# SECRETARY OF THE AIR FORCE
WASHINGTON

2011 OCT 11 PM 2:30

The Honorable Carolyn Lerner
Special Counsel
United States Office of Special Counsel
1730 M Street N.W., Suite 300
Washington, DC 20036-4505

OCT 11 2011

Re: Office of Special Counsel File No. DI-11-1649

Dear Ms. Lerner:

I am responding to your April 8, 2011 correspondence, referring for investigation whistleblower disclosures from Ms. Tamry McCauley, an employee at the 61st Communications Squadron located at Los Angeles Air Force Base (LAAFB), California. You requested that the Air Force (AF) investigate Ms. McCauley's allegations that Ms. Janell Green operated a personal business selling beauty products during duty hours and using government resources in violation of ethical standards, and that her supervisor, Ms. Christina Whetsel, abused her authority by having knowledge of the alleged improper activities of Ms. Green and allowing them to continue.

The investigation concluded that Ms. Green operated her personal business in violation of certain DoD 5500.7-R and 5 C.F.R. Part 2635 provisions. The investigation also concluded that Ms. Whetsel abused her authority by allowing Ms. Green to conduct her business at work and during duty hours. As corrective action, the Commander of the Space and Missile Systems Center on LAAFB issued an email directive to the entire base population on September 22, 2011, ordering an immediate cease and desist of personal commercial activity on base, directed compliance with off-duty employment rules, and directed remedial ethics training for the base population. Appropriate disciplinary action against Ms. Green and Ms. Whetsel has also been initiated.

I am enclosing two versions of the report of investigation. The first contains the names of witnesses and is for your official use. I understand you will provide a copy of this report to the President and the House and Senate Armed Services Committees for their review and to Ms. McCauley. The second is a redacted version, which I request that you use for public release.

We appreciate your efforts to bring this matter to our attention. If the AF can be of any further assistance, please contact Ms. Cheri L. Cannon, Deputy General Counsel for Fiscal, Ethics and Administrative Law at (703) 693-9291 or cheri.cannon@pentagon.af.mil.

Sincerely,

Michael B. Donley

Michael B. Donley

Attachments:
1. Report of Investigation
2. Redacted Report of Investigation

# REPORT OF INVESTIGATION
**OSC File No. DI-11-1649**

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## INFORMATION INITIATING THE INVESTIGATION

By letter dated April 8, 2011 (OSC Referral Letter), the Office of Special Counsel (OSC) referred to the Secretary of the Air Force (SecAF) for investigation a whistleblower disclosure case (OSC File No. DI-11-1649) from Ms. Tamry McCauley,[1] an audiovisual media specialist, assigned to the 61st Air Base Group at Los Angeles Air Force Base (AFB). According to OSC, Ms. McCauley has alleged that "employees of the U.S. Department of Defense, 61st Airbase [sic] Group, Los Angeles Air Force Base, El Segundo, California, engaged in conduct that may constitute violations of law, rule or regulation and an abuse of authority." After review and based on the information disclosed by Ms. McCauley, OSC "concluded that there is a substantial likelihood that the information provided to OSC by Ms. McCauley discloses possible violations of a law, rule and regulation and an abuse of authority." In its letter, OSC noted that "where specific violations of law, rule, or regulation are identified, these specific references are not intended to be exclusive."

## OSC SUMMARY OF DISCLOSURE INFORMATION

According to the OSC Referral Letter, Ms. McCauley provided the following information to OSC:

(1) According to OSC, Ms. McCauley, an audiovisual media specialist, disclosed that Janell Green, a video teleconferencing technician, "is operating a business from her workstation, during duty hours, using government equipment and supplies in violation of the Standards of Ethical Conduct. 5 C.F.R. §§ 2635.704-.705."

(2) According to OSC, Ms. McCauley alleged that "[a]s the owner of Drippin' Nectar Natural Bath & Body Products (Drippin' Nectar), Ms. Green produces and sells body creams, lotions, oils, scrubs and sprays."

(3) According to OSC, Ms. McCauley disclosed that "Ms. Green has advertised her Drippin' Nectar products to her friends and Air Force co-workers using her work e-mail and demonstrates her products at her workstation during duty hours." In addition, she alleged that "Ms. Green distributes her products and collects payment for the sales during duty hours." Further, Ms. McCauley alleged that "Ms. Green utilizes Air Force office equipment to order supplies needed for the production of her products during duty hours." According to OSC, Ms. McCauley indicated "she witnessed Ms. Green engaging in this improper activity on a daily basis and that Ms. Green's supervisor, Christine [sic] Whetsel, Supervisor, Conference Services is fully aware" of Ms. Green's actions.

(4) According to OSC, Ms. McCauley reported Ms. Green's activities related to Drippin' Nectar to the Air Force Office of the Inspector General (IG) and her disclosure resulted in an investigation. OSC stated their office "verified that an investigation was conducted in June and July 2010." OSC stated that the IG investigation, "according to information

[1] Ms. McCauley, according to the OSC Referral Letter, has consented to the release of her name in conjunction with this Report of Investigation.

received by [OSC], substantiated Ms. McCauley's allegations regarding Ms. Green's misuse of government property and improper on-duty conduct." According to OSC, the investigation further concluded that "Ms. Whetsel had knowledge of Ms. Green's improper activities" and that, "[d]espite these findings, according to Ms. McCauley, Ms. Green's activities continue to date."

## CONDUCT OF THE INVESTIGATION

The OSC Referral Letter was forwarded for investigation, through the Air Force Inspector General (SAF/IG), to the Inspector General of Headquarters Air Force Space Command (AFSPC/IG). On June 30, 2011, AFSPC/IG appointed an investigating officer (IO) to conduct an investigation into the whistleblower allegations contained in the OSC Referral Letter. In the course of the OSC investigation, the IO conducted an initial complaint analysis interview with Ms. McCauley, and thereafter interviewed 17 witnesses including Ms. McCauley, Ms. Whetsel, and Ms. Green.[2] The IO also collected and examined relevant documentation including personnel files, emails, stored electronic communications, Los Angeles AFB ethics training slides, and the prior IG report. Pertinent legal authorities, including applicable Department of Defense (DoD) and Air Force regulations were researched and reviewed. The OSC investigation was conducted from June 30, 2011 through August 17, 2011.

The standard of proof used in determining the finding for each allegation was the preponderance of the evidence, *i.e.* was it more likely than not that the alleged violation occurred.

Pursuant to 5 U.S.C. § 1213(c), an agency is afforded 60 days to complete the required report of investigation. The Air Force has been granted two extensions for its response to the OSC Referral Letter, which is due on October 11, 2011.

## LEGAL FRAMEWORK

### *Violation of Law, Rule or Regulation*[3]

#### *OGE/DoD Regulations*

The Office of Government Ethics (OGE) issues government-wide ethics regulations at 5 C.F.R. Part 2635, *Standards of Ethical Conduct for Employees of the Executive Branch.* DoD 5500.7-R, *Joint Ethics Regulation* (referred to commonly as "the JER" or DoD 5500.7-R) provides DoD-specific regulation on ethical conduct. The JER also incorporates all of 5 C.F.R.

[2] A complete list of the witnesses interviewed is set forth in the Appendix of this Report.

[3] All law, rule and regulation references cite to current sources. Although some of the source documents have been updated since the start of the alleged timeframe, all laws, rules and regulations cited have remained substantially the same throughout the entire timeframe.

Part 2635.[4] JER, paragraph 2-100. The JER applies to "employees of the Department of Defense," defined as including "[a]ny DoD civilian officer or employee (including special Government employees) of any DoD Component (including any non-appropriated fund activity)." JER, paragraphs 1-211 and 2-200. All civilian employees of the Air Force are subject to the standards established in both the JER and 5 C.F.R. Part 2635.[5]

"Public service is a public trust. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations." 5 C.F.R Part 2635.101.

There are 14 general ethics principles that apply to every employee. *See* 5 C.F.R. Part 2635.101(b). Among these general principles are:

> ...
> (5) Employees shall put forth honest effort in the performance of their duties.
> ...
> (9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
> (10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

*Id.*

***Operating a Business at the Workplace***

Section 705(a) of the OGE regulations states:

> Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties.

5 C.F.R. Part 2635.705(a).

DoD employees may only use government resources for official purposes, with certain specific exceptions.[6] *See* the JER, paragraph 2-301(b). "Government resources" include

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[4] Paragraph 1-100 of the JER states "This Regulation provides a single source of standards of ethical conduct and ethics guidance..."

[5] Under the JER, DoD employees who suspect that a violation of the JER has occurred are required to report the matter to appropriate channels (as listed in the JER). *See* the JER, paragraph 10-200.

[6] The exceptions to the general rule that government resources must be used for official purposes include the use of government resources for logistical support of certain non-federal entity events (*see* the JER, paragraph 3-211) and

"personnel, equipment, and property." *See id.* However, there are no exceptions in the JER for using any government resources in any situation for a personal business or commercial activity.

The JER also allows that an agency designee may approve the use of government resources (*except personnel*) for limited personal use when:

> (a) The use does not adversely affect the performance of official duties by the DoD employee or the DoD employee's organization
> (b) The use is of reasonable duration and frequency, and made only during the DoD employee's personal time such as after duty hours or lunch periods;
> (c) The use serves a legitimate public interest (such as supporting local charities or volunteer services to the community; enhancing the professional skills of the DoD employee; job-searching in response to Federal Government downsizing);
> (d) The use does not put Federal Government resources to uses that would reflect adversely on DoD or the DoD Component (such as involving commercial activities; unofficial advertising, soliciting or selling; violation of statute or regulation; and other uses that are incompatible with public service); and
> (e) The use creates no significant additional cost to DoD or the DoD Component.

The JER, paragraph 2-301(b)(1).

Under Section 704(a) of the OGE regulations, "[a]n employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes." 5 C.F.R. Part 2635.704(a). Included in the definition of "[g]overnment property" is "any form of real or personal property in which the Government has an ownership, leasehold, or other property interest that is purchased with Government funds…." 5 C.F.R. Part 2635.704(b). "Government property" also includes "office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles." *Id.*

The JER places specific restrictions on the use of government communications systems, which includes government owned telephones, fax machines, email, internet systems, and commercial systems when use is paid for by the federal government. *See* the JER, paragraph 2-301(a). The use of government communications systems by DoD employees may only be done for "official use" or for "authorized purposes." *See id.* "Authorized purposes" includes personal communications from the workplace that are reasonably made while at the workplace, "such as checking in with spouse or minor children; scheduling doctor or auto or home repair appointments; brief internet searches; [and] e-mailing directions to visiting relatives," when permitted by an agency designee who determines that the communications:

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personal participation in certain non-federal entity events such as fundraisers, professional association events, and community support activities (*see* the JER, paragraph 3-300).

(a) Do not adversely affect the performance of official duties by the DoD employee or the DoD employee's organization;
(b) Are of reasonable duration and frequency, and whenever possible, made during the DoD employee's personal time such as after duty hours or lunch periods;
(c) Serve a legitimate public interest (such as keeping DoD employees at their desks rather than requiring the use of commercial systems; educating the DoD employee on the use of the communications system; improving the morale of DoD employees stationed for extended periods away from home; enhancing the professional skills of the DoD employee; job-searching in response to Federal Government downsizing);
(d) Do not put Federal Government communications systems to uses that would reflect adversely on DoD or the DoD Component (such as uses involving pornography; chain letters; unofficial advertising, soliciting or selling except on authorized bulletin boards established for such use; violations of statute or regulation; inappropriately handled classified information; and other uses that are incompatible with public service); and
(e) Do not overburden the communication system (such as may be the case with broadcasts and group mailings), create no significant additional cost to DoD or the DoD Component, and in the case of long distance communications, charges are:

1. Charged to the DoD employee's home telephone number or other non-Federal Government number (third number call);
2. Made to a toll-free number;
3. Reversed to the called party if a non-Federal Government number (collect call);
4. Charged to a personal telephone credit card; or
5. Otherwise reimbursed to DoD or the DoD Component in accordance with established collection procedures.

The JER, paragraph 2-301(a)(2).

The Air Force has its own specific regulation on the use of the internet and email, which reiterates and expands on the guidelines of the JER. *See* AFI 33-129, *Web Management and Internet Use*, February 25, 2005 (as revised by Air Force Guidance Memorandum dated May 4, 2011). "Using the Internet for other than official or limited authorized personal purposes may result in adverse administrative or disciplinary action. The activities listed [in the AFI] involving the use of government-provided computer hardware or software are specifically prohibited." Air Force Guidance Memorandum to AFI 33-129, Attachment 2, paragraph 2.1. One activity prohibited is "[u]ses [of the internet] that would adversely reflect on the DoD or the [Air Force] such as chain letters, unofficial soliciting, or selling except on authorized Internet-based

capabilities established for such use.." Air Force Guidance Memorandum to AFI 33-129, Attachment 2, paragraph 2.1.2.

***Outside Employment Guidelines***

Employees who wish to engage in outside employment must comply with all the principles and standards within 5 C.F.R. Part 2635, as well as specific provisions under Section 801. *See* 5 C.F.R. Part 2635. Section 801(b) states that the outside employment of a DoD employee must not conflict with the employee's official duties and that employees must comply with agency requirements for prior approval of outside employment. *See* 5 C.F.R. Part 2635.801(b).

Section 803 of the OGE regulations states:

> When required by agency supplemental regulation issued after February 3, 1993, an employee shall obtain prior approval before engaging in outside employment or activities. Where it is determined to be necessary or desirable for the purpose of administering its ethics program, an agency shall, by supplemental regulation, require employees or any category of employees to obtain prior approval before engaging in specific types of outside activities, including outside employment.

5 C.F.R. Part 2635.803. The JER does not require DoD employees to obtain prior approval for engaging in outside employment, except for certain employees who are required to file financial disclosures. *See* the JER, paragraph 2-206. However, it does allow agency designees or higher authorities to require DoD employees under their jurisdiction to report outside employment prior to engaging in the employment. *See* the JER, paragraph 2-303.

Air Force Space Command Instruction (AFSPCI) 51-4, *Off-Duty Employment*, February 1, 2001, does create such a requirement for DoD employees within the jurisdiction of Air Force Space Command.[7] Specifically, it states that

> All civilian and military personnel who intend to seek off-duty employment, including employment while on terminal leave, shall submit an AF Form 3902 to their first-level supervisor at least 2 weeks before beginning employment (except in cases where 2 weeks notice is not possible). Final approval must be obtained prior to starting off-duty employment.

AFSPCI 51-4, paragraph 1.3. Paragraph 1.2 of AFSPCI 51-4 defines "Off-Duty Employment" as "business activities and compensated outside employment, including self-employment. Examples of self-employment include the sale of insurance, stocks, mutual funds, real estate, cosmetics, household supplies, vitamins, and other goods or services."

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[7] This regulation also states that employees may not engage in off-duty employment that is prohibited by statute or regulation, that would detract from readiness, or that would pose a security risk. *See* AFSPCI 51-4, paragraph 1.1.

***Gifts and Solicitations***

The standards for giving gifts to an official superior[8] and accepting a gift from an employee receiving less pay are found in 5 C.F.R. Part 2635, Subpart C. Unless specifically excepted, an employee is not permitted to give a gift to an official superior. 5 C.F.R. Part 2635.302. Further, unless specifically excepted, "an employee may not, directly or indirectly, accept a gift from an employee receiving less money than himself unless: 1) [t]he two employees are not in a subordinate-official superior relationship; and 2) [t]here is a personal relationship between the two employees that would justify the gift." *Id.*

A "gift" is defined as including "any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred." *See* Sections 203 and 303 of 5 C.F.R. Part 2635. However, under the definition, several exceptions are listed:

> (1) Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;
> (2) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;
> (3) Loans from banks and other financial institutions on terms generally available to the public;
> (4) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;
> (5) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of his official duties;
> (6) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;
> (7) Anything which is paid for by the Government or secured by the Government under Government contract;
> Note: Some airlines encourage those purchasing tickets to join programs that award free flights and other benefits to frequent fliers. Any such benefit earned on the basis of Government-

[8] Under OGE regulations, "official superior" means "any other employee ... including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee." 5 C.F.R. Part 2635.303(d). For purposes of the subpart C on gifts, an employee is considered to be the subordinate of any of his official superiors. *See id.*

> financed travel belongs to the agency rather than to the employee and may be accepted only insofar as provided under 41 CFR 301-53.
> (8) Any gift accepted by the Government under specific statutory authority, including…;
> (9) Anything for which market value is paid by the employee.

5 C.F.R. Part 2635.203.

Certain exceptions to the subordinate-official superior gift rule are set forth in Section 304. *See* 5 C.F.R. Part 2635.304. The listed general exceptions of gifts that may be given and accepted on "an occasional basis" are:

> (1) Items, other than cash, with an aggregate market value of $10 or less per occasion;
> (2) Items such as food and refreshments to be shared in the office among several employees;
> (3) Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends;
> (4) Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions; and
> (5) [Certain leave transfers].

5 C.F.R. Part 2635.304(a). In addition to the general exceptions, a gift appropriate to the occasion may be given by a subordinate and accepted by a superior in recognition of infrequently occurring occasions of personal significance (such as marriage, illness, or birth of child), or upon occasions that terminate a subordinate-superior relationship (such as retirement, resignation, or transfer). *See* 5 C.F.R. Part 2635.304(b). Notwithstanding any exceptions listed in the regulation, an official superior is not permitted to coerce the offering of a gift from a subordinate. *See* 5 C.F.R. Part 2635.302(c).

Under the JER, an employee is not permitted to knowingly solicit or make solicited sales to DoD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off-duty. *See* the JER, paragraph 2-205. Excepted from this rule are sales or leases of real property, sales made in a retail establishment off-duty, and the posting of advertisements inside a DoD building assuming the posting is in accordance with building management policies. *See id.* These exceptions are contingent on the absence of coercion or intimidation. *See id.*

***Abuse of Authority***

The Merit Systems Protection Board (MSPB) has held that "[a]n abuse of authority occurs when there is an arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or

advantage to himself or to preferred other persons. The definition of abuse of authority does not contain a *de minimis* standard or threshold."[9]

Various actions by a supervisor, if related to supervision, can qualify as an abuse of authority. For example, MSPB has held the following instances to constitute an abuse of authority: 1) a proven allegation of a supervisor approving false time sheets;[10] 2) an allegation, if proved, of a supervisor ignoring an incident of illegal firing of weapons by subordinate border control agents;[11] 3) a decision not to follow agency-written selection rules for a job vacancy;[12] and 4) the mishandling of a grievance and discriminating against a class of individuals in the hiring process.[13]

However, not all actions taken by a supervisor necessarily qualify as a proper allegation of abuse of authority. For instance, a supervisor order to a subordinate to produce insurance documentation in connection with a car accident occurring in the parking lot would not qualify as an abuse of authority because it was a private matter not involving the agency, and the exchange of such documentation is routinely done after an accident.[14]

## SUMMARY OF EVIDENCE

### *Background*

The Space and Missile Systems Center (SMC) is located on Los Angeles AFB, California. The 61st Air Base Group (ABG) is a subordinate unit to the SMC. Although subordinate, the 61st ABG is the host unit on Los Angeles AFB and provides administrative and base services to the personnel assigned to the SMC, including communication support like video-teleconferencing (VTC). The 61st Communications Squadron (CS) is a sub-organization within the 61st ABG.

During most of the timeframe relevant to these allegations, Ms. Christina Whetsel[15] was the supervisor of Conference Services, which is part of the 61st CS. Under Ms. Whetsel were six employees, consisting of Ms. Tamry McCauley,[16] [Audiovisual Specialist 1][17] and [Audiovisual

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[9] *See* Stiles v. Department of Homeland Sec., 116 M.S.P.R. 263, 271 M.S.P.B. (2011); Wheeler v. Department of Veterans Affairs, 88 M.S.P.R. 236, 241 M.S.P.B. (2001).
[10] *See* D'Elia v. Department of the Treasury, 60 M.S.P.R. 226, 234 M.S.P.B. (1993), *rev'd on other grounds.*
[11] *See* Stiles v. Department of Homeland Sec., 116 M.S.P.R. 263, 265-271 M.S.P.B. (2011).
[12] *See* Wheeler v. Department of Veterans Affairs, 88 M.S.P.R. 236, 238-241 M.S.P.B. (2001).
[13] *See* Thomas v. Department of the Treasury, 77 M.S.P.R. 224 M.S.P.B. (1998), *rev'd on other grounds.*
[14] *See* Ramos v. Department of the Treasury, 72 M.S.P.R. 235, 241 M.S.P.B. (1996).
[15] Since June 2011, Ms. Whetsel (a GS-12) has worked as a project manager in the 61st CS. Prior to that, and during most of the relevant timeframe, she was the supervisor (IA-3) of Conference Services in the 61st CS since 2005.
[16] Ms. McCauley (a GS-7) is an audiovisual specialist in Conference Services with the 61st CS. She has been in that position since 2005.
[17] [Audiovisual Specialist 1] (a GS-7) is an audiovisual specialist in Conference Services with the 61st CS. He has been in that position since 2003.

Specialist 2],[18] who worked in the audiovisual section, and Ms. Janell Green,[19] [Video-teleconference Assistant 1][20] and [Video-teleconference Assistant 2][21] who worked in the video-teleconferencing section. The seven employees worked in a small office space, each at their own cubicle. It was arranged in such a way that an employee sitting at their cubicle could not see the other employees. However, because of the close proximity, it was easy to hear each other. [Video-teleconference Assistant 2] moved to a different office in May 2011. Ms. Whetsel moved to a different office in June 2011.

***The SMC/IG Investigation***

On May 17, 2010, Ms. McCauley made a complaint to the Space and Missile Systems Center Inspector General (SMC/IG). SMC/IG appointed an investigating officer (SMC/IO) on May 17, 2010, who conducted an investigation from June 21, 2010 to August 19, 2010. The SMC/IG complaint included an allegation (allegation 4) that Ms. Whetsel knowingly allowed Ms. Green to conduct a personal business on government time for years.[22] Although the SMC/IG investigation was focused on Ms. Green's business, she was not a subject of any allegation. The SMC/IO interviewed seven witnesses, including Ms. McCauley, Ms. Green, and Ms. Whetsel.[23]

In the SMC/IG complaint, Ms. McCauley alleged that Ms. Whetsel allowed employees to openly run a personal business on government time. In her initial interview, Ms. McCauley testified that Ms. Green "has a business called Drippin Nectar" that markets skin products "like bath salts, lotions, body oils . . . body sprays, body butters, body everything." Ms. McCauley explained:

> [IO]: And she sells these?
> [W]: Absolutely.
> [IO]: On the work site?
> [W]: Absolutely.
> [IO]: How does she sell her product?
> [W]: Well, let's say -- give you an example. She will make her products on the weekend or whatever. She'll bring her packages in, bring all her stuff in. People that work on this base come down

[18] [Audiovisual Specialist 2] (a GS-7) was an audiovisual specialist in Conference Services with the 61st CS during most of the timeframe at issue. He is now a video-teleconference assistant. He has worked in Conference Services at the 61st CS since 2007.

[19] Ms. Green (GS-7) is a video-teleconference assistant in Conference Services with the 61st CS. She has been in that position since 2000. She was previously active duty Air Force for 10 years.

[20] [Video-teleconference Assistant 1] (GS-7) is a video-teleconference assistant in Conference Services with the 61st CS. She has been in that position since 1996.

[21] Since May 2011, [Video-teleconference Assistant 2] (GS-7) has worked as a photographer in public affairs since May 2011. Prior to that, she was a video-teleconference assistant in Conference Services with the 61st CS since around 2009.

[22] Ms. McCauley made three additional allegations to SMC/IG, which were unrelated to the allegations forwarded by OSC to SecAF.

[23] [Video-teleconference Assistant 2], [Audiovisual Specialist 2], [Audiovisual Specialist 1] and [Video-teleconference Assistant 1] were also interviewed by the SMC/IO. All seven witnesses were interviewed again by the IO in the OSC investigation.

> to her office, they give her money and she gives them their product. She does demos in our equipment room. Demos where she'll get a bowl of water or something and she'll do like a hand scrub in one of our rooms. I've actually walked in by accident into one of our VTC rooms while she was putting labels on her bottles and having people come down --
> [IO]: All of this is during duty time?
> [W]: Absolutely.

Ms. McCauley stated she once walked into an equipment room and Ms. Green "was in there doing a hand scrub for a customer." Ms. McCauley said she told Ms. Green "you better get out of this room . . . we had like a quarter-million dollars worth of equipment in this room." Ms. McCauley believed that [Audiovisual Specialist 1] had also told Ms. Green to stay out of the equipment room. She also believed Ms. Green "would usually sell her products in one of the VTC's because they have locks on the doors and you can -- you know, we're the only ones who have a key. But, yes, she does sell her product openly."

In her SMC/IG interview, [Video-teleconference Assistant 2] confirmed that Ms. Green sells bath and beauty products. She testified "I know she has a business and I know people come to her during the job." However, [Video-teleconference Assistant 2] stated that Ms. Green "has told me several times that she -- she doesn't want people to do that, but people do it, people come up to her desk anyway." [Video-teleconference Assistant 2] explained that Ms. Green operates the business from home but that she has "a lot of clients that are here at work." [Video-teleconference Assistant 2] opined that if clients approached Ms. Green at work, it was the clients initiating the meeting not Ms. Green. [Video-teleconference Assistant 2] also stated that Ms. Green has a "very flowery" personality and that "there are a million people that are always around her desk," but they are not necessarily clients of Ms. Green.

[Video-teleconference Assistant 1] testified that Ms. Green sells and gives away lotions and sprays, although [Video-teleconference Assistant 1] refused to characterize what Ms. Green does as a "business." When asked to whom the products are sold, [Video-teleconference Assistant 1] stated "I personally have bought some. Couple people in the office that she has given them some. I have purchased some personally and then there's some that she just gives to us in the office. There's people in the office that purchase them too." [Video-teleconference Assistant 1] also testified:

> [W]: I have -- I said I have purchased myself personally lotion and spray.
> [IO]: On the job?
> [W]: It can be on the job, it can be in the car, it can be at her house.

In his SMC/IG interview, [Audiovisual Specialist 2] also stated that he has witnessed Ms. Green selling products. "Yes, she -- she -- I don't know what you say business, but she does sell. I don't know if you say business open she just sell items. She have appointment if someone on base wants to [buy] something, come to her desk and she will give the products out to the

employee -- customer." In his SMC/IG interview, [Audiovisual Specialist 1] likewise confirmed that Ms. Green sells bath and beauty products to SMC employees.

When questioned during that investigation, Ms. Green admitted that she has a business selling lotions, body oils, and body scrubs. She stated that she makes them at home and that she has clients throughout the country. When asked if she has sold and distributed her products on the job, she answered "I have." Ms. Green was later asked about the use of her government computer:

> [W]: Now, I try to [use my home email] now.
> [IO]: Does the now mean that you have dealt it on the Government computer?
> [W]: People sending me e-mails about my products? Yes, they send me e-mails, they've asked me questions or they call me or ask me questions about the products.
> [IO]: And have you responded?
> [W]: Yeah, I do respond to them.

In her SMC/IG interview, Ms. McCauley testified that Ms. Whetsel was "[v]ery much aware of it and has not said a word." When asked if Ms. Whetsel buys the products, Ms. McCauley answered "Absolutely." Ms. McCauley continued:

> [W]: But, yes, she does sell her product openly.
> [IO]: And it's condoned in or sanctioned by Ms. Whetsel?
> [W]: Absolutely. And I been there six years and her business has only increased.
> [IO]: How often does this occur?
> [W]: Daily. The only time it doesn't occur is if she's not there.

[Audiovisual Specialist 1] elaborated on Ms. Whetsel's role. He was asked by the SMC/IO whether Ms. Whetsel was aware of the business being run from the job site during government time, to which he responded "Not only is she aware, she's advertised and also participated in the sale of the product." When asked for proof, [Audiovisual Specialist 1] testified:

> I witnessed it. She even started to create her business cards because Janell is not tech savvy. So Christina showed her how to create her business cards. So that lets me know that she is definitely aware of the business on the job. And they're people walking out of our office all day long -- matter of fact, I shared with you earlier, there was a young lady who was just in the office when I left about 30 minutes ago, asking about a product and Christina Whetsel is sitting at her desk. She hears everything that's going on. So it's within ear reach that she hear [sic] that people are exchanging money and talking about her product and services.

When asked to elaborate about the business cards, [Audiovisual Specialist 1] stated that Ms. Green told him Ms. Whetsel offered to make the cards and showed Ms. Green the website to use to order business cards. [Audiovisual Specialist 1] stated that he did not know if the business cards were printed with a government computer.

[Video-teleconference Assistant 2] stated that Ms. Whetsel was aware of Ms. Green's activities:

> [IO]: Is your supervisor aware that this business is being practiced on the job site?
> [W]: More than -- yeah, she does. She knows. But she knows that -- that Janell makes the product at home and she also knows that you know, people come up to Janell. . . . I'm sure Christina's probably aware of it.

[Video-teleconference Assistant 1] also testified about Ms. Whetsel's knowledge of Ms. Green's business:

> [IO]: Is your supervisor aware that this business is being run from the job site during Government time?
> [W]: Yeah, she know [sic] it's there.
> . . .
> [IO]: How does Ms. Whetsel know?
> [W]: Well it's -- we have it on. . . . Now as far as the understanding of what's going on in the office, I don't know, but she knows we wear the products, I do.

The SMC/IG interview of Ms. Whetsel only briefly touched on the issue of Ms. Green's personal business. After being advised of the allegation, the relevant portion of the interview consisted of the following:

> [IO]: Ms. Whetsel, are you aware of such a practice [conducting a personal business on government time] by Ms. Green while on Government time?
> [W]: I counseled her and she now does that off Government time. But when it was happening, I counseled her to correct the issue.
> [IO]: So Ms. Whetsel, are you saying you were aware?
> [W]: When I became aware of it I counseled her and the matter was corrected. And business was not done on Government time. She may talk about it, but she's not selling anything in the office.

Ms. Green testified that Ms. Whetsel "is aware that I have my own business" and "has bought products from me before." Ms. Green stated she has also given products to Ms. Whetsel. However, Ms. Green did confirm that Ms. Whetsel talked to her about the issue:

> [IO]: So what has your supervisor done about that knowing --
>
> . . .
>
> [W]: Well she had -- she did come to talk to me and what I had to do was let people know -- customers here -- when I first started the business it was just telling everyone I was doing this great thing, but I know that I had a business. So what I did was started making envelopes and when people come to me, they ask me to order -- they order stuff from me but they have to mail money to me in envelopes that I give them. That's what I've tried to start doing because I have several people that come here and ask me different questions about my product. I usually refer them -- they have my home phone number, my cell number, and my home e-mail address. And that's what I tell customers -- most lately customers that when they come to me we have to do our business that way. So I keep a stack of envelopes here, stamped that I put the stamps on and I usually refer them to me from home. Give me a call on my cell phone or contact me at home. And that's what I've started doing as of late. Was I doing that at first? No. Because I had just -- it was just a hobby that I started and I started telling my co-workers and telling people around here this is what I do when I go home.

[Audiovisual Specialist 1] stated "There was a time let's say that Ms. Green was able to set up her beauty shop in the office. She sells beauty products, body and bath products. It's funny, just coming here right now she told me she was asked to stop that. As if someone got wind that we were coming here to do this interview" and later clarifying "Janell Green just told me that Ms. Whetsel just asked her to discontinue this practice."

Based upon the evidence obtained in that investigation, the SMC/IO substantiated the allegation that Ms. Whetsel knowingly allowed a subordinate, Ms. Green, to conduct a personal business, including the selling of products, on government time. The SMC/IG report was reviewed by the SMC legal office.

***SMC/IG Investigation Follow Up***

The SMC/IG report was reviewed by the SMC legal office. By memorandum dated January 4, 2011, SMC/IG notified [61st ABG Commander], the 61st Air Base Group Commander, (61 ABG/CC) of the investigation findings. That memorandum stated "the investigation found that Ms. Whetsel did in fact knowingly permit a subordinate to conduct her personal business on government time." On January 6, 2011, SMC/IG sent a letter to Ms. McCauley informing her that the SMC/IG investigation was completed, that three of the allegations were unsubstantiated, and that the allegation regarding Ms. Whetsel permitting a subordinate to conduct a personal business on government time was substantiated.

According to Ms. Whetsel's personnel files, on January 6, 2011, [61st CS Director][24] counseled her. [61st CS Director] documented the counseling with the following comments: "Ms. Whetsel counceled [sic] on IG report finding that substantiated she allowed a subordinate to conduct personal business on [government] time. Counseled on the inappropriateness of this and the need to take prompt action when she becomes aware that an employee is conducting personal business at work."[25] Also on January 6, 2011, the 61 ABG/CC informed the SMC/IG by email that "her unit CL [someone from her unit] counseled [Ms. Whetsel] on rules and regulations concerning conduct of personal business during duty time."

***Ms. Green's Business at the Work Place***

Ms. Green was interviewed by the IO and, as she did in her SMC/IG testimony, she admitted that she operates the business called Drippin' Nectar. She stated she makes lotions, body oils, and body scrubs and sells them for between seven and thirty dollars. She testified that she has been making these products for years and that it started as a hobby when she was a child. Ms. Green testified that she began by bringing products into her office and giving them away. She then began selling products to people who were interested, and she still gave products away as gifts as well.

In a review of internet sources, the IO confirmed the existence of Ms. Green's business. The IO found a page from Ms. Green's "Drippin' Nectar" business website which states that she is the owner and correspondent of the "Drippin' Nectar" trademark. The website "www.trademarkia.com" includes official documentation from the United States Patent and Trademark Office (USPTO) which shows that the USPTO registered to Ms. Janell Green a trademark for "Drippin' Nectar" on June 17, 2008. According to the USPTO documentation, Ms. Green applied for the trademark on February 9, 2007. The documentation further indicated that the "first use" of the trademark was on January 1, 2007 and was "in commerce" on March 1, 2007.[26] The trademark was registered for "Body cream; Body lotion; Body oils; Body scrub; Body spray used as a personal deodorant and as fragrance; Body sprays; Body washes; Liquid soaps for hands, face and body; Scented body spray; Skin and body topical lotions, creams and oils for cosmetic use; Soaps for body care in Class 3."

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[24] [61st CS Director] was the 61st CS Director (squadron commander equivalent) from April 2010 until the late summer of 2011.

[25] [61st CS Director] also testified that he never saw a copy of the SMC/IG report and did not know who the employee was that owned the business. As the commander initiating the investigation, [61st ABG Commander] (Commander of the 61st ABG) had control over the report and discretion as to its release.

[26] According to the USPTO website, most trademark applicants base their application on either their current use of the mark in commerce or on their intent to use the mark in commerce in the future. Under either basis, the applicant is required to show that the mark has actually been used in commerce prior to registration. If the mark has already been used in commerce at the time the trademark application is submitted, the applicant may file under the "use in commerce" basis. If the mark has not yet used in commerce, the applicant must file under the "intent to use" basis and must have a bona fide intent to use the mark in commerce in the future. In order to show a bona fide intent, the examples given are having a business plan, creating samples products, or performing other initial business activities. If an applicant files with an "intent to use" basis, an additional form must be filed subsequently within a specified time limit that shows the mark has been used in commerce. According to the USPTO records, Ms. Green's mark of "Drippin' Nectar" was first used at least as early as January 1, 2007, and first used in commerce at least as early as March 1, 2007, and is now in use in such commerce.

In her testimony, Ms. McCauley made it very clear that she witnessed Ms. Green's business activity occurring in the work place during duty hours. In discussing Ms. Green's routine at the office, Ms. McCauley testified that Ms. Green would notify her customers that their product was ready from her desk, by phone or email. Customers would then come to the office and an exchange of money for products would occur. Ms. McCauley stated that Ms. Green would keep the products behind her desk. "They would be standing at her desk, sometime[s] two or three deep, waiting for her to either exchange products or money, or to talk about ordering a product or do a demonstration." According to Ms. McCauley, having customers in the office "was an ongoing everyday occurrence" and "a part of the everyday activities." Ms. McCauley testified that she had a discussion with Ms. Green two years ago, warning her that spending work time selling her products was inappropriate.

[Audiovisual Specialist 1] testified that Ms. Green would conduct her business at her work station. He stated:

> W: Well, I mean, like if I'm coming in the office, I mean, it's – it's not like it's hidden. It's like she does it with no discretion whatsoever, like a person comes down, they ask for a product or -- I think these are repeat customers also, because they ask for a product and she sells it to them.
> IO: During the day.
> W: During the day, yeah. You mean like off work? I don't know what happens after hours.
> IO: But during the day.
> W: But during work hours, yes, I've seen that.

[Video-teleconference Assistant 2] agreed that customers would drop off money to Ms. Green at her desk. She stated this would happen in "the middle of the day" but denied it happened often. [Video-teleconference Assistant 2] testified "I saw it, I think I can remember, like maybe two or three times I've come across somebody that would say, 'I have something for Janell,' and I just assumed it was a check." The IO followed this up with whether she meant two or three times a week, which [Video-teleconference Assistant 2] answered "Oh, no. Goodness, no. I mean two or three times like in the time that I was there, so we're talking like maybe a year and a half, two years."

Ms. McCauley stated that she "never noticed a time where people weren't buying customers. From 2005 till I'd say recently, I've seen people come in and out of our office to purchase products. . . . It was constant. It was a revolving door of people coming to buy products." Ms. McCauley stated that she used to buy products from Ms. Green. However, she testified Ms. Green "said she could no longer sell me products. And that was right after the interview with [SMC/IG]." She further stated "There has never been a time, up until after that interview with [SMC/IG], that she has not run that business. It was constant."

Since the SMC/IG investigation, Ms. McCauley stated that "things were dormant for about maybe two weeks, and then, after that, it -- it was a little less out of my eyesight, but people were still coming down." Since the prior investigation, Ms. McCauley saw activity, on a

daily basis, which appeared like Ms. Green was selling her products. Ms. McCauley has also heard at least one customer say she wanted to pay Ms. Green "for my stuff." Ms. McCauley estimated the drop in Ms. Green's work time spent on her personal business since the SMC/IG investigation going down to "two, maybe two and a half hours a day" which is a "trickling" of what it was before the SMC/IG investigation.

[Audiovisual Specialist 1]'s assessment that the volume of customers since the SMC/IG investigation has stayed high was similar to Ms. McCauley's testimony. [Audiovisual Specialist 1] stated:

> IO: So, since January of this year [2011], have you seen the product sold?
> W: Absolutely.
> IO: And how many times?
> W: A hundred.

He stated that he has seen her selling products at the workplace earlier in July 2011.[27] "She does it almost every day or every week."

[Audiovisual Specialist 2] testified that Ms. Green's selling at the workplace slowed considerably after the SMC/IG investigation, but has not completely stopped. He stated "Probably not a week. Probably one -- one time, probably a month or something. I -- I don't see that many. I don't recall that how many that was." He then stated he had only seen one or two customers in the year since the SMC/IG interviews.

[Employee Relations Assistant][28] testified that he chatted about Ms. Green's business with her co-workers. According to [Employee Relations Assistant], some of her co-workers said "Hey, well, you know what, we -- we can't really get Janell to do the type of work we need her to do because she's so focused on -- on her products."

Other witnesses testified that Ms. Green did not appear to conduct business at the work site, with some witnesses being told by Ms. Green that she could not talk business while at work. [Video-teleconference Assistant 2] stated she was "pretty darn sure" she had heard Ms. Green tell people to wait until after work to talk about her products outside. However, [Video-teleconference Assistant 2] believed Ms. Green gave in to "customer service" as people pushed her to talk about and sell her product at the work place during duty hours.

During her interview with the IO, [Video-teleconference Assistant 1] denied knowing that Ms. Green operated a personal business from work:

> IO: In your [SMC/IG] testimony, you stated that Ms. Janell Green had operated a personal business from her job.
> W: I didn't say -- I didn't say or state that she operated anything

[27] [Audiovisual Specialist 1]'s interview was on July 14, 2011.
[28] [Employee Relations Assistant] (GS-7) is an employee relations assistant in the director of personnel section of the SMC.

from her job.

However, when asked if any employees assisted her with the business, Ms. Green testified "my co-worker, [Video-teleconference Assistant 1], is very supportive of me."

[Video-teleconference Assistant 1] also stated she could not remember ever buying products from Ms. Green:

> IO: Okay, thank you. You also stated in your -- testified in the IG investigation that her products included body lotions, oils, scrubs and sprays. Is that correct?
> W: I have them all.
> IO: You also stated that you purchased some of the products.
> W: I have them all.
> IO: Okay. So you did purchase them?
> W: I have been given as gifts.
> IO: You stated that you had purchased some of the products.
> W: And they have been given to me as gifts also.
> IO: But did you purchase them, ma'am?
> W: I can't remember because I've been thinking gift lately. They're not -- basically given to me.
> IO: Well, in your -- you -- you testified under oath back in July of 2010 that you had purchased some; is that not correct?
> W: I really can't remember because this is 2011 and I've been on medication.
> . . .
> IO: Okay. And that was in February? When was the last time you actually purchased one?
> W: I haven't in awhile. I haven't. Everything is given to me.
> IO: But you have, but not in awhile.
> W: Not in awhile and I can't say when.
> IO: But -- but -- but you have purchased.
> W: As a donation, yeah, if that's what you want to call it . . . . It could have been a donation just to say thank you.
> IO: Okay. So you have given her money for a product.
> W: I'm going to say donation. I have been giving her donations, so it's however you guys want to say it worded. I've given her money as for donations. It's called thank you.
> . . .
> IO: But you have given her donation as recent as when?
> W: I haven't given her anything. As I just told you, I received it as a gift in February.
> IO: But you mentioned, ma'am, you gave it as a donation. Do you know when your recent -- most recent donation was?
> W: I can't remember. I wouldn't give her anything for a donation as for a gift. I – that's mine. You don't give a gift and then give

some back to you. It's previous, and I have given her something as a donation, but not for my birthday gift where you just asked me recently, which was in February.
IO: Well, at -- at any time, ma'am, when was a donation given?
W: I really can't recall. I just got something for my birthday, that's -- that and, here it is, it's July, so I haven't received anything other than since my birthday because the stuff I have, I still have it. But before that, I can't recall.

[Budget Analyst],[29] [Command Action Group Specialist][30] and Ms. Whetsel mentioned that [Video-teleconference Assistant 1] bought Ms. Green's products. [Video-teleconference Assistant 1], however, when questioned by the IO, denied that she bought products from Ms. Green – a statement in direct contradiction of her statements in the SMC/IG investigation where she admitted she had bought products from Ms. Green. In her interview with the IO, [Video-teleconference Assistant 1] was evasive in responding to questions, frequently responding "I can't remember," "I don't recall," and "I don't know." When asked by the IO had she ever received an email from Ms. Green regarding the product, [Video-teleconference Assistant 1] responded, "[c]an we pass that and go to another one?" In his search of Ms. Green's email, the IO recovered at least one email to [Video-teleconference Assistant 1] from Ms. Green with a listing of products and prices. The testimony from [Video-teleconference Assistant 1] shows her to be uncooperative in the investigation and not credible in many of her statements.[31]

[Executive Administrator][32] testified that she was a customer of Ms. Green's. She stated Ms. Green knew it was inappropriate to conduct personal business at work, and that Ms. Green told her "Don't call me at work or E-mail me if you want some products."[33] She denied ever receiving any emails from Ms. Green's government account. Rather, their communication was by personal phone. Also, she stated that whenever she picked up products from Ms. Green on base, they would meet in the courtyard not in the office. [Executive Administrator] denied ever seeing any advertisements about the products or demonstrations from Ms. Green. [Executive Administrator] stated that Ms. Green is "very professional at work" and "I never see like a bunch of people in there walking through there giving -- getting products from her."

[Management Assistant][34] testified that she began buying products from Ms. Green around January 2011. [Management Assistant] stated that around March 2011, she picked up an order from Ms. Green's work station. "There was one occasion where I was leaving to go on leave and I asked her, 'Can you just bring it to work and I'll pick it up on my way out.'"

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[29] [Budget Analyst] (GS-11) is a budget analyst in the SMC.
[30] [Command Action Group Specialist] (GS-11) is a Command Action Group Specialist working on the Commander's Action Group for the SMC.
[31] [Video-teleconference Assistant 1] was the last witness to be interviewed, and the question of whether she had purchased products from Ms. Green was not central to the investigation. As such, other witnesses with potential knowledge on this subject were not specifically questioned on it.
[32] [Executive Administrator] (contractor) works as an executive administrator in the 61st Logistics Readiness Squadron (LRS).
[33] [Executive Administrator] could not recall when this statement was made, but guessed it was earlier in 2011.
[34] [Management Assistant] (GS-7) is a management assistant in a contracting section of the SMC.

However, [Management Assistant] stated the rest of her dealings with Ms. Green's business were done off-duty, such as during lunch or at Ms. Green's house.

[Programming Management Analyst][35] testified as to her last discussion with Ms. Green about the business while at work:

> IO: Since say the middle of last year, say a year ago . . .
> W: Uh-huh.
> IO: . . .since a year ago . . .
> W: Uh-huh.
> IO: . . . you have been in that office.
> W: Yes.
> IO: Have you seen any products during that time?
> W: No. I remember the last time I purchased from her, because I asked her. I went down to say, "Hey, can I get some more or some samples," and she said, "You know, I can't do this here." She said, "You're going to have to contact me on my personal E-mail address," and stuff like that. So that's so -- since that time . . .
> IO: And what -- and what was that time, about a month or . . .
> W: Maybe end of '09, beginning 2010, I really don't recall.

Witness testimony suggested that when Ms. Green discussed her products, it was not usually Ms. Green who would actively initiate the conversations. Ms. Green testified that "I have a lot of people that come to me that know that . . . I make products." Further, she stated that "when people come and ask me if I make products, I tell them yes. . . . My products are part of me. They're part of the conversation that I have with people."

Ms. McCauley, [Video-teleconference Assistant 2], [Audiovisual Specialist 2] and [Audiovisual Specialist 1] all testified that the most common ways Ms. Green found new customers at the work place were by the scent of the office and by customer word of mouth. Because the aroma of the product within the office space was both noticeable and pleasant, it was normal for people walking in to remark about the smell which would spark a discussion from Ms. Green about the products. [Video-teleconference Assistant 2] stated "she smells just beautiful, and it's hard -- it really is really difficult to not stop, you know?" [Audiovisual Specialist 2] stated "People asking about that product, how smell." [Command Action Group Specialist] testified that she walked in the VTC office often and "one day, you know, I said, 'What is this? It smells so good, there's never labels.' And [Ms. Green] said, 'I make my own stuff.'" [Management Assistant] stated she found out about Ms. Green's products by noticing "someone who has something on and I said, 'What's that you're wearing . . . .'" Likewise, [Audiovisual Specialist 1] testified:

> Oh, that's what I'm saying. She has no discretion about it. I mean, this -- can I just be real frank? If you wanted to go in her office today and you're just coming in, act like you're going to have a

[35] [Programming Management Analyst] (GS-12) is a programming management analyst in the strategic plans and programs section of the SMC.

> VTC . . .you'd just have to say, "Well, what is this wonderful scent in the room?" And you say -- and -- and that's all you'd need to say and she would say, "Oh, this is my product." And it would take off from there. So it's – it's no discretion in it whatsoever.

[Command Action Group Specialist] testified that "I normally approach her if I want something" and denied receiving any emails from Ms. Green or seeing any advertisements or demonstrations. [Programming Management Analyst] stated that she came down to Ms. Green's desk one day in 2009 and introduced herself because she heard Ms. Green sold body products.

Ms. Green testified similarly. Although she stated that a "very small percentage" of her clients are employees on base, "[m]ost people don't even know I make the products because I don't talk about it. . . . I don't -- the only the way they'll find out is that they'll say, 'Are you the girl,' or 'Is that scent you're wearing, are you the girl that makes the lotion[?]' . . . And that's how they -- I never go to anyone."

Several witnesses testified they purchased products from Ms. Green. [Budget Analyst] testified that she has bought products in the past. [Video-teleconference Assistant 2] testified that she purchased products from Ms. Green in the office prior to the SMC/IG investigation. [Command Action Group Specialist] stated that she would pick up her orders from Ms. Green at different locations, including at a hair salon and at Ms. Green's desk. Ms. McCauley testified that Ms. Green would prepare bags of products for customers at her desk or in a VTC room. [Audiovisual Specialist 1] described this typical scenario:

> IO: And what does -- what does that entail?
> W: I've seen the exchange of money for product.
> IO: And is that when people walk into the office, they -- they collect the product and then pay for it?
> W: Well, just imagine this. Our workstations are separated, so I'm sitting in there at my desk and I can't see hers from mine because we're on the same side, but someone will walk in the door and greet her, so I don't just jump up and look and see what they're doing, but I can see clearly that when they leave the office, they have a bag in their hand full of products or no bag at all, and I -- and I know her products because she -- she have them sit on her counter sometime and I've seen them several times.
> IO: Are they in the bags already?
> W: Some of them are and some of them she just make and they're – they're inside of the, what you want to say, the carton or the -- the clear case. Lotions, creams, bath salts.

[Programming Management Analyst] testified that she purchased some products from Ms. Green. [Programming Management Analyst] did not think she paid for the product at the office, saying "I think she gave me an address. . . . I remember her saying something about you have to mail me the payment maybe." However, [Programming Management Analyst] did say she picked up the product at Ms. Green's office. [Programming Management Analyst] testified

that she requested several samples so she could decide which scent to purchase and, in response, Ms. Green brought several samples into the office for her.

Ms. Green testified that when people have approached her at work on how to pay her, she has told them to pay her outside of the base, mail her the payment, or pay her on PayPal. She said before the SMC/IG investigation, at times people would leave her a payment at her desk if she was not there, but she "didn't prefer that." Ms. Green stated that she gave products out to a customer a few weeks prior to her interview for the OSC investigation, but was unclear as to where the transfer was made.[36] She said that since the SMC/IG investigation, she tries not to operate her business at work during duty hours but on "very rare" occasions will bring customers products at work. Otherwise, she stated she meets customers after work or during lunch.

Ms. McCauley, [Video-teleconference Assistant 2], [Budget Analyst], [Executive Administrator] and [Contract Buyer][37] testified that Ms. Green would keep bottles at her desk. Ms. McCauley and [Video-teleconference Assistant 2] both testified that Ms. Green often allowed others to use the products at her desk. [Audiovisual Specialist 1] testified that he "definitely" saw her products at her work station within the past two months.[38] Except for [Audiovisual Specialist 1], all these witnesses stated Ms. Green's products were not left in common areas, such as the bathroom. [Audiovisual Specialist 1], however, stated that he has seen her product left in the (unisex) bathroom or one of the VTC rooms several times. Not every witness who has been in the office testified that they saw Ms. Green's products. Both [61st CS Director] and [Management Assistant] stated they never noticed her products anywhere.

Ms. Green denied in her testimony that any of her products are left in common areas in the office and that nothing is on display. However, she stated some of her product would be at her work station "to use." She testified "I would put it up there. If someone come [sic] to the office, they would say, 'Oh, what's this?' And they'd put the lotion on . . . ."

Ms. McCauley testified that Ms. Green would sometimes demonstrate her sugar scrub, by having potential customers wash their hands with the scrub in the restroom near the office. She reiterated her SMC/IG testimony that she once walked into a VTC room to see Ms. Green with a bowl of water and "people standing and waiting to get their hands done." [Audiovisual Specialist 1]'s testimony was very similar, as he stated Ms. Green rubs products on the arms and legs of customers at the office. [Audiovisual Specialist 1] also testified that he has seen Ms. Green demonstrate her products since the SMC/IG investigation. [Video-teleconference Assistant 2] did not say she ever saw a demonstration, but stated customers may have used sugar scrubs in the bathroom.

[Employee Relations Assistant] testified that he received a hand scrub demonstration. He stated he went to her desk, where she had something "like a hair grease container" full of her product. She helped him put her product on his hands in front of her desk, and then a few minutes later the two walked down the hall to a sink and she helped him wash his hands off.

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[36] Ms. Green at first agreed the customer left her office with a product and then said she either met the customer in the courtyard or off base.
[37] [Contract Buyer] (GS-7) is a contract buyer in the SMC.
[38] [Audiovisual Specialist 1] testified on July 14, 2011.

[Budget Analyst] also testified that she tried a scrub of Ms. Green's in the bathroom at work. When questioned on this subject, Ms. Green admitted that she has demonstrated her product at work.

Ms. Green testified that she would conduct demonstrations at the work site prior to the SMC/IG investigation:

> IO: Okay. Now, did you demonstrate the product prior to the -- last -- this time last year . . .
> W: Yeah.
> IO: . . . in some way?
> W: I -- I could give you an example. One of the -- one of -- one of our VTC customers, and that's where I work, in video-teleconferencing, it was her birthday. So she came down to the office and we're all wishing her happy birthday, and I said, let me go give you a hand scrub. Gave her a hand scrub with no list, no business card or anything. Gave her some lotion to put on her hand. She loved it and she left. And she has never come back to me to ask for anything. So several friends and people I've known for years, I love to do that, and if we're -- if we're in the office and it's a down day and we're relaxing, I love to do that and it is what I love to do. My business is what I love and it's part of me, so when I talk about anything, at some point that comes up because it's – it's a part of me.
> IO: So, as far as demonstrating . . .
> W: Uh-huh.
> IO: . . . whether it's a scrub or lotion . . .
> W: Uh-huh.
> IO: . . . it would have been in some room in the facility that you work in.
> W: Usually it's the restroom or . . .
> IO: Restroom, okay.
> W: . . . the sink or the kitchen.
> IO: And – and . . .
> W: But that's few and far between.
> IO: Infrequent times?
> W: Very infrequent, because not a lot of people want to go and . . .

Ms. Green testified that she stopped demonstrating her product at work after the SMC/IG investigation.

All witnesses agreed that Ms. Green would sometimes give her products away. Generally, she would allow people to use the products she had at her desk. Sometimes, she would give out small samples of a product and sometimes she would give a product as a gift. [Video-teleconference Assistant 2] stated "she's a very giving person, so she would be giving gifts, and not necessarily a sample. I mean, you could ask for a sample, you know . . . ."

[Audiovisual Specialist 1] stated that Ms. Green would sometimes give her products to Ms. Whetsel. However, Ms. Green testified that she has never given her product as a gift to anyone in her chain of command.

When asked whether she has ever noticed Ms. Green give out her product, [Video-teleconference Assistant 1] testified that she and others in the office would give out products to people who requested, specifically people coming back from washing their hands often asked for lotion:

> W: If someone asks me for hand sanitary, somebody asks me for lotion, I'm going to give you an option, do you want to smell good or your [sic] want Johnson & Johnson?
> IO: So would any of the products be from Ms. Green's business?
> W: Not Johnson & Johnson.
> IO: What -- what -- no, that's not what I said, ma'am.
> W: I'm not saying yes.
> IO: I said -- so lotion would be.
> W: Yes. I said hand sanitary, Johnson & Johnson and lotion.
> IO: And that would be in your work center, ma'am?
> W: It sure would.

Ms. Green testified that she regularly[39] gave products away as gifts at the work site. She stated the products have labels on them, with the Drippin' Nectar company logo and her website. She said the giveaways sometimes prompt the person to buy more product, but sometimes not. [Budget Analyst] testified that she was given samples of products from Ms. Green about twice, as well as emailed a list of products, all prior to the SMC/IG investigation.

Consistent with his previous testimony during the SMC/IG investigation, [Audiovisual Specialist 1] testified that he has seen business cards for Drippin' Nectar[40] on Ms. Green's work desk. Ms. Green denied that she kept business cards on her desk, but she did say she has them in her purse and gives them out at work. [Audiovisual Specialist 1] also stated she has made business cards with her work computer and printer. He testified that once he went to the office printer to pick up something he printed and noticed her business labels at the printer. [Audiovisual Specialist 1] and Ms. McCauley both testified that Ms. Whetsel had to order the office a new printer after Ms. Green broke the old one while printing labels for her products. [Video-teleconference Assistant 2] confirmed that Ms. Green used the office printer to make labels, but she denied that the printer broke as a result and denied that the printer was replaced. Ms. Green testified that she used the printer "once in a while" to print emails and labels.

Ms. McCauley did not believe Ms. Green used any other office supplies or equipment for the business, but she did believe Ms. Green ordered products online from her government computer. [Audiovisual Specialist 1] testified that Ms. Green used her government computer to send emails on her business and to research products. Ms. Green partially denied this, stating that she does her research for client skin issues at home. According to Ms. McCauley, she has

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[39] When asked how often, she answered "that's more often than I can even tell you."
[40] [Budget Analyst] testified that Ms. Green had business cards, but did not state where they were printed.

not seen Ms. Green use her government computer for business purposes since the SMC/IG investigation. However, [Audiovisual Specialist 1] testified that he has seen Ms. Green use the office printer for her business as recently as June 2011.

Ms. Green was questioned on the topic of government computer and email use. She testified that she has used her government email account to conduct her business in the past. She also testified that after the SMC/IG investigation, she stopped using her government computer for that purpose. From 2005 to 2009, she stated that she would receive emails from potential customers and she would reply on her government email. Prior to the SMC/IG investigation, she also stated that she would send out product lists on her government email account. She testified that within the last year, since the SMC/IG investigation, when she receives emails on her government account from customers she "usually tell[s] them to contact me on my cell phone or contact me on my personal E-mail address."

A search of Ms. Green's government email account was conducted for evidence of computer use for business purposes. The search examined activity on the account from around October 2005 through July 8, 2011. The review of Ms. Green's account showed she received orders from customers at her government email address. Further, it showed Ms. Green placed multiple orders for ingredients with commercial vendors by email from her government account. She also received repeated product advertisements from several different companies, but there was no evidence that she directly replied to any solicitations. In total, 21 instances of marketing, selling, or distributing personal business products were found from October 21, 2005 through May 4, 2010. However, there was no evidence of Ms. Green using her government email account for business purposes after May 4, 2010.

Ms. McCauley also provided the IO with several individual emails from Ms. Green, sent via her government account. On March 29, 2006, Ms. Green sent an email describing Drippin' Nectar products from her government account to 57 people. The subject was titled "Greetings my family" and the email body began with "DRIPPIN' NECTAR FRAGRANCE & PRICE LIST." The body then described 20 different products without prices[41] and six products of what "we have" with prices listed.[42] Some product prices were under $10, but most were more than $10. Similar emails were sent out from Ms. Green's government account to one person on October 31, 2006, and to 50 people on November 8, 2006. All these emails ended with Ms. Green's personal home number, personal cell phone number, and personal email address. Another similar email was sent to one person from Ms. Green's government account on April 17, 2007. However, the introduction of this email included more information. It stated:

> Thank you for contacting "Drippin Nectar." The following is a list of the products I make. Until the website is up, you can order from this list. You can email or call in your order. I accept paypal & money orders.

[41] For instance, one of the products was listed as "'Sweet dreams' – dreamy blend of lavender & roses, I recommend using this before bedtime. Lavender naturally relaxes your senses and promotes a good night sleep."
[42] For instance, one of the products was listed as "'Exfoliating Sugar Scrub' – 8oz. - $13, 16oz. - $20."

Many of the recipients of these emails had government email addresses, including accounts at the SMC and within the 61st ABG. Ms. Whetsel was not a named recipient of any of these emails.

***Ms. Whetsel's Involvement***

Several witnesses testified about the longstanding relationship between Ms. Whetsel and Ms. Green and how Ms. Whetsel would favor Ms. Green at work. [Video-teleconference Assistant 2] testified that Ms. Whetsel "knows Janell [Green] – they've known each other for a really long time," even before they were supervisor and subordinate. Ms. McCauley opined that because Ms. Green and Ms. Whetsel were friends, Ms. Whetsel allowed Ms. Green to operate her business.

> And she [Ms. Green] would have a conversation over and over with the supervisor [Ms. Whetsel] who – because they were friends, and they were close friends, and so [Ms. Whetsel] allowed [Ms. Green] to do whatever she wanted to do. So [Ms. Green] didn't feel like she was going to get in any trouble. She didn't feel like she was in any – any danger or jeopardy because the supervisor's sitting back there watching her and helping her create her business cards.

Ms. McCauley further stated:

> [Ms. Whetsel] never really crossed Janell [Green]. [Ms. Whetsel] was really concerned about her -- being her friend. She never -- on the -- on the rare occasions that I would -- like I got yelled at one time for an event starting late. It wasn't my event, and so I said, "Hey, listen, you need to talk to the girl about coming in late." And she said she had no expectations of them other than if they came to work, she was happy. And then when they -- she did talk to them, if Janell yelled at her, she would get upset. So she valued her friendship and her not being mad at her more than, you know, from the office. So she [Ms. Whetsel] never really challenged her [Ms. Green], ever.

The SMC/IG asked [Audiovisual Specialist 2] whether he had noticed a trend where Ms. Whetsel exercised favoritism towards certain employees under her supervision to the detriment of other employees under her supervision. [Audiovisual Specialist 2] responded in the affirmative, explaining

> If there's a definition for favoritism, my definition a little bit different. But favoritism is a yes. Favoritism related more to work. In other words, our office is so divided in – in one section where [Audiovisual Specialist 1], Ms. McCauley and I, [Audiovisual Specialist 2] is in one section where we do work on

> Audio Visual is more than the other two, [Video-teleconference Assistant 1] and Mrs. Green doing VTC which is conference – telephone conference.
>
> So that's two favor – two different – even though we in the same office, but we do two different works. So favor show up when we – Audio Visual, we do pretty good work, we get a lot of good praise. But there's a shortcoming on VTC part which means there's a lots of complaints, malfunctions, a lot of time we have to step in and help the VTC part. Christina show favoritism by protecting them [Video-teleconference Assistant 1 and Ms. Green], nourishing them. In other words, not helping them to step up. So everytime [sic] there's a problem, she step in and babysit them and she resolve the problem by herself. ...That's how she favors them. In other words, for us, if we have a problem on the Audio Visual side, we resolve ourself [sic]. We independent, we figure out and try to resolve our problem. She doesn't show favoritism on us. We just on our own, we do our own thing. But on this part she very protective of VTC part with Ms. Green and [Video-teleconference Assistant 1] fall on. She very protective of them. Any problem she will come and rescue them, and solve the problem for them.

[Audiovisual Specialist 2] explained that Ms. Whetsel favors Ms. Green and [Video-teleconference Assistant 1] because "she wants to protect" them because they have been working for her "for so long before even any of us coming."

[Audiovisual Specialist 1] testified in the SMC/IG investigation that Ms. Whetsel favored Ms. Green and [Video-teleconference Assistant 1]. He stated:

> The circumstances are, we have two female employees in our office that [Ms. Whetsel has] known since her military days. I guess that goes back 15 years or whatever. They knew each other then and they were close friends in the military. This one particular person I'm talking about is Ms. [Janell] Green. [Video-teleconference Assistant 1] was not in the military but they been knowing – [Video-teleconference Assistant 1]'s been with the Government since school days, so she's been there a long time.
>
> . . .
>
> Janell Green and Christina Whetsel were in the military together, the Air Force. They were Airmen together. And they were good friends, they still are good friends . . . Ms. Christina Whetsel and Ms. Janell Green are very good friends. They go back to the military days together.

[Audiovisual Specialist 1], [Audiovisual Specialist 2] and Ms. McCauley testified that they had heard Ms. Whetsel make remarks at a staff meeting to the effect of "that her only expectation of [Video-teleconference Assistant 1] and Ms. Green was that they come to work. Nothing more, nothing less." [Audiovisual Specialist 2] understood Ms. Whetsel to say that "[s]he doesn't have a high level of expectation" for either [Video-teleconference Assistant 1] or Ms. Green.

Ms. McCauley testified that Ms. Whetsel "turned a blind eye" to Ms. Green's business at work. She stated "she never corrected her or said, 'Hey, this is inappropriate.' She, in fact, helped her make her business cards and helped her design stuff for her business. She participated." When asked if Ms. Whetsel was aware that Ms. Green might have been violating something, Ms. McCauley stated that "she [Ms. Whetsel] knew."

> I believe that the majority of the people, especially the people that I considered to be ethical, knew that what she was doing was inappropriate, because it was constant, and it interfered with our daily activities in actually supporting our customers, because when I have to ask someone that's waiting to get their hands scrubbed to get out of my way because I need to get somebody something, it's a hindrance . . . .

Ms. McCauley opined that she thought Ms. Whetsel bought products from Ms. Green prior to the SMC/IG investigation, but not after. [Audiovisual Specialist 1] also testified that Ms. Whetsel has bought products from Ms. Green and used them on a regular basis. [Employee Relations Assistant] testified that about a year and a half prior to his testimony,[43] he heard Ms. Whetsel say "Hey, I just got some stuff from Janell."

When asked if she thought the chain of command was aware of Ms. Green's business, [Video-teleconference Assistant 2] answered "I think everybody in that office knew she was running a business." [Audiovisual Specialist 2] stated that he believed Ms. Whetsel was tolerant of Ms. Green operating her business at work. [Command Action Group Specialist] was "pretty sure" that Ms. Whetsel knew of Ms. Green's business and that Ms. Whetsel must have known about the products because "you couldn't help but know that she, you know, has stuff that smells good." [Contract Buyer]'s testimony was similar, as she said Ms. Whetsel "must have been aware of the product. Everyone in the area knew of the product." However, there is no evidence that anyone higher than Ms. Whetsel knew of Ms. Green's business operations until the SMC/IG investigation.

Ms. McCauley testified that Ms. Whetsel would assist Ms. Green by telling people about Ms. Green's products. Further, Ms. McCauley stated "I know [Ms. Whetsel] assisted her with the graphics portion or something to do with her card or business cards." Ms. McCauley stated she bases these beliefs off of what she has overheard at the office. [Audiovisual Specialist 1] testified "that originally it was Ms. Whetsel who helped her get the business started, because she was the one who showed her the -- the website of how to print . . . the business cards." He also

[43] [Employee Relations Assistant] testified on July 14, 2011.

testified that he complained about Ms. Green operating a business, both to Ms. Green directly and to Ms. Whetsel.

[Audiovisual Specialist 1] offered the following theory in his testimony:

> But -- but I -- but I'm going to be honest with you. Do you know why this has been allowed to happen? Can we be frank? Understand, I'm just going to be honest with you since I'm under oath, it's really due to Christina Whetsel. I don't know did they have an agreement, did they have a bond, but I do know that they've had a long friendship since military days, and I don't know was an agreement that was struck with them that, "Hey, I will allow you to sell your products." I don't know if -- if the deal was -- now I admit I didn't hear this, but it's awfully strange that you would allow her to have certain privileges that no one else has. I don't know that -- if you'd let -- allow me to have these products, to be able to sell these products in the office, I'll give you privileges.

[Audiovisual Specialist 1] stated that he and other co-workers brought Ms. Green's business to the attention of Ms. Whetsel and then to [61st CS Director], the squadron's Director. He also stated there were complaints made at the Equal Employment Opportunity office and with the base IG. [61st CS Director] did not state that he was approached directly by employees about Ms. Green's business. However, he did state that the SMC/IG conducted an investigation into that matter.

Ms. Green testified that Ms. Whetsel "was always aware" of the business. Ms. Green stated that Ms. Whetsel never helped Ms. Green in advertising the product, demonstrating the product, printing labels for the product, or selling the product. Ms. Green testified that Ms. Whetsel was "talked to" regarding Ms. Green's misuse of a government computer for personal business "just after" the SMC/IG investigation. She testified that after the SMC/IG investigation, Ms. Whetsel told her to stop operating her business at work. However, Ms. Green stated no one had ever told her to stop prior to that investigation.

The IO reviewed Ms. Whetsel's personnel files and confirmed that she was counseled about Ms. Green's personal business on January 6, 2011, after the SMC/IG investigation. After the counseling notation, Ms. Whetsel noted in her personnel file "I had verbally counceled [sic] employee prior to the [SMC/IG] investigation." There is no mention of such counseling in the transcript of Ms. Whetsel's testimony in the SMC/IG investigation. The IO reviewed Ms. Green's personnel files which have no documentation of or references to her operating a business at work (or anything else related to this subject matter). Ms. Whetsel testified that she did not document the counseling she had with Ms. Green.

When questioned by the IO, Ms. Whetsel testified that in the beginning of 2010, she counseled Ms. Green to stop conducting business at work and she stopped. Ms. Whetsel stated:

> I mean, it wasn't as though she had set up shop in . . . in the office, it was she had bags at the office. I didn't see her selling them, exchanging money, I just -- the bags were at the office, so I'm not sure if a few people were picking them up, but I had mentioned to her that, you know, I didn't -- I didn't think it was appropriate for people to pick up products at the office. Other than that, I didn't see whether it was an issue. I mean, she -- she makes sprays and products like that, so she would spray it in the office, but that's not selling it in the office, it's – that's -- I mean, I can make sprays at -- at my home and bring them in and spray it in the office. It -- I wasn't promoting -- she wasn't promoting her business, she was just making the atmosphere smell good. When I had asked her to stop, I never saw people pick up any products in the office.

Ms. Whetsel testified the last time she noticed bags of Ms. Green's product in the work site was during Christmas of 2009. She also stated she has never purchased a product from Ms. Green, but did say that she received some in a gift exchange one Christmas. However, in the SMC/IG investigation, Ms. Green testified that Ms. Whetsel "has bought products from her before." Ms. Green did confirm that she gave Ms. Whetsel some of her product around Christmas time and in exchange received a calendar made by Ms. Whetsel.[44]

Ms. Whetsel testified that she never advised anyone in her chain of command about the business, and no one in her chain approached her about the issue. Ms. Whetsel testified that she believed some people within the VTC office had bought products from Ms. Green before, but Ms. Whetsel said she never noticed anyone from outside their office ever order anything and has never seen Ms. Green demonstrating her products at work or heard about demonstrations at work. However, Ms. Whetsel did say she has heard Ms. Green answer questions about her products to people in the office. Ms. Whetsel also denied knowing that Ms. Green used her government computer and printer for the business and denied ever seeing money exchanged or dropped off at the office. The search of Ms. Whetsel's government email account found no evidence of any marketing, selling or distributing Drippin' Nectar products.

From 2004 until the spring of 2011, [Telecommunications Specialist][45] was Ms. Whetsel's supervisor. [Telecommunications Specialist] testified that he was not aware that Ms. Green ran a business. However, he believed he would have been informed if she were disciplined:

> IO: So, if anything were -- if any adverse action or anything were taken on people in there, would it be likely that you'd know about it?

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[44] A number of witnesses, including [Video-teleconference Assistant 1], Ms. McCauley, [Command Action Group Specialist] and [Video-teleconference Assistant 2] testified that Ms. Whetsel took photographs and then made calendars which she sold or gave as gifts. [Budget Analyst] stated that Ms. Whetsel sold calendars for about $8.00 and also gave them as gifts.

[45] [Telecommunications Specialist] (GS-12) is assigned to the 61st Communications Squadron as a telecommunications specialist.

W: Oh, absolutely.
IO: So, you don't know if Ms. Green had a business.
W: No, I'm like a second-level supervisor.
IO: And you don't know if she's been, if she -- if she did have a business, you -- would you know if she was disciplined for it or told to stop?
W: I would know she was disciplined for it.
IO: So nobody ever up in your chain mentioned to you anything about a business or any problems associated with -- that was going on regarding having a business?
W: No. There's a lot of communication with her first line supervisor who is Christine [sic] Whetsel and me and she's never mentioned that at all.

[61st CS Deputy Director],[46] the Deputy Director of the 61st Communications Squadron, also testified that he had no knowledge of Ms. Green operating a personal business and has never heard of Drippin' Nectar.[47] Like [Telecommunications Specialist], [61st CS Deputy Director] testified that if Ms. Whetsel knew Ms. Green was running a personal business while at work he would have expected Ms. Whetsel to have reported that to him. He said this was especially true during the time he was acting Director of the squadron, a position he held for about one year until [61st CS Director] was hired as the permanent Director. [61st CS Deputy Director] also testified that his supervisor, [61st CS Director], did not share any counseling sessions he may have had regarding personal businesses in the squadron.

***Other Matters***

The IO observed that most of the testimony disclosed that selling products at work has been common practice at Los Angeles AFB and people felt that such practice was rather accepted. Ms. McCauley, [Video-teleconference Assistant 2], [Management Assistant], [Programming Management Analyst], [Budget Analyst], [Command Action Group Specialist], Ms. Green and Ms. Whetsel testified that civilian employees selling things at work on Los Angeles AFB is not unusual. [Executive Administrator] said the economy is bad, so everyone does. Ms. McCauley implied that the climate at the base was such that selling products was allowed.

Ms. McCauley testified that "Janell is a good person and I think had she received proper guidance like a long time ago, because I've only -- she's been on this base for 20 years, so, because the climate was that it was okay, and this is before I got here . . . ." [Video-teleconference Assistant 2] stated "what Janell would have done is probably not anything different than what -- whatever percentage of what happens in every office is probably going on. But, I do know that Janell worked very hard to maintain a separation."

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[46] [61st CS Deputy Director] (IA-4) is the Deputy Director of the 61st Communications Squadron.
[47] He was, however, aware of the other allegations of the SMC/IG report (unrelated to the allegations of Ms. Green's personal business).

Ms. Green testified that many people on base, including [Audiovisual Specialist 1] in her office, would regularly sell things like AVON, Mary Kay, scarves, candles, magazines, and other products. Ms. Green added:

> I work for the government, so I'm not saying that my business was oh yeah, it was perfect what I did, because I do realize the rules and the regulations that are here. I work in -- I've worked and have worked for the past 20 years in an environment where you could buy anything, almost, that someone is selling at this base . . .

Many of the witnesses indicated that Ms. Whetsel was a photographer and had been engaged in commercial activity or gave photo calendars as gifts. Several witnesses, including [Audiovisual Specialist 2], [Video-teleconference Assistant 1], [Video-teleconference Assistant 2], and [Command Action Group Specialist] stated Ms. Whetsel has given calendars out as gifts at the office for special occasions such as Christmas. [Audiovisual Specialist 2] stated she has a website and sells photographs and calendars, but did not think that Ms. Whetsel advertised her photos other than by word of mouth. Most witnesses did not state she conducted business on-duty. The only evidence that Ms. Whetsel sold products at the worksite came from Ms. McCauley and [Audiovisual Specialist 2]. Ms. McCauley stated that at one time two or three years ago, she purchased a calendar from Ms. Whetsel, but has not noticed the items being sold since then. In his SMC/IG testimony, [Audiovisual Specialist 2] also stated that he bought a photograph for about $20.00 from Ms. Whetsel, but that he was the only one in the office who bought a picture.

When asked by the IO if there was anything further she would like to add, Ms. Whetsel testified:

> No. I'm just also wondering when people on this base and they're selling Girl – Girl Scout cookies and selling AVON, the difference of Janell talking about her product. I don't understand the difference. [Audiovisual Specialist 1] also has a business. [Audiovisual Specialist 2] also has a business.

She indicated that [Audiovisual Specialist 1] videotapes things on weekends or when he is off-duty and that [Audiovisual Specialist 2] operates a business providing video production services. Ms. Whetsel testified that while she heard both employees talk about their business ([Audiovisual Specialist 2] to a much lesser extent), she did not talk with either of them about it. "They didn't bring the – bring any sort of videos or business into the – into the office, it was just talk about the business, so I didn't think anything of it."

The IO noted that the interviews with some witnesses showed that they were carefully responding to questions, trying not to expose people of any wrongdoing. For example, when [Video-teleconference Assistant 1] was asked if anyone outside of her office would know about selling of calendars, she said, "Do I have to give out names . . . to me, that is personal information isn't it?" [Budget Analyst] stated that half the base has a business. When asked if

she knew the names of other people who sell products, [Budget Analyst] said, "I'm going to plead the Fifth on that because it's too many" and she did not want to get them in trouble.

All witnesses agreed that ethics training is mandatory on an annual basis. The IO obtained copies of the 25 slides from the on-line training. While the training covered various topics, there is one slide devoted to "Personal Business in the Work Place." That slide states that "You may not conduct any activity related to your personal business in the work place." It also states "You may not knowingly solicit or make solicited sales to personnel who are junior in rank, grade, or position (or their families). This includes insurance, stocks, real estate, cosmetics, household supplies, and other such goods and services." There is also a slide on the general prohibition against giving gifts to supervisors and a slide on the requirement for civilian employees to obtain permission prior to engaging in off-duty employment. The slide on off-duty employment basically states that civilian employees are required to get permission and submit a form if engaged in "off-duty employment," but does not define that term or specifically state that operating a personal business is included.

Ms. Whetsel testified that she was not aware of Ms. Green asking for off-duty employment authorization. Ms. Green stated that she does not have an off-duty employment authorization form and she did not believe she was required to get permission to operate her business. [61st CS Deputy Director] confirmed in his testimony that if a civilian employee under him wanted to have a personal business, they would be required to have an off-duty employment authorization. According to the IO, SMC/IG checked and found no record of off-duty employment for [Audiovisual Specialist 1] or [Audiovisual Specialist 2].

## ANALYSIS

### *Violation of Law, Rule or Regulation*

Based upon the evidence above, it is clear that Ms. Green owned and operated a business making and selling bath and beauty products. While Ms. Green may have started out making and selling her products as a hobby, as early as October 2005 and certainly by 2007 she was engaged in commercial activity, selling her products for money. Most notably, she used a name for her endeavor and, in 2008, registered Drippin' Nectar as a trademark. The USPTO documents indicated that Ms. Green owned and operated a business in commerce. Further, she advertised her products by use of business cards, distribution of samples, demonstrations and a website, all of which prompted people to buy her products. While some witnesses, like [Video-teleconference Assistant 1] and [Audiovisual Specialist 2], were unwilling to characterize Ms. Green's enterprise as a "business," the overwhelming testimonial evidence indicated that Ms. Green operated a personal business. Indeed, Ms. Green herself admitted that she owned and operated a business. For instance, she testified that Ms. Whetsel "is aware that I have my own business" and "when I first started the business it was just telling everyone I was doing this great thing, but I know that I had a business." When viewed in total, the evidence was overwhelming that Ms. Green's activities with Drippin' Nectar were a business or commercial activity motivated at least in part by profit.

The ownership and operation of a personal business by an Air Force civilian employee is not, by itself, a violation of any law, rule or regulation. However, the personal commercial activity of a civilian Air Force employee is subject to various legal requirements. Each is addressed below.

***Operating a Business at the Workplace***

The use of government resources to support private enterprises are extremely restricted, and even more so when the private enterprise is a for-profit private business. Government resources include duty time, government owned equipment and supplies, and government email accounts and network access. These restrictions, when taken together, effectively restrict an Air Force civilian employee from operating a personal business at the work site (whether on- or off-duty) as well as during duty time (whether at the normal work site or elsewhere).

*Duty time*

The misuse of federal employee time while on-duty for other than official purposes violates several regulatory provisions. Specifically, 5 C.F.R. Parts 2635.101(b) and 2635.705(a) require an employee to put forth an honest effort in the performance of their duties. Further, paragraph 2-301(b) of the JER states that government personnel, as a type of government resource, may only be used for official purposes and can never be used for commercial activities, unofficial advertising, or soliciting or selling. These provisions are at the heart of the allegations against Ms. Green.

By operating her business while on duty time, Ms. Green failed to put forth an honest effort in the performance of her duties. The evidence made clear that from around October 2005, Ms. Green has devoted substantial duty time to promoting and operating her business. Witness testimony strongly showed that Ms. Green spent large portions of her duty day demonstrating her products, discussing products with potential customers, giving out samples, exchanging products for money, and even at times bagging her products. Documentary evidence likewise showed that Ms. Green advertised her business by drafting lengthy emails and sometimes entering dozens of email addresses. While [Video-teleconference Assistant 2] did not say they were all customers, she did say "there are a million people that are always around [Ms. Green's] desk." Regarding customers, Ms. McCauley stated "[t]hey would be standing at her desk, sometime[s] two or three deep, waiting for her to either exchange products or money, or to talk about ordering a product or do a demonstration." [Employee Relations Assistant]'s testimony amply summed up the issue when he stated that he heard some of her co-workers say "Hey, well, you know what, we -- we can't really get Janell to do the type of work we need her to do because she's so focused on -- on her products."

At least prior to the SMC/IG investigation, Ms. Green's misuse of her duty time was flagrant. However, even minimal official time spent on commercial activities, unofficial advertising, and soliciting or selling is not allowed under paragraph 2-301(b) of the JER. Even the use of very short durations of time to simply deliver a bag of products to a client in the courtyard or handing out a business card, if done during duty time, is using official time for a

commercial activity, which is not acceptable. However, the evidence reflected that Ms. Green's use of duty time to support her business went well beyond a *de minimis* level.

Ms. Green therefore violated 5 C.F.R. Parts 2635.101(b) and 2635.705(a) and paragraph 2-301(b) of the JER by operating a personal business while on duty time.

*Government equipment and other resources*

Under Section 704(a) of the OGE regulations, employees such as Ms. Green may not use government property – including office supplies and telecommunications – for unauthorized purposes such as private commercial activity. The use of government telecommunications systems (including telephones, internet and email) for private commercial activity is strictly prohibited under paragraph 2-301(a) of the JER. The Air Force has its own specific regulation on the use of the internet and email, AFI 33-129 (including the current Air Force Guidance Memorandum to the same), which states that the use of the government network for "unofficial soliciting" or "selling" is not allowed and that using government internet or email for these unauthorized purposes "may result in adverse administrative or disciplinary action."

The search of Ms. Green's official email account made it clear that she used her account to advertise and operate Drippin' Nectar. The search yielded numerous incidents of misuse, which included advertising, selling, and ordering. The emails collected in the investigation made clear that she was advertising her products for sale through emails from her official account. Ms. Green's admission that she has used her government email account to support her business only further solidify the finding that Ms. Green violated the regulatory provisions on government email and internet use. This misuse of government email and internet resulted in a violation of 5 C.F.R. Part 2635.704(a), paragraph 2-301(a) of the JER, and paragraph 2.1 of Attachment 2 to the Air Force Guidance Memorandum to AFI 33-129. While the use of her government email account was repetitive from October 2005 up to May 2010, it is notable that there was no evidence of such misuse after May 2010.

The evidence also showed that Ms. Green used the Conference Services printer in support of her business. While there was conflicted testimony over the timeframe of the printer use, as well as whether Ms. Green broke the printer while printing labels, the evidence was in agreement that Ms. Green used the office printer for at least some business purposes; even Ms. Green testified that she used the printer "once in a while" to print emails and labels. Regardless of the number of times she used the printer to support Drippin' Nectar, the use of the printer even one time results in a violation of 5 C.F.R. Part 2635.704(a) and paragraph 2-301(a) of the JER, as using government equipment for private commercial activity is prohibited.

*Duration and Severity of these Violations*

The evidence was overwhelming that Ms. Green conducted her Drippin' Nectar business at her workplace and during duty time from October 2005 through the OSC investigation. Every witness with knowledge on the subject, including Ms. Green, testified that she has conducted business operations at work and during duty time. Based on the evidence, there is no question that Ms. Green was in violation of certain ethics regulations as discussed above. The only

contested issues involved the magnitude and egregiousness of Ms. Green's violations, both in the amount of government time and resources spent on her business, and whether her violations continued beyond the SMC/IG investigation.

As to the level of misconduct prior to the SMC/IG investigation, the weight of the evidence clearly supports a finding that Ms. Green's violations were flagrant and egregious. Documentary evidence and testimony showed Ms. Green spent a substantial amount of time operating her business while at work, rather than putting forth an honest effort at her job throughout the entire duty day.

After the SMC/IG investigation, the evidence is less clear. Ms. McCauley and [Audiovisual Specialist 1] testified that, essentially, nothing changed. That claim is not supported by the weight of the evidence. Ms. Whetsel testified that she counseled Ms. Green, which Ms. Green (and [Audiovisual Specialist 1]) corroborated (although they differ on the timing of such counseling). Every other witness besides Ms. McCauley and [Audiovisual Specialist 1] testified that Ms. Green either completely stopped operating her business at work, or significantly reduced the time she spent on it. Most telling was the computer search, which showed a complete stop in government email and internet misuse after the SMC/IG investigation. In total, the evidence supports a finding that Ms. Green substantially curtailed her commercial activities after the SMC/IG investigation, but did not completely stop. Specifically, the evidence showed Ms. Green ceased misusing government equipment and her government email account. However, the evidence showed that she continued to devote a smaller amount of duty time for her business, to deliver products to and accept payments from some customers, in addition to discussing and marketing her products to potential customers.

***Outside Employment Guidelines***

Outside employment may not conflict with the employee's official duties under 5 C.F.R. Part 2635.801(b). Section 803 requires an employee to obtain prior approval for off-duty employment if an agency supplemental regulation requires the same. Air Force Space Command Instruction (AFSPCI) 51-4, *Off-Duty Employment*, paragraph 1.3, does create such a requirement for civilian employees to obtain prior approval for off-duty employment within the jurisdiction of Air Force Space Command. Paragraph 1.2 of AFSPCI 51-4 defines "Off-Duty Employment" as "business activities and compensated outside employment, including self-employment. Examples of self-employment include the sale of insurance, stocks, mutual funds, real estate, cosmetics, household supplies, vitamins, and other goods or services."

As discussed above, Ms. Green's work with Drippin' Nectar had clear conflicts with her official duties. Instead of devoting her duty time to her duties, she operated her personal business in violation of 5 C.F.R. Part 2635.801(b). Moreover, the evidence, by a clear preponderance, showed that Ms. Green did not have off-duty employment permission. Her supervisor was unaware of this approval, and Ms. Green not only denied having approval but questioned whether she needed approval. As such, Ms. Green's operation of a personal business was in violation of 5 C.F.R. Part 2635.803 and paragraph 1.2 of AFSPCI 51-4.[48]

[48] The disclosures referred by OSC centered on the business activities of Ms. Green. However, in the course of the SMC/IG investigation and the OSC investigation, evidence was obtained which suggests that several individuals

*Gifts and Solicitations*

In general, 5 C.F.R. Part 2635.302 prohibits a subordinate from giving a gift to a superior and a superior accepting a gift from a subordinate. There are many exceptions to the general rule. Notably for this situation, a subordinate may give a superior a gift if it is valued at $10 or less. The evidence showed that sometimes Ms. Green handed out free samples of her products, sometimes she gave the product as a true gift, and sometimes she simply allowed people "to use" her product during the day or after returning from the bathroom.

Ms. Whetsel is Ms. Green's immediate supervisor. In reviewing the evidence, there was some evidence that Ms. Green has given products to Ms. Whetsel. Because of their close proximity in the office and their close relationship, the evidence did support that Ms. Whetsel would use Ms. Green's product from time to time at the work site. However, the evidence does not support a finding that such use would exceed the $10 dollar rule and thus, be a prohibited gift. With regard to samples, the evidence was not clear on whether Ms. Green ever gave Ms. Whetsel sample products.

There is, however, clear evidence that Ms. Green gave Ms. Whetsel a gift of her product one Christmas. Ms. Whetsel testified that she received such a gift from Ms. Green. According to Ms. Green's testimony, she and Ms. Whetsel exchanged holiday gifts – Ms. Whetsel gave her a calendar with photos that she had taken and Ms. Green gave Ms. Whetsel some of her product. Holiday gifts are specifically not an exception to the general rule against subordinates giving gifts to superiors. It is unknown what particular product Ms. Whetsel received from Ms. Green. However, the emailed price list of Drippin' Nectar products showed most prices to be in excess of $10, and Ms. Green testified that her products range in price from $7 to $30. [Budget Analyst] testified, however, that Ms. Whetsel sold her calendars for $8. If there were a true exchange, the gift to Ms. Whetsel would likely have been less than $10. However, there is insufficient evidence as to the value of Ms. Green's gift to Ms. Whetsel to make a determination as to whether or not 5 C.F.R. Part 2635.302 was violated.

Paragraph 2-205 of the JER prohibits an employee from knowingly soliciting or making solicited sales to DoD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off-duty. The JER provision provides certain exceptions.

There was not sufficient evidence for a finding that Ms. Green violated this provision. While it was clear Ms. Green sold and attempted to sell products to a number of people on base, the evidence adduced did not uncover any customers junior in grade to Ms. Green.[49]

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(Ms. Whetsel, [Audiovisual Specialist 2] and [Audiovisual Specialist 1]) were also in apparent violation of these regulations.

[49] As previously stated, the disclosures referred by OSC centered on the business activities of Ms. Green. However, in the course of the SMC/IG investigation, evidence was obtained which suggests that Ms. Whetsel sold a photograph to [Audiovisual Specialist 2] in apparent violation of Paragraph 2-205 of the JER.

*Abuse of Authority*

An abuse of authority occurs when there is an arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons. The definition of abuse of authority does not contain a *de minimis* standard or threshold.

The IO found that the preponderance of credible evidence indicates that more likely than not Ms. Whetsel abused her authority by knowingly allowing her close personal friend and subordinate, Ms. Green, to operate a business for personal gain from her duty station during duty hours using government resources and by failing to take appropriate action to preclude such conduct.

The facts clearly show that Ms. Green operated a personal business from her duty station during duty hours using government resources prior to and, to a lesser degree, after the previous investigation. According to the evidence, Ms. Green operated her business at work from around October 2005 through the time of this investigation. Testimony further shows that witnesses and subjects were employed daily in a close work environment and that Ms. Green openly operated her business in that environment. While there was testimony suggesting that Ms. Green's commercial activities subsided after the SMC/IG report, the evidence shows that she continued to operate her business at the worksite, albeit on a more covert and diminished level. Based on the clear evidence, Ms. Green's personal business at work was very well known and obvious over a long period of time.

The IO found, based upon a preponderance of evidence, that Ms. Whetsel knew that Ms. Green was operating a personal business during work hours. There is also evidence which shows that, based upon their close personal friendship, Ms. Whetsel showed favoritism toward Ms. Green by allowing Ms. Green to conduct her personal business at work while Ms. Whetsel handled problems with Ms. Green's official work.

Ms. Whetsel's testimony that she was generally unaware of Ms. Green's activities at work was contradicted by every other witness who talked about the subject, including Ms. Green. The others in the Conference Services office, namely Ms. McCauley, [Audiovisual Specialist 1], [Video-teleconference Assistant 2] and [Audiovisual Specialist 2], testified that Ms. Whetsel knew about the business conducted on-duty. Others from outside the office, namely [Contract Buyer], [Command Action Group Specialist] and [Employee Relations Assistant], similarly testified that Ms. Whetsel must have known what Ms. Green was doing. Further, the nature of Ms. Green's violations was so substantial and so public that it is highly unlikely someone frequenting the office – much less the supervisor sitting inside the open office – would have missed the obvious business operations at the work site. In addition, the evidence indicates that Ms. Green and Ms. Whetsel had been friends for a long time and had a close working relationship. A reasonable person would conclude that Ms. Whetsel was aware of this situation well before and after the SMC/IG investigation. Ms. Whetsel's denial of knowledge is unpersuasive, and the evidence is overwhelming that Ms. Whetsel was aware of Ms. Green's commercial activities.

As her direct supervisor and with knowledge of her commercial activity, the IO found that Ms. Whetsel was personally responsible for taking appropriate action to stop Ms. Green from using government resources to conduct personal business at work during work hours and failed to do so. The evidence is clear that prior to January 2010, Ms. Whetsel took no action to stop Ms. Green's commercial activities at work. While Ms. Whetsel testified that she verbally told Ms. Green that she had to stop operating her business at work in January 2010, the evidence does not support her statement. There is no written evidence of any counseling of Ms. Green by Ms. Whetsel in January 2010 (or at any time). Further, Ms. Green testified that she was not told to stop operating her business prior to the SMC/IG investigation and there is no evidence that Ms. Green ceased operating her business prior to the SMC/IG investigation in July 2010.

The preponderance of the evidence shows that some form of verbal communication by Ms. Whetsel to Ms. Green likely occurred during or after the SMC/IG investigation. [Audiovisual Specialist 1] testified in his SMC/IG interview conducted on July 8, 2010, that Ms. Green told him just prior to his interview that she was asked to stop selling her beauty products in the office. Ms. Green testified that Ms. Whetsel told her to stop her commercial activity just after the SMC/IG investigation.

However, the evidence shows that in response to this statement, Ms. Green's commercial activity diminished but did not cease and that Ms. Whetsel took no further action to ensure that Ms. Green stopped the operation of her personal business at the worksite. The IO determined that despite being counseled in January 2011, Ms. Whetsel continued to fail to take appropriate action. In addition, Ms. Whetsel failed to apprise her management of Ms. Green's business activities. In their testimony, both [Telecommunications Specialist] and [61st CS Deputy Director] indicated that they would have fully expected Ms. Whetsel to have briefed them if someone had been running a business at the work site, yet both denied knowing about Ms. Green's business.

By applying the standards noted above, Ms. Whetsel abused her authority as Ms. Green's supervisor by allowing her to use government resources during government work hours to conduct personal business. Her inaction prior to the SMG/IG report and her lack of appropriate follow up action thereafter resulted in personal gain to a preferred person, Ms. Green.

Based upon the preponderance of the evidence, the allegation that Ms. Whetsel abused her authority is substantiated.

## CORRECTIVE ACTION

Based upon the evidence in the file and the determinations made in the ROI above, the Air Force has undertaken corrective actions, including both administrative and disciplinary in nature. It should be noted that in June 2011, just prior to the initiation of the OSC investigation, Ms. Whetsel was moved out of her IA-3 position as the supervisor of Conference Services and into a new GS-12 position at a different location on base. As a result, she no longer supervises Ms. Green or Ms. McCauley.

*Administrative Corrective Actions*

The evidence adduced in the investigation revealed that private selling practices on the Los Angeles AFB may be widespread. The reference in the testimony of many of the witnesses to other private selling practices on the base indicates that such practice (and potential JER violations) may have been relatively commonplace and tolerated by various levels of supervision. Because this evidence tends to draw into question whether there was a wider culture of tolerating commercial activities at work by employees and supervision, the administrative corrective action was aimed at the entire SMC and not limited to only the individuals named in this Report.

On September 22, 2011, Lieutenant General Ellen Pawlikowski, the Commander of the SMC, sent out an email directive to every employee (military and civilian) under the SMC, including the 61st ABG. In the email, she stated:

> I have a serious topic I need to address with you. It has come to my attention that some SMC employees are presently or have in the past been performing activities related to the operation of personal businesses during the normal duty day, and that other SMC employees have participated in or conducted transactions with these employees in regards to those businesses, also during the duty day. USAF employees, military or civilian, must use official time to perform official duties only. Activities other than official duties during the work day are prohibited. Additionally, employees may not direct or request subordinates to use official time to perform any activities other than official activities. Examples of personal business that cannot be conducted in the workplace include selling insurance, stocks, real estate, cosmetics, household supplies, and other such goods and services. Such activity violates the standards of ethical conduct for employees of the executive branch of the federal government, in particular 5 CFR part 2635, sections 705 and 802, as implemented within DoD by the Joint Ethics Regulation (JER). Any such ongoing activity will cease and desist immediately.

In addition to the cease and desist order, Lieutenant General Pawlikowski's email required that anyone engaged in or planning on engaging in off-duty employment, including the operation of a personal business out of an employee's house, must obtain written approval to do so. Further, the email set forth Lieutenant General Pawlikowski's determination that remedial JER training is necessary for all of SMC and stated that she expects full cooperation and attendance for this upcoming training.

The legal office at Los Angeles AFB has developed and initiated the ordered remedial ethics training. All units on Los Angeles AFB will be trained, to include all civilian and military personnel. The training will occur in small groups in the courtroom at the legal office in base. On September 28, 2011, the 61st Communications Squadron was the first group trained. In

attendance were Ms. Whetsel and Ms. Green. To emphasize the importance of this training, the Staff Judge Advocate personally attended the training and made opening remarks. Two military attorneys then covered the remainder of the topics. Because of the large number of personnel, it is anticipated that it will take six months to rotate all units through the ethics training. Every training session will have a sign-in sheet to ensure full accountability.

In addition to this remedial training, the SMC Commander has directed that the SMC legal office provide ethics training to all new employees at Los Angeles AFB. This includes personnel new to the Air Force, as well as employees moving to Los Angeles AFB from another Air Force location. Further, the SMC Commander has directed that the SMC legal office will provide ethics training at the next scheduled Commander's Call, which is a base-wide gathering of essentially all personnel, both civilian and military.

***Disciplinary Actions***

Disciplinary action has been proposed for the two subjects identified in this investigation, Ms. Whetsel and Ms. Green. On October 11, 2011, Ms. Whetsel was issued a notice of proposed suspension for three days for conduct unbecoming a supervisor and negligent performance of supervisory duties. On October 7, 2011, Ms. Green was issued a notice of proposed suspension for two days for inappropriate conduct for a federal employee.

## CONCLUSION

Upon review of the evidence and testimony adduced during the investigation, the following violations of law, rule, or regulation are based upon a preponderance of the evidence:

- Ms. Green failed to put forth honest effort in the performance of her duties, using government resources for unauthorized activities, and engaging in outside employment that conflicted with her government duties in violation of 5 C.F.R. Part 2635.101(b) and DoD 5500.7-R, paragraph 2-200;
- Ms. Green failed to use official time in an honest effort to perform duties in violation of 5 C.F.R. 2635.705(a) and DoD 5500.7-R, paragraph 2-200;
- Ms. Green used government resources for other than official purposes in violation of DoD 5500.7-R, paragraph 2-301;
- Ms. Green used her government email for unofficial soliciting and selling in violation of the Air Force Guidance Memorandum to AFI 33-129, Attachment 2, paragraph 2.1;
- Ms. Green's operation of her personal business conflicted with her official duties in violation of 5 C.F.R. Part 2635.801(b); and
- Ms. Green failed to get approval for her off-duty employment in violation of 5 C.F.R. Part 2635.803, DoD 5500.7-R, paragraph 2-200, and AFSPCI 51-4, paragraph 1.2.

The evidence and testimony adduced during the investigation suggests the following apparent violations of law, rule, or regulation:

- Ms. Whetsel, [Audiovisual Specialist 2] and [Audiovisual Specialist 1] failed to get approval for off-duty employment in apparent violation of 5 C.F.R. Part 2635.803, DoD 5500.7-R, paragraph 2-200, and AFSPCI 51-4, paragraph 1.2; and
- Ms. Whetsel sold a photograph to a subordinate in apparent violation of DoD 5500.7-R, paragraph 2-205.

Based upon the evidence and testimony in the record, the IO found, by a preponderance of the evidence, that Ms. Whetsel abused her authority by allowing Ms. Green to conduct her business at work and during duty hours.

The investigation did not reveal a criminal violation. Therefore, referral to the Attorney General, pursuant to 5 U.S.C. Sections 1213(c) and (d) is not appropriate. This Report is submitted in satisfaction of my responsibilities under 5 U.S.C. Sections 1213(c) and (d).

## APPENDIX

### WITNESSES INTERVIEWED
(Alphabetical Order)

[Budget Analyst] (July 15, 2011 by AFSPC/IG), Budget Analyst (GS-11), SMC/PIO
[Employee Relations Assistant] (July 14, 2011 by AFSPC/IG), Employee Relations Assistant (GS-7), SMC/DP
[Video-teleconference Assistant 2] (July 27, 2010 by SMC/IG and July 13, 2011 by AFSPC/IG), Photographer (GS-7), SMC/PA
[61st CS Director] (July 15, 2011 by AFSPC/IG), Director (IA-4), 61st CS
Janell Green (July 7, 2010 by SMC/IG and July 15, 2011 by AFSPC/IG), Video-teleconference Assistant (GS-7), 61st CS
[Audiovisual Specialist 2] (July 8, 2010 by SMC/IG and July 13, 2011 by AFSPC/IG), Video-teleconference Assistant (GS-7), 61st CS
[61st CS Deputy Director], (July 14, 2011 by AFSPC/IG), Deputy Director (IA-4), 61st CS
[Video-teleconference Assistant 1] (July 12, 2010 by SMC/IG and July 18, 2011 by AFSPC/IG), Video-teleconference Assistant (GS-7), 61st CS
[Programming Management Analyst] (July 15, 2011 by AFSPC/IG), Programming Management Analyst (GS-12), SMC/XP
[Audiovisual Specialist 1] (July 8, 2010 by SMC/IG and July 14, 2011 by AFSPC/IG), Audiovisual Media Specialist (GS-7), 61st CS
[Telecommunications Specialist] (July 14, 2011 by AFSPC/IG), Telecommunications Specialist (GS-12), 61st CS
[Command Action Group Specialist] (July 14, 2011 by AFSPC/IG), Command Action Group Support Specialist (GS-11), SMC/CCX
Tamry McCauley (June 30, 2010 by SMC/IG and July 13, 2011 by AFSPC/IG), Audiovisual Media Specialist (GS-7), 61st CS
[Executive Administrator] (July 13, 2011 by AFSPC/IG), Executive Administrator (contractor), 61st LRS
[Contract Buyer] (July 14, 2011 by AFSPC/IG), Contract Buyer (GS-7), SMC/GPK
Christina Whetsel (July 13, 2010 by SMC/IG and July 15, 2011 by AFSPC/IG), Project Manager (GS-12), 61st CS
[Management Assistant] (July 14, 2011 by AFSPC/IG), Management Assistant (GS-7), SMC/LRPK

### ABBREVIATIONS USED

ABG – Air Base Group
AFB – Air Force Base
AFI – Air Force Instruction
AFSPC – Air Force Space Command
AFSPCI – Air Force Space Command Instruction
CCX – Commander's Action Group
CS – Communications Squadron

DoD – Department of Defense
DP – Director of Personnel
GPK – Global Positioning Wing, Contracting
IG – Inspector General
IO – Investigating Officer
JER – Joint Ethics Regulation
LRPK – Launch Range, Contracting
LRS – Logistics Readiness Squadron
MSPB – Merit Systems Protection Board
OGE – Office of Government Ethics
OSC – Office of Special Counsel
PA – Public Affairs
PIO – Public Information Officer
SAF/IG – Air Force Inspector General
SecAF – Secretary of the Air Force
SMC – Space and Missile Systems Center
SMC/IG – Space and Missile Systems Center Inspector General
TIG – The Inspector General
USPTO – United States Patent and Trademark Office
VTC – Video-Teleconference or Video-Teleconferencing
XP – Strategic Plans and Programs