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CONFIDENTIAL

Marc L. Zafferano, Esq.
Aronson, Dickerson, Cohen & Lanzone
939 Laurel Street, Suite D
San Carlos, CA 94070

Re: San Mateo County Harbor District

Dear Mr. Zafferano:

This letter will confirm that we have been retained to investigate a complaint of sexual harassment made by former San Mateo County Harbor District employee Lisa Fernandez. The Harbor District has requested that we make factual findings, and has instructed us to conduct our investigation independently, and without direction as to outcome. This letter summarizes our findings.

I.
INVESTIGATION

Complaint Background

Lisa Fernandez worked for the San Mateo County Harbor District as an Accounting Specialist from January 1997 to March 1999. Director of Finance, Anne Marie Walsh LaRocca, began a pregnancy disability leave in March of 1999. During

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her leave, Ms. Fernandez filled that position temporarily as Acting Director of Finance until her resignation from the District on April 23, 1999.

On September 5, 2001, more than two years after her resignation, Ms. Fernandez appeared before the Harbor Commission and made a complaint of sexual harassment related to her employment. She stated that for her 40th birthday, District General Manager Peter Grenell sketched a birthday card which he gave to her. (Johnson, Grenell)¹ A copy of the card appears as Attachment A. At the time of her complaint, Ms. Fernandez also distributed the lyrics from a "popular song" to explain the sexual meaning of the card. (Johnson) She asserted that the card was offensive and constituted sexual harassment.

Investigation of Harassment Complaint

In response to Ms. Fernandez' complaint, we were asked to conduct a neutral investigation and to present factual findings. The following individuals were interviewed in person in December, 2001, January, 2002, and February, 2002:

- Peter Grenell, Harbor District General Manager;
- Ann Marie Walsh LaRocca, former Director of Finance;
- Dorothy Baughman, former Administrative Assistant/Board Clerk (telephone interview);
- Renee Koszis, Accounting Specialist;
- Beverly Fontana, Administrative Assistant/Board Clerk;
- Daniel Temko, Harbor Master (Pillar Point);
- Robert Johnson, Harbor Master (Oyster Point);

¹ Parenthetical references refer to interviews with the person indicated.

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- Don Coats, Maintenance.

Interviews were also requested from Ms. Fernandez and three former female employees who had worked under Mr. Grenell in the District's administrative offices. Letters requesting an interview, describing the complaint, and our neutral role in investigating that complaint were sent to: 1) Lisa Fernandez; 2) Nancy Barlow, former Executive Assistant/Project Coordinator, 3) Barbara Lozier, former Accounting Technician and Administrative Assistant, and 4) Shannon Tanisaki, former Accounting Technician and Administrative Assistant. (Attachment B) Follow-up telephone calls were placed to each.

Tanisaki and Barlow never responded to our correspondence or phone messages. Lozier had moved following her employment with the District, and could not be located.²

On January 3, 2002, in response to our December 2001 correspondence, Ms. Fernandez left a voicemail message with our office apologizing for not responding to our letter and call, and stating that she had been unavailable for interview because she had been working substantial amounts of overtime. She stated she would agree to provide an interview about Peter Grenell.

On January 4, 2002, Ms. Fernandez left a second voicemail message stating that she had not made up her mind about speaking with me. She stated that it would be a "waste of time" to investigate if the matter was going to be discussed by the Commission in closed session.

On January 9, 2002, I personally spoke with Ms. Fernandez by telephone. She stated she was conferring with counsel about whether to go forward with the interview. She asked whether discussions about the investigation findings would be made public. I advised her that I could not speak for the District on this matter, and suggested that she may wish to contact District counsel Marc Zafferano. I encouraged her to provide an interview and stated that it was important to the investigation process that she tell her side of the story. She stated she would think

² Federal Express confirmed delivery of the above letters to Fernandez, Barlow and Tanisaki.

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about it and call me back. To date, she has not responded to our multiple requests for an interview.

Ms. Fernandez's equivocal position about being interviewed, the resulting delay in completing this investigation, and efforts to get her side of the story from her coworkers have made this investigation difficult and time consuming. We provide this report with the caveat that our findings do not include the perspective of the complaining party. We have, however, made every effort to determine her perspective based on statements and opinions expressed to coworkers.

Finally, in addition to witness interviews, documentation was reviewed, including the District's sexual harassment policy, sexual harassment training materials, newspaper articles addressing Fernandez' harassment complaint, personnel records, a tape recording of the September 5, 2001 complaint, and background materials on District elections and politics provided by the District. Below is a summary of our interviews and findings.

II. SUMMARY OF INTERVIEWS AND FINDINGS

District Work Environment Prior To The Card Incident

The Harbor District hired Peter Grenell as its General Manager in 1997. The District had hired Ms. Fernandez earlier that year. Mr. Grenell described the work environment when he arrived as that of a typical "harbor," where off color remarks and conduct occurred from time to time. He states that he was initially "tolerant" of such conduct, but only to the extent it did not appear harmful, unwelcome, or interfere with the ability of employees to do their jobs. (Grenell).

Grenell cites the conduct of Lisa Fernandez as an example. He states that when he arrived to the District, Fernandez had orchestrated an event called "Trashy Tuesdays." Grenell described Fernandez as the "creator and star" of the event, which included her dressing up "provocatively" in high heels, make up and low cut dresses in order to "turn on" the harbor patrol. (Grenell) No employee other than Fernandez participated in this event (LaRocca, Grenell). Grenell states he tolerated

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Fernandez' conduct because no one complained and it did not appear to create an intolerable work atmosphere.

Employees who worked with Fernandez did not feel her attire "crossed the line," or was inappropriate for her role as an employee who did not work directly with the public. (LaRocca, Baughman, Johnson). However, one former employee felt that Mr. Grenell gave the impression that he "appreciated" Fernandez' dress, and thereby encouraged it. (Baughman) However, the employee could recall no specific comments or actions by Mr. Grenell which caused her to form this impression. (Baughman). While Grenell's tolerance of Fernandez' conduct may have been unsettling to some, there is no indication that his conduct was intolerable or interfered with the ability of employees to do their job. (LaRocca; Baughman)

Ms. Fernandez may deny the existence of "Trashy Tuesdays" or the degree to which she participated in the event.³ However, others confirm her participation in the event, stating that on Tuesdays she "sometimes dressed seductively," wearing short skirts, heels and low cut blouses. (LaRocca, Temko, Grenell, Coats) Others heard her expressly refer to "Trashy Tuesdays." (LaRocca)

Card Incident

Ms. Fernandez celebrated her 40th birthday sometime in 1998, perhaps the early part of that year. (Grenell) For her birthday, Mr. Grenell sketched a birthday card which he believed she would "find amusing." (Grenell) He presented her the card with little discussion, stating only, "Happy Birthday." (Grenell) There were no other employees present when the card was presented. (Grenell)

Mr. Grenell stated that he gave Ms. Fernandez the card in the context of "Trashy Tuesday," and did not see the card as inconsistent with Ms. Fernandez's Trashy Tuesday routine. (Grenell) He did not intend to offend or embarrass her by Giving her the card. (Grenell) As set forth below, no employee interviewed felt that

³ In a brief telephone conversation with Ms. Fernandez on January 9, 2002, she stated she anticipated that Mr. Grenell would bring up "Trashy Tuesdays," and disagreed with how Grenell would portray her in this context. She provided no further information about Trashy Tuesdays, other than these cursory remarks.

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the card was presented to demean or embarrass her. No one felt that the card was so abusive that it interfered with her ability to perform her job duties.

Card Description

Mr. Grenell described the card as a "cartoon" which he drew himself. The card contains a drawing of woman in bed (purportedly Fernandez), covered by a sheet or blanket. In the background is a window, with the sun shining through it. There is no nudity, but the woman is apparently unclothed under the covers. The caption reads: "Time to plow the back 40." A further inscription reads: "(and you can leave your hat on)." It is signed, "Happy B-Day. The ole beardo." (*see* card, Attachment A).

Employee Reaction To The Card

Female employees who saw the card distinguished its intent from its effect. Almost universally, female employees who saw the card described it as "distasteful," "inappropriate for the workplace," and something they would "not want to receive from their boss" (LaRocca, Koszis).⁴ Male employees were less universal in their condemnation. One male employee found the card "tame" in relation to what he felt was Fernandez' "provocative style." (Temko). However, another male expressed shock at its contents. (Johnson). However, no employee felt that Grenell gave the card to Fernandez with the intent to embarrass or otherwise cause her to feel uncomfortable. One female employee familiar with the relationship between Grenell and Fernandez believed that the card was probably "given in friendship," and that only in retrospect had it proven to be an "error in judgment." (LaRocca)

At the time Fernandez received the card, she found it distasteful. (Baughman) Dorothy Baughman stated that when Fernandez received the card she told her that she did not think it was appropriate or funny. (Baughman) Fernandez told her she interpreted the card to be a picture of her (Fernandez) "naked in bed," and that the

⁴ Some employees do not view the card to be overtly sexual in nature, but becomes so only when placed in context of the song lyrics from which the card caption is drawn. (Coats) Employees familiar with the lyrics view the card to be sexual in nature on its face. (Temko) Whether by innuendo or otherwise, the card appears to be sexual in nature.

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card attributed "negative personality traits" to her which she did not find flattering or amusing. (Baughman) Nothing in Baughman's description of Ms. Fernandez's reaction suggests that it interfered with Ms. Fernandez's ability to perform her job.

Few District employees were aware of the card in 1998, while Fernandez was employed. Employees became aware of the card only after Fernandez made it public at the Commission meeting in September, 2001.

Coastal Commission Collage

Mr. Grenell was forthcoming about other events involving Fernandez which could be construed as sexual in nature. On a single occasion "in 1997 or 1998," he brought into the office a "fold-out history of the Coastal Commission and the Coastal Conservancy." (Grenell) Mr. Grenell was formerly the Executive Officer of the Coastal Conservancy. He described it as a mixture of "collages and cartoons" which he created, which contained "nudity." (Grenell) He showed the book to several employees, including Fernandez. (Grenell). Everyone who saw it laughed at it, including Fernandez. (Grenell)

Director of Finance, Anne Marie Walsh LaRocca, stated that when Grenell brought the collage to work, he handed it to her in a "brown paper bag." (LaRocca) She described it as a "book," one-inch thick, like a "writing journal." It contained writings, cutouts, and art drawings by Grenell. The book also contained nudity. (LaRocca). LaRocca stated she "never felt harassed by it," but did feel it was "strange." (LaRocca) She felt no pressure to look at the book. (LaRocca) She did not feel it was appropriate for the workplace. (LaRocca)

Absence of Contemporaneous Complaints to Management

There is no evidence that Ms. Fernandez complained to management, including her female supervisor (LaRocca), about either the card or the collage during her employment. Ms. Fernandez had received and read the District's harassment policy, and presumably was aware of District procedures for initiating a complaint. (Attachments C and D) Most employees became aware of the card after Fernandez made it public in her September, 2001 complaint to the Commission, more than 2 years after the incident. (Grenell, Temko, Baughman, LaRocca)

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There is evidence that Ms. Fernandez frequently complained to co-workers about various aspects of her work environment. Noticeably absent from these complaints were ongoing concerns about gender-based conduct or harassment. To the contrary, the volume of Ms. Fernandez' complaints appeared directed to her working relationship with her female supervisor, Anne Marie Walsh LaRocca. (Grenell) Fernandez felt that she "bossed her around." (Temko) Others observing the relationship saw it as a "personality clash." (Johnson) Still others interpreted Fernandez' objections to LaRocca as based on perceptions of "favoritism." (Coats) According to Peter Grenell, LaRocca was a CPA by training, ran a "tight ship" in her department, and often called Fernandez on missed deadlines and other work deficiencies. (Grenell) Her style clashed with that of Ms. Fernandez'. (Temko, Grenell) She expressed few, if any, ongoing concerns about gender based harassment.

Fernandez' Resignation

On April 23, 1999, Ms. Fernandez resigned from the District. (Grenell) Her resignation occurred on the same day as the resignation of Administrative Assistant Dorothy Baughman. (Baughman, Grenell) Ms. Fernandez provided no explanation for her resignation in her exit interview or to Mr. Grenell. (Grenell) However, Ms. Fernandez told Dorothy Baughman that she was resigning because of a letter of reprimand which Mr. Grenell gave to Ms. Baughman. (Baughman) Both Ms. Fernandez and Ms. Baughman felt the reprimand was unfair. (Baughman) Ms. Fernandez' resignation appears unrelated to the card incident of sexual harassment now under investigation.

September 2001 Complaint

In September 2001, more than two years after receiving the card from Grenell, Ms. Fernandez made a complaint with the Commission. She distributed copies of the birthday card and song lyrics to Commission members. She complained that the card constituted "sexual harassment." (Johnson)

Persons observing Ms. Fernandez at the Commission meeting described her as "upset" and "uncomfortable" over the incident. (Fontana) Other employees expressed skepticism about the legitimacy of the complaint because of the significant

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delay in raising concerns about the card. (LaRocca, Temko) Those expressing skepticism felt the complaint was timed for political reasons related to District elections in which Fernandez was a candidate. (LaRocca, Temko) This explanation does not appear inconsistent with the delay and timing of the complaint.

History of Corrective Action - Grenell

To the extent complaints have been brought to his attention, there is evidence that Peter Grenell has responded promptly with appropriate remedial action. In late 1997 or early 1998, Harbor Master Robert Johnson reported an incident amounting to what he believed could be harassment. The incident involved a female employee (Barlow) who made a sexually oriented remark to another female co-worker (Tanisaki). Tanisaki had been trying to get pregnant. Johnson remembers the remark involved reference to a "nooner," which made Tanisaki very upset. Johnson observed the incident, reported it to Grenell, and an inquiry was done. (Johnson) Grenell admonished Barlow, asking her to "be more discrete in what you say and where you say it." (Grenell) No subsequent similar incidents were reported or observed. (Johnson)

Current Female Employees Report Good Relationship With Grenell

Current and former female employees interviewed report a good relationship with Peter Grenell. None have felt uncomfortable working with him, or feel that he has created a negative work environment for women based on gender. (Koszis, Fontana, LaRocca) To the contrary, when off color remarks have surfaced, one female employee reported that Grenell stepped in, told the employee to "knock it off," and that there were no further problems. (Koszis)

After the card and collage incidents in 1997/1998, no employees reported specific incidents of sexually oriented comments or conduct by Grenell. (Baughman, LaRocca, Koszis, Johnson, Coats) At least one employee commented that Grenell "treats people with respect," is generally fair, and gets high marks for socializing with his employees, including having an occasional drink at the bar. (Coats) To the extent concerns have been expressed, they have been about perceived "favoritism" or "unfairness," none of which appear gender based. (Baughman; LaRocca)

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Current Work Environment

No woman interviewed felt that she had been subjected to harassment because of her gender while employed by the District. (Fontana, Koszis, LaRocca) Some women commented that male employees occasionally compliment them on how "nice" they look, or make comments such as "hi sweetie" or "hi buttercup." (Fontana) However, no woman indicated that these comments were offensive, unwelcome, or interfered with their ability to do their job. (Fontana)

Notwithstanding the informal nature of the current work environment, a few employees reported that sexual innuendo, bantering and flirting are common. One male employee stated that he routinely compliments female employees on their attire ("You look beautiful in that dress".) (Coats) A female employee stated that she may have made joking remarks such as "your place or mine," in response to a male employee's comment that he could use a nap. (Fontana) Others stated that such "comments go on in the office all the time." (Coats) However, no woman interviewed indicated that these comments were offensive, unwelcome, or interfered with their ability to do their job.

Sexual Harassment Policy

The District maintains a sexual harassment policy, which is provided to all employees. (Grenell). The policy is periodically updated and republished. (Grenell) The policy contains: 1) a prohibition clause, prohibiting all forms of harassment; 2) a definition clause, which provides examples of hostile work environment and *quid pro quo* forms of harassment; 3) a complaint mechanism, which explains how complaints can be made and which provides multiple alternative avenues for employees to make complaints; 4) a provision prohibiting retaliation; 5) a provision explaining and providing for a range of disciplinary action for engaging in harassment; and 6) a confidentiality provision explaining that the District will make best efforts to maintain complaints confidential. (See Attachment C). This policy, or a version substantially similar to it, has been in place since the time Fernandez was hired by the District. (Grenell)

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All employees are given a copy of the policy, and must sign for it acknowledging that they have read, understood and agreed to follow its terms. (Grenell). Ms. Fernandez signed an acknowledgement form stating she had received training and read the District's sexual harassment policy. (*See Acknowledgement form, Attachment D*). It is currently being updated by counsel, and has or will be reviewed with employees in the context of anti-discrimination/harassment training. (Grenell)

Anti-Discrimination Posters

Anti-discrimination posters are in place. All employees interviewed were aware of the posters, and knew their location. (Grenell, Temko, Coats, Fontana, Johnson)

Sexual Harassment Training

The District periodically conducts mandatory anti-discrimination/sexual harassment training for all employees. New employees are required to view a sexual harassment training video. (Grenell) As of December 2001, the District had completed 2 of 3 mandatory sexual harassment training sessions for its employees (Grenell). Training sessions included review of key sexual harassment concepts, including hostile work environment and *quid pro quo* forms of harassment, the District's harassment complaint process, retaliation, and the consequences of engaging in prohibited conduct. (Grenell) Written materials were distributed. (*See Attachment E*).

All current employees interviewed confirmed participation in training. (Grenell, Temko, Fontana, Johnson, Coats)

III SUMMARY AND CONCLUSION

To summarize, on September 5, 2001, Lisa Fernandez appeared before the Harbor Commission and made a complaint of sexual harassment. The complaint focused on a card created by Peter Grenell, which he gave to Fernandez for her 40th birthday in 1998. The card was sexual in nature.

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Female employees who saw the card felt it was distasteful, inappropriate for the workplace and something that they would not want to receive from their boss. Fernandez reacted negatively to the card at the time she received it. However, the card was presented to Fernandez at a time period when her conduct was viewed by some as "provocative." Absent a statement from Fernandez, it is unclear whether the "Trashy Tuesday" routine, directed to persons other than Peter Grenell (i.e., the "harbor patrol"), is enough to view the card as welcome or incited by Ms. Fernandez. The card appears to be a one time incident, and does not appear to have created an abusive work environment or interfered with the ability of any employee to do their job. As one former employee described it, Mr. Grenell likely gave the card to Ms. Fernandez in "friendship," but only in retrospect had it proven to be an "error in judgment."

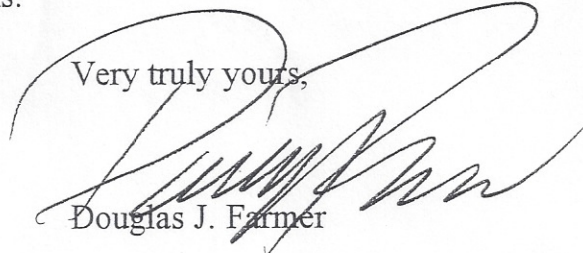
At the present time no female employee working under Mr. Grenell who was interviewed expressed discomfort with her work environment because of her gender. When concerns have been expressed about off-color commentary or innuendo, employees have observed Mr. Grenell respond promptly and decisively to end the conduct. Although employees have complained about perceived "favoritism" and "unfairness," none of these concerns appear to have been gender based.

Finally, it appears that the District has taken effective measures to deter future inappropriate conduct. It has re-distributed its updated sexual harassment policy to all employees. Harassment training videos are required at the time of hire for new employees. Comprehensive sexual harassment training was recently conducted for current employees. Anti-discrimination and anti-harassment posters are posted in conspicuous locations, and employees know the location of these postings. Since these preventive measures have been re-implemented, no complaints of discrimination or harassment have been brought to our attention.

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We hope that you find this report helpful. Please to not hesitate to contact me directly if you have any questions.

Very truly yours,



Douglas J. Farmer

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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Attachments