. It was something that she requested." (RT 50-51)

2.j. References to Assistance by Judge Saucedo's Brother

Judge Saucedo testified he gave Tovar the typewritten note with his brother's name and phone number and that he provided this information to Tovar solely to assist her

and/or her son with medical issues. (RT 104-109; Exh. 24) However, he admitted his explanation to investigator Buehler was different. (RT 107) Regarding the note, Judge Saucedo told Buehler: " I made a commitment to paying [Tovar] . . . the \$200 for the car, and I wanted her to understand in order to break the financial relationship with J.K. . . . she could continue with my brother to help if I couldn't do it.' " (RT 107, 332) At the hearing, Judge Saucedo said his statement to Buehler was "non-contextual," and his intent was to reference a "broader discussion that I had with my brother about our, his/mine, personal financial condition." (RT 107) He also said "Keep in mind that at the time that I discussed it with Ms. Buehler, information was evolving. We didn't have full information." (RT 108)

Regarding his October 29 text to Tovar in which he stated he had a "wonderful conversation with my brother *about you*. Just doing financial planning. You don't know how well you are covered," Judge Saucedo said this statement referred to "family financial planning" and the text did not suggest he and his brother had discussed Tovar. (Exh. 9 at CJP 219, italics added; RT 108-109) When the Examiner asked if he was "lying to Ms. Tovar in this [text]," Judge Saucedo responded "No," and then gave a lengthy explanation about the fact that his son's future plans would impose additional expenses on Judge Saucedo and his wife. (RT 110) Both the Examiner and Special Masters attempted to focus Judge Saucedo on the question (regarding the meaning of his statement to Tovar that he had a conversation with his brother "about you" and "[y]ou don't know how well you are covered"), but Judge Saucedo never directly answered the question. (RT 110-112)

2.k. Disneyland trip

Judge Saucedo admitted he paid for a Disneyland vacation trip package for Tovar's family and her sister's family, and he had promised to pay for trip-related expenses for both families, including food and gas. (RT 187-188) He testified he paid for these vacation packages in response to Tovar's specific request that he do so. (RT 171) He denied that he brought up the idea, and said she came into his chambers, stood in the corner of his office, and requested that he pay for the vacation because she wanted to do something special for her family. (RT 170-171)

2.l. Judge Saucedo's November 3 Text Messages to Tovar

When the Examiner asked Judge Saucedo to explain his November 3 text message regarding the distinction between an "ordinary" and "special" friend, Judge Saucedo stated "it was an inarticulate way of describing different kinds of friends and relationships" and "draw[ing] a distinction between friends and categories of friends." (RT 179; Exh. 9 at CJP 233, 235)

When the Examiner asked Judge Saucedo what he meant by "My career is toast" after receiving Tovar's text message that she intended to tell her husband "absolutely everything" (Exh. 9 at CJP 234), Judge Saucedo testified:

"This was a culmination of several things that were going on. And at that point, my evaluation of the circumstances was that I had started off on this path of helping her, mentoring her, supporting her, trying to reconcile her marriage with Lalo, and I had come to the conclusion that this had not worked out. And the context that created this is that all along I had told her to disclose things. And the other is that when she referred to, in the earlier text, about being damaged, I did not understand what she was referring to as 'damage' because here I had given her what she had requested, support for the car

[payments] to address the issue with Jeremy, the Disneyland trips, the car. And I could see that these things were not working out, that we had not communicated effectively. And when she said that 'the lies to my family and friends is not worth how I'm feeling right now,' it was obvious to me we had not communicated, what I had tried to help her with had not happened in that fashion.

And now, this was being turned on its head, and I didn't know what she was going to say to Lalo or what she might misrepresent. And from my perspective, there was . . . nothing that I could do at that point to change this. And so I was placed in a position where I felt this way." (RT 177-178)

2.m. The \$8,000 Payment and the Extortion Accusation

Judge Saucedo testified that on November 18, Tovar came into his chambers and told him that "she wanted \$8,000, and that if she wasn't given \$8,000 by November 20th, that she would report our interactions to HR." (RT 191-192, 284) The next day he deposited the \$8,000 into her account and gave her the note accusing her of "extortion." (Exh. 39; RT 193) He said he agreed to her demand because at that point, he did not know "what she was capable of." (RT 194) He gave her the note and money because he "wanted her to stop. . . . Please stop. It is done. Enough is enough." (RT 194) He acknowledged he gave her the note in the courtroom, but said the calendar had finished, and the attorneys were packing up their materials. (RT 195) When asked why he did not report Tovar's claimed criminal behavior to the police or the district attorney's office, Judge Saucedo said he wanted the matter "done and for it to conclude." (RT 195)

3. Additional Defense Percipient Witnesses

Judge Saucedo called three defense witnesses to testify regarding their personal knowledge of the relevant events: court reporter Werth, Judge Saucedo's wife, Teresa Saucedo, and court clerk Velasquez.

Mrs. Saucedo testified that she and Judge Saucedo have been married for 34 years. (RT 1079) In January 2013, Mrs. Saucedo retired from her position as the chief deputy of the litigation team for the county counsel's office, and she has since returned as a special assistant working part-time. (RT 1080-1081)

Mrs. Saucedo testified that the Anonymous letter was delivered to her home by mail on September 17. (RT 1097) She initially assumed it was from the "Jenny Commission" regarding a potential judicial appointment because the envelope had a " 'personal and confidential' " label similar to Jenny Commission correspondence. (RT 1097) She did not open the envelope, but when Judge Saucedo came home, he opened the mail and then showed her the Anonymous letter. (RT 1098-1099) Mrs. Saucedo said that someone must be " 'really angry at this woman,' " and Judge Saucedo responded that he would take the letter with him to work and discuss it with Tovar. (RT 1099)

During direct examination, Mrs. Saucedo testified at length about Judge Saucedo's whereabouts on the days before they received the Anonymous letter. (RT 1090-1096) According to Mrs. Saucedo, she and Judge Saucedo stayed overnight in San Jose on Saturday September 14 to attend an opera with friends and the next day they spent several hours together at the courthouse. (RT 1090-1093) Mrs. Saucedo was not asked whether she was aware of her husband's numerous gifts to Tovar.

In her testimony, Werth denied that before September 2013 Judge Saucedo was involved in any conversations at work regarding Tovar or her personal life, and could not recall that Judge Saucedo was present when Tovar discussed her tattoos, prior cesarean section, husband, financial issues, or prior affair with Knoy. (RT 918-923, 929) She acknowledged, however, that Tovar's tattoos were visible at work. (RT 921-922) Werth denied that she ever told Tovar or Investigator Buehler that she believed Judge Saucedo wrote the Anonymous letter, and when asked at the hearing whether she thought Judge Saucedo wrote the letter, she said, "Absolutely not." (RT 962, 937, 988, 1007)

In her testimony, court clerk Velasquez testified about her conversations with Tovar while the two were at their desks outside Judge Saucedo's chambers. She stated that the two frequently discussed personal matters (including Tovar's prior affair with Knoy and Tovar's problems with her husband). (RT 1141-1157) She also said Judge Saucedo was always very respectful towards her, and that she never heard Judge Saucedo use obscenities, raise his voice, pound his fist, slam the door, or stomp his feet. (RT 1163, 1167-1168)

4. Judge Saucedo's Background and Mentorship History

Judge Saucedo testified he was born in Texas and was the third of seven children. His parents were undocumented immigrants who came to the United States in the 1940's, and worked as farm laborers. (RT 1181-1182; Exh. 4 at CJP 16) In the 1960's, his family moved to Lindsay in California's Central Valley. (RT 1183-1184) Judge Saucedo testified that when he was growing up, Lindsay was a segregated community in which there was discrimination against Hispanic individuals. (Exh. 4 at CJP 16) Although he was one of

the top students in high school, he did not expect to be able to attend college because of his family's limited resources. (RT 1185-1187) However, he ultimately received financial assistance and attended the University of California at Berkeley. (RT 1186-1190) During college he continued to work with his family in the farm fields on weekends and during family vacations. (Exh. 4 at CJP 17)

Judge Saucedo decided to attend law school partly as a result of an incident during which his brother was "almost beaten to death by some kids . . . ," who were never prosecuted. (RT 1190; Exh. 4 at CJP 17) After earning a law degree from Stanford Law School, Judge Saucedo practiced law for more than 24 years in the Central Valley, primarily with rural legal service agencies and at a private law firm representing plaintiffs in employment class actions. (RT 1191-1192; Exh. 4 at CJP 17) Judge Saucedo was elected to the Lindsay city council, and was later appointed mayor. (RT 1192-1193)

In May 2001 Judge Saucedo was appointed to the Tulare County Superior Court, and was the first Hispanic judge in Tulare County. (RT 218, 241) Judge Saucedo devotes substantial time to volunteering for organizations and mentoring young professionals. (RT 1192, 971-972; Exh. 4 at CJP 18, 19) Because of the numerous challenges growing up in a family with limited means and in a segregated community, Judge Saucedo developed a strong desire to help others exposed to similar circumstances. (RT 269; Exh. 4 at CJP 17) Judge Saucedo testified that when he was young he learned that he had to be "twice as good" as "the white kids around me, otherwise I couldn't succeed because of the color of my skin." (RT 269) He testified he wanted to impart this knowledge to Tovar,

who is Hispanic, and wanted to help her achieve a better personal and professional life.
(RT 269)

Judge Saucedo testified he is "very remorseful" about his conduct. (RT 1202) He acknowledged he was "too familiar" with Tovar and the "frequency of [his] conduct" was not appropriate. (RT 1202) He also said he should have turned over the Anonymous letter to court officials. (RT 1202) He testified he thought he was helping Tovar, and did not intend to make her feel uncomfortable or put pressure on her. (RT 1203) He acknowledged he did not appropriately handle Tovar's claimed extortionate demand. (RT 1202) Judge Saucedo said he has always lived a "very ethical, very orderly life," and the two-month incident was a "lapse." (RT 1203) When his counsel asked whether the experience has taught him something, Judge Saucedo responded: "Yes. Absolutely. I've always loved and respected the law, and I've gone back and thought about that, and I will continue to love and respect the law and I understand the process. I also understand what my duties are. But I really understand that period of time was not great." (RT 1203)

5. Character Witnesses

Judge Saucedo presented an impressive array of character witnesses, including the testimony of 11 witnesses and more than 100 supporting declarations from judges, community leaders, community members, religious leaders, attorneys with whom he had worked, defense attorneys, prosecuting attorneys, court staff, and former mentees (See RT 546, 633, 641, 855, 884, 890, 897, 906, 940, 947, 955; Exh. N1-109) Whether testifying in person or by declaration, these witnesses were unanimous in their praise for Judge Saucedo as a fair, generous, honest, respectful, courteous, caring, patient, and hard-

working judge, attorney, and leader. (See RT 1074-1076; Exh. N at 4, 5, 12, 13, 15, 23, 47, 67, 77) Many discussed Judge Saucedo's practice of mentoring individuals, particularly those from underprivileged backgrounds. (See RT 1060, 648, 895, 912, 1105; Exh. N at 8, 19, 29, 39, 54, 63) Others discussed his volunteer work in underserved communities and his selflessness, compassion, and sensitivity towards others. (See RT 903, 1068; Exh. N at 3, 7, 8, 9, 11, 22, 29, 57, 60, 79) Judge Saucedo was repeatedly described as a strong positive role model and community leader. (See RT 647, 649, 903, 952-953, 1068; Exh. N at 1, 13, 15, 20, 26, 29, 53, 64)

Among the many supporting character witnesses, two were particularly compelling. Tyrone Wilson, a prosecutor in Santa Clara County, experienced an extremely difficult childhood, living in 23 different foster homes. (RT 1050-1051) He persevered, received an athletic scholarship, and graduated from both college and law school. (RT 1056-1059) He and Judge Saucedo met at an event where both were speaking to underprivileged youth. (RT 1060) Upon learning Wilson had not passed the California Bar Examination after three attempts, Judge Saucedo offered to mentor him. Wilson passed the exam and attributes his success to the fact the judge taught him to focus, gave him confidence, and treated him like a son. (RT 1060, 1061-1063) Wilson regards Judge Saucedo as an honest, selfless, and caring person. (RT 1049-1069) Diana Mata, who has known Judge Saucedo since high school, provided similar testimony strongly attesting to Judge Saucedo's positive influence in her life and explained he helped her achieve professionally and personally as the single mother of eight children. (RT 1120-1132)

IV. PROCEDURAL SUMMARY

Several days after Tovar complained about Judge Saucedo's conduct, the presiding judge of the superior court referred the complaint to the Judicial Council. (Exh. 1, 2)

In February 2014, the Commission notified Judge Saucedo that it had ordered a preliminary investigation of Tovar's allegations, and detailed those allegations. (Exh. 3) The notification letter quoted from the text messages between Tovar and Judge Saucedo from October 30 through November 3. (Exh. 3 at CJP 5) The letter concluded by alleging:

"[Y]ou wrote the [A]nonymous letter concerning Tovar as a means of inserting yourself into her personal life. It is alleged that you repeatedly referenced the letter and the possibility of Tovar's husband finding out about it as a means of manipulating Tovar and maintaining control over her. It is alleged that you tried to induce Tovar into having a romantic relationship with you by repeatedly telling her that you would take care of her and her financial needs, and by giving her numerous gifts, including money and a car.

It is alleged that your conduct described above was inconsistent with your obligations to uphold the integrity of the judiciary, to avoid impropriety and the appearance of impropriety, and to act at all times in a manner that promotes public confidence in the integrity of the judiciary." (Exh. 3 at CJP 14)

Judge Saucedo responded with a lengthy letter explaining in detail his commitment to mentoring young professionals and students, and that this activity was a product of his "humble upbringing," including his facing "challenges and segregation because of my family's limited means and the color of my skin." (Exh. 4 at CJP 19) With respect to Tovar, he stated their interactions began with his intention to mentor her, but

that his "charitable nature [became] exploited by Ms. Tovar to leverage her agenda."

(Exh. 4 at CJP 28) Specifically, Judge Saucedo stated:

"My relationship with . . . Tovar, my former clerk and friend, was nothing more than mentorship and friendship. My sole intent was to help Ms. Tovar and her family through what appeared to be a financially difficult and emotional time, and to assist her with her career. *Several weeks after I began providing her and her family assistance, I began to realize she had the contrary intent.* I was gradually exposed to her intentions when my voluntary offers to financially help Ms. Tovar and her family were manipulated and turned on me, ultimately leading to extortion by Ms. Tovar. I soon realized that I had misjudged the situation. I realize that my miscalculation led to circumstances which at times compounded my vulnerability. Nevertheless, I assure the Commission that there was neither a romantic, intimate, or physical relationship between Ms. Tovar and me, nor a suggestion of one by either of us. Further, I had no desire or intent, *and no need*, for a closer and more personal relationship with Ms. Tovar, . . . [W]hile I feel strongly that none of this implicates *any* judicial canon (and that none of my interaction at issue here implicated or interfered with any court case or court business), I understand that my interaction with Mr. Tovar might have been, at times, too familiar. I profoundly regret the decisions that led me to be in that position, and for that I am unqualifiedly apologetic." (Exh. 4 at CJP 20) (First italics added.)

Judge Saucedo also discussed the "great difficulty" in accessing witnesses in the matter. (Exh. 4 at CJP 20) Specifically, Judge Saucedo stated that he has had "limited cooperation," from various "critical" witnesses, including executive secretary Ellen Kennedy, and deputy sheriffs/bailiffs Knoy and Ballantyne. (Exh. 4 at CJP 20-21)

In June 2014, the Commission amended its prior letter to add the allegations pertaining to Judge Saucedo's preparing and delivering a letter to Tovar's teenage son that contained legal advice. (Exh. 5)

On December 19, 2014, the Commission filed a notice of formal proceedings, charging Judge Saucedo with willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action. The Commission alleged a single count that encompassed all of Judge Saucedo's conduct towards Tovar from mid-September 2013 through mid-November 2013, beginning with his alleged creation of the Anonymous letter. (Notice at pp. 1-20) The Commission identified each of the incidents discussed above and alleged Judge Saucedo "engaged in [this] conduct . . . in an attempt to establish a closer relationship with [Tovar], in which she would confide in you and be your 'special friend.' " (Notice at pp. 1-2)

In his verified Answer, Judge Saucedo denied he authored the Anonymous letter, but admitted he wrote most of the notes and texts attributed to him. He alleged his "sole intent was to help the clerk through what appeared to be a financially difficult and emotional time." (Ans. at 3, 10-11) He claimed he "misapprehended the situation" and his "well intended offers to financially assist the clerk and her family were manipulated and turned on him. . . . What began as a genuine attempt . . . to help the clerk get out of a financial bind led to an emotional response, then immediate regret, and, finally, an extortionate scheme on the part of the clerk." (Ans. at 11)

The parties provided prehearing written briefs. The Special Masters' hearing was conducted from April 6 through April 10, 2015. Closing arguments were held on April 27, 2015. The parties submitted extensive posthearing briefs setting forth proposed findings of fact and conclusions of law.

V. FACTUAL FINDINGS

A. Summary

Many of the critical facts underlying the charges are undisputed. Judge Saucedo admits that between mid-September 2013 and mid-November 2013 he gave Tovar gifts valued in excess of \$25,000. He also agrees he presented the Anonymous letter to her, offered to intercede on her behalf, never reported the matter to his presiding judge, court administration or law enforcement, falsely told Tovar he had successfully intercepted the letter, and accused Tovar of extortion by handing her a note in the courtroom after depositing \$8,000 into her bank account. Judge Saucedo further concedes he sent Tovar about 445 texts during the two-month period (many of which discussed their personal relationship), gave her several notes, and wrote the letter providing legal advice to her son. Although he took issue with the meaning and context of some of these documents, he admitted all were written by him. Judge Saucedo also concedes he stated his career was "toast" after Tovar said she planned on telling her husband "absolutely everything" and then threatened to commit suicide if Tovar did not return his call. After she assured him she would not tell anyone, he purchased the car for her. He told her he intended to resign or retire and would stop further gifts to her, but then deposited \$200 in her bank account.

Other important facts were hotly contested. Judge Saucedo steadfastly denies he wrote the Anonymous letter, used the gifts as a means to establish a "close" relationship with Tovar, or intended to promote a romantic relationship. Rather, he maintains he was motivated solely by a sincere desire to mentor Tovar and assist her in resolving marital

and financial difficulties he perceived she was experiencing. As the centerpiece of his defense, Judge Saucedo claims Tovar turned on him and manipulated his well-intentioned efforts to assist her, as evidenced by her decision to keep all of the gifts. He also emphasizes that none of his actions relate in any way to his judicial decisionmaking or affected any matters before him. He claims none of his acts warrant a disciplinary action.

As explained below, we find by clear and convincing evidence Judge Saucedo wrote the Anonymous letter in an effort to establish a closer personal or "emotional" relationship with Tovar and we reject his claim he intended only to "mentor" her or that his improper actions can be properly blamed on any of Tovar's actions. Although we recognize Tovar made some poor choices in continuing to accept gifts, and, in one instance, demanded Judge Saucedo make good on his financial "promises," these considerations do not excuse the fact it was Judge Saucedo who initiated the relationship through false means and then improperly used his position and financial rewards to pressure his court clerk into maintaining an inappropriate and unwanted personal relationship.

In the sections below, we first explain why we found Tovar's testimony to be reliable and accurate on these issues, and why we have declined to credit much of Judge Saucedo's testimony and positions. We then discuss the primary disputed factual matters, and explain our resolutions of those specific disputes and the reasons for our conclusions.

B. Credibility Findings of Primary Witnesses Tovar and Judge Saucedo

We find Tovar's testimony to be credible and find true her version of the events (summarized in our description of the Examiner's case above). Her testimony was

consistent with, and corroborated by, numerous items of documentary evidence, including her text messages with Judge Saucedo and Werth, and notes and letters given to her by Judge Saucedo. Tovar recalled numerous details of the relevant events, and those details coincided with, and were substantiated by, the content and timing of the documents.

For example, Tovar's description of Judge Saucedo's actions in the car dealer break room (that he wanted to "know my happiness" and wanted her to "be emotional with him") was followed one hour later by a text from Judge Saucedo (during the work day) in which he said that he was "angry with myself"; "[t]his is the most difficult message I have ever written"; and "I cannot overcome my embarrassment over my childish, stupid and silly behavior." (RT 628, 841-842; Exh. 9 at CJP 228) Documentary evidence reflects that shortly after this text, Judge Saucedo deposited additional money into Tovar's account and assured her he would buy the car for her. (Exh. 9 at CJP 228)

Likewise, Tovar's testimony that Judge Saucedo told her he wanted to have more personal contact with her after one of their AAA office meetings was corroborated by Judge Saucedo's October 30 text (shortly after an AAA meeting) stating he was "feeling out of balance" and "still feeling under appreciated" and was "Embarrassed about my feelings," and his text of the next morning stating "I sincerely apologize for everything I said or did yesterday that was offensive or hurtful. I should not have communicated while off balance." (Exh. 9 at CJP 222-223, 226)

We also find Tovar's testimony to be credible because she freely acknowledged when she was not sure of a particular fact or a specific date. Tovar was forthright in

admitting facts that were damaging to her, and made a good faith effort to explain the reasons for her actions. These explanations appeared to be unrehearsed and truthful. Although Tovar has filed claims based on Judge Saucedo's conduct and is represented by counsel, we are satisfied her testimony was trustworthy on the issues before us, notwithstanding any financial motivation associated with litigation. Further, although Tovar did not always use the best judgment in responding to Judge Saucedo's overtures, we are convinced her detailed testimony about Judge Saucedo's conduct is reliable.

By contrast, we find significant portions of Judge Saucedo's testimony lacked credibility. Our conclusion is based on numerous factors.

First, as explained below, we find by clear and convincing evidence that Judge Saucedo wrote and sent himself the Anonymous letter. (See section V.C., below) Judge Saucedo's refusal to acknowledge this foundational fact and his continuing assertions that he was unaware of the well-known details raised by the letter (such as Tovar's prior relationship with Knoy and her visible tattoos) create substantial doubt as to the truthfulness of his remaining testimony.

Second, the fact that Judge Saucedo admitted lying in the past or telling others to lie undermined his current credibility. Judge Saucedo admitted he did not tell the truth on several occasions, including when he falsely told Tovar he had communicated with her husband's employer. Judge Saucedo not only misrepresented the fact that he had contacted the hospital, he also provided numerous false details to embellish the story (e.g., that he spoke with a person named "John" who was the human resources manager; John had the letter on his desk; John did not know who Mr. Tovar was; and John said he

"shredded" the letter during the phone conversation). (RT 512) Judge Saucedo also acknowledges he encouraged Tovar to lie about the flowers (even though he now claims he gave them to her for the anniversary of her brother's death) and admits he previously misidentified the delivery date of the flowers. Additionally, Judge Saucedo told Tovar to misrepresent the facts regarding the source of the money for the Disneyland vacation (that it was from Tovar's overtime work) and the BMW automobile (that it was Mrs. Saucedo's "old car"). (RT 617-631)

Third, Judge Saucedo's testimony and prior statements were at odds with his text messages and notes to Tovar. For example, in his verified Answer, he denied he offered to provide Tovar with spending money for the Disneyland trip, but his testimony and text messages clearly show he committed to giving her this money. (Ans. at 6; Exh. 9 at CJP 216-217; RT 188) He also denied in his Answer that Tovar had told him to stop texting her, yet his AAA note specifically asks for his "texting privileges to be reinstated." (Ans. at 6; RT 73-74; Exh. 32) Judge Saucedo also denied telling Tovar that he planned to give her \$26,400, even though his October 31 text message clearly states this fact. (RT 78-79; Exh. 9 at CJP 226) He also admitted in a text message that he understood his conduct was "negatively impacting" Tovar, yet he continued to seek a closer relationship and continued to provide her with gifts. (Exh. 9 at CJP 228) Judge Saucedo also maintained he did not talk with his brother regarding financial support for Tovar, even though he told her in a text that he spoke with his brother "*about you*" and "*You don't know how well you are covered.*" (Exh. 9 at CJP 219, italics added; RT 108, 112)

Fourth, Judge Saucedo's testimony was inconsistent with assertions made in documents he signed. For example, in his June 2014 letter to the Commission, he stated that "Ms. Tovar has initiated and entertained *all* personal contact we had with one another at all times but one." (Exh. 4 at CJP 29, italics added) The statement directly conflicts with the documented facts showing Judge Saucedo frequently initiated the text communications. (See RT 60, 122, 74) When Judge Saucedo was asked at the hearing to explain the "one" occasion when Tovar did not initiate the communication, he began a lengthy nonresponsive narrative about the "Ballantyne incident." (RT 59-61)

Fifth, the manner in which Judge Saucedo testified—failing to answer direct questions, providing nonresponsive and sometimes rambling answers, and answering with irrelevant points—created significant doubt as to the truthfulness of his answers.

C. Judge Saucedo Wrote the Anonymous Letter and Sent it to Himself

The primary factual dispute at the hearing was whether Judge Saucedo authored the Anonymous letter. Upon initially reviewing the letter and the crude language contained in it, we were initially highly skeptical that Judge Saucedo—a highly regarded, dignified, meticulous judge—could have possibly written the letter and then participated in a convoluted plan to persuade his court clerk that she needed his help (financial and otherwise) to solve the problems raised by the letter. But after carefully considering all of the testimony and closely examining the documents, we reach the inescapable conclusion that Judge Saucedo did write the letter and mailed it to himself for this purpose.

Most important, Judge Saucedo's actions after receiving the letter make sense only if he was the author. Judge Saucedo testified that when he received the letter he was aware the letter was addressed to Mr. Tovar at his place of employment and he was aware of possible security and domestic violence concerns that could be triggered when Mr. Tovar received the letter. As a judicial officer, he was further aware of his obligation to report this type of correspondence sent to his home address to the presiding judge and to law enforcement. He nonetheless took no actions to notify court officials or law enforcement about the letter, nor did he make any attempts to determine the author or preserve the evidence for forensic analysis. He instead *affirmatively precluded* any such actions by demanding that Tovar not tell anyone about the letter, giving her a note (admitted as an exhibit) asking her to confirm she had not told anyone, meeting with Tovar in a private room away from his chambers, and dismissing Tovar's repeated suggestions that court officials should be notified. At the hearing, Judge Saucedo was unable to explain these actions, other than to say that "[p]erhaps" he did not "think" about these issues at the time. (RT 101) Given Judge Saucedo's experience and intelligence, this explanation is not credible. We conclude Judge Saucedo did not "think" about these issues because he was the author of the letter and its only recipient and thus knew there were no security concerns associated with his receiving the letter.

It is also highly significant that when Tovar expressed concern about her husband receiving the letter, Judge Saucedo said he would speak with Mr. Tovar's employer and ensure the letter would be intercepted before Mr. Tovar received it. Judge Saucedo admits that several hours later, he told Tovar that he had contacted the hospital and an

official agreed to destroy the letter, but this statement was not true—he in fact never called the employer. Judge Saucedo testified he did not make this call because he immediately recognized that he was ethically prohibited from doing so. (RT 99) Judge Saucedo said he nonetheless lied to Tovar because he was concerned for her feelings and wanted to reassure her. This testimony is not believable. Given his manifested personal concern for Tovar and her family, we find it implausible that Judge Saucedo would have falsely reassured Tovar unless he already knew that he was the author and no letter had in fact been sent to the hospital. His claim that he believed the problems raised by the letter would be remedied by his "mentor[ship]" and the "passage of time" is not reasonable. (RT 216)

Additionally, there is no evidence that Tovar or her husband or his employer ever received a copy of the letter. If a third party sent the letter to Judge Saucedo to inform Mr. Tovar of his wife's alleged extramarital affair, it would seem reasonable that this person would also have sent the letter to Tovar's husband. It is not logical that the letter was sent only to Judge Saucedo if it had been written by a third party.

Judge Saucedo in fact expressed his awareness that the letter was sent only to him. He testified, and told a prehearing investigator, it was his understanding there was only one copy of the letter (the one he received). When the investigator asked him why he did not give Tovar a copy of the letter, Judge Saucedo responded "I didn't want multiple copies out there. Only one had been sent. And at the time, I just wanted to hold onto it. And she didn't ask me for a copy." (RT 215) We conclude he knew only one letter was sent because he sent the only copy to himself.

That Judge Saucedo was the author of the letter is also made clear by his immediate and deliberate use of the letter to create a dependent relationship between himself and Tovar. Immediately after showing Tovar the Anonymous letter, Judge Saucedo had a specific and defined plan for moving forward, a plan that relied on the contents of the letter and his willingness to "fix" the problems raised in the letter. Over the next two months, Judge Saucedo continued to use the letter to pressure Tovar when she sought to distance herself from him. For example, after Judge Saucedo gave her the September 30 note and she told him she did not feel comfortable with his help, Judge Saucedo responded in an angry manner, stating " 'What do you mean you don't want my help anymore? So you mean the [Anonymous] letter is true? So it is true about you and Jeremy? Maybe your husband does need to know about the [Anonymous] letter.' " (RT 569-570, 807)

Judge Saucedo argued that he could not have written the letter because he was unaware of the details in the letter, including Tovar's tattoos, "c-scar," prior relationship with Knoy, husband's name, and place of employment. However, the Examiner proffered clear and convincing evidence that Judge Saucedo was in fact aware of those details.

Regarding Tovar's tattoos, the Special Masters had the opportunity to observe that Tovar's tattoos were clearly visible with her work outfits. (RT 516-517, 665-669) In light of this observation and Werth's testimony that "you could see" Tovar's tattoos at work (RT 922), we reject Judge Saucedo's testimony that he was unaware of the tattoos. (RT 226) We also find credible Tovar's recollection of two specific conversations with Judge Saucedo about her tattoos. During one of those conversations, Judge Saucedo asked

Tovar why she was wearing a band aid on her foot, and Tovar explained that the court policy was that employees must cover their tattoos at work (although Tovar did not always follow this policy). (RT 516, 518, 719-720) In another conversation, Judge Saucedo told Tovar that his son has tattoos and Tovar discussed her tattoos. (RT 719)

The Anonymous letter also identifies Tovar's "c-scar." We credit Tovar's testimony that she had discussed the fact that she had a cesarean section with Judge Saucedo when he saw a photograph of her infant in an incubator. (RT 518-519) We also find Judge Saucedo was aware of this fact through the frequent personal discussions among staff in the common area outside his chambers. We find highly unlikely Judge Saucedo did not know the meaning of the phrase "c-scar."

Regarding Tovar's prior romantic relationship with Knoy, compelling evidence supported that this relationship was a widely known fact at the courthouse, and was discussed by Tovar and Velasquez when they were at their desks. Given this evidence and the social environment among judge and staff in Judge Saucedo's department, it is reasonable to infer Judge Saucedo was also aware of this prior relationship.

Further, although Tovar generally referred to her husband as "Lalo" and the letter was addressed to "Hilario Tovar," Judge Saucedo admitted he was aware that Lalo is a common nickname for Hilario. (RT 296-297, 514, 670) He also acknowledged he knew Tovar worked for a healthcare provider in this area. (RT 225) Tovar testified she was excited her husband had recently gotten a job at the medical center and she "mentioned it to Tessie, Kim [and] Judge." (RT 515, 925) Additionally, when Judge Saucedo first showed her the Anonymous letter, he pointed out that the letter had been sent to her

husband's employer, reflecting he was aware that Mr. Tovar worked at the Tulare Regional Medical Center. (RT 501)

These conclusions are also supported by the evidence of the physical layout of Judge Saucedo's chambers and the clerks' common area. (Exh. 47A) Given the closeness of the clerks' desks to Judge Saucedo's chambers, Judge Saucedo (who generally kept his door open) could hear many of the conversations among his staff. The evidence showed Tovar and Velasquez frequently discussed personal matters while at their desk, and this included Tovar's complaints about her husband and her financial problems, and the fact that her husband had a new job at the medical center.

We also find relevant that Werth concluded at the time that Judge Saucedo was the author of the Anonymous letter. Although Werth's opinion is not central to our finding, her initial observation corroborates our conclusion that Judge Saucedo wrote the letter. She had worked with Judge Saucedo for about 13 years, and having reviewed hundreds of his court orders, was highly familiar with his sentence structure and writing style. After she was shown the Anonymous letter, Werth opined she was " 'positive' " that he wrote the letter. (RT 578, 599) She repeated this opinion to investigator Buehler. Although Werth recanted her opinion during the hearing and denied she had ever stated or believed that Judge Saucedo wrote the letter, this change in position was suspect. At the time of the hearing, Werth continued to work for Judge Saucedo and manifested strong support for her longtime boss. Important portions of her testimony were contradicted by her own text messages written as events were unfolding and before charges were brought against Judge Saucedo.

Finally, contrary to Judge Saucedo's contentions, the fact that the forensic analysis did not find that this letter was written on his court computer is not dispositive because the evidence shows the analyst did not find evidence of the other notes and letters that Judge Saucedo admitted writing. (Exh. 48) We likewise do not find credible Judge Saucedo's claim that he did not know how to type an envelope to himself, or that he could not have printed the self-addressed envelope. Additionally, the fact that the Examiner did not "prove" the precise location of the mailbox that Judge Saucedo used to mail the letter is not dispositive. For our purposes, it is sufficient that the evidence shows the letter was received at a distribution center that processes mail from the area where Judge Saucedo lived and worked, and that Judge Saucedo was in this vicinity at the time the letter was mailed.

D. Judge Saucedo's Actions Were Not for the Purpose of Mentoring Tovar

We also find the Examiner proved by clear and convincing evidence that Judge Saucedo wrote and sent the letter to himself as part of a predesigned plan to manufacture Tovar's dependence on him, hoping it would lead to an "emotional" relationship and possibly a romantic or sexual relationship, and was not for the purpose of mentorship.

It is undisputed that Judge Saucedo successfully and enthusiastically mentored numerous individuals out of a sense of compassion and desire to help. But those relationships were unlike his relationships with Tovar. The other mentees asked for the judge's help. Tovar did not seek assistance; Judge Saucedo came to her. The other mentees had a defined goal in mind and worked with the judge toward that goal. Tovar did not have a specific objective; Judge Saucedo suggested goals that mainly involved

assisting with her financial situation. The other mentees were not promised, nor did they receive, financial support. Judge Saucedo gave Tovar substantial gifts and assured her she would no longer have financial worries.

We reject Judge Saucedo's claim he was mentoring Tovar to show her a better way of living. As is clear from the testimony of Judge Saucedo's numerous mentees, when Judge Saucedo mentors someone he does it with advice, direction, referrals and encouragement. Mentoring is not accomplished by providing a subordinate with thousands of dollars in gifts, including a BMW car and vacation, or expecting a "special" friendship in exchange.

Judge Saucedo's additional claim he was mentoring Tovar because she asked him to do so is inconsistent with his own written statements and documented conduct. For example, in his September 30 note, Judge Saucedo acknowledged that he had "probed" into her personal finances despite that she did not voluntarily want to give him this information; he falsely told her he took "a risk to protect" her; he told her that "from here on out, you will no longer have any financial worries" and that he wanted to work with Tovar to plan her "financial future"; he said his "biggest concern is how you would explain a two seater gift to [her husband]"; and he told her to "[f]eel free, if you wish, to compliment me if you like things I do or wear." (Exh. 26) In the AAA note, Judge Saucedo acknowledged that she had told him to stop texting her, by asking to "have my texting privileges reinstated" and he "promise[d] to use greater discretion and not make you feel as if I am being controlling." (Exh. 32)

Likewise, in his Answer, Judge Saucedo asserted that within weeks of receiving the Anonymous letter "it became apparent" to him that Tovar did not want mentorship help, and instead was using him for financial gain. (Ans. at 11) However, Judge Saucedo's texts and notes show he continued to pressure Tovar to have an "emotional" relationship after this time. For example, six weeks after he received the Anonymous letter, he told Tovar he would be willing to discuss paying for body sculpting for Tovar in March or April, but "we have lots on our plate right now, Disney, the car, etc." (Exh. 9 at CJP 217) In his text messages the next day, he said that he was feeling "under appreciated" and "like a one sided friendship" and was "Embarrassed about my feelings." (Exh. 9 at CJP 222-223) A few days later, he referenced his accountant's inquiries as to the nature of his relationship with Tovar and why he was buying her all of these gifts, and whether it was a "one sided friendship." (Exh. 9 at CJP 231) The next day, Judge Saucedo sent Tovar the lengthy text message about the difference between a "special friend" and an "ordinary friend," stating that a "Special friend means you want to make time and effort to share thoughts and experiences with me" and indicating that he would like to be her special friend. (Exh. 9 at CJP 233) Although Judge Saucedo had previously acknowledged that "[I]t is obvious my behavior is negatively impacting you," he continued to discuss their relationship. (Exh. 9 at CJP 228)

Tovar's text and verbal responses make clear her continued discomfort with Judge Saucedo's discussions of a closer relationship. After Tovar expressly said she could not "handle this [any] longer" and the "lies to my family and friends [are] not worth it," and that she plans to tell her husband "absolutely everything" including about the Anonymous

letter, the gifts, the trips, and the car, Judge Saucedo said that "Based on your text, I will resign as Judge tomorrow. My career is toast." (Exh. 9 at CJP 234-235) Tovar then demanded that he follow through with the car and trip, and told him she is going to see a therapist. In response, Judge Saucedo implored her to call him, and when she did not respond, he sent her a text stating that he is in the garage "committing suicide." (Exh. 9 at CJP 235-236) Shortly after, Tovar promised him she would not "say anything" if he "follow[s] through with what I asked." (Exh. 10) Within minutes, he thanked her for "sparing my life and career" and for the "gift of life." (Exh. 9 at CJP 236)

Our conclusion that the relationship was not a mentorship is also supported by the evidence showing Judge Saucedo did not want his actions towards Tovar to be disclosed. Judge Saucedo specifically instructed the florist not to reveal the sender's identity; he told Tovar to lie about the sender of the flowers; he directed the AAA personnel not to contact him about his payments for the Disneyland vacations; he told Tovar to tell her husband that the car he was buying for her was Judge Saucedo's wife's "old car"; he demanded that Tovar keep the Anonymous letter a secret; and he told Tovar he could not tell his wife about the Anonymous letter. In this regard, we find Judge Saucedo's emphasis on the fact that he and Tovar appeared together in public places to be unhelpful. Given his efforts to conceal facts regarding his relationship with Tovar, his willingness to go with her to the car dealership and the AAA office has minimal significance. There is no evidence that any of his colleagues or his wife were aware of any "mentorship" relationship with Tovar.

In his testimony, Judge Saucedo discussed that he is a highly ordered and structured person who focuses on "framework" and "process" when working with others.

(RT 50-53, 172-173, 274-275) In his closing statement, Judge Saucedo's counsel argued that everything that Judge Saucedo "does, he does with vigor and does it in a deliberate and organized way." (RTH 52) The evidence established that this is precisely how Judge Saucedo approached his desire to have a closer personal relationship with his female clerk. He devised the plan to send a crude and "vile" letter accusing her of sexual infidelity and apparently envisioned that Tovar would rely on him to become the person who would protect her and "fix" her life problems (or what Judge Saucedo perceived to be her life problems). Although we agree with Judge Saucedo that in hindsight it seems implausible or improbable that a reasonable individual would conceive of this plan and believe it would succeed, we are convinced this was Judge Saucedo's plan.

E. Judge Saucedo Improperly Interfered with Ballantyne's Duties

The evidence regarding Deputy Ballantyne is largely undisputed. Ballantyne wrote a report reflecting an incident involving Tovar's error in preparing a minute order, and Tovar received a disciplinary action based on the report. Shortly after Judge Saucedo learned of the disciplinary action, Ballantyne came into Judge Saucedo's courtroom while court was in session to check court monitors about a possible disturbance near the courtroom. Judge Saucedo immediately called Ballantyne's supervisor (Sergeant O'Rafferty) to the bench and spoke briefly to him. (RT 375) Judge Saucedo told Sergeant O'Rafferty that Ballantyne was dishonest, untrustworthy, and should lose his job, and was thereafter banished from his courtroom. (RT 240-241, 374-376, 1172)

Judge Saucedo also complained to court administrator LaRayne Cleek that Ballantyne's report was the product of his eavesdropping on Judge Saucedo's

conversation with Tovar. (RT 239) He complained the erroneous minute order was purely court business and the deputy's report was outside the appropriate protocol. (RT 234-240) In his hearing testimony, Judge Saucedo repeated this same concern with Deputy Ballantyne's "eavesdropping." (RT 71-72, 236-239)

We reject Judge Saucedo's explanation. The appropriate protocol for a deputy aware of the late-release of a prisoner is to document those facts in a report. Judge Saucedo's suggestion that Ballantyne acted inappropriately by filing the report is disingenuous. Judge Saucedo's further complaint that Deputy Ballantyne was secretly "eavesdropping" on his conversation with his clerk shows a lack of insight into his judicial authority and the role of security personnel at the court. Having escorted the prisoner's attorney into the clerk's common area to see Tovar about the erroneous minute order, Deputy Ballantyne was standing right outside Judge Saucedo's chambers when Tovar went into the judge's chambers and asked Judge Saucedo if the prisoner was supposed to have been released. (RT 370-371) To characterize these actions as eavesdropping makes no sense. We find there was no proper basis for Judge Saucedo to complain to either the deputy's superiors or the court administrator about Ballantyne's conduct. We find Judge Saucedo's explanation for filing the complaint to be false and we further find the true reason for the complaint was to further Judge Saucedo's personal objectives to protect his clerk.

F. Judge Saucedo Misrepresented Tovar's September 20 Overtime Work

It is undisputed that Judge Saucedo and Tovar spoke in his chambers on Friday September 20 from about 4:45 p.m. until 5:10 p.m.; Tovar reported overtime pay for at

least a portion of this time; and Judge Saucedo wrote an email Monday morning September 23, stating he had been discussing "cases" with Tovar, including "orders to the jail [for] prescriptions [to] be issued to inmates who were going to be released pursuant to court order." (Exh. 19B)

A factual dispute exists regarding whether Tovar was working on court matters during the claimed overtime. At the Special Masters' hearing, Judge Saucedo said he and Tovar were working on prescription medicine orders during that time. However, Tovar testified that she was not working during the overtime, and instead Judge Saucedo was speaking to her about the Anonymous letter. She said Judge Saucedo told her to say that she was working overtime, and that he would confirm this with her supervisors (which he did).

We find Tovar's testimony to be accurate. She recalled the event in particular detail, and her testimony appeared reliable, straightforward and honest. She did not appear to have a motive to lie, particularly because she was essentially admitting that she had made a false overtime claim.

We find Judge Saucedo's testimony on the matter to be inconsistent, confusing, and ultimately not credible. His testimony that he was discussing one particular case (involving defendant Arrizon) was impeached when the Examiner produced evidence showing Arrizon's medication order had been faxed to the sheriff's office several hours earlier the same day. (Exh. 19D at CJP 400; RT 143-144, 531, 533) When his own counsel attempted to clarify Judge Saucedo's testimony to suggest that Judge Saucedo and Tovar had been discussing defendant Joshua Phillips, Judge Saucedo initially agreed

that this was the matter he and Tovar had been discussing, but then acknowledged the order was actually filed "sometime midday." (RT 292) His additional statement that he needed to confirm this filing during the after-hours meeting is not credible.

G. Judge Saucedo Improperly Provided Legal Advice in Letter to Tovar's Son

The evidence was largely undisputed regarding Judge Saucedo's letter to Tovar's son. Judge Saucedo acknowledged he wrote the letter and gave it to Tovar to give to her son, and ultimately admitted it contained legal advice. The primary factual dispute was whether Tovar asked him to write it. Tovar testified that she was surprised by the letter and had not requested it; whereas Judge Saucedo testified that he wrote the letter "responsive to a request that she had made to me." (RT 65) We find Tovar's testimony on this matter to be credible.

H. Extortion Accusation Letter

The evidence was undisputed that on November 18, Tovar met with Judge Saucedo to request funds, and the next day Judge Saucedo deposited \$8,000 into her bank account and gave her the "extortion" note while they were in the courtroom. Several factual disputes nonetheless remain regarding this incident, including the purpose for which Tovar requested the funds, Judge Saucedo's intent in giving Tovar the extortion note, and whether court was in session when Judge Saucedo gave Tovar the extortion note.

Regarding the purpose of the funds request, Judge Saucedo testified that during their chambers meeting, Tovar said "she wanted \$8,000, and that if she wasn't given \$8,000 by November 20th, that she would report our interactions to HR." (RT 192, 284)

Judge Saucedo said he believed this date was important because it was the date her teenage son planned on committing to a college for athletics on November 20, and Judge Saucedo assumed she intended to use the money to "celebrate or to give money to her son . . . as a reward." (RT 284-285)

Tovar's recollection was different. She testified she told Judge Saucedo she needed money for the Disneyland trip by November 20 because the trip was coming up. She said she also told him she would be requesting a transfer from his chambers. (RT 660) She denied that she asked for any specific amount of money, but said she asked for the trip expenses that he had already promised her. She testified she made the request because "we all agreed that I was going to take this trip with family, because we already had told everybody that we were going. And if I cancel everything, it was just going to be a mess at home, and I was going to have to explain why we weren't going on this trip we already had planned." (RT 661, 663)

We find credible the portion of Tovar's testimony regarding her request for the Disneyland trip expenses. Judge Saucedo admitted at the hearing and in his text messages that he had promised Tovar he would pay for trip expenses, and it was undisputed that Tovar did not have funds to pay for these expenses. The evidence additionally makes clear that by November 18, Tovar had become distraught over Judge Saucedo's conduct and had made the decision she could no longer remain in his department. During the previous week, Judge Saucedo prevented her from speaking with bailiff Cibrian, and then notified Tovar that her financial privileges were "reinstated" and deposited \$200 in her bank account, despite that he had previously promised to stop

giving her these cash gifts. Judge Saucedo then announced he had changed his mind about retiring or resigning. At that point, Tovar was aware (from her previous conversation with court manager Hernandez) that she needed to inform Judge Saucedo of a transfer request before the transfer would be approved. She also necessarily understood that if she was going to obtain the Disneyland expense money, she would need to request these funds before the transfer.

Based on this evidence, we find Tovar approached Judge Saucedo on November 18 to inform him of her intention to seek a transfer from his department and also to ask for the Disneyland money that had been promised to her. However, we find the evidence is insufficient for us to determine whether it was Judge Saucedo or Tovar who suggested the specific \$8,000 figure. Although Judge Saucedo had an incentive to inflate the fund request to make Tovar appear unreasonable or extreme, there is also evidence that Tovar may have suggested this specific figure as she immediately withdrew \$6,132 from her account the day after Judge Saucedo deposited the funds. (RT 842)

In any event, regardless which party raised this \$8,000 figure, we are satisfied the Examiner proved by clear and convincing evidence that Judge Saucedo deposited the \$8,000 into Tovar's bank account for the specific purpose of seeking to ensure Tovar would stay silent about his past behavior. Judge Saucedo provided no reasonable explanation for his decision not to report the alleged extortion conduct to court or law enforcement officials. He said only that he wanted the matter "to conclude." (RT 194-195) This testimony—along with the facts surrounding his giving her the extortion note in the courtroom—support our conclusion that Judge Saucedo deposited the money with

the intent to pressure Tovar to stay silent and conclude the matter without anyone knowing about it.

On the issue concerning the circumstances in which Judge Saucedo gave Tovar the "extortion" note, Tovar testified that Judge Saucedo handed the note to her while she was sitting at her courtroom clerk's desk "*in the middle of*" a criminal hearing. (RT 663, italics added) She said that during the hearing when a public defender, deputy district attorney, an interpreter, and Werth were present, Judge Saucedo asked to go off the record, and then handed her the note and asked her to read it. (RT 663; Exh. 49 at CJP 199) She asked whether he wanted her to read it on the record, and Judge Saucedo said "No." (RT 663; Exh. 49 at CJP 199) Judge Saucedo then went back on the record and finished the proceeding. (RT 663) He then "took off." (RT 663)

In his testimony, Judge Saucedo acknowledged he gave the note to Tovar in the courtroom. (RT 194) However, he denied he gave her the note during the proceedings, and said he handed her the note when the afternoon calendar was completed and the attorneys were picking up their materials and were leaving. (RT 195)

Tovar's testimony was credible on this issue. Tovar's testimony was specific, detailed, and made sense given the entire circumstances. We find Judge Saucedo gave Tovar the "extortion" note (that included the definition of the extortion crime) during court proceedings while he was on the bench and in his judicial robe. We further find Judge Saucedo engaged in this conduct at this time and place for the specific purpose of using his judicial office to intimidate Tovar and ensure her silence.

I. Judge Saucedo's Due Process Claim

Judge Saucedo contends his due process rights were "impaired" because the Judicial Council's investigator did not request or preserve any electronic evidence from witnesses other than Tovar, and therefore all relevant evidence may not have been preserved. (JSB at 40) He also complains that he did not have "unfettered access" to some of the witnesses including court bailiffs, court clerks and other court staff. (Exh. 4 at CJP 20; JSB at 40-41)

The arguments do not show error or any undue prejudice to Judge Saucedo's defense. Judge Saucedo had the opportunity to call all witnesses and to obtain any relevant discovery. He complains that not all text messages were preserved, yet he admitted he regularly deletes messages on his own phone. (RT 280-281) Moreover, there is no showing that text messages on other court employee cell phones would have been helpful to his case. Judge Saucedo had the full and fair opportunity to present his defense at the Special Masters' hearing and was at all times represented by experienced and very able counsel. There was no due process violation.

We also reject Judge Saucedo's claim that Buehler's interview with him was unfair or misleading. Attorney Buehler was retained as an outside consultant to perform an objective assessment of Tovar's allegations. (RT 319-320, 324-325) She is highly experienced in conducting workplace investigations and took detailed notes of her interview with Judge Saucedo. (RT 318-325) Buehler said she provided Judge Saucedo the opportunity to answer her questions in great detail, and Judge Saucedo's counsel was

at the interview and frequently sought clarification of her questions. (RT 323-331, 131-132)

VI. LEGAL CONCLUSIONS

A. Overview

The Special Masters are required to reach legal conclusions regarding whether the Examiner proved by clear and convincing evidence that any misconduct committed by Judge Saucedo constitutes willful misconduct, prejudicial misconduct or improper action.

In determining whether a judge's conduct was improper or unjudicial, we are guided by the canons of the California Code of Judicial Ethics. We thus begin by setting forth the judicial canons identified in the Notice of Formal Proceedings, and then explain we have found true the allegations that Judge Saucedo violated each of these canons. (Canons 1, 2A, 2B(1), 3(C)(5), and 4(G).)

We next consider whether Judge Saucedo's canon violations constituted prejudicial misconduct. As explained below, prejudicial misconduct includes conduct that is "prejudicial to public esteem for the judicial office" or conduct committed in "bad faith." (*Broadman, supra*, 18 Cal.4th at p. 1092.) We determine Judge Saucedo engaged in numerous instances of prejudicial misconduct.

Finally, we reach the issue whether Judge Saucedo's canon violations constituted willful misconduct, which is the most serious form of judicial misconduct because the conduct takes place while a judge is acting in his or her "judicial capacity" in "bad faith." (*Broadman, supra*, 18 Cal.4th at p. 1091.) We conclude Judge Saucedo committed three instances of willful misconduct: (1) giving Tovar the extortion accusation letter in the

courtroom during a judicial proceeding; (2) attempting to improperly interfere with Ballantyne's bailiff duties; and (3) falsely reporting Tovar's overtime work on September 20.

B. Judicial Canon Violations

1. Applicable Canons

The Notice of Formal Proceedings alleged Judge Saucedo violated several judicial canons: Canons 1, 2, 2A, 2B(1), 3(C)(5), and 4(G). These canons read as follows.

Canon 1(A) states:

"An independent, impartial, and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this code are to be construed and applied to further that objective. A judicial decision or administrative act later determined to be incorrect legally is not itself a violation of this code."

Canon 2A states:

"A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge shall not make statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office."

Canon 2B(1) states:

"A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge."

Canon 3C(5) states:

"A judge shall not make unnecessary court appointments. A judge shall exercise the power of appointment impartially, on the basis or merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees above the reasonable value of services rendered."

Canon 4(G) states: "A judge shall not practice law."

2. Violations of Judicial Canons

We find Judge Saucedo's conduct during September 18 through November 19 violated each of the identified judicial canons.

First, Judge Saucedo's authorship of the Anonymous letter and his subsequent misrepresentations that he was unaware of the author's identity violate Canons 1 and 2A. This conduct violated the high standards required of a judge, undermines the integrity of the judiciary, and diminishes public confidence in the integrity of the judiciary.

Second, Judge Saucedo's misrepresentations to his court clerk about his purported call to Mr. Tovar's employer, and his encouraging Tovar to lie to her husband and to her coemployees violate Canons 1 and 2A. These misrepresentations violated the high standards required of a judge, undermine the integrity of the judiciary, and diminish public confidence in the integrity of the judiciary.

Third, Judge Saucedo's failure to report the Anonymous letter to his presiding judge, court administration or law enforcement violates Canons 1 and 2A. This conduct violated the high standard of conduct required of a judge, undermines the integrity of the judiciary, and diminishes public confidence in the integrity of the judiciary.

Fourth, Judge Saucedo's conduct in using the Anonymous letter as a means to promote a closer personal relationship violates Canons 1 and 2A. This conduct violates the high standards required of a judge, undermines the integrity of the judiciary, and diminishes public confidence in the integrity of the judiciary.

Fifth, Judge Saucedo's course of conduct during September 18 through November 19 that included giving Tovar, a subordinate employee, substantial monetary and tangible gifts as a means to convince her to become involved in a closer personal relationship violates Canons 1 and 2A. This conduct violated the high standards required of a judge, undermines the integrity of the judiciary, and diminishes public confidence in the integrity of the judiciary.

Sixth, Judge Saucedo's conduct in seeking to trigger a disciplinary action against Deputy Ballantyne and ordering him out of his courtroom and his conduct in providing false information to Tovar's supervisor to justify overtime work violated Canons 1, 2A, 2B(1) and 3C(5). This conduct violated the high standards required of a judge, and was improperly motivated by Judge Saucedo's own individual concerns regarding his personal relationship with Tovar, rather than the best interests of the court. The conduct did not reflect a good faith exercise of his administrative duties, as he sought to influence the employment of a court employee and utilize court resources based on his own self-interests, rather than the court's interests.

Seventh, Judge Saucedo's extortion allegation, and the manner in which he made the accusation, violated Canons 1, 2A, and 2B(1). Judge Saucedo interrupted court proceedings to hand Tovar a note accusing her of extortion. By doing so, Judge Saucedo

improperly used the power of his judicial office to intimidate Tovar and seek to ensure her silence regarding his conduct during the previous two months. Judge Saucedo also failed to report the claimed extortion demand to law enforcement or court officials. Judge Saucedo's conduct concerning the extortion claim violated the high standards required of a judge, and violated his duties to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Eighth, Judge Saucedo's conduct in providing Tovar's son with legal advice violates Canon 4(G).

C. Judge Saucedo Engaged in Prejudicial Misconduct

Prejudicial misconduct occurs when an objective observer would conclude the judge's improper conduct was " 'prejudicial to [the] public esteem for the judicial office," ' " regardless of the motive or intent of the judge. (*Broadman, supra*, 18 Cal.4th at p. 1092.) Even good faith conduct can constitute prejudicial misconduct under this category of misconduct. (*Ibid.*) Prejudicial misconduct can also occur if the judge engages in bad faith conduct but is not acting in a judicial capacity. (*Ibid.*) "In this context, bad faith means a culpable mental state beyond mere negligence and consisting of either knowing or not caring that the conduct being undertaken is unjudicial and prejudicial to public esteem." (*Id.* at p. 1093.)

Under these legal principles, each of Judge Saucedo's canon violations constitutes prejudicial misconduct. An objective observer would readily conclude his conduct was highly prejudicial to the "public esteem for the judicial office," and that Judge Saucedo brought the judicial office into disrepute. His authoring the Anonymous letter containing

crude language and allegations about a sexual affair involving his courtroom clerk and a court bailiff, and then using the letter to create a closer "emotional" or "special friend" relationship with the clerk and pressuring her with expensive gifts and/or other benefits to comply with his requests for a closer relationship, fell far below the standards of conduct expected of a judicial officer and would undermine the public esteem for the judicial office. His creation of an embarrassing, sexually explicit letter for the sole purpose of manipulating his courtroom clerk is the essence of an act committed in bad faith. The fact that Judge Saucedo's conduct involved ongoing dishonesty and subterfuge additionally shows bad faith, and that he was aware his conduct was wrong.

D. Certain of Judge Saucedo's Actions Constituted Willful Misconduct

Willful misconduct differs from prejudicial misconduct primarily in the requirement that the Examiner must prove the judge was acting in a "judicial capacity" and in bad faith. (*Dodds v. Commission on Judicial Performance* (1995) 12 Cal.4th 163, 172-173 (*Dodds*); see *Kennick v. Commission on Judicial Performance* (1990) 50 Cal.3d 297, 319.)

A judge acts in a "judicial capacity" when the judge performs functions associated with the position of a judicial officer, including adjudicative or administrative acts. (*Broadman, supra*, 18 Cal.4th at p. 1104.) When a judge is on the bench, he or she is presumed to be acting in a judicial capacity. (*Dodds, supra*, 12 Cal.4th at p. 172.) When the judge is in chambers or other locations in the courthouse during working hours, the judge is "generally, though not necessarily, acting in a judicial capacity." (*Ibid.*)

A judge also acts in a "judicial capacity" if he or she uses or attempts to use the authority of the judicial office for an improper purpose. (*Dodds, supra*, 12 Cal.4th at p. 172.) However, the fact that a judge's action inherently "carrie[s] with it a degree of authority due to his status as a judge" is insufficient—without more—to show the judge was acting in a judicial capacity. (*Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865, 913.)

The Examiner acknowledges that most of Judge Saucedo's improper activities were performed away from the courtroom and were not undertaken in connection with his judicial functions or through explicit use of his judicial authority. But the Examiner contends two of Judge Saucedo's judicial canon violations occurred when he was acting in a judicial capacity: (1) when he *initiated* the personal relationship with Tovar by meeting with her to show her the letter and create a plan of action; and (2) when he handed her the letter in the courtroom accusing her of extortion.

As explained below, we disagree with the Examiner's first argument, but agree with the second. We additionally find Judge Saucedo acted in a judicial capacity when he barred Deputy Ballantyne from his courtroom and recommended his termination, and when he misrepresented Tovar's overtime pay. With respect to these acts committed in a judicial capacity (extortion accusation letter, Ballantyne incident, overtime misrepresentation), we conclude they constitute willful misconduct because the Examiner also proved they were committed in bad faith.

1. Judge Saucedo's Initiation of the Course of Conduct

The Examiner contends Judge Saucedo was acting in a judicial capacity when he first showed Tovar the Anonymous letter because he called her into his chambers, and then told her to meet him at lunchtime in a library conference room. The Examiner contends these actions constituted staff supervision, and thus occurred while Judge Saucedo was acting in a judicial capacity.

Supervising staff is a function generally associated with the position of a judge. (*Dodds, supra*, 12 Cal.4th at p. 175.) However, the California Supreme Court has held this principle should be applied narrowly. (*Ibid.*) As a policy matter, every direction by a judge to his or her staff is not considered a judicial function; otherwise, a judge's day-to-day communications would be potentially subject to the most serious discipline, a result not intended by the Commission rules. A judge does not act in a judicial capacity when he or she engages in conduct in the courthouse that is "unrelated to the work of the court." (*Ibid.*) Thus, to come within the willful misconduct category, the judge's action must in fact constitute supervision of the employee *regarding the employee's court-related duties*.

The Examiner argues that when showing Tovar the Anonymous letter on September 18, Judge Saucedo was acting in a judicial capacity because he discussed "personnel issues" and "workplace security" concerns. (EB at 98-99) However, this assertion is not supported by our factual findings. We have specifically found Judge Saucedo did not raise workplace security concerns or personnel issues during these initial meetings. Instead, Judge Saucedo approached the issue of the letter as a personal matter

concerning Tovar's private life. His discussions of these matters did not implicate his supervision of Tovar with respect to her work at the court. Thus, the fact that Judge Saucedo is Tovar's supervisor is not sufficient to establish his activities at the initiation of the relationship constituted "willful misconduct."

2. The November 19 "Extortion Letter"

We have found Judge Saucedo interrupted court proceedings to hand Tovar a note while she was at her clerk's desk accusing her of extortion, and asked her to immediately read the note, and that this occurred while Judge Saucedo was on the bench in his judicial robe and criminal proceedings were in progress. We have also found Judge Saucedo engaged in this conduct for the purpose of intimidating Tovar and ensuring her silence regarding his conduct during the previous two months.

Based on these factual findings, Judge Saucedo's conduct concerning the extortion accusation letter was performed in his judicial capacity. When he handed Tovar the letter, Judge Saucedo was on the bench presiding over a court case and thus presumptively acting in a judicial capacity. He also specifically attempted to use his authority as a judge for improper ends (silencing Tovar), which necessarily supports a finding of judicial capacity. (See *Dodds, supra*, 12 Cal.4th at p. 172.)

We also find Judge Saucedo committed this conduct in bad faith. "Bad faith" for purposes of "willful misconduct" requires a showing of a corrupt purpose (a purpose other than the faithful discharge of judicial duties), or actual knowledge that it is beyond the judge's powers, or actions taken in conscious disregard for the limits of the judicial authority. (*Broadman, supra*, 18 Cal.4th at pp. 1091-1092.) Even under his version of

the facts, Judge Saucedo engaged in the improper conduct in bad faith. He testified that Tovar threatened to report him unless he paid her \$8,000. Instead of disclosing this conduct to his superiors or law enforcement, he deposited this money into her account *and* engaged in this judicial conduct hoping to intimidate her to adhere to her promise not to report him if he paid the money. Judge Saucedo—who had been a judge for more than 10 years and had been presiding over criminal matters for at least three years—clearly knew his making extortion allegations against Tovar while he was on the bench was not within his judicial powers. At the very least, Judge Saucedo engaged in the conduct with a conscious disregard for the limits of his judicial authority.

3. Ballantyne Incident

It is undisputed that Deputy Ballantyne submitted a report documenting Tovar's clerical error pertaining to a late prisoner release, and Tovar received a disciplinary action based on the report. After reviewing the report and the disciplinary action taken against Tovar, Judge Saucedo recommended bailiff Ballantyne's termination, accused him of dishonesty, and banished him from his courtroom during a court proceeding. We have found Judge Saucedo's allegations against Ballantyne made to Ballantyne's superior and the court administrator were unsupported and were for the purpose of punishing Ballantyne for his report and protecting Tovar. Ballantyne's report about the late release was a reasonable action approved by Ballantyne's supervisor, and Judge Saucedo's complaints about the report were unfounded and were asserted as retribution for the action taken against Tovar. Judge Saucedo had no legitimate court-related basis to order

Ballantyne to leave his courtroom, accuse him of dishonesty, and banish him from his courtroom.

Judge Saucedo's improper actions relating to Ballantyne were performed in a judicial capacity. Judge Saucedo was on the bench during a criminal proceeding when he engaged in the improper conduct (calling Ballantyne's supervisor to the bench and telling him Ballantyne must immediately leave the courtroom). Further, his actions constituted supervision over a court employee on a matter directly related to court business (courtroom security). Thus, Judge Saucedo was acting in a judicial capacity.

Moreover, Judge Saucedo's conduct was committed in bad faith. He allowed a personal relationship to improperly influence a personnel decision and potentially compromise court security. His action also reflected a corrupt purpose—punishing Ballantyne for no valid reason except for his personal favoritism for Tovar—and thus was not part of the faithful discharge of his judicial duties. We are additionally satisfied that Judge Saucedo knew, or acted in conscious disregard for the fact, that his actions exceeded his lawful powers. (See *Wenger v. Commission on Judicial Performance* (1981) 29 Cal.3d 615, 650-652 [judge committed willful misconduct by banishing a deputy district attorney from courtroom]; *Inquiry Concerning Brown* (1999) 48 Cal.4th at CJP Supp. 100, 106-107 [judge committed willful misconduct by banishing criminal court administrator from courtroom].)

4. Overtime Incident

We have found Judge Saucedo affirmatively misrepresented to court administrators that Tovar was working overtime on September 20, when Judge Saucedo

knew that she was not working, and instead was having a discussion with him (at his request) regarding the Anonymous letter. Judge Saucedo also instructed Tovar to misrepresent to her supervisor that she was working on a "case." (RT 529)

This conduct constituted supervision over a court employee on a matter directly related to court business (employee pay) and improperly interfered with court resource decisions. Thus, Judge Saucedo was acting in a judicial capacity when he made these misrepresentations.

Judge Saucedo's committed this conduct in bad faith. He allowed a personal relationship to improperly influence a personnel decision. His conduct reflected a corrupt purpose because he misrepresented an employee's work time, which was plainly not within the faithful discharge of his judicial duties. Additionally, in making this misrepresentation, Judge Saucedo either knew, or acted in conscious disregard for the fact, that his actions exceeded his lawful powers.

VII. FACTORS IN AGGRAVATION AND MITIGATION

A. Aggravation

1. Judge Saucedo was not truthful in the investigation or at the hearing. He refused to admit important documented facts, failed to answer direct questions, and made affirmative misrepresentations.

2. Judge Saucedo's assertion he was merely "mentoring" Tovar and his continued tactic of blaming Tovar for his conduct shows a lack of insight into his judicial responsibilities and a lack of appreciation as to why his conduct constituted a serious violation of the judicial canons.

B. Mitigation

1. Judge Saucedo has no record of any prior misconduct or disciplinary record.
2. Judge Saucedo's conduct did not impact the adjudication of cases assigned to him.
3. Judge Saucedo has a distinguished career as a judge, attorney, and community leader.
4. The conduct occurred during a brief two-month period, and was manifestly out of character.
5. Judge Saucedo has very strong and wide support from his colleagues, attorneys, community leaders, community members, and former mentees.
6. Judge Saucedo has provided substantial assistance to many individuals in need and his assistance has been of great benefit to the individuals and to the community.

Respectfully Submitted,

Dated: July 7, 2015

/s/
Hon. Justice Judith Haller
Presiding Special Master

Dated: July 7, 2015

/s/
Hon. Judge Louis Hanoian
Special Master

Dated: July 2, 2015

/s/
Hon. Judge Becky Dugan
Special Master