



**OPPENHEIMER**  
INVESTIGATIONS  
GROUP LLP

**Executive Summary of Report  
Concerning Complaint Against:**

SCVWD Directors Barbara Keegan and  
Linda Lezotte

**Client:** Santa Clara Valley Water District

**Date:** January 12, 2021

**CONFIDENTIAL**  
EXECUTIVE SUMMARY OF  
INVESTIGATIVE REPORT

## **CONFIDENTIAL EXECUTIVE SUMMARY**

### **I. INTRODUCTION, BACKGROUND, AND SCOPE**

On July 27, 2020, Santa Clara Valley Water District (“VWD”) retained Oppenheimer Investigations Group LLP (formerly the Law Offices of Amy Oppenheimer) to conduct an impartial investigation of a complaint dated May 27, 2020, brought by Reverend Jethroe Moore, President of the San Jose/Silicon Valley Branch of the National Association for the Advancement of Colored People (“NAACP”). Moore supplemented the complaint with a letter to the investigator dated August 10, 2020. Moore’s complaint was directed against VWD Board Directors Barbara Keegan and Linda LeZotte, concerning their conduct in the hiring process for Rick Callender, VWD’s Chief Executive Officer. Amy Oppenheimer was the principal investigator, assisted by Julie Matlof Kennedy.<sup>1</sup> Vida Thomas conducted a second level review of the report.

The essence of Moore’s complaint was that Keegan and LeZotte acted to block Callender’s appointment due to his race. Moore told the investigator that Callender had provided the specific information included in the complaint. After conducting interviews and reviewing the record, the investigator concluded that the complaint arose directly from Callender’s experiences and perceptions. Accordingly, Callender and Moore were both considered complainants.

Based on the information in the two letters referred to above, along with the interviews of Moore and Callender, VWD asked the investigator to conduct an investigation addressing the following questions:

1. Did Keegan and LeZotte release confidential information from Callender’s personnel or EEO files to the media and the public?
2. Did Keegan and LeZotte spread information about Callender being a sexual harasser or a convicted felon as part of their “lobbying” against his appointment to the CEO position?
3. Did Keegan and LeZotte seek criminal background checks on Callender in connection with his application for the CEO position?
4. If any of the above conduct occurred, was it due to Callender’s race?

### **II. WITNESSES AND DOCUMENTS**

The investigators conducted interviews of fifteen individuals, including all seven board members. The investigators also reviewed extensive documentation.

#### **A. Witnesses**

Consistent with professional investigative standards, the investigators interviewed witnesses who were most likely to have direct information about contested facts. The investigators first sought evidence from current VWD directors and employees, with the aim of minimizing public disclosure of confidential information. In the interest of confidentiality and avoiding needless expense, the investigators did not seek information that would be cumulative or unrelated to contested issues. In some cases, the

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<sup>1</sup> The Board’s response to the complaint, including the retention of the investigator, was undertaken pursuant to Governance Policies updated as of December 10, 2019, specifically Governance Policies 6.15-6.19.

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investigators sought to interview witnesses outside the agency. Some of those individuals agreed to be interviewed, whereas others declined.

Also in accordance with standard investigative practice, the investigators did not seek to interview members of the press or legal counsel. Members of the press customarily refuse to divulge information they received from sources. Moreover, attempting to interview members of the press almost inevitably leads to media coverage of the confidential investigation. Likewise, attorneys must assert privilege with regard to their communications with clients and it is rare that they are interviewed as witnesses.

It is important to note Reverend Moore's statement that all of his allegations were based on information provided to him by Callender. Callender said the same thing. Thus, in determining whom to interview, the investigators relied heavily on Callender's detailed allegations and his statements about which witnesses had first-hand knowledge of the relevant facts.

With that background, the following information is provided:

### **1. Witnesses Interviewed**

The investigators interviewed Reverend Moore, Callender, Keegan, LeZotte, Estremera, Santos, Kremen, Varela, and Hsueh. In addition, the investigators interviewed six witnesses identified herein by their initials for purposes of confidentiality: NC, AN, RG, MC, ME, and DG.<sup>2</sup>

### **2. People Who Declined to Speak with the Investigators**

The investigators attempted to schedule interviews with BN, NH, and JJ. None of those witnesses responded to the request for an interview.

### **3. Other People Identified but Not Interviewed**

As noted above, the investigators did not interview members of the press (e.g., JW or DP) or legal counsel.

There were several people whose names came up in connection with uncontested facts; there was no reason to interview such people. For example, Keegan and LeZotte said that they believed a criminal background check should be done. Thus, it was not necessary to interview other witnesses (LB, MR, OL, PM, and TV) who were said to have knowledge of this.

Callender described the involvement of nearly all the other people listed by Moore as potential witnesses. With regard to several of them (e.g., OL, PM, and LB), Callender said they were recipients of second or third hand reports of various events. The investigators chose to interview witnesses with more direct knowledge rather than people who would be able to provide only attenuated hearsay.

With regard to the former employee (AC) who obtained a copy of a document from Callender's EEO file, it was determined that there was no reason to interview him. The witness who gave AC the document was interviewed; she said he returned it two days later. There was no evidence from Callender or

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<sup>2</sup> Other than Moore, Callender, Keegan, LeZotte, and the remaining directors, all actual or potential witnesses are identified by their initials for reasons of confidentiality.

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anyone else to suggest that AC ever gave the document to Keegan or LeZotte. Keegan and LeZotte both denied having the document at any point. LeZotte and Hsueh said that LeZotte read from an entirely different document during a closed session Board meeting. (See below.) Moreover, there was information that AC left VWD on bad terms and had a contentious relationship with Callender and thus interviewing him might not be in Callender's or the agency's best interests. Given how remote it was that he would provide relevant information, it was determined it was neither necessary nor desirable to interview AC.<sup>3</sup>

One of the directors said that AR (an aide to a public official) had a personal grievance with Callender and might have spoken with Keegan. Callender said he believed Keegan and LeZotte spoke with AR but he provided no details.<sup>4</sup> The investigator determined that an interview with this third party witness was not likely to be revelatory.

There was no specific evidence of or allegation concerning the role of another third party, DD. His name was included on a list of potential witnesses without any link to a specific event. Not one of the other witnesses (including Moore himself) ever mentioned him during an interview. Thus, he was not interviewed.

There was evidence that another third party (SS) spoke to ME and made disparaging remarks about Callender. The investigator interviewed ME, who described those remarks. Therefore there was no need to seek cumulative evidence through a subsequent interview of SS.

### **B. Documents**

Moore and Callender accused Keegan and LeZotte of racism based on their spreading rumors that Callender had sexually harassed employees at VWD and had a criminal background. They asserted the two directors were sexualizing a Black man and making false allegations against him based on racist beliefs.

Because of these assertions, the complaint could not be investigated without making a determination as to the basis for Keegan and LeZotte's beliefs. This investigation disclosed that in 2008 VWD did do an internal investigation of a sexual harassment complaint against Callender. It also turned out that Callender did have a conviction for some sort of assault. Callender asserted, however, that each of these findings was a result of racism.

Thus, the complete file for the investigation of the 2008 complaint (consisting of hundreds of pages) was reviewed to determine if it was a fair and thorough investigation and whether the findings were consistent with the evidence gathered. This investigation also included a review of a 2008 ethics investigation involving Callender, the record of other complaints brought both by and against Callender, DFEH records, and documents relating to Callender's 2013 settlement with VWD.

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<sup>3</sup> Likewise, there was no reason to interview TY, an employee who was not involved with the maintenance of the EEO files.

<sup>4</sup> In the same part of his interview, Callender mentioned a possible conversation between Keegan and LeZotte and an employee (TV). Again, because neither Callender nor any other witness ever mentioned anything specific about TV, the investigator deemed it unnecessary to pursue an interview.

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### III. FINDINGS

#### A. 2008 Investigations

As stated above, Keegan and LeZotte were accused by Moore and Callender of racism by their sexualizing a Black man and making false allegations against him based on racist beliefs. If the sexual harassment allegations were false, that would be evidence that their opposition was, indeed, nefarious and perhaps racist. By asserting this theory, Moore and Callender put at issue the basis for Keegan and LeZotte's actions and whether those actions were reasonable and done in good faith or whether they were a subterfuge for racism.

The document review led a determination that the 2008 investigation of a sexual harassment complaint against Callender was thorough and fair. There was no reason to believe it was impacted by racism – in fact the lead investigator was a Black woman. Callender was found to have violated VWD's policies against harassment. In a separate report (which also appeared to have been thorough and fair), Callender was found to have engaged in ethics violations.

Callender asserted that these findings were set aside or expunged as a result of a 2013 settlement of a different matter. However, although Callender tried to have the findings expunged as part of that settlement, VWD did not agree to that.

The question, then, was whether Keegan's and LeZotte's consideration of the 2008 sexual harassment finding against Callender, in determining whether Callender should be CEO, was reasonable or whether it was racist. The related inquiry was whether they made false statements or accessed confidential documents during the process.

With this in mind, the following findings were made.

#### B. Did Keegan and LeZotte release confidential information from Callender's personnel or EEO files to the media and the public?

Not sustained. A preponderance of the evidence did not support a finding that Keegan or LeZotte released confidential information from Callender's personnel file or EEO file to the media or the public.

The basis for the contention that Keegan and/or LeZotte released confidential information about Callender was twofold. First, a document from his personnel file (apparently the draft 2008 report concerning the sexual harassment allegations) was printed and taken home by an employee when it should not have been. Second, LeZotte read aloud from something during a Board meeting that was held via Zoom and Board members were unsure what she was reading from.

There was evidence that Callender's personnel file was compromised, however there was no evidence that that documents were given to anyone. LeZotte said what she read out loud from was a complaint filed in Superior Court, which is a public document. She produced it during this investigation.<sup>5</sup> Given this evidence, which was found to be credible, it could not be found that either Keegan or LeZotte released confidential information about Callender.

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<sup>5</sup> Exhibit 1 hereto consists of pages 1 and 11, redacted to protect the privacy of the plaintiff. LeZotte said she read from Paragraph 41 on page 11 during a closed session Board meeting.

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### **C. Did Keegan and LeZotte spread information about Callender being a sexual harasser or a convicted felon as part of their “lobbying” against his appointment to the CEO position?**

Sustained in part and not sustained in part. A preponderance of the evidence supported a finding that both Keegan and LeZotte discussed their concerns about Callender engaging in sexual harassment with Board members and others. A preponderance of the evidence did not support a finding that either of them referred to Callender as a “convicted felon” but did support a finding that Keegan brought up Callender’s criminal background on at least one occasion.

There was considerable evidence that Board members discussed Callender’s appointment with each other and with other individuals. Whether this is correctly considered “lobbying” was unclear. Further, whether the discussions were inappropriate or would violate rules, policies, laws or expectations was beyond the scope of this investigation.

Keegan and LeZotte were not alone in this – it was undisputed that Callender and all of the Directors engaged in conversations among themselves and with others about the CEO search. In addition to conversations between and among all of the board members, Keegan spoke to eight non-board members and one member of the media (though there was no evidence Keegan initiated that contact) and LeZotte spoke to two non-board members. Additionally, Kremen spoke to a member of the media, and Kremen, Estremera, Santos and Varela all spoke to one or more non-board members. Callender also spoke to numerous members of the public and to four board members (Kremen, Estremera, Santos and Varela).

As for what Keegan and LeZotte said, a preponderance of the evidence did not support a finding that either Keegan or LeZotte referenced a “deep criminal history,” a felony, multiple affairs, or fathering a child with a VWD employee. However, there was evidence that Keegan, on one or two occasions, referenced past criminal charges (though not specifically a felony), which was a true statement.

There was a text from Keegan to Kremen asking if a reporter, Pulcrano, killed a “Rick expose article,” Keegan provided a detailed explanation of the context. She said another journalist, Wadsworth, called Keegan and said Pulcrano was treating an article about Callender “differently” and was trying to “kill” it. Therefore, Keegan said, she sent Kremen, who is a friend of Pulcrano’s, a text asking about this. This was evidence that she was speaking to the press about Callender, though not evidence that she initiated the conversations.

For the foregoing reasons, a preponderance of the evidence supported a finding that Keegan and LeZotte spoke to other Board members about the CEO search and expressed concerns about Callender’s history of sexual harassment during those conversations. Further, a preponderance of the evidence supported a finding that Keegan (and in two instances LeZotte) spoke to others about Callender’s application to become CEO to gauge support for him, at times bringing up the past charges of sexual harassment and once (by Keegan) bringing up his criminal record.

### **D. Did Keegan and LeZotte seek criminal background checks on Callender in connection with his application for the CEO position?**

Sustained. A preponderance of the evidence supported a finding that Keegan and LeZotte suggested that a criminal background check be done on Callender.

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LeZotte and Keegan both admitted suggesting a criminal background check, so to that extent this issue was uncontested.

Hsueh said the question of doing a criminal background check on applicants was raised early in the process and she thought there was agreement on this but that later Estremera and Santos felt strongly that a background check should not be done on an internal candidate.

Thus, while there is no question that Keegan and LeZotte supported doing a criminal background check, as did some other directors, and that at some point in the process Estremera and Santos did not, when and why there were dissenting views was harder to parse out.

The issue of who sought a criminal background check, when, and why, was difficult to track due to a number of factors. First, the contract with the search firm stated that there would be a background check on finalists, suggesting that doing so was a *fait accompli*. Second, witnesses tended to conflate a criminal background check with a generic background check, making it hard to determine who was advocating for or against which. Third, witnesses also tended to conflate doing a background check in the beginning of the search with the doing so on finalists and with doing so for the final candidate of choice before an offer was made, which was what was ultimately done here. Thus, the significance of this issue is ambiguous.

Nevertheless, given the evidence, a finding could be made that Keegan and LeZotte did want such a background check to be done.

### **E. If any of the above conduct occurred, was it due to Callender's race?**

Not sustained. A preponderance of the evidence did not support a finding that Keegan and/or LeZotte's actions were based on race.

The evidence is that Keegan and LeZotte believed there were serious allegations of sexual harassment against Callender that had been sustained via an internal investigation and that consideration of this was relevant to whether Callender was suitable to be CEO. The evidence also established that there was a reasonable basis for their belief as it was supported by documentary evidence.

Reasonable minds can differ on the relevance of these findings to Callender's fitness to be CEO – while they did appear to be serious, they were also twelve years old. It seems likely that some people would believe findings of sexual harassment would be relevant in decisions on hiring, even if twelve years old.

But raising and discussing Callender's past sexual harassment cannot fairly be considered, in and of itself, racist. It is also unreasonable to conclude that there is a pattern of racism simply because Keegan and LeZotte voted against Camacho, a woman of Color, in the 2017 CEO selection. (This was the other reason given by some board members for the conclusion that Keegan and LeZotte's vote was due to racism.) There was unconverted evidence that Keegan voted for a Black man rather than Camacho, dispelling this argument.

The other reasons raised for concluding Keegan and/or LeZotte were racist were insubstantial. Kremen said LeZotte rolled her eyes when discussing diversity (which she disputed). Callender said he heard a rumor that twelve or thirteen years ago, Keegan said a competitor for a position was selected only because he was Black. Keegan, on the other hand, said she was not selected for a number of positions

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for which she thought she was more qualified, and one of them was given to a Black man, but she did not say he got the position because he is Black. These allegations, along with the vote against Camacho, the concerns raised by Keegan and LeZotte about sexual harassment and advocating for a background check, were the only bases for the accusations of racism given by Reverend Moore, Callender and the four board members who voted for Callender.

Certainly, there are ugly racial stereotypes linking Black men to hypersexuality. In the United States there is also a history of false claims of rape and sexual assault against Black men. Had there not been competent evidence of sexual harassment and a criminal conviction Keegan and LeZotte's bringing these things up could certainly be seen as racist. However, that was not the case here. Rather, there was evidence of Callender's past harassment and that it had impacted the work environment at VWD.

Given Keegan and LeZotte's good faith, reasonable concerns about Callender's past actions, coupled with the lack of evidence of racial animus, a preponderance of the evidence did not support a finding that Keegan's or LeZotte's actions were due to Callender's race.

Respectfully submitted,



Amy Oppenheimer



Julie Matlof Kennedy



Vida Thomas



# Exhibit 1

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6 Attorney for Plaintiff

7 IN THE SUPERIOR COURT IN THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF SANTA CLARA

FILED Santa Clara Co  
07/27/09 11:16am  
David H. Yamashiki  
Chief Executive Officer  
St. Francis Hospital  
R#2009700081539  
JK \$300.00  
TL \$300.00  
Case: 1-09-CV-148445-148445-1

9  
10 Case No.: 109CV148445

11 COMPLAINT:

11 [REDACTED] Plaintiff,  
12 vs.  
13 SANTA CLARA VALLEY WATER  
14 DISTRICT, et. al., ENRICO CALLENDER  
15 (a.k.a. RICK CALLENDER), an individual,  
16 and DOES 1 through 50, inclusive,  
17 Defendant.

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1. Sexual Harassment and Hostile Work Environment [Gov. Code § 12940(j)(1)];
  2. Failure to Prevent Harassment and Discrimination [Gov. Code §§ 12940(j)(3) & (k)];
  3. Retaliation [Gov. Code § 12940(h)];
  4. Gender Violence [Civil Code §52.4];
  5. Assault;
  6. Battery;
  7. Intentional Infliction of Emotional Distress;
  8. Defamation.

JURY TRIAL REQUESTED

1 41. The investigation continued until on or about May 2008. Plaintiff was told that after  
2 interviewing more than twenty individuals that they finally decided to stop because they were  
3 certain they had enough information and that otherwise they could have kept on going. Plaintiff  
4 was told that her complaint was sustained and that they were recommending that Callender be  
5 terminated for the findings of the investigation. They also informed Plaintiff that ultimately the  
6 decision was up to the CEO. Plaintiff again expressed her concern that the same CEO he had  
7 bragged about getting hired would be the one in charge of deciding his punishment.

8 42. As Plaintiff had feared, the CEO decided to ignore the recommendation of the EEO  
9 investigators and to keep Callender employed with SCVWD. He was apparently "demoted" but  
10 less than four months later his position was reinstated.

11 43. As a result of the decision of SCVWD to maintain employment of Callender, Plaintiff  
12 continues to be exposed to him. Both the Office of Government Relations and the Office of  
13 Public Relations works closely with the CEO and the Board of Directors. This means that on  
14 numerous occasions Plaintiff has been subjected to being in Callender's presence and that she  
15 will continue to be in jeopardy of having to encounter him. On these encounters Callender has  
16 leered at Plaintiff. Causing her extreme distress. On one instance Callender smiled at her in a  
17 sarcastic manner, which she felt implied that he knew he had "won."

18 44. Plaintiff has missed opportunities for career advancement because Callender is still  
19 employed at the district. He has accepted meeting invitations that he never attends, that Plaintiff  
20 would have otherwise been assigned to, but to which she could not attend because of his  
21 presence. Plaintiff was going to be assigned to work on the future funding campaign, but because  
22 of his involvement the assignment was given to someone else.

23 45. Plaintiff continues to fear for the future of her career at SCVWD, because she knows  
24 what Callender is capable of doing and has seen him get away with it. Callender is in a position,  
25 by his very presence at SCVWD to prevent career growth and advancement of Plaintiff and to  
26 continue to defame her and damage her professional reputation.

27 46. Defendant Employer is strictly liable for the acts of Callender, a supervisory employee  
28 of Defendant Employer, under Government Code §12940(j)(1).

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