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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

NATHAN ASPINALL, Plaintiff, v. ELLIS CARTER, in his individual capacity, Defendant.	**No. 23-cv-0447-JGB** **Eastern Division** **Civil Action** **Jury Trial Demanded**

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Government employers must maintain effective, efficient, and fair working environments if they are to properly serve the public. While clear workplace policies seek to identify and dissuade employee misconduct, they are futile if not enforced. As a veteran public servant for the California Department of Social Services ("CDSS"), Ellis Carter served his organization by enforcing policies shielding CDSS and the public from risks caused by employee misconduct. Carter was notified that Nathan Aspinall—a senior leader in a CDSS department meant to promote child welfare—was showing preferential treatment to a subordinate with whom he was romantically involved. CDSS's HR policy, which Aspinall agreed to and signed, prohibited supervisor-subordinate relationships, and Carter notified Aspinall that CDSS would be more rigorously investigating violations of this policy. After receiving a reimbursement request from Aspinall for an apparent romantic outing with his subordinate, Carter launched an investigation. As part of the investigation and pursuant to CDSS's IT policy, which Aspinall also agreed to and signed, CDSS searched for emails related to Aspinall's romantic outing on an iPad that Aspinall owned and used for CDSS work. The search produced emails from Aspinall's Gmail account confirming his forbidden relationship, and he was subsequently terminated. Aspinall now brings this suit alleging that the search violated his Fourth Amendment rights.

For Aspinall to prevail, he must prove both that he had an objectively reasonable expectation of privacy and that CDSS's search was unreasonable. A government employee's Fourth Amendment rights can be implicated only if the employee had an objectively reasonable expectation of privacy. Courts balance this expectation against the government employer's operational realities, including its need to operate effectively and efficiently, both for its own interest and for the interest of the public. A government workplace cannot operate efficiently or

effectively when it cannot enforce against favoritism, abuses of power, or financial misappropriation.

Aspinall knew that he could be subject to an investigatory search, and he allowed both his workplace lover and CDSS's IT team to use and control his device. On balance, any expectation of privacy Aspinall may have had was objectively unreasonable and its gravity paled compared to CDSS's need to effectively serve the public. Even if Aspinall had an objectively reasonable privacy expectation that outweighed CDSS's operational realities, CDSS's search was nonetheless constitutional because it was reasonable. If a search is justified at its inception and reasonable in scope, it is reasonable and therefore constitutional. CDSS's search was justified because it was likely to—and did—uncover evidence of Aspinall's misconduct, and it was reasonable in scope because it took measures to reduce intrusiveness and sought to protect the public from harm. Summary judgment must be granted because, as a matter of law, CDSS did not violate Aspinall's Fourth Amendment rights.

STATEMENT OF UNDISPUTED MATERIAL FACTS

Ellis Carter is the Director of the Office of Personnel Management for the California Department of Social Services ("CDSS") in Riverside, California. (Carter Dep. 3:1-18, attached as Ex. A). The Office of Personnel Management oversees all CDSS activities related to human resources, such as training, recruiting, and hiring. (Carter Dep. 4:2-3). In his role, Carter, a seven-year veteran of public service at CDSS, is responsible for these activities and for enforcing CDSS's workplace policies. (Carter Dep. 4:13-14).

To prevent unfair treatment towards employees, CDSS forbids romantic relationships between supervisors and subordinates. (CDSS HR Policy 105: Personal Conduct ("HR Policy 105"), attached as Ex. B). HR Policy 105 is included in CDSS's employee handbook

("Handbook"), a copy of which CDSS distributes to all its employees when they are hired. (Carter Dep. 5:7-11). Under HR Policy 105, a supervisor engaged in an illicit relationship is subject to disciplinary action, including termination. (HR Policy 105). On January 12, 2021, upon joining CDSS, plaintiff Nathan Aspinall received a copy of the Handbook and signed an agreement to abide by its policies; the agreement stated that it specifically includes HR Policy 105. (Acknowledgement and Receipt of HR Policies, attached as Ex. C). Around this time, Aspinall also completed training with members of CDSS's human resources team. (Aspinall Dep. 6:7-10, attached as Ex. D).

Aspinall used an iPad that he owned personally to conduct CDSS business. (Aspinall Dep. 11:5-7). To use a personal device for work, Aspinall had configured the device to receive official CDSS emails and to automatically connect to CDSS's Wi-Fi network. (Aspinall Dep. 11:10-13). Before an employee can configure a personal device to be used for CDSS business, however, he must register the device with CDSS's information technology ("IT") department and agree to IT-related policies governing the use of such devices, such as a policy requiring personal devices to comply with a variety of security protocol. (CDSS IT Policy for Privacy, Mobile-Computing Devices, and Acceptable Use ("IT Policy") 2, attached as Ex. E). Additionally, CDSS's IT Policy permits CDSS to access employees' email or computer accounts without consent if the access may support an investigation of a company policy violation. (IT Policy 1). Upon joining CDSS, Aspinall also signed an agreement to abide by these policies, and he completed training with IT department members soon after being hired. (Acknowledgement and Receipt of IT Policies, attached as Ex. F).

In March 2023, Zeinab Ali, a Deputy Director for the Division of Youth and Family Services who reported to Aspinall, met privately with Carter to share concerns that Aspinall had

become romantically involved with Amy Johnson—another one of Aspinall's direct subordinates and one of the two other Deputy Directors in the department. (Carter Dep. 6:19-22). Aspinall and Ms. Johnson were both unmarried, they frequently ate lunch and left the office together, and Ms. Ali observed that the two shared a close interpersonal rapport. (Carter Dep. 7:4-7). Aspinall also occasionally shared the iPad he used for work with Ms. Johnson for her to conduct CDSS business. (Aspinall Dep. 13:11-14). In her meeting with Carter, Ms. Ali expressed concern that Aspinall was treating Ms. Johnson preferentially, stating that Aspinall had assigned Ms. Johnson to coveted projects and invited her on select work trips. (Carter Dep. 7:16-21). During his tenure as Ms. Johnson's boss, Aspinall increased Ms. Johnson's professional responsibility and assigned her to join him on multiple business trips. (Carter Dep. 16:11-20). Aspinall had worked with Ms. Johnson before joining CDSS, and as a member of the CDSS hiring committee, he advocated for Ms. Johnson's candidacy before she was hired a few months later. (Aspinall Dep. 4:17-20). On April 3, 2023, Carter held a meeting to inform senior staff members, including Aspinall, that CDSS would begin more rigorously investigating reports of supervisor-subordinate relationships to enforce HR Policy 105. (Carter Dep. 11:18-12:2).

About two months later in June 2023, after returning from a work trip called AGSSP in Santa Barbara with Ms. Johnson, Aspinall submitted an expense report requesting reimbursement in the amount of $177.22 for a dinner for two. (Carter Dep. 8:6-15). A receipt for the dinner, which included a $55 bottle of wine, was attached to the expense report. (Bouchon Receipt, attached as Ex. H). Carter was concerned to see that the expense was for Bouchon, a quiet, romantic restaurant in Santa Barbara, and he recalled that Aspinall and Ms. Johnson had returned from AGSSP a day later than all other CDSS staff members. (Carter Dep. 8:5-18). Already suspicious of Aspinall's alleged romantic relationship with Ms. Johnson, Carter requested

CDSS's IT team to initiate a search of Aspinall's emails pursuant to CDSS's IT policies in order to clarify the nature of Aspinall's relationship with Ms. Johnson. (Carter Dep. 8:20-9:2).

Approximately six months prior, one of Aspinall's colleagues, James Pearce, had been suspected of falsifying CDSS expense reports. (Carter Dep. 9:4-10). CDSS's IT team was able to confirm the fraudulent expenses through a search of Pearce's personal laptop, and the team told Carter that they could use a similar approach to search Aspinall's emails. (Carter Dep. 9:4-10). The IT team stated that they could conduct this search either through CDSS's network servers or through Aspinall's iPad. (Carter Dep. 10:5-6). The IT team noted, however, that a server search could fail to retrieve some emails. (Carter Dep. 10:6-8). Additionally, they stated that the iPad search would be quick and straightforward, whereas the server search would be more complicated and time intensive. (Carter Dep. 11:1-4).

On June 8, 2023, Carter instructed the IT team—whom Aspinall had already given the unlocked iPad for a software update—to begin the limited email search using the iPad. (Carter Dep. 11:1-7). Carter ordered the IT team to search no other iPad applications besides the email inbox, and he instructed the team to restrict the search to seven keywords relating to the investigation: "Bouchon," "Santa Barbara," "Amy," "Johnson," "Dinner," and "AGSSP." (Carter Dep. 12:6-15). The IT team complied with these instructions. (Carter Dep. 12:14-15). Aspinall had configured the iPad's inbox to comingle official CDSS emails with his personal emails; all emails populated and were displayed together in a singular location on the device. (Carter Dep. 14:5-9). Accordingly, despite the restrictive keywords, emails from Aspinall's personal Gmail account were found during the search. (Carter Dep. 14:9-12). The search uncovered an email thread confirming Aspinall and Ms. Johnson's romantic relationship. (Carter Dep. 13:9-17).

On June 11, 2023, following the search, Carter interviewed Aspinall who admitted to the romantic relationship with Ms. Johnson. (Carter Dep. 15:19-21). Acting under his authority and duties, and after consulting his supervisor in the California Department of Human Resources, Carter terminated Aspinall's employment on June 22, 2023, for violating CDSS HR Policy 105. (Carter Dep. 16:11-17:10).

SUMMARY JUDGMENT STANDARD

A court must grant a motion for summary judgment when the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Material facts are those that could affect the suit's outcome, and facts must be viewed in the light most favorable to the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). There is no genuine dispute of material fact unless the evidence establishes that a reasonable jury could find in favor of the nonmoving party. *Id.* Accordingly, summary judgment must be granted when the nonmovant fails to establish a genuine dispute over an element of his claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

ARGUMENT

CDSS's search was constitutional under the Fourth Amendment and summary judgment must therefore be granted because (1) Aspinall had no objectively reasonable expectation of privacy and (2) CDSS's search was reasonable. The Fourth Amendment of the United States Constitution permits reasonable searches and seizures. U.S. Const. amend IV. Searches conducted by government employers are only subject to the Fourth Amendment if they infringe upon an expectation of privacy that is objectively reasonable. *O'Connor v. Ortega*, 480 U.S. 709, 715 (1987). However, because of the "tremendous responsibility" given to government employees and their employers' "overriding interest" in serving the public in a "proper and

efficient manner," searches conducted by government employers to investigate workplace misconduct do not require warrants or probable cause. *Id.* at 722-25. Even if a government employee has an objectively reasonable expectation of privacy, a workplace search to investigate employee misconduct is nonetheless reasonable and therefore constitutional when the search is justified at its inception and reasonable in scope. *Id.* at 726. Here, CDSS's search was constitutional first because a reasonable jury could not find that Aspinall had an objectively reasonable expectation of privacy. However, even if Aspinall did have a reasonable expectation of privacy, CDSS's search was constitutional because the search was both justified at its inception and reasonable in scope. For both of these reasons, CDSS's search was constitutional and summary judgment must be granted.

I. SUMMARY JUDGMENT MUST BE GRANTED BECAUSE A REASONABLE JURY COULD NOT FIND THAT ASPINALL HAD AN OBJECTIVELY REASONABLE EXPECTATION OF PRIVACY.

Summary judgment must be granted because a reasonable jury could not find that Aspinall had an objectively reasonable expectation of privacy, as Aspinall (1) was on notice that workplace searches could occur and (2) allowed other parties to access and control his device. A government employee must have a reasonable expectation of privacy for a workplace search to implicate his Fourth Amendment rights. *Id.* at 715. For Fourth Amendment protection, an employee's expectation of privacy must be objectively reasonable; a subjective expectation is insufficient. *Id.*; s*ee United States v. Taketa*, 923 F.2d 665, 674 (9th Cir. 1991). Government employers, however, must ensure that their workplaces operate efficiently and effectively, and they must protect the public against the harm that may stem from "work-related misfeasance" or "misconduct." *O'Connor*, 480 U.S. at 724. These "operational realties" of the workplace may therefore make employees' expectations of privacy unreasonable. *Id.* at 717. A government

employee has no objectively reasonable expectation of privacy when he is on notice that searches might occur from time-to-time for work-related purposes. *Schowengerdt v. General Dynamics Corp.*, 823 F.2d 1328, 1335 (9th Cir. 1987). He is also less likely to have a reasonable expectation of privacy for property that is not "given over to his exclusive use," such as property that is shared, accessible, or controllable by other parties. *See Khachatourian v. Hacienda La Puente Unified Sch. Dist.*, Civ. No. 10-08436, 2012 WL 12877986, at *7-9 (C.D. Cal. 2012). Here, Aspinall was on notice that searches could occur, and he allowed other parties to access and control his device. Accordingly, he had no objectively reasonable expectation of privacy and summary judgment must be granted.

A. Aspinall Did Not Have an Objectively Reasonable Expectation of Privacy Because CDSS's IT Policy and CDSS's Prior Practices Put Aspinall on Notice That a Workplace Search Could Occur.

Aspinall had no reasonable expectation of privacy because he was on notice that CDSS may conduct a search for work-related purposes. An employee has no reasonable expectation of privacy when he has been put on notice that searches might occur from time-to-time for work-related purposes. *Schowengerdt*, 823 F.2d at 1335. An employee has received such notice when a policy exists informing employees of the possibility of a workplace search. *See Khachatourian*, 2012 WL 12877986, at *8. He also has such notice when he is aware of an existing practice of workplace searches. *Id.* Aspinall agreed to CDSS's IT Policy, which informed him that CDSS may search employees' devices and communications. He also knew that a similar search recently had been conducted on a colleague's device. Therefore, Aspinall was on notice that this type of workplace search may occur, so he had no objectively reasonable expectation of privacy.

An employee has no reasonable expectation of privacy when a workplace policy exists which puts him on notice of the possibility of a search. *Id.* at *2. In *Khachatourian*, the plaintiff schoolteacher was suspected of bringing a firearm into the school in violation of school policy.

Id. The defendant school administrator used a canine unit to search the plaintiff's classroom, and a search dog found a pistol owned by the plaintiff. *Id.* at *2-3. The plaintiff was subsequently fired. *Id.* at *4. The school had a policy of using search dogs, and the plaintiff knew that the school had used search dogs to search classrooms in the past. *Id.* at *8. The court reasoned that the plaintiff was on notice that this type of search could occur and therefore had no objectively reasonable expectation of privacy because (1) a policy existed enforcing this type of search and (2) the plaintiff knew that the school conducted this type of search in the past. *Id.*

Conversely, an employee is more likely to have a reasonable expectation of privacy when no workplace policy exists to put employees on notice that searches may occur. *Schowengerdt*, 823 F.2d at 1335. In *Schowengerdt*, the plaintiff engineer for the U.S. Navy was suspected of misconduct related to his sexuality. *Id. at* 1331. The defendant security and Navy personnel entered the plaintiff's locked office and searched his locked deck, discovering personal photographs and sexually explicit correspondence. *Id.* At trial, the defendants did not present any evidence that a workplace policy existed informing employees of the possibility of a workplace search. *Id.* at 1335. Accordingly, on appeal, the court held that a determination must be made surrounding the existence of a relevant workplace policy, as the absence of such a policy would weigh in favor of the plaintiff having a reasonable expectation of privacy. *Id.*

Here, Aspinall was on notice that a workplace search might occur because (1) CDSS had a policy informing employees that a search could be conducted and (2) Aspinall knew that a similar search had been conducted in the past. First, like the plaintiff schoolteacher in *Khachatourian* who was subject to the school's policy of conducting classroom searches, Aspinall was subject to CDSS's IT Policy permitting the organization to search employees' devices and communications. Second, like the plaintiff in *Khachatourian* knew that his

classroom might be searched because the school had conducted classroom searches in the past, Aspinall knew his iPad might be searched because he knew CDSS had searched his James Pearce's device only a few months prior. Moreover, because Carter informed Aspinall two months before Aspinall's termination that CDSS would be increasing its efforts to enforce against improper relationships, Aspinall—who was engaged in such a relationship—was given even further notice that he might be subject to a workplace search. On the other hand, unlike *Schowengerdt*, in which a factual dispute arose surrounding the existence of a workplace policy permitting the Navy and its personnel to conduct searches, no such dispute exists here. CDSS's IT Policy—a policy Aspinall agreed to abide by when he signed the corresponding agreement—expressly grants the organization the right to search employees' devices. Aspinall was subject to and agreed to a CDSS policy informing employees that searches might occur, and he knew that CDSS had conducted a comparable search in the recent past. Therefore, Aspinall was on notice that these searches may occur in the workplace, and he had no reasonable expectation of privacy.

B. Aspinall Did Not Have an Objectively Reasonable Expectation of Privacy Because Aspinall Allowed Other Parties to Access and Control the Device.

Aspinall had no reasonable expectation of privacy because he allowed other parties to access and control the device. A government employee is less likely to have a reasonable expectation of privacy for property that is not limited to the employee's exclusive use. *See Khachatourian*, 2012 WL 12877986, at *7 (quoting *Schowengerdt*, 823 F.2d at 1335). An employee does not have exclusive use of property that is deliberately shared with other parties. *Id.*; *see also California v. Greenwood*, 486 U.S. 35, 40 (1988) (reasoning that an expectation of privacy in the contents of a trash bag placed outside for pickup was unreasonable because the plaintiff had the "express purpose of conveying [his trash] to a third party."). Property has a high degree of exclusivity when it is inaccessible or cannot be controlled by other parties. *See*

Khachatourian, 2012 WL 12877986, at *9. Because Aspinall allowed Ms. Johnson and CDSS's IT Department to use and control his iPad, respectively, Aspinall did not have a reasonable expectation of privacy.

A government employee does not have a reasonable expectation of privacy over property that is shared with or controlled by other parties. *Id.* at *8. In *Khachatourian*, the defendant school administrator searched the plaintiff schoolteacher's classroom with the assistance of a canine search unit after the school received a tip that the plaintiff brought a firearm onto the property in violation of the school's policy. *Id.* at *2-3. The plaintiff shared his classroom with another teacher for one class period per day. *Id.* at *8. Additionally, though the classroom was locked and unavailable to the public while no teachers were present, school administrators were permitted to access the classroom outside teaching hours. *Id.* Because the plaintiff shared his classroom with coworkers and administrators could access his classroom with no teachers present, the court concluded that the classroom was not limited to the plaintiff's exclusive use and that the plaintiff therefore did not have a reasonable expectation of privacy. *Id.*

Here, Aspinall did not have a reasonable expectation of privacy over his iPad because it was accessed and controlled by other parties. Like the plaintiff teacher in *Khachatourian* who shared his classroom with another teacher for limited periods of time, Aspinall occasionally shared his iPad with Ms. Johnson for work. Furthermore, similarly to how the school administrators in *Khachatourian* exhibited some control over the teacher's classroom by retaining access to the classroom when a teacher was not present, CDSS's IT Department controlled Aspinall's iPad by enforcing security and encryption policies, retaining the ability to wipe the device's memory, and requiring regular access to the device for software updates. Although the iPad was owned by Aspinall, unlike the classroom in *Khachatourian* which was not

the plaintiff's property, the iPad was used extensively for CDSS work and was governed by CDSS's IT Policy. Furthermore, unlike the classroom in *Khachatourian* which remained locked when teachers were not present, Aspinall's iPad was not restricted by a password or otherwise when the search was conducted. Because Aspinall shared the iPad with Ms. Johnson and forfeited some control of the device to CDSS's IT Department, Aspinall did not have exclusive of the device and he did not have a reasonable expectation of privacy.

II. SUMMARY JUDGMENT MUST BE GRANTED BECAUSE A REASONABLE JURY COULD NOT FIND THAT CDSS'S SEARCH WAS UNREASONABLE.

Summary judgment must be granted because a reasonable jury could not find that CDSS's search was unreasonable, as the search was (1) justified at its inception and (2) reasonable in scope. A reasonable search does not violate the Fourth Amendment, irrespective of the expectation of privacy—subjective or objective—of the person subjected to the search. *See City of Ontario, Cal. v. Quon*, 560 U.S. 746, 760-61 (2010). A search conducted to investigate work-related misconduct is reasonable when (1) the search is justified at its inception and (2) the scope of the search is reasonable. *O'Connor*, 480 U.S. at 725-26. First, a search is justified at its inception when there are "reasonable grounds for suspecting that the search will turn up evidence . . . of work-related misconduct." *Id.; see also Taketa*, 923 F.2d at 674 (holding that the search of a government employee's locked office was justified at its inception because the office was expected to contain evidence of the suspected misconduct). Second, the scope of a search is reasonable when it relates to the circumstances that prompted the search and is not excessively intrusive. *O'Connor*, 480 U.S. at 726. However, a search is not required to be minimally intrusive to be reasonable, and the scope of a workplace search can be both intrusive and reasonable when the search seeks to prevent substantial harm. *See Quon*, 560 U.S. at 763; *Larios v. Lunardi*, 856 Fed.Appx 704 (9th Cir. 2021), aff'g 442 F.Supp.3d 1299, 1310 (E.D. Cal. 2020)

(reasoning that a government employer's search of the plaintiff's text messages on his personal cell phone was reasonable in scope because the search sought to prevent harm caused by the plaintiff's forbidden romantic relationship). Here, CDSS's search was (1) justified at its inception because CDSS reasonably suspected that the search would uncover evidence of Aspinall's misconduct and (2) reasonable in scope because the search related to the investigation of misconduct, took measures to reduce intrusiveness, and was conducted to prevent harm. As such, the search was reasonable and summary judgment must be granted.

A. CDSS's Search Was Justified at Its Inception Because It Was Reasonable to Suspect That the Search Could Uncover Evidence of His Relationship with Ms. Johnson.

CDSS's search was justified at its inception because it was reasonable to suspect that it could uncover evidence of Aspinall's relationship with Ms. Johnson. For a search to be reasonable, it must be justified at its inception. *O'Connor*, 480 U.S. at 726. A search conducted by a government employer is justified at its inception when there are "reasonable grounds for suspecting that the search will turn up evidence . . . of work-related misconduct." *Id.* Such reasonable grounds exist when the evidence being searched for may reasonably be located in the place being searched. *Taketa*, 923 F.2d at 674. CDSS had reasonable grounds to suspect that evidence of Aspinall's romantic relationship with Ms. Johnson may be located in Aspinall's iPad email inbox. Therefore, CDSS's search was justified at its inception.

A government employer's search is justified at its inception when evidence of workplace misconduct reasonably may be found in the location being searched. *Id.* In *Taketa*, the plaintiff shared a three-office building with two employees working for the Drug Enforcement Administration ("DEA"). *Id.* at 668. An outside DEA employee informed her supervisor that one of the employees sharing the office building with the plaintiff was using DEA equipment for illegal wiretapping. *Id.* DEA administrators initiated an investigation into the alleged misconduct

and entered the office building at night to determine whether the equipment was being used illegally. *Id.* Because the equipment could not be found in the two other offices in the building, the administrators concluded that it must have been in the plaintiff's office, which was locked. *Id.* The DEA administrators forced open the lock and found the equipment being used illegally in the plaintiff's office. *Id.* The court reasoned that the DEA administrators, acting as employers, had reasonable grounds to suspect that evidence of the employee misconduct may be found in the plaintiff's office because they had received an employee allegation of the misconduct and no evidence could be found in other parts of the building. The court held that the administrators' search of the plaintiff's office therefore was justified at its inception. *Id.*

Here, CDSS's search was justified at its inception because CDSS had reasonable grounds to suspect that evidence of Aspinall's romantic relationship with Ms. Johnson may be found in Aspinall's email inbox. Like the DEA administrators in *Taketa* who conducted a search to investigate workplace misconduct, CDSS conducted a search to investigate a relationship violating CDSS policy. Furthermore, the DEA administrators in *Taketa* received a tip that an employee was conducting illegal wiretapping, and they searched the plaintiff's office because it was likely to contain the equipment being used for the misconduct. Similarly, here, after allegedly being in a romantic relationship with and extending preferential treatment to a subordinate, Aspinall submitted a suspicious expense report and came home late from a work trip with Ms. Johnson. In turn, CDSS searched his email inbox because it was likely to contain evidence of misconduct. Accordingly, CDSS's search was justified at its inception.

B. The Scope of CDSS's Search Was Reasonable Because It Allowed CDSS to Efficiently Conduct its Investigation, the Search Tactics Reduced the Degree of Intrusiveness, and the Search Sought to Prevent Significant Harm.

The scope of CDSS's search was reasonable because (1) it allowed CDSS to efficiently conduct its investigation, (2) the search tactics reduced the degree of intrusiveness, and (3) the

search sought to prevent significant harm. A search is reasonable in scope when it relates to the circumstances that prompted the search and the measures taken are not excessively intrusive. *O'Connor*, 480 U.S. at 726. However, an employer is not required to employ the "least intrusive search practicable" for a scope to be reasonable. *Quon*, 560 U.S. at 763. Rather, an employer conducts a search reasonable in scope by enacting efficient measures that reduce the search's intrusiveness. *Id.* at 761, 763. Though concerns exist surrounding unrestricted searches of personal devices in criminal contexts (*see generally Riley v. California*, 573 U.S. 373 (2014) (discussing concerns regarding police officers' warrantless, open-ended searches of suspected criminals' cell phones—including videos, photos, texts, contacts, and call histories)), some intrusiveness is appropriate in workplace searches when they seek to prevent great harm. *See Larios* 442 F.Supp.3d at 1310; s*ee also National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 675 (1989) (concluding that urine tests for U.S. Customs employees are reasonable in scope despite their intrusiveness because of the importance of thwarting border corruption). First, CDSS utilized a search method that allowed its investigation to be completed efficiently. Second, CDSS employed tactics to reduce the search's intrusiveness. Finally, CDSS's search sought to prevent great harm. For these reasons, the scope of the search was reasonable.

A government employer conducts a search that is reasonable in scope when (1) the search method is an efficient means to conduct a workplace investigation and (2) the employer reduces the intrusiveness of the search. *Quon*, 560 U.S. at 761. In *Quon*, the plaintiff police sergeant and his fellow officers were issued pagers to be used for policework. *Id.* at 750-51. During his first few months of using the device, the plaintiff exceeded his monthly text limit and incurred overage charges. *Id.* at 752. Because of the significant overage charges incurred by the plaintiff and a colleague, a supervisor who managed the pager contract sought to determine whether the

monthly character allotment was too low. *Id.* To make this determination, the supervisor requested transcripts of the text messages from the pagers' service provider. *Id.* Upon review, the supervisor discovered many messages unrelated to policework, some of which were sexually explicit. *Id.* at 753. The defendant police department administrators then launched an investigation into the plaintiff's suspected misconduct. *Id.* In doing so, the defendants reviewed the content of the plaintiff's text messages sent or received during two of the months in which the plaintiff incurred overage charges. *Id.* at 753, 761. The defendants also only reviewed messages transmitted during the plaintiff's on-duty hours. *Id.* at 753. The Court first reasoned that the scope of the search was reasonable because the search was an "efficient and expedient" way to conduct the investigation which triggered the search. *Id.* at 761. Second, the Court held that the scope was reasonable because the defendants reduced the search's intrusiveness by reviewing messages transmitted only during working hours and only for a subset of months in which overage charges were incurred. *Id.* at 761-62. The Court reinforced this holding by stating that while it was "certainly reasonable" to review the messages for only a subset of months, it could even have been reasonable to review the messages transmitted during all the months during which overages were incurred. *Id*. at 762. Furthermore, the Court rejected the notion that the scope of the search was unreasonable merely because the defendants could have used tactics to reduce the intrusiveness even further. *Id.* at 755, 763-64. Finally, the Court also rejected the notion that the scope of the search was unreasonable merely because the defendants unexpectedly uncovered personal content.

Here, the scope of the search of Aspinall's iPad inbox was reasonable because (1) the search was an efficient means for CDSS to conduct its investigation of Aspinall's misconduct and (2) CDSS took affirmative steps to reduce the intrusiveness of the search. First, like

searching the plaintiff's messages in *Quon* was a means to facilitate a workplace investigation of misconduct quickly and efficiently, searching Aspinall's email inbox was a means to investigate quickly and efficiently whether he had engaged in a romantic relationship in violation of CDSS policy. Unlike searching CDSS's servers, which was time-intensive and complex and potentially excluded emails relevant to the investigation, searching the iPad inbox allowed CDSS to quickly conclude the investigation and ensure that relevant emails had not been omitted. Second, like in *Quon*, where the defendant police department administrators reduced the intrusiveness of the search of the plaintiff's device by narrowing the timeframe from which messages were pulled, CDSS reduced the intrusiveness of the search of Aspinall's iPad both by limiting the search to the device's email inbox and by using a restrictive list of keywords relating to the subject matter of the investigation. Because (1) the search was an efficient and expedient way to investigate Aspinall's misconduct and (2) CDSS employed multiple tactics to reduce the search's intrusiveness, the scope of the search was reasonable.

Similarly, the scope of a search is reasonable when its intrusiveness is not excessive compared to the significance of the harm it seeks to prevent. *See Larios*, 442 F.Supp.3d at 1310. In *Larios*, the plaintiff highway patrolman worked with a confidential informant to facilitate investigations for a narcotics task force. *Id.* at 1302. The plaintiff and the informant engaged in a prohibited romantic relationship, and after a romantic note written by the plaintiff was discovered at the informant's home, the highway patrol initiated an investigation into the plaintiff's misconduct. *Id.* As part of the investigation, the defendant investigators created a copy of the plaintiff's entire phone with the intent of reviewing his text messages. *Id.* at 1304. The defendants then searched more than a year's worth of messages that the plaintiff had sent and received. *Id.* at 1310. The court concluded that even though the search was extensive and

concerned sensitive information, its scope was reasonable because it was not "excessively intrusive" compared to the "abuse of power" suspected of the plaintiff. *Id.*

Conversely, a search is unreasonable when the techniques used in the search are disproportionately intrusive compared to the suspected misconduct's potential harm to the public. *Richards v. County of Los Angeles*, 775 F.Supp.2d 1176 (C.D. Cal. 2011). In *Richards*, the plaintiff worked for the defendant Department of Public Works ("DPW"). *Id.* at 1179. The plaintiff often worked nighttime shifts in which she was the only person in the building other than a security guard stationed on a different floor. *Id.* at 1180. In her role, the plaintiff frequently worked alone and did not leave the "dispatch room" for any reason except restroom breaks. *Id.* Because of the isolated nature of the plaintiff's role and workplace, she often engaged in private acts in the dispatch room, including changing clothes, pumping breast milk, and adjusting her sanitary pads. *Id.* After suspecting that the plaintiff had engaged in sexual activity in the dispatch room with a visitor one night while on duty, the defendant installed a hidden video camera in the dispatch room to surveil the room for misconduct. *Id.* at 1179. The court held that the scope of this search was unreasonable, as a surreptitious video recording was an exceedingly intrusive search technique, second only to "a strip search or a body cavity search." *Id.* at 1184. Furthermore, the court reasoned that while the plaintiff's alleged misconduct might have been inappropriate, its potential harm to the public was minimal compared to the extreme intrusiveness of the search. *Id.*

Here, the scope of CDSS's search was reasonable because it sought to prevent significant harm to the public and was not excessively intrusive. Like the defendant investigators in *Larios* whose search sought to prevent the plaintiff highway patrolman from abusing his power, CDSS's search comparably sought to ensure Aspinall did not abuse his power by making management

decisions based on his relationship status. Though both searches were conducted to prevent abuses of power caused by illicit workplace relationships, the search of Aspinall's iPad's email inbox was even less intrusive than the comprehensive download of the plaintiff's phone in *Larios*, the scope of which the *Larios* court nonetheless deemed reasonable. On the other hand, CDSS's search differs from the search conducted by the DPW in *Richards* both in degree of intrusiveness and of potential consequence. Here, CDSS's search of one iPad application using a restrictive list of keywords is far less intrusive than video surveillance of a private workspace in which an employee pumps breast milk and changes clothes. Further, the potential public harm caused by an illicit relationship between a senior leader and his subordinate is significant compared to that of the relatively benign inappropriateness of a sexual encounter in an empty building at night. While Aspinall's misconduct and the misconduct of the plaintiff in *Richards* were both romantic in nature, the potential consequences of Aspinall's romantic relationship reached much further. Aspinall's relationship with Ms. Johnson posed both the risk of subjecting CDSS employees to unfair management and of misappropriating CDSS funds toward romantic outings rather than public service. CDSS's search sought to prevent potentially severe harm, and the techniques it used were not excessively intrusive. Accordingly, the scope of its search was reasonable.

CONCLUSION

Summary judgment must be granted because Aspinall did not have an objectively reasonable expectation of privacy and CDSS's search was reasonable. CDSS's service to the public would be undermined if the organization could not enforce policies employed to prevent favoritism, abuses of power, and misappropriation of taxpayer funds. If Aspinall had any expectation of privacy, it was objectively unreasonable and dwarfed in significance compared to

the operational reality that CDSS must facilitate a fair and functional work environment. For this reason, Aspinall's Fourth Amendment rights cannot be implicated, so summary judgment must be granted. However, even if this were not so, CDSS's search was reasonable for purposes of the Fourth Amendment because it was justified at its inception and reasonable in scope. Because a reasonable jury could not find that the search was unreasonable, CDSS is entitled to judgment as a matter of law. Accordingly, summary judgment also must be granted on these grounds.

Dated: February 25, 2024

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Memorandum of Law in Support of the Motion for Summary Judgment of Defendant was served this day via email, to counsel for Plaintiff at the following address:

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