



Pastor Jethroe Moore II, moore2j@att.net 408-515-1114

January 9, 2022

Chair Tony Estremera
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Dear Chair Estremera and members of the Board;

It has been nearly a year, January 23, 2021, since we wrote to you about the fraudulent and negligent report which did not investigate the claims of the SJ/SV NAACP and instead only looked at one of the many claims we made.

Everyone can tell by Director LeZotte's and Keegan's current memo that they are trying to suggest that they have been exonerated of their likely illegal and harassing behaviors which we asked to be investigated. Clearly they have not, as the mass majority of the accusations which we provided direct evidence about were not investigated at all. We know that Valley Water General Counsel at the time did not want to allow for Valley Water and the Directors to be financially liable for the offending Director's behaviors, and as such they conducted a fraudulent investigation which did not fully examine our complaints. Both offending Directors remain guilty in the eyes of the community and likely the law. The community is not fooled, and everyone knows and can smell and see what illegal and racist behavior looks like. The stench of harassment and racism is clearly in the room, despite the findings of all Caucasian team which partially investigated our accusations, but obviously ignored other clear violations of the law.

As we pointed out last January the "thorough" investigation appears to have sought rationale to try and rehash settled by agreement with Valley Water, always disputed, and debunked by the Department of Fair Housing and Employment (DFEH) decades-old incorrect and salacious assertions, instead of examining the current issues about Directors LeZotte's and Keegan's unethical and likely illegal "Karen"-like privileged public and private behaviors during the CEO hiring process. (See all our attachments included with this letter)

We are truly disturbed and disappointed that the Board Ethics and Conduct Ad Hoc Committee did not fully, and fairly, investigate and provide findings to the Board about our last set of legitimate complaints about the Oppenheimer investigation, and ask that it be re-conducted and/or evaluated by another independent firm with instructions to look at our actual complaint versus trying to incorrectly investigate things which did not lead toward evaluating the true nature of our complaint. It's truly disappointing that White Privilege has been allowed to rule the day in this instance.



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As you are also very aware, the SJ/SV NAACP complaint was not CEO Rick Callender's complaint, which has yet to be filed. We continue to advise and encourage Mr. Callender to file a complaint against Valley Water and the offending Directors as he has a three-year statute of limitations from the date of the egregious and harassing behaviors of Directors LeZotte, Keegan, and Valley Water, to file his complaint about the initial illegal and harassing behaviors, and the subsequent retaliation to which he has been subjected, with the Department of Fair Employment and Housing (DFEH). We strongly believe that he will be successful in any subsequent complaint and action.

Regardless, the SJ/SV NAACP believes that this process has gone on for far too long and deserves some immediate resolution. The SJ/SV NAACP will officially withdraw our complaint, and not co-sponsor any future complaint, or legal action, of CEO Callender with the DFEH relative to this matter, if Valley Water agrees to the following terms:

1. We ask that Valley Water agree to not indemnify Director's LeZotte and Keegan against any lawsuits or actions taken against them personally as a result of their illegal and harassing behaviors during the CEO recruitment of Mr. Callender.
2. In an ideal world, there would be nothing to keep young people of color from pursuing their dreams. But many students of color often lack access to economic resources that ease the path to pursuing higher education. The SJ/SV NAACP needs to train, educate, and empower the black community and that takes time and money. We ask for \$25,000 dollars to accomplish that mission and to support such a program. This investment would demonstrate Valley Water's commitment to the same worthy goals, which will only make our overall community stronger.
3. We request another \$25,000 dollars be donated to the Healing Grove Health Center, whose mission is to share the love of God through Health Care, Soul Care, and Culture Care, thus bringing "the healing of the nations" to our community.
4. We ask that Valley Water create a program for hiring/training people from groups, such as ex-felons, veterans, and individuals receiving government assistance, giving them the chance to gain experience in the field of water. This program should give Valley Water the ability to mold and develop talent that can bring new ideas and ways of innovation to the water industry.
5. We ask that Valley Water hire at least one, and perhaps more, full time internship coordinator(s). The responsibilities of these coordinators will be to develop the interns to work in the water industry. We also ask that the SJ/SV NAACP be included in the intern application and interview process.
6. We ask that Valley Water Board put into place a CEO and other executive hiring process that will no longer allow for the discriminatory and atrocious behaviors to occur



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in which Directors Keegan and LeZotte engaged during the hiring process of CEO Rick Callender.

7. We ask the Valley Water Board to fix their official complaint process so that community, employee, or other complaints about Board member actions or behaviors are not handled by Valley Water staff, but by an independent third party or the Board themselves. This would help ensure transparency, accountability, and fairness during any subsequent investigation.

8. We ask that Valley Water take a closer look at the ethnic diversity of all Valley Water divisions and see if they reflect the communities they serve. Valley Water's divisions are overwhelmingly white, and Valley Water should do more to prevent hiring abuses, nepotism, or preferential treatment at all levels, and expand outreach to historically black colleges and universities during recruitments.

9. We ask that Valley Water issue a new and clear policy statement directing that the Board and all Board Appointed Officers take tangible action to advance diversity, equity and inclusion as integral components to the values and mission of Valley Water. Valley Water must value an inclusive work environment where all employees and residents feel welcome and comfortable to share diverse ideas and perspectives.

10. We ask that Valley Water create a Board Appointed Officer position and Office called the Office of Diversity, Equity and Inclusion that reports directly to the Board of Directors. That office will be independent of the CEO and District Counsel, with clear goals to advance inclusion, equity and diversity in employment and procurement. This Office will be responsible to the Board of Directors for a 5-year term and will focus on reforming how the Valley Water views and treats all communities including low-and-moderate income communities.

Some will scream against this type of proposed change. Labor might even be coaxed to rail against it. But it is clear that the time has come, and past and current circumstances demand this action. Our community has suffered inequities for decades when it comes to discrimination in employment and procurement. This Office shall determine employee demographic data, assess perspectives, assess progress, identify gaps, and prioritize improvements for diversity equity and inclusion at Valley Water.

11. We ask that Valley Water require all members of the Board of Directors to take 8-hours of training every year on diversity, inclusion and ethics, including implicit bias, understanding of social identities and cultural patterns, bridging across differences at social levels, with the support of local community members.

12. We ask that by July 1, 2022, the CEO, General Counsel and Clerk of the Board submit a DEI action plan which details and provides timelines, to attract, promote or hire from a robust pool of qualified candidates. We also ask that each Board Appointed Officer provide a list of equity indicators specific to each of their areas and provide a



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description of how each office will develop reliable data to track progress on racial equity, demonstrating a commitment to provide an inclusive work environment and equal participation at all levels, including how they will be instituting mandatory training of their employees on implicit bias.

On behalf of the SJ/SV NAACP I look forward to your response and to closing the atrocious chapter of a vicious White privileged attack on an African American man who simply elected to try and be CEO, both before he applied, and after.

In Community Spirit,

Pastor Jethroe Moore II

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

5 ENRICO L CALLENDER,
6 Plaintiff,
7 vs.
8 SANTA CLARA VALLEY WATER DISTRICT ET
9 AL,
10 Defendant

Case No.:

ENRICO L CALLENDER V. SANTA CLARA
VALLEY WATER DISTRICT ET AL.

11 COMPLAINT AND JURY DEMAND

12 Plaintiff, Enrico Callender Enrico Callender, by and through his undersigned counsel,
13 [REDACTED] hereby complains against the Defendants, the Santa Clara Valley Water
14 District, Director Joe Judge, Michael Baratz, Matthew Bruni, Jessica Collins, and Edward Yates.

16 STATEMENT OF CLAIM

17 This is an action to vindicate violations of the Plaintiff's civil rights and to redress the
18 unlawful and discriminatory conduct and employment practices of the Defendants.

19 This action arises out of the illegal and wrongful harassment based on the plaintiff's race,
20 age and subsequent retaliation. Mr. Callender was has been relentlessly harassed during the period of
21 his employment based, in whole or in part, upon his gender, age and/or race in violation of Title VII of
22 the Civil Rights Act of 1964, as amended, 42 U.S.C. Section(s) 2000e et seq., and the Civil Rights Act of
23 1866, as amended by the Civil Rights Restoration Act of 1991, 42 U.S.C. Section 1981 and 1983, 1st
24 Amendment of the United States Constitution, and The California Fair Employment and Housing Act
25 (Part 2.8 commencing with Section 12900 of Division 3 of Title 2 of the Government Code) and the
26 Regulations of the Fair Employment and Housing
27

1 Commission (California Code of Regulations, Title 2, Division 4, Sections 7285.0
2 through 8504).

3 Beginning on or about March 20, 1996, Enrico Callender, an African-American male,
4 was employed at the Santa Clara Valley Water District. During his more than 16 years with the Santa
5 Clara Valley Water District, Mr Callender performed his duties in a professional and outstanding
6 manner.
7

8 In or around February 1998 Mr. Callender began to experience direct and personal
9 attacks on his character and good name during the board meetings of the board of directors from Director
10 Joe Judge in open session.

11 Mr. Judge verbally attacked Mr. Callender in public and intentionally questioned his
12 credibility during taped sessions of the Santa Clara Valley Water District Board meetings. Director
13 Judge then began to make numerous demands that then CEO Mr. Stan Williams immediately discharge
14 Mr. Callender. These attacks and unfair demands for discharge were unwarranted and unexpected and
15 went on for nearly a decade before Mr. Callender began to document the attacks.
16

17 In or around February 2008, the Santa Clara Valley Water District initiated an
18 investigation into alleged sexual harassment and misconduct at its facility located in San Jose, CA, where
19 Mr. Callender is employed. The investigation was the direct consequence of Mr. Joe Judge's ongoing
20 attempts to force Mr. Callender to be removed from the employ of the organization. The allegations
21 raised by Ms. Jessica Collins, a white female employee, who reported, under questionable circumstances,
22 that she had been subjected to sexual harassment.
23

24 Mr. Callender vigorously denied the accusations, and subsequently in 2011 the DFEH
25 found that the District was knowledgeable that their conclusions were not based on facts which they had
26 in evidence.
27

1 Following both investigations, Mr. Judge went on a series of attacks directed towards Mr.
2 Callender, referring to him as Nigger, attacking his association with the NAACP and acting in a harassing
3 manner during open and public board meetings towards Mr. Callender.

4 In December 2010 Mr. Callender issued a complaint directly to the elected Board of
5 Directors of the Santa Clara Valley Water District in an attempt to halt the ongoing harassment. A
6 District' investigation revealed many of these claims to be accurate. Mr. Callender filed a complaint with
7 the California Department of Fair Housing in March of 2011.

8 Following the complaint with the DFEH Mr. Judge began a retaliatory campaign to try to
9 attack Mr. Callender's reputation by directly meeting with District managers, and others, and by making
10 and handing out copies of a complaint against Mr. Callender which had been dismissed in the courts.

11 As a result of the Defendants' unlawful discriminatory, and retaliatory conduct and
12 employment practices and violations of Plaintiff's rights protected by state and federal law, Mr. Callender
13 was experienced severe emotional distress and a loss of income.

14 Plaintiff now seeks monetary damages, including back pay, front pay, if applicable,
15 compensatory and punitive damages; and attorneys fees and costs, pursuant to Title VII of the Civil
16 Rights Act of 1964, as amended, 42 U.S.C. Sections 2000e, et seq.; the Civil Rights Act of 1866, as
17 amended, 42 U.S.C. Section 1981 and 1983; 42 U.S.C. Section 1981 and 1983A and 42 U.S.C. Section
18 1988, and The California Fair Employment and Housing Act (Part 2.8 commencing with Section 12900
19 of Division 3 of Title 2 of the Government Code) and the Regulations of the Fair Employment and
20 Housing Commission (California Code of Regulations, Title 2, Division 4, Sections 7285.0 through
21 8504).

22 Mr. Callender also brings tort claims under the common law of California.

1 PARTIES

2 Plaintiff, Enrico Callender, an African-American, is an adult male individual and citizen
3 of the United States who resides at [REDACTED], San Jose, CA . Mr. Callender is 42 years old and was
4 an employee of the Santa Clara Valley Water District, within the meaning of Title VII of the Civil Rights
5 Act of 1964, as amended, 42 U.S.C. Sections 2000e, et seq., and The California Fair Employment and
6 Housing Act (Part 2.8 commencing with Section 12900 of Division 3 of Title 2 of the Government Code)
7 and the Regulations of the Fair Employment and Housing Commission (California Code of Regulations,
8 Title 2, Division 4, Sections 7285.0 through 8504), and applicable case law.
9

10 Defendant, the Santa Clara Valley Water District [herein referred to as District], is a
11 Public entity or similar business entity organized and existing under the laws of the State of California,
12 and which regularly conducts business at the Santa Clara Valley Water District, San Jose, CA.
13

14 At all relevant times, Defendant District employed in excess of fifteen employees and
15 was an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.
16 Sections 2000e, et seq., and The California Fair Employment and Housing Act (Part 2.8 commencing
17 with Section 12900 of Division 3 of Title 2 of the Government Code) and the Regulations of the Fair
18 Employment and Housing Commission (California Code of Regulations, Title 2, Division 4, Sections
19 7285.0 through 8504).
20

21 Defendant, Joe Judge , a white male, is an adult individual and citizen of the United
22 States who resides in California. At all relevant times, Mr. Judge was a employee of the District.

23 Defendant, Matt Bruni, a white male, is an adult individual and citizen of the United
24 States who resides in California. Between approximately June 2002 and to January 2013, Mr. Bruni is an
25 employee of the District.
26
27
28

1 Defendant, Michael Baratz, a white male, is an adult individual and citizen of the United
2 States who resides in California. Between approximately June 2010 and January 2013, Mr. Baratz was an
3 employee of the District.

4 Defendant, Ed Yates, a white male, is an adult individual and citizen of the United States
5 who resides in California. Between approximately June 2011 and October 2012, Mr. Yates was an
6 employee of the District.

7 Defendant Santa Clara Valley Water District is a local government and public agency in
8 the State of California.

9 JURISDICTION AND VENUE

10 This is, in part, an action authorized and instituted pursuant to: Title VII of the Civil
11 Rights Act of 1964, as amended, 42 U.S.C. Section(s) 2000e et seq., and the Civil Rights Act of 1866, as
12 amended by the Civil Rights Restoration Act of 1991, 42 U.S.C. Section 1981 and 1983, and the
13 California Fair Employment and Housing Act (Part 2.8 commencing with Section 12900 of Division 3 of
14 Title 2 of the Government Code) and the Regulations of the Fair Employment and Housing Commission
15 (California Code of Regulations, Title 2, Division 4, Sections 7285.0 through 8504), and the common law
16 of the State of California.

17 The jurisdiction of this Court is predicated upon the law of the State of California, to
18 redress the unlawful deprivation of Plaintiff's rights secured, guaranteed and protected by State and
19 Federal law.

20 Venue is proper in the Santa Clara County Superior Court for the State of California
21 pursuant to 410.10 of the code of Civil Procedure, wherein Plaintiff resides, all Defendants, regularly
22 conduct business and where all the wrongful conduct occurred.

23 ADMINISTRATIVE PREREQUISITES

1 Mr. Callender has complied with all the administrative prerequisites to action under as
2 follows:

3 On or about March 20, 2011, Mr. Callender timely filed a formal charge of
4 discrimination with the California Department of Fair Employment and Housing under The California
5 Fair Employment and Housing Act (Part 2.8 commencing with Section 12900 of Division 3 of Title 2 of
6 the Government Code) and the Regulations of the Fair Employment and Housing Commission (California
7 Code of Regulations, Title 2, Division 4, Sections 7285.0 through 8504) [hereinafter referred to as DFEH]
8 which was jointly filed with the Equal Employment Opportunity Commission [hereinafter referred to as
9 E.E.O.C.];

10
11 Mr. Callender promptly and diligently accommodated all DFEH and E.E.O.C. requests
12 for information and fully cooperated in the agencies' investigation of this matter;

13
14 Mr. Callender has exhausted all available administrative remedies in accord with the
15 aforementioned statutes prior to instituting this Civil Action, Mr. Callender was provided a right to sue on
16 January 22, 2011.

17 **FACTUAL ALLEGATIONS**

18 Plaintiff, Enrico Callender, was employed by Defendant District on or about March 20,
19 1996 and worked at the District Headquarters located in San Jose, California.
20

21 At all relevant times, Defendant District employed in excess of fifteen (15) employees for
22 at least twenty (20) calendar weeks in 1996 through 2013.

23 At all relevant times, all matters regarding compensation, terms, conditions, rights and
24 privileges of Mr. Callender' employment were governed and controlled by Defendant District.
25

26 Upon information and belief and at all relevant times, Defendants Judge, Baratz, Bruni
27 and Yates were acting as the Director's, agents, servants and/or employees of Defendant District.
28

1 Defendant District is therefore liable for the acts, actions and omissions of the individual Defendants
2 pursuant to the principals of ratification, respondeat superior and actual and/or implied agency.

3 At all relevant times, Mr. Callender fully, adequately and completely performed all of the
4 functions, duties and responsibilities of his employment with Defendant District.

5 Until 2008 Mr. Callender has a history and record of regular salary increases and
6 bonuses.

7 At all relevant times, Defendant Judge was a elected Director of Defendant District.

8 Defendant District had a policy regarding sexual and racial harassment in the workplace.
9 Pursuant to the District Employment policies, the District's employees, agents, or contractors not
10 discriminate, harass, or allow harassment against any applicant, employee, customer, or other person on
11 the basis of sex, race, religion, color, national origin, ancestry, religious creed, political affiliation, mental
12 or physical disability (including HIV or AIDS), medical condition (including cancer), genetic
13 information, marital status, parental status, gender, age (over 40), pregnancy, special disabled veteran
14 status, Vietnam Era Veteran and all other Veteran status, sexual orientation, gender expression, gender
15 identity, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the
16 request, exercise, or need for reasonable accommodation.
17
18

19 Upon information and belief and as set forth herein, Defendant District applied this
20 policy in a manner that discriminated against Mr. Callender on the basis of age and/or race.

21 Director Judge initiated a series of public and private racially motivated attacks on Mr.
22 Callender which began in 1996.

23 Director Judge's attacks were based on discriminatory intimidation, ridicule and insult
24 and harassment.
25

26 Director Judge's verbal attacks included racial slurs directed toward Mr. Callender.
27

1 Director Judge's attacks included communicating disparaging information to third
2 parties, whom he knew, or should have known would carry the information back to Mr. Callender.

3 Director Judge's verbal attacks included direct racial slurs and other slurs which could be
4 determined through innuendo, all of which were directed at Mr. Callender.

5
6 Director Judge's verbal attacks were severe and pervasive over a period of over one
7 decade and intensified between 2006 and 2011.

8 Director Judge's attacks were continuous and steady over more than a decade.

9
10 The District, its employees, and agents were aware of Director Judge's racial animus
11 towards Mr. Callender.

12 Director Judge's confirmed to others that he was angry with another African American,
13 but was directing his anger towards Mr. Callender.

14
15 As a result of the attack on Mr. Callender it created a hostile work environment for Mr.
16 Callender where he felt that his only option might be to leave his employment, rather than continue to be
17 subjected to unfair and disparate treatment.

18 Director Judge on multiple occasions between 1996 through 2009 demanded that
19 multiple acting and actual CEO's discharge Mr. Callender of his duties as an employee. Upon
20 information and belief, these calls for discharge were based on racial animus.

21
22 Upon information and belief, in 2008 the District its employees, agents and contractors
23 conspired to initiate a District-wide investigation into Mr. Callender based on allegations of sexual
24 harassment and misconduct, in an attempt to manufacture a basis for discharge.

25 Ms. Jessica Collins at the encouragement of District agents initiated the complaint against
26 Mr. Callender.

1 Upon information and belief, Ms. Collins accusations were not creditable, and she only
2 reported the alleged sexual harassment after she was implicated in a violation of company policy.

3 At all relevant times, Mr. Callender vehemently denied all allegations of misconduct.

4 The District conducted the aforesaid investigation in such a manner so as to intimidate,
5 harass, embarrass and coerce its employees into supporting the accusations.
6

7 Upon information and belief, as part of the aforesaid investigation, District, through its
8 agents and employees, promised to reward employees and contractors for misrepresentation of fact and
9 retaliated against employees who did not cooperate with the misrepresentation of fact.
10

11 The District knew or should have known that the investigation against Mr. Callender
12 were false and motivated by self-interest, and tied to Director Judge and the attempt to discharge Mr.
13 Callender.

14 In spite of said knowledge, District acted on its investigative findings by reducing Mr.
15 Callender's pay and removing his then title.

16 Director Judge's verbal attacks on Mr. Callender included calling Mr. Callender racial
17 derogatory names.
18

19 Mr. Judge openly and continuously attacked Mr. Callender for his involvement and
20 association with the NAACP.

21 The District, its employees and agents were aware of Director Judge calling Mr.
22 Callender racially derogatory names.
23

24 Upon information and belief between 2009 and 2010 the District attempted to initiate at
25 least four subsequent investigations through its Equal Employment Office into Mr. Callender, in an
26 attempt to further manufacture a basis for discharge of Mr. Callender.
27

1 Upon information and belief, after Mr. Callender filed complaints directed toward at the
2 ongoing discriminatory actions of the District and Director Judge, Director Judge began to circulate a
3 dismissed court complaint, which had been discharged by the Santa Clara County Superior Court in a
4 attempt to attack Mr. Callender’s character and veracity and to influence the internal District investigation
5 on his action and role.

6
7 In December 2011 Mr. Bruni, the District’s HVAC technician, engaged in a unprovoked
8 written online attack against Mr. Callender and two other African American senior managers in an
9 attempt to attack their character and veracity. Upon information and belief this was done during and
10 while in the employ of the District.

11 Mr. Bruni falsely accused Mr. Callender of sexually harassing several women and the
12 District, causing the District to have to financially settle.

13
14 In 2012 Mr. Baratz, the District’s acting Human Resources Director, engaged in a series
15 of unprovoked verbal attacks in open District forums against Mr. Callender, in an attempt to attack his
16 character and veracity.

17 Upon information and belief, Mr. Baratz publicly and falsely stated that Mr. Callender
18 engaged in sexually harassing behaviors and would have to be “forced out” of the District, because he
19 would not leave on his own volition.

20
21 In 2012 Mr. Yates, Senior District Counsel, engaged in a unprovoked attack against Mr.
22 Callender, encouraging other members of senior management to refuse to works with Mr. Callender.

23 Upon information and belief, Mr. Yates publicly and falsely stated that Mr. Callender had
24 been accused and convicted of corruption.

25
26 In fact, there is evidence that Defendant Callender was subjected to disparate treatment
27 for over a decade through the behaviors and actions of Director Judge.

1 In fact, there is evidence which demonstrates that the District had knowledge that its
2 conclusions of its prior referenced investigation was not based on the facts.

3 In fact, there is evidence of the racially derogatory terms being spoken about Mr.
4 Callender on multiple occasions by agents, employees or contractors of the District.
5

6 In fact, District knew or should have known that Ms. Jessica Collins did have something
7 to gain from pursuing allegations against Mr. Callender because prior to her allegations of sexual
8 harassment , Defendant Collins was personally implicated in violations of District company policy.

9 In fact, the District used the investigation and complaint process as a tool for har
10

11 Contrary to its express employment policies, the District did not halt the harassment, and
12 allowed for other employees and agents of the District to retaliate .

13 CAUSES OF ACTION

14 FIRST CAUSE OF ACTION

15 Hostile Work Environment Gov. Code, § 12940(j)

16 All Defendants

17 Defendant District' Violation of Title VII's Prohibition Against Employment

18 Discrimination, and the California Fair Employment and Housing Act against Racial Discrimination --
19 Disparate Impact
20

21 Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs of
22 the Complaint as though set forth at length herein.
23

24 This claim is authorized and instituted pursuant to the provisions of Title VII of the Civil
25 Rights Act of 1964, 42 U.S.C. Section(s) 2000e et seq., as amended, and 42 U.S.C. Section 1981 and
26 1983, and The California Fair Employment and Housing Act (Part 2.8 commencing with Section 12900
27 of Division 3 of Title 2 of the Government Code) and the Regulations of the Fair Employment and
28

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1 Housing Commission (California Code of Regulations, Title 2, Division 4, Sections 7285.0 through
2 8504), for relief based upon the unlawful employment practices of the above-named Defendant.
3 Specifically, Mr. Callender complains of Defendant District' violation of Title VII's prohibition against
4 discrimination in employment based, in whole or in part, upon an employee's race.

5
6 Mr. Callender is an African-American male and during his employment with Defendant
7 District was a member of a class protected under Title VII against race based discrimination by his
8 employer, Defendant District, or its supervisory personnel. At all relevant times, Mr. Callender fully,
9 adequately and completely performed all of the functions, duties and responsibilities of his employment
10 with Defendant District.

11 At all relevant times, Defendant District operated under a harassment policy which was
12 intended to prevent disparate treatment based on race and other factors.

13
14 Director Judge through his numerous public statements about Mr. Callender being, "King
15 of the Blacks," referring to Mr. Callender as a Nigger, and statements about Mr. Callender's role in, and
16 association with the NAACP sought to create an atmosphere that a reasonable African American would
17 find to the work atmosphere to be hostile and abusive.

18 As a result of Defendant District' policies and practices, Mr. Callender was unjustly and
19 discriminatorily deprived of equal employment opportunities because of his race.

20
21 As a further result of Defendant District' above stated actions, Mr. Callender has been, is
22 being and will be deprived of income in the form of wages and prospective retirement benefits, but denied
23 because of his race and in an amount to be proven at trial.

24 SECOND CAUSE OF ACTION

25 Disparate Treatment (Gov. Code, § 12940(a))

26 All Defendants

27
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1 Defendant District' Violation of Title VII's Prohibition Against Employment

2 Discrimination, and the California Fair Employment and Housing Act against Racial Discrimination --
3 Disparate Impact

4 Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs of
5 the Complaint as though set forth at length herein.
6

7 This claim is authorized and instituted pursuant to the provisions of Title VII of the Civil
8 Rights Act of 1964, 42 U.S.C. Section(s) 2000e et seq., as amended, and 42 U.S.C. Section 1981 and
9 1983, and The California Fair Employment and Housing Act (Part 2.8 commencing with Section 12900
10 of Division 3 of Title 2 of the Government Code) and the Regulations of the Fair Employment and
11 Housing Commission (California Code of Regulations, Title 2, Division 4, Sections 7285.0 through
12 8504), for relief based upon the unlawful employment practices of the above-named Defendant.

13 Specifically, Mr. Callender complains of Defendant District' violation of Title VII's prohibition against
14 discrimination in employment based, in whole or in part, upon an employee's race.
15

16 Mr. Callender is an African-American male and during his employment with Defendant
17 District was a member of a class protected under Title VII against race based discrimination by his
18 employer, Defendant District, or its supervisory personnel. At all relevant times, Mr. Callender fully,
19 adequately and completely performed all of the functions, duties and responsibilities of his employment
20 with Defendant District.
21

22 At all relevant times, Defendant District operated under a harassment policy which was
23 intended to prevent disparate treatment based on race and other factors.

24 Defendant District upon learning that their prior mentioned investigation .

25 On information and belief, As set forth herein, as a result of the investigation out of
26 which the allegations against Mr. Callender arose, Defendant District did not attempt to correct any
27 erroneous findings which arose as a result of their investigation.
28

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1 On information and belief, Defendant District disciplinary and release process is applied
2 in a disparate manner toward minority at-will employees in general, and African-American employees in
3 particular, at a substantially higher rate than white employees and therefore has a significant
4 discriminatory impact on minority employees.

5 On information and belief Defendant District allowed Mr. Judge to continuously to treat
6 Mr. Callender in an abusive and harassing fashion, whereas when another minority Director was
7 reprimanded for his abusive behavior toward white employees and instructions were given that the
8 minority Director could only communicate with the CEO.

9 As a result of Defendant District' policies and practices, Mr. Callender was unjustly and
10 discriminatorily deprived of equal employment opportunities because of his race.

11 As a further result of Defendant District' above stated actions, Mr. Callender has been, is
12 being and will be deprived of income in the form of wages and prospective retirement benefits, but denied
13 because of his race and in an amount to be proven at trial.

14
15
16 **THIRD CAUSE OF ACTION**

17 Defendant District' Breach of Contract and/or Promissory Estoppel

18 Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs of
19 the Complaint as though set forth at length herein.

20 Defendant District promulgated express and written statements of employment policies,
21 practices and procedure which it provided and disseminated to all of its employees, including Mr.
22 Callender.

23 Defendant District represented, both orally and in writing, that it would treat employees
24 in a specific, fair and equitable manner.

1 The customary pattern and practice of Defendant District was to follow its express and
2 implied employment policies and practices, including for at will employees.

3 Defendant District promulgated these policies and procedures, and made these
4 representations, in such a manner as to manifest its willingness to enter into a bargain with its employees,
5 including Mr. Callender.
6

7 Mr. Callender assented to Defendant District' offer regarding the employment policies
8 and procedures by accepting employment and via oral representations in such a way as to conclude the
9 bargain.

10 Mr. Callender' initial and/or continued employment with Defendant District constituted
11 acceptance of and consideration for Defendant's offer.
12

13 Defendant District breached its contract with Mr. Callender by its failure to follow its
14 own practices, policies and procedures with regard to the terms and conditions of Plaintiff's employment
15 as set forth herein.

16 As set forth herein, Defendant District intentionally, willfully and/or maliciously
17 breached its contract with Plaintiff.
18

19 Moreover, Defendant District expected and/or should have reasonably expected Mr.
20 Callender to rely on the aforementioned policies and procedures as a commitment by Defendant District
21 to follow and abide by them.

22 At all relevant times, Mr. Callender understood and reasonably relied on the
23 aforementioned policies and procedures to his detriment and harm, both pecuniary and otherwise.
24

25 As set forth herein, Defendant District manipulated and did not follow the
26 aforementioned employment practices, policies and procedures. Specifically, Mr. Callender was subjected
27 to adverse employment actions for cause in that Defendant District did not properly determine whether or
28 not there was cause.

1 Substantial injustice can only be avoided by enforcing the promises made by Defendant
2 District to Mr. Callender.

3 Defendant District' breach of contract was a direct and proximate cause of the injuries,
4 damages and harm suffered by Mr. Callender and as set forth herein.

5 Defendant District' conduct was willful and wanton, and Mr. Callender is entitled to
6 punitive/exemplary damages in addition to compensatory damages and other remedies available under the
7 common law.
8

9 FOURTH CAUSE OF ACTION

10 All Defendants -Negligence

11 Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs of
12 the Complaint as though set forth at length herein.
13

14 Defendant District owed and continues to owe a duty of care to third parties, and more
15 particularly to their employees such as Mr. Callender, to prevent their employees from acting in any way
16 to harm co-employees.
17

18 Defendant District had a duty to prevent pervasive harassment by Directors and
19 employees.
20

21 Defendant District had a further duty to ensure that complaints of sexual harassment and
22 sexual misconduct were properly handled and the investigation conducted in a fair, impartial and/or non-
23 discriminatory manner.

24 Defendant District voluntarily contracted, promised and/or agreed and thereby assumed a
25 legal duty to ensure that complaints of sexual harassment and sexual misconduct were properly handled
26 and the investigation conducted in a fair, impartial and/or non-discriminatory manner, pursuant to its
27 express employment policies.
28

1 Defendant District breached its duty of care owed to Mr. Callender by and through the
2 following acts and/or omissions, which include but are not limited to:

3 A. Failing to properly and adequately train its managerial, including Mr. Baratz,
4 employees on the release of private information.

5
6 B. Failing to properly and adequately train its managerial employee and directors,
7 including Defendant Judge, to prohibit discriminatory employment practices, including discrimination
8 based on race, and/or age;

9 C. Failing to carefully and diligently supervise its employees to prevent them from
10 improperly handling complaints of sexual harassment and/or conducting the investigation in a non-
11 discriminatory manner;

12
13 D. Failing to implement and/or take appropriate remedial action once it knew or should
14 have known that its employees were mishandling complaints of sexual harassment and/or conducting the
15 investigation in a discriminatory manner; and

16 E. Failing to conduct a reasonable, proper and appropriate investigation.

17 F. Failing to abide by its own express and implied employment policies and procedures;

18 G. Failing to exercise reasonable care under the circumstances.

19 H. Failing to train its employees to prevent libel, slander and false light, relative to the
20 workplace.
21

22
23 The above-named Defendants conduct was a direct and proximate cause of the injuries,
24 damages and harm suffered by Plaintiff Callender.

25 Because the Defendants' conduct toward Mr. Callender was improperly motivated, and
26 was intentional, willful and wanton, Mr. Callender is entitled to punitive exemplary damages in addition
27 to compensatory damages.
28

1 FIFTH CAUSE OF ACTION

2 All Defendants - Intentional Infliction of Emotional Distress

3
4 Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs of
5 the Complaint as though set forth at length herein.

6 As set forth herein, during his employment with Defendant District, Mr. Callender was
7 subjected to a pattern of discrimination and misconduct in the workplace based, in whole or in part, on his
8 age, and/or race.

9
10 At all relevant times, the above-named Defendants knew or should have known that their
11 statements referring to the Plaintiff as a Nigger, King of the Blacks, and other racially charged statements
12 were unwelcome.

13 At all relevant times, the above-named Defendants knew or should have known that Ms.
14 Collin's accusations against Mr. Callender were false. Despite said knowledge, Defendants ignored the
15 evidence and attempted to coerce and intimidate other employees into implicating Mr. Callender in
16 wrong-doing.

17
18 Despite actual and/or constructive knowledge that the accusations were unfounded, Mr.
19 Callender was written-up and disciplined for alleged infractions of company policy. Moreover, the above-
20 named Defendants have communicated to third parties, including the non involved and non concerned
21 employees, that Mr. Callender was guilty of sexual misconduct, despite actual and/or constructive
22 knowledge that these accusations were false.

23
24 The above-named Defendants, by branding Mr. Callender a sexual harasser and
25 disciplining him for alleged infractions of company policy acted intentionally, recklessly and/or with
26 deliberate indifference to a substantial probability that severe emotional distress would result to Mr.
27 Callender.

28 ENRICO L CALLENDER V. SANTA CLARA VALLEY WATER DISTRICT ET AL. - 18

1 The above-named Defendants' actions towards Mr. Callender as set forth above, are
2 evidence of a pattern of age discrimination and/or race discrimination which further constitutes extreme
3 and outrageous conduct.

4 The conduct of the above-named Defendants was outrageous in character and extreme in
5 degree, because said conduct was atrocious and egregious, and went beyond all possible bounds of
6 decency and is utterly intolerable in a civilized community.

7 The extreme and outrageous conduct of the above-named Defendants toward Mr.
8 Callender was done in a willful and wanton manner, and constituted a disregard for the rights and well-
9 being of Mr. Callender.
10

11 As a direct and proximate result of the above-named Defendants' extreme and outrageous
12 conduct, Mr. Callender suffered severe emotional distress.
13

14 Because the Defendants' extreme and outrageous conduct toward Mr. Callender was
15 improperly motivated, and was intentional, willful and wanton, Mr. Callender is entitled to
16 punitive/exemplary damages in addition to compensatory damages.
17

18 SIXTH CAUSE OF ACTION

19 Defendant District and Judge-Freedom of Association

20 Mr. Callender was actively affiliated with the National Association for the Advancement
21 of Colored People, holding titles such as President of the San Jose, Silicon Valley Branch. Mr. Callender
22 has been actively and publicly affiliated with the organization since approximately the year 2000.
23

24 Defendant Judge actively engaged in remarks which were overheard by many in meetings
25 of the

26 Santa Clara Valley Water District that they would take the Rick out from being “king of
27 the Blacks” and he had too much power as NAACP President.
28

1
2 SEVENTH CAUSE OF ACTION

3 All Defendants - Defamation

4
5 Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs of
6 the Complaint as though set forth at length herein.

7 Upon information and belief, Defendant's Judge, Baratz, Bruni, Collins and Yates have
8 repeated false and untrue allegations on numerous occasions to a variety of individuals, including but not
9 limited to, District Employees and to others not presently known to Plaintiff.

10
11 At all relevant times all defendants knew, or should have known that their statements and
12 allegations of sexual misconduct by Mr. Callender were false, and/or made with reckless disregard as to
13 whether the statements were false or not.

14 At all relevant times all defendants knew or should have known that their statements and
15 allegations of corruptions were false, and/or made with reckless disregard as to whether the statements
16 were false or not.

17
18 As set forth herein, Mr. Callender never sexually harassed Ms. Collins, and has
19 steadfastly denied all allegations of sexual harassment and misconduct.

20 Mr. Callender has never been accused or convicted of corruption.

21 Upon information and belief, all defendants's false oral and written defamatory
22 statements specifically pertained to Mr. Callender.

23
24 As set forth herein, Defendant Yates's false oral defamatory statements specifically
25 alleged that Mr. Callender had perpetrated a crime, which constitutes libel and slander per se.

26 Defendants Judge, Bruni, Baratz and Yates defamatory oral and written statements were a
27 direct and proximate cause of the injuries, damages and harm suffered by Mr. Callender.

28 ENRIQUE CALLENDER V. SANTA CLARA VALLEY WATER DISTRICT ET AL. - 20

1 Because the above-named Defendants' conduct towards Mr. Callender was improperly
2 motivated, and was intentional, willful and wanton, Mr. Callender is entitled to punitive/exemplary
3 damages in addition to compensatory damages.

4 The above-named Defendants' publication of a defamatory statement was a direct and
5 proximate cause of the injuries, damages and harm suffered by Mr. Callender.
6

7 Because the Defendants' conduct towards Mr. Callender was improperly motivated, and
8 was intentional, willful and wanton, Mr. Callender is entitled to punitive/exemplary damages in addition
9 to compensatory damages.

10 EIGHTH CAUSE OF ACTION

11 All Defendants- False Light

12 Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs of
13 the Complaint as though set forth at length herein.
14

15 By publishing or causing to be published the false allegations described above all
16 defendants have portrayed Plaintiff in a false light.
17

18 The false light created by the Defendant's actions as alleged herin would be highly
19 offensive to a reasonable person in the Plaintiff's position.

20 The Defendants knew or should have knows that the publication alleged herin would
21 create a false impression about Plaintiff or acted with reckless disregard for the truth.
22

23 The above-named Defendants' publication of a defamatory statement was a direct and
24 proximate cause of the injuries, damages and harm suffered by Mr. Callender.

25 Because the Defendants' conduct towards Mr. Callender was improperly motivated, and
26 was intentional, willful and wanton, Mr. Callender is entitled to punitive/exemplary damages in addition
27 to compensatory damages.
28

1
2 **ADDITIONAL PARTIES AND/OR CLAIMS**

3
4 Mr. Callender respectfully requests leave to amend his Complaint to add additional
5 parties and/or claims upon completing initial discovery. It may be necessary to name agents or employees
6 of the above-named Defendants, and to add additional claims such as intentional discrimination based on
7 race pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq.,
8 and 42 U.S.C. Section 1981 and 1983; intentional discrimination based on age pursuant to the Age
9 Discrimination in Employment Act, 29 U.S.C. Section 620 et seq, conspiracy, malicious prosecution and
10 negligent hiring if additional investigation and discovery elicits information that supports such claims.

11 **DAMAGES**

12
13 The conduct of the above-named Defendants, as set forth herein, in violating Mr.
14 Callender' rights under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section(s) 2000e
15 et seq.; the Civil Rights Act of 1866, as amended by the Civil Rights Restoration Act of 1991, 42 U.S.C.
16 Section 1981 and 1983; and the common law of California, caused injuries, damages and harm to Mr.
17 Callender, including, but not limited to, past and future economic loss, past and future non-economic
18 losses, including extreme emotional distress, loss of reputation, shame, humiliation, pain and suffering,
19 inconvenience, mental anguish, impairment in the quality of life; and consequential losses.

20
21 **WHEREFORE**, Plaintiff Enrico Callender requests judgment and damages against
22 Defendants, the Santa Clara Valley Water District, Director Joe Judge, Matt Bruni, Jessica Collins,
23 Michael Baratz, and Edward Yates, jointly, severally and/or individually, as follows:

24 A. A declaratory judgment that Defendants have violated Mr. Callender' right to be free
25 from discrimination in the workplace pursuant to the Title VII of the Civil Rights Act of 1964, as
26 amended, 42 U.S.C. Sections 2000e, et seq.; the Civil Rights Act of 1866, as amended by the Civil Rights
27 Restoration Act of 1991, 42 U.S.C. Section 1981 and 1983; 42 U.S.C. Section 1981 and 1983A;

28 ENRICO L CALLENDER V. SANTA CLARA VALLEY WATER DISTRICT ET AL. - 22

1 B. Enter an injunction ordering Defendant District to make Plaintiff whole with full back
2 pay, benefits and reinstatement to Mr. Callender's prior position, or in the alternative, front pay.

3 C. An award to Mr. Callender for compensatory damages in amount to be shown at trial
4 for past and future economic and non-economic losses, including extreme emotional distress and mental
5 anguish, impairment of the quality of life; and consequential loses;

6
7 D. An award to Mr. Callender for exemplary and/or punitive damages in an amount to be
8 shown at trial;

9 E. Enter an injunction ordering Defendant District to remove all documents relative to the
10 investigation which was intended to harass Mr. Callender, and its findings from Mr. Callender's
11 personnel file.

12
13 F. An award to The Law Offices of [REDACTED] for reasonable attorneys' fees and
14 costs, including but not limited to expert witness fees, as provided in Title VII of the Civil Rights Act of
15 1964, as amended, 42 U.S.C. Section 2000e-5(k), 42 U.S.C. Section 1981 and 1983A, 42 U.S.C Section
16 1988 and as provided under state law;

17
18 G. An award to Mr. Callender of interest on any awards at the highest rate allowed by
19 law; and

20 H. Such other and further relief as this Court deems just and appropriate.

21 **PLAINTIFF REQUESTS TRIAL TO A JURY ON ALL CLAIMS ALLOWED BY LAW**

22
23
24 Dated this 9th of January, 2013

25
26 [REDACTED]

January 23, 2021

Chair Tony Estremera
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Dear Chair Estremera and members of the Board;

After review of the Oppenheimer report, on behalf of the San Jose Silicon Valley NAACP (SJ/SV NAACP) I want to register the fact that the accusations which the SJ/SV NAACP had lodged were likely intentionally misrepresented, and many of our allegations were clearly neither investigated nor addressed. Additionally, after following the last several board meetings, further investigations are in order relative to conflict of interest directly related to this issue.

This “thorough” investigation appears to have sought rationale to try and rehash settled, always disputed, and debunked decades-old assertions, instead of examining the current issues about Directors LeZotte’s and Keegan’s unethical public and private behaviors during the course of the CEO hiring process. From what the Oppenheimer report states, it appears Valley Water asked for an investigation to make it a referendum on Mr. Callender and why the Directors attacked him. Was it Valley Water District Counsel who tried to turn this investigation on Mr. Callender as a retaliatory effort due to the SJ/SV NAACP complaint about the violations of Mr. Callender’s rights?

This investigation is far from thorough and completely glosses over, misrepresents, and ignores most of the SJ/SV NAACP’s complaints. Further, Ms. Oppenheimer even confirms that she discounted interviewing at least one person I said was necessary for the investigation simply because I alone mentioned the need to interview this witness. This is absolutely not thorough. As such, I will be filing a complaint with the FPPC to investigate the below newly identified issues, and will strongly urge Mr. Callender to file a complaint with the DFEH and/or the EEOC so that he can move toward having them conduct a real investigation of the facts and our prior complaints, and obtain justice. To be clear, the Oppenheimer assertion that the SJ/SV NAACP was a joint complaint with Mr. Callender is completely false. This was the complaint of the SJ/SV NAACP to seek justice for a process which was unethical, unfair and unjust in the treatment of an African American executive.

I note that Ms. Oppenheimer makes mention of Mr. Callender’s settlement with Valley Water, however she neglects to include any of the findings or documentation of the DFEH as it relates to the issues of the “investigations” of Mr. Callender, or the terms and assertions that Mr. Callender demanded and provided over a decade ago. I have attached all the documents which I sent to Ms. Oppenheimer for her consideration of my prior complaint, of which she mentions none. I am genuinely concerned that the Oppenheimer investigation does not touch on, or mention, any of the facts in the attached documents, making their investigation appear clearly biased, especially due to the direction she notes was given from Valley Water General Counsel as it related to what to actually investigate.

I am not surprised that Ms. Oppenheimer added a female African American attorney to the signature list of her investigation, to make her findings appear more credible. However, it should be mentioned that the investigation was led in its entirety by two Caucasian women, who conducted all interviews. From my understanding, the African American woman was not present in any of the interviews. This addition of a person who did not participate in any of the interviews does not make the investigation more credible or believable.

Ms. Oppenheimer in her own investigation has pointed out that many critical witnesses, such as the past employee who had violated policy and taken home Mr. Callender's personal employee files, the past employee who was a direct source of information about the retaliatory campaign, and several other critical witnesses, all were not interviewed. The rationale for not interviewing some of the individuals makes little to no sense except that, as she noted, it was to protect Valley Water from liability. How is this thorough? This is not a reason to ignore interviewing several key witnesses who likely have critical information relevant to the accusations and assertions of wrongdoing.

As a reminder of the issues which the SJ/SV NAACP requested to be investigated, I will restate our complaints below.

- 1. Directors Keegan and LeZotte engaged in a retaliatory campaign against Mr. Rick Callender due to his past complaints, settlements and DFEH findings against past Director Joe Judge.**

There was no attempt to investigate this issue at all, it appears.

- 2. Directors Keegan and LeZotte arranged for and/or participated in the stealing and release of confidential employee files of Mr. Callender. The release of partial and confidential information contained in the files of Mr. Callender was an intentional attempt to violate Mr. Callender's right to privacy, harass Mr. Callender, and was a retaliatory strike due to Mr. Callender's settlements, and an attempt to malign his good character and reputation.**

Critical witnesses were not interviewed intentionally as it relates to this issue. It is obvious from the investigative report that Valley Water's direction through their General Counsel's office was to try and mitigate the liability of the actions of Director's Keegan and LeZotte by trying to provide rationale and support for their unethical actions.

- 3. Directors Keegan and LeZotte violated The Fair Chance Act (Assembly Bill No. 1008), Government Code § 12952 which makes it illegal for employers in California to ask about, or investigate, the criminal record of job applicants before making a job offer. This was an attempt to harass and discriminate against Mr. Callender.**

The report does confirm that at least Director Keegan was involved in trying to conduct an illegal, self-led investigation before the interview process had even begun. This was again glossed over and described as Directors Keegan and LeZotte simply asking for a criminal report to be conducted. Even the evidence in the report notes that there was a Director-led inquiry prior to a job offer being made. This is obviously an attempt to limit liability on Valley Water and Directors Keegan and LeZotte.

- 4. Directors Keegan and LeZotte intentionally attempted to malign Mr. Callender's reputation with local media, and the general public, and tried to promote false and misleading stories about him. This was an attempt to harass and discriminate against Mr. Callender.**

The report ignores this issue and does not opine. Instead the Oppenheimer report seeks to try and publicly support and endorse the public claims of Directors Keegan and LeZotte.

- 5. Directors Keegan and LeZotte engaged in a public campaign, which included speaking with Valley Water staff, Directors, and other elected officials, to blacklist Mr. Callender. This was an obvious attempt to try and prevent Mr. Callender from applying for, or obtaining, the job of CEO, by trying to force him to quit, or to ultimately be fired, and as such violated at minimum the spirit of Labor Code (§1050-1053). This was an obvious attempt to harass and discriminate against Mr. Callender.**

The report does not address the actions of Directors Keegan and LeZotte which started before the application process even began.

I hope that the Board now investigates the new issues I have detailed below which have occurred in public and likely in private.

Santa Clara Valley Water District Governance Policy 6 states “The Board commits itself and its members to ethical, business-like, and lawful conduct, including proper use of authority and appropriate decorum when acting as Board members.” The SJ/SV NAACP believes that Directors LeZotte and Keegan have violated this policy in several ways, detailed below:

- 1. Directors LeZotte and Keegan have a conflict of interest which is reasonably foreseeable to impact their personal financial interest, however they still engaged in trying to influence Board discussions on the investigation.**
- 2. Director LeZotte attempted to influence District Counsel to interfere with the investigation of herself in order to support a more favorable contract for District Counsel, and District Counsel has attempted to interfere with the investigation of Directors LeZotte and Keegan.**
- 1. Directors LeZotte and Keegan have a conflict of interest which is reasonably foreseeable to impact their personal financial interest, however they still engaged in trying to influence Board discussion on the investigation.**

Under state law and Valley Water policy, a public official has a disqualifying conflict of interest in a governmental decision if it is foreseeable that the decision will have a financial impact on his or her personal finances or other financial interests. In such cases, there is a risk of biased decision-making that could sacrifice the public’s interest in favor of the official’s private financial interests. To avoid actual bias or the appearance of possible improprieties, the public official is prohibited from participating in the decision.

It is reasonably foreseeable that the nature of the SJ/SV NAACP’s complaint could potentially lead to Director LeZotte and Keegan being held personally liable for discrimination and harassment lawsuits which would impact their personal finances.

Director LeZotte’s and Director Keegan’s direct and active participation, rather than recusing themselves, in attempting to influence the investigation by demanding

during public session details from District Counsel and the Chair about the investigation, and Director LeZotte's attempt to make a motion during the 11/24/20 board meeting to try and influence the outcome of the investigation is a clear conflict of interest and an ethical violation requiring investigation.

2. Director LeZotte attempted to influence District Counsel to interfere with the investigation of herself in order to support a more favorable contract for District Counsel, and District Counsel has attempted to interfere with the investigation of Directors LeZotte and Keegan.

Director LeZotte was directly involved in the sudden re-negotiation of the Valley Water District Counsel's contract and pushed for unreasonably favorable terms. While these negotiations were underway for District Counsel's contract, District Counsel attempted to interfere with the investigation called for by the SJ/SV NAACP, by calling two staff members to ask that they call witnesses named in the SJ/SV NAACP's complaint to make them aware of the accusations in the complaint.

Neither of the witnesses had knowledge that they were even named in the complaint, which was never made public. There appears to be a clear link with Director LeZotte and the District Counsel attempting to influence the outcome of the investigation and Director LeZotte trying to assist District Counsel with the favorable contract terms. An investigation is required to determine if these two actions are indeed tied and to what degree the ongoing investigation was tainted as a result of District Counsel and Director LeZotte.

District Counsel's direction to the investigator is also obvious and clear evidence of bias.

A secondary investigation is obviously required to deal with the above conflict of interest issues and known attempts to influence the outcome of the investigation of Directors Keegan and LeZotte.

The SJ/SV NAACP sees these issues as overlapping and related to all of the SJ/SV NAACP's complaints.

I am again filing this written complaint with the hope that the Board Ethics and Conduct Ad Hoc Committee will impartially, fully, and fairly investigate and provide findings to the Board, in addition to ensuring that the Oppenheimer investigation is re-conducted and/or evaluated by another independent firm with instructions to look at our actual complaint versus trying to incorrectly investigate things which do not lead toward evaluating the true nature of our complaint.

In Community Spirit,

Rev. Jethroe Moore

September 16, 2012

Mr. Stan Yamamoto Chief Legal Officer Santa Clara Valley Water District 5750 Almaden Expressway San Jose, CA 95118	*** <u>CONFIDENTIAL</u> **
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Re: Third Confidential Offer of Settlement

Dear Mr. Yamamoto;

In response to your June 22, 2012 letter and our September 10, 2012 conversation in your office, I am clarifying the scope of my settlement offer and the linkage to your clients.

In your June 22, 2012 letter, you incorrectly point out that DFEH was unable to sustain any viable violation on the part of the District or Director Joe Judge. In order for DFEH to have jurisdiction, the acts of harm identified in the complaint must have occurred within one year of the filing of the complaint and the DFEH must prove by a preponderance of the evidence that the complaining party was subjected to racially derogatory acts which were severe in intensity or pervasive over time, that the harassment created a hostile and offensive work environment, and that the District is liable for the discrimination. DFEH also must prove that the harassing behavior occurred because of my protected status. DFEH did, in fact, find many of these elements present, but questioned the pervasiveness of the obviously discriminatory behavior at the time of my complaint.

As you are aware, since my last complaint, there have been additional attacks from members of senior management, classified staff, and District consultants toward me and other African Americans at the District that demonstrate discrimination based on age, race, sex and retaliation as a result of my complaints against the District and Director Judge. For example, the acting manager of the Human Resources Unit opined publicly that I would have to be forced out of the District, among other discriminatory comments. In another incident, classified staff posted defamatory attacks about African American managers during work hours on Craigslist, only targeting myself, Sharon Judkins and Kay Norris. And in a third incident, District consultants engaged in harassing behavior that I immediately reported to my supervisor.

I am unaware of the final status of the investigations related to these three incidents. Although I have not yet filed a complaint with DFEH or EEOC, given these recent discriminatory and retaliatory attacks against me, I am certain DFEH will find the pattern of discrimination to be, in fact, pervasive.

California Government Code provides that it is an unlawful employment practice for any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden by law or because the person has filed a complaint, testified, or assisted in any proceeding under the Fair Employment and Housing Act (FEHA). (CA. Gov. Code § 12940.)

To establish a prima facie case of retaliation, a plaintiff must show (1) he or she engaged in a protected activity, (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action. ^{1/11/22}

In the case of *Wysinger v. Automobile Club of Southern California*, the court found retaliation when: an employer unlawfully retaliated against a former employee for filing an age discrimination claim in violation of the Fair Employment and Housing Act by declining to transfer him to another office; the employee's supervisor threatened to “crush” managers who opposed the employer's new compensation plan, which was the basis of the employee's age discrimination claim; the employee was not invited to serve on management committees or to apply for management positions, and was treated with coldness between the time he filed the age discrimination claim and the denial of his transfer; and the employer refused to engage in an interactive process to discuss the employee's disabilities, which would have been alleviated by a transfer to an office that did not require a long commute. (*Wysinger v. Automobile Club of Southern California*, 157 Cal.App.4th 413. (2008).)

The actions of the acting Human Resources Director and the classified employee clearly constitute retaliation, as portions of documents that they were utilizing in various media during work hours were provided to them by and through Director Judge.

Clearly, I have been subjected to an ongoing chain of discriminatory attacks, of which Director Judge is just one link.

As you are aware, DFEH also found evidence that confirmed that Ms. Debra Dake, while working in the position of the EEO officer, was removed from her position for engaging in unnecessary investigations outside the scope of the EEO office, and for drawing conclusions unsupported by facts regarding me and other employees.

Further, Ms. Dake was found to have made discriminatory comments against African American employees; the District had full knowledge of this and yet took no actions to cure her discriminatory actions or question any of her findings where African Americans were involved.

The District never questioned Ms. Dake's findings despite this knowledge and instead allowed her biased, discriminatory, and manipulated investigative findings to stand.

The pattern of discriminatory behaviors toward myself did not start with Director Judge; the DFEH and other investigations have confirmed that they occurred well before and simultaneously with Director Judge's actions, hence the broad nature of my settlement offer.

The settlement offer is significantly lower than any request that would be made through a trial. There is a strong precedent for this kind of award. The courts have found that the amount of the award shall be based on all relevant evidence, including: willful, intentional or purposeful conduct; refusal to prevent or eliminate discrimination; conscious disregard for the rights of employees; commission of unlawful conduct; intimidation or harassment; conduct without just cause or excuse; or multiple violations of the FEHA. All of these factors are present in this case.

My settlement offer encompasses all past and current actions which have occurred.

That being said, I will again make the offer which:

1. Provides me protections from future retaliation for myself and my family.
2. Provides a quick solution, saving money from any potential litigation for the District and myself.
3. Only provides me restitution for unjust actions towards myself.

In order to avoid litigation, I again make the following offer:

1. Immediately remove and destroy all information in my employment file relative to the four negligent investigations in 2008.
2. Return my previous job classification as well as back pay, including bonuses not awarded in 2008 and the cost of living adjustment not awarded in 2008, by August 1, 2012.
3. Return all back pay to date as a result of my salary being reduced by August, 1, 2012.
4. Update my retirement pay and terms of service as a result of the loss of pay.
5. Agree in writing that I will not be administratively removed from my current position or unit before July 1, 2017.
6. Agree in writing that if the District terminates my service with or without cause before July 1, 2022, the District will pay me two and one half (2 ½) years of severance at my salary rate at the time of my release.
7. Agree in writing that there will be no change in my reporting relationship, either from the CEO or District Counsel, until 2022.
8. Maintain current Office of Government Relations staffing levels (you might want to specify the number of positions here) until at least FY 2018, unless the District has made a declaration of a fiscal emergency, declared bankruptcy, or must cut \$45 million dollars from its overall budget in any one fiscal year.
9. Fix the flat nature of the positions within the Office of Government Relations by providing 1) a permanent Program Administrator position, so that advancement can occur within the unit, and 2) permanent Senior Office Specialist or another administrative support position. This would equalize the obvious staffing disparities between the Office of Government Relations and the vast majority of other units within the District.
10. Director Judge to agree to refrain from all disparate, harassing, discriminatory, and retaliatory behavior towards myself.
11. Director Judge to commit to repairing internal and external relationships, to the best of his ability, where he has challenged my professional reputation and character, by November 1, 2012.

In return for acceptance of my offer, I am prepared to waive my rights to any employment-based discrimination litigation against the District and Mr. Judge relative to the initial complaint and the recently amended complaint, and the complaints identified in this communication, and waive my rights to pursuing any other potential litigation relative to information which resulted from the investigation of the DFEH.

I appreciate your taking the time to consider my offer. If further clarification is required, I would be happy to discuss with you ASAP. I ask that the District respond in writing to my request by September 28, 2012.

Sincerely,

Rick L. Callender

San Jose, CA 95111



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

(800) 884-1684 | Videophone for the DEAF (916) 226-5285
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

March 30, 2012

Enrico L. Callender
[REDACTED]

San Jose, Ca 95111

RE: E201011G0697-00-ev EEOC #: 37AB105266
Callender/Santa Clara Valley Water District

Dear Mr. Callender,

This letter is to advise you of the status of the Department's investigative findings following your appeal and the reopening of your case on February 22, 2012.

In order for the Department to file and investigate complaints alleging a violation of the Fair Employment and Housing Act (FEHA), the Department must have jurisdiction. If the numerous required jurisdictional elements applicable to a given case are all present, the Department will have the legal authority to proceed. However, if one required element is lacking, the Department will not have jurisdiction and will lose authority to act on a complaint.

In your Complaint of Discrimination you allege you were harassed by Director Joe Judge on the basis of your race (African-American) from 2000 to the filing of your DFEH complaint on April 20, 2011. The alleged harassment included comments by Director Judge directly related to your race and harassing behavior you believe occurred because of your race.

The FEHA states that for the DFEH to have jurisdiction the acts of harm identified in the complaint must have occurred **within one year** of the date the complaint was filed. The DFEH must also prove, by a preponderance of evidence, that you were 1) subjected to racial slurs, 2) the racially derogatory acts were **severe** in intensity **or pervasive** over time, 3) the harassment created a hostile and offensive work environment and 4) the Respondent is liable for the discrimination. The Department must also prove the harassing behavior, summarized in your chronology, occurred **because** of your protected basis.

In your complaint you allege you were harassed and subjected to a hostile and offensive work environment in that colleagues reported to you that Director Judge had made racially derogatory comments about you and others.

Summarized below are the race based comments reported to you by colleagues and the Department’s findings with respect to each allegation:

- On 2/05/11 Roderick Jefferson allegedly informed you he had attended a meeting where Director Judge referred to George Bush as a “man” and Barak Obama as a “boy.”

Finding: This incident was confirmed as having occurred several years ago; although it was not communicated to you until 2011.

- In 2010, Director Judge (in discussing the departure of Ed Willis form the district) allegedly stated “I would never support him because he wants to be King.”

Finding: Ed Willis (African-American) left the district years before you were told about the comment. The general tone of the comment was confirmed, though not the specific words.

- On 8/31/10 former Director Cy Mann informed you Joe Judge had referred to you as an “uppity nigger” and stated you “always call that boy Jeff in to frazzle him.” (Jethro Moore is President of the local NAACP Chapter.)

Finding: Comment confirmed. Although the timeframe for the actual comment was unclear it appears to have been made some time after April 2010.

The following comments were also substantiated but occurred more than one year before the filing of your DFEH complaint; sometime between May, 2006 and May 29, 2009:

- On 5/29/09 you allege Joe Judge engaged in a “tirade where he attacks me and my reputation” in which he refers to you as thinking you are “**king of the Blacks**” and states you think the NAACP controls everything; that you know powerful Blacks and are untouchable.

Finding: Evidence is mixed but one witness did confirm words to this effect by Joe Judge.

- In September 2008, in conversation with District staff members, Judge allegedly stated he needed to speak with you about a project. When corrected by staff asking “Don’t you mean Chris Elias?” Judge responded, “**Oh yeah, the other one.**”

Finding: One witness did confirm this comment.

- In May, 2006 you stated you overheard Judge screaming at Stan Williams, “You need to fire Rick now. I don’t want **that boy** around here, don’t you understand me!”

Finding: Evidence did NOT confirm the specific wording but did support Judge had expressed a desire to have you fired on more than one occasion during a prior administration.

HEADQUARTERS

2218 Kausen Drive
Suite 100
Elk Grove, CA 95758
(916) 478-7251

BAKERSFIELD

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Suite 215
Bakersfield, CA 93309
(661) 395-2729

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San Jose, CA 95131
(408) 325-0344

Callender

In addition to the above allegations, you assert Director Joe Judge subjected you to many other harassing actions because of your race. Summarized below are the harassing incidents alleged and the Department’s findings with respect to each allegation:

- On 10/20/11 District employee Melanie Richardson informed you Director Judge gave her a copy of a dismissed, court case in which you were named as the defendant. You stated you believed Judge was contacting potential witnesses to discredit you as part of the District’s investigation of your discrimination complaint.

Finding: The incident was confirmed, however it was not clear it occurred at the time of the District’s investigation. Additionally, no other witnesses interviewed confirmed being contacted by Judge regarding your court case. (Note: Melanie Richardson was not interviewed during the District/Respondent’s investigation.)

- On 3/20/11 Ray Yep is told by Beau Goldie to retire or be fired. (Yep’s race: Asian)

Finding: No determination was made; the allegations are unrelated to Joe Judge, the alleged harasser.

- On 3/18/11 Director Joe Judge allegedly “attacks” Consultant Doug Johnson’s application to the district for consultant services. (Johnson’s race: Caucasian)

Finding: Evidence confirmed Judge opposed the hiring of Johnson because of his previous redistricting work for the district which resulted in criticism of the Board of Directors of which Judge was an (elected) member.

- On 3/21/11 you informed Director Estremera you filed a complaint with DFEH and the District had taken no action since your initial interview in February, 2011.

Finding: The following actions were found to have been taken by the District, in the investigation of your December, 2010 discrimination complaint:

- Board refers your complaint to the District in late January, 2011;
- Initial interview conducted with you regarding your allegations in February, 2010;
- Interviews commence 4/06/11 by outside counsel;
- Investigation findings submitted on August 31, 2011.

- In March, 2010 you advised your supervisor, CEO Beau Goldie the District was attempting to get rid of you by suggesting your responsibilities be assigned other staff and that he (Goldie) was dismantling your position by reassigning your duties to other managers.

Finding: Evidence confirms you discussed above concerns with Goldie but retained your position as Government Relations Manager with no evidence of involvement by Director Judge.

- In January, 2011 you allege Trish Mulvey (a local resident, not an employee) had informed you she was present at meetings where Judge had made (non-specified) comments about you and the

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NAACP

Finding: There was no evidence to support the allegation.

- On 12/14/10 you allege Joe Judge attacked your “character and veracity” by suggesting you could not do your job due to a “conflict of interest.”

Finding: The incident was confirmed in review of video tapped meeting. However, witness testimony is mixed as to whether the criticisms of you were race related.

- On 11/22/10 Director Judge reportedly expressed the belief you would be leaving the district as a result of your educational endeavors; law school.

Finding: Comment **confirmed**. Witnesses did not perceive the comment, however, as occurring because of your race. Some witnesses stated they too had made the same assumption (that you would be leaving) until they learned otherwise.

- On 10/13/10 the job announcement for the “Senior Communications” (Communications and Public Relations Manager) position is amended to include one of your duties.

Finding: Confirmed. However, witnesses reported it is within the prerogative of the CEO to reassign duties and state there is potential overlapping within unclassified positions and especially between the Public Relations and Government Relations positions. No causal connection established to link race to the incident.

- On 10/13/10 CEO Beau Goldie suggests you would be leaving the district when you complete your schooling; law school.

Finding: Goldie stated he could not remember if he had assumed or indicated you would be leaving your position. However, he did recall discussing with you the possibility of moving into another position (in the District) in their legal department.

- On 10/06/10 you allege Judge attempted to influence the Request for Proposal (RFP) process and avert AB466 by attempting to influence the hiring of a personal friend, Mia O’Connell.

Finding: The DFEH has no jurisdiction to enforce or investigate violations of AB466. The allegation that an elected official (Director Judge) was attempting to influence the hiring of a personal friend would appear to be politically motivated and unrelated to a violation of the F.E.H.A.

- Between 7/2010 and 11/2010 you allege former EEO officer (Debra Dake) was “instructed” to find a way to “get rid of you” but was ultimately removed from her position “due to hostile and prejudicial actions towards African-Americans.”

Finding: Evidence does not indicate that EEO officer Dake was “instructed” to get rid of you. However, evidence confirms she was removed from her position for engaging in unnecessary investigations, outside the scope of the EEO office and for drawing conclusions unsupported by

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facts regarding you and other (non-African-American) employees. (*These investigations included employees of various races; complaints.)

- In 2008, you assert two board members approached Judge about what they perceived as personal attacks against you. He allegedly responded he was actually upset with Tommy Fulcher (your and Judge’s prior employer), not you.
- **Finding:** Although you believed Judge’s comment was race-related because Fulcher is also African-American there was no evidence to support the allegation. Evidence appears to support, however, an animosity between Judge and Fulcher.
- On 10/23/07, after approving the consultant contract for Mia O’Connell Judge allegedly turns off the microphone and tells you “Don’t forget Zoe likes Mia” implying that Mia should be hired by the district.

Finding: Evidence does not suggest this incident occurred because of your race. The implication that political pressure was being applied by Judge to hire Mia, in this instance, would not be in violation of F.E.H.A.

- In May 2007 Director Judge allegedly threatens your job and the prior CEO, Stan Williams for hiring Susan Siravo (Caucasian). Judge alleged states “if you ever cross Zoe Lofgren again by not hiring who she wants, I’ll have your jobs.”

Finding: Evidence confirmed above incident; however, there appears to be no casual connection between the threat and your race in violation of the F.E.H.A.

SUMMARY OF FINDINGS

The Department’s investigation confirmed Director Joe Judge made several racially, harassing comments between 2006 and April, 20, 2011; the most egregious, single incident occurring between April and August, 2010. The Department was unable to prove, however, that the harassing comments confirmed were sufficiently severe or pervasive to establish a violation under the Fair Employment and Housing Act.

In evaluating your remaining allegations of harassment, the Department must prove the (harassing) conduct occurred **because of** your race, African-American. In making this determination the Department analyzes the validity of the Respondent’s (non-discriminatory) reasons for the conduct, their treatment of other employees and direct evidence. The Department’s investigation did not substantiate that the harassing conduct was in violation of the statute. In interview, several witnesses expressed the opinion that Judge’s questioning of you in board meetings was unnecessarily critical and sometimes adversarial. However, witnesses were divided in their perceptions as to whether Judge’s comments were personal attacks (unrelated to your race) or occurred because of your race. Witnesses (including some African-Americans) also testified no other employee of the District (African American or non-African American) was treated in a similar manner to you by Director Judge. Some witnesses perceived there had been long standing issues between you and Judge when you worked together for Fulcher that were unrelated to race. Finally, many of the harassing incidents alleged (summarized above) were either unsubstantiated or unrelated to you or your race.

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Callender

Regrettably, the Department is unable to pursue your complaint for accusation as DFEH is unable to conclude a violation of the statute occurred.

In closing, please be advised that should you decide to pursue your complaint in court, you must do so within one year as described in your Notice of Case Closure (RTS) which was issued on January 23, 2012. As discussed previously, the reopening of your case on February 22, 2012 did not extend the statute of limitations and any civil action, in violation of the FEHA, must be filed within one year of the Notice of Case Closure.

Sincerely,

Marlene Massetti
by *Tu a/pw. Acting DA*

Marlene Massetti
District Administrator
San Jose District Office, DFEH

Enclosure: Notice of Case Closure; dated January 23, 2012

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CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE (hereafter, "Release" or "Agreement") of all claims against former Director Joe Judge ("Judge") and the Santa Clara Valley Water District (which includes without limitation, District's Board of Directors, departments, committees, predecessors, successors, subsidiaries, related entities, past and present directors, employees and managers, independent contractors, managers, attorneys, agents and assigns) (collectively, "the District") is made by and between the District and Enrico Callender).

RECITALS

WHEREAS, Callender is currently employed by the District as its Government Relations Manager; and

WHEREAS, in April 2011, Callender filed a discrimination complaint against the District (Case #201011G0697-00-ev) and Judge (Case #201011G0697-01-ev) with the California Department of Fair Employment and Housing ("DFEH"), which were closed by the DFEH on January 23, 2012, re-opened by the DFEH, and re-closed by the DFEH on March 30, 2012; and

WHEREAS, this discrimination complaint was jointly filed with the U.S. Equal Employment Opportunity Commission on or about the same day, and has since been closed by that agency; and

WHEREAS, Callender made a written combined settlement offer for the case against the District and Mr. Joe Judge. on June 15, 2012 presenting eleven (11) terms of settlement.

WHEREAS, on or about December 4, 2012, Callender filed a new complaint against the District with the DFEH (DFEH Inquiry Number 55011-26161) alleging age, color, race, and sex discrimination, harassment, and retaliation; and

WHEREAS, as set forth herein, the parties now desire to enter into this settlement agreement which is intended to resolve, fully and forever, any and all actual and potential grievances, charges, disputes, controversies, claims, actions and lawsuits between them in order to avoid the uncertainties of litigation and the expense and costs incident thereto:

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. General Release

(a) In consideration for the payment of twenty-seven thousand five hundred dollars (\$27,500.00) and the change of Callender's job title from Unclassified Manager to Deputy Administrative Officer, Callender waives and releases any and all claims he has or might have against the District and Judge. The released claims include, but are not limited to, claims for discrimination, harassment, and retaliation arising under federal, state, and local statutory or common law, such as Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act ("ADEA"), the Fair Employment and Housing Act, and the Unruh Civil Rights Act. This general release includes any and all liabilities, claims, demands, contracts, debts, obligations and causes of action of every nature, kind and description, in law, equity, or otherwise, whether or not now known or ascertained, which heretofore do or may exist, and including any matter, cause or thing arising out of, relating to, or connected with Callender's employment with the District prior to the execution of this Agreement. It is

understood and agreed that this payment shall not have any impact on, and shall not count towards, Callender's final salary at the District for purposes of retirement or any other employment or retirement benefits. The change of Callender's job title shall take effect on a date to be established by District which shall be no later than July 1, 2013. This change in title shall not include any increase in salary or benefits. The monetary payment is for Callender's alleged emotional distress relating to the complaints described herein.

(b) Callender understands and acknowledges that he has 21 days from the initial presentation of this Agreement to consider his release of claims under the ADEA, and if he executes this Agreement within that 21-day period he has done so by expressly waiving this 21-day notice provision. Callender acknowledges that he then has 7 days from the date he executes this Agreement to revoke his release of the ADEA claims. If Callender desires to revoke this release within the 7-day period after delivering the executed Agreement to the District, he must do so in writing delivered to the District Counsel, in which case his eligibility for the settlement payment set forth in paragraph 1(a) above is terminated. Callender is advised that he should consult an attorney prior to executing this Agreement.

(c) Concurrent with his execution of the Agreement, Callender shall execute and file a "Confirmation of Resolution by the Parties" with the DFEH (DFEH-200-10) and take whatever other steps are necessary to close his pending complaint with the DFEH and any matter pending before the EEOC.

2. Time for Payment of Settlement. No later than fifteen (15) business days after *both* the closure of his case by the DFEH and execution of this Agreement by

Callender, the District will make the payment described in paragraph 1(a) of this Agreement so long as Callender has not revoked the release within the 7-day period after delivering the executed Agreement to the District.

3. Waiver of Rights under Civil Code Section 1542. Callender understands and expressly agrees that this Agreement extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present or future, arising from or attributable to his employment with the District prior to the execution of this Agreement. Callender acknowledges that any and all rights granted him under Section 1542 of the California Civil Code or any analogous state or federal law or regulation, are hereby expressly waived. Callender recognizes and acknowledges that factors which have induced him to enter into this Agreement might turn out to be incorrect or different from what he had previously anticipated, and Callender expressly assumes all of the risks of this waiver of California Civil Code Section 1542. Said Section 1542 of the California Civil Code, reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.

4. Confidentiality. Except as may be required by statutory or regulatory requirements (including the California Public Records Act) or by legal process, neither party will disclose to others the terms of this Agreement, the amounts referred to in this Agreement, or the fact of the payment of said amounts. However, Callender may make

such disclosures to his attorneys, accountants or other professional service advisors as necessary to effectuate the purposes for which he consulted with such professional advisors. This paragraph is a material term, and Callender agrees that the District may take action in any court of competent jurisdiction to enforce this term, including forfeiture of amounts paid under this Agreement.

5. No Workers' Compensation Claim. Callender unequivocally affirms that he does not have a compensable workers' compensation injury of any kind, and that he has no intention of filing for workers' compensation benefits with respect to his employment at the District. If he does apply for workers' compensation – contrary to the intention of the parties – the parties agree that a compromise and release will be entered into based solely on the consideration in this settlement, and that such claim should be summarily dismissed in the District's favor.

6. Severability. In the event that any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid or against public policy, that term, condition or provision will be deemed to be deleted, and the remaining terms, conditions and provisions will continue in full force and effect.

7. Choice of Law and Venue. The validity, interpretation and performance of this Agreement will be construed and interpreted according to the laws of the State of California. Any legal proceeding relating to this Agreement will be instituted in a court in Santa Clara County.

8. Authority to Make Agreement. Callender represents and warrants that he has full power to make the releases and agreements contained herein, and that he has not assigned, encumbered or in any manner transferred all or any portion of the claims

covered by the releases and agreements contained herein. Callender acknowledges that this warranty and representation is an essential and material term of the Agreement. Callender will indemnify the District for any claims brought by purported assignees of Callender, including costs of judgment and reasonable attorneys' fees.

9. Entire Agreement. The parties acknowledge that this Agreement constitutes the sole and entire agreement of the parties in this matter, that any modifications may only be made by a writing signed by both parties, and that this Agreement supersedes any prior written or oral agreement concerning the subject matter of its provisions. The parties agree that there are no representations, agreements, arrangements or understandings, either written or oral, between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

10. Other Terms.

(a) Each party has had the opportunity to participate in drafting the Agreement. The terms, conditions and provisions of the Agreement will not be construed against one party and in favor of another by virtue of who actually drafted or circulated the Agreement.

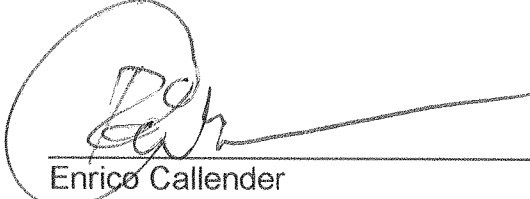
(b) The parties will each execute all documents and perform all acts necessary to effectuate the terms and purposes of this Agreement.

(c) The Agreement may be executed in counterparts, with the same force and effect as if executed in a single, complete document.

11. In further consideration of the foregoing, Callender agrees, acknowledges and recognizes that this Agreement is a "no fault" settlement in light of disputed claims,

and that nothing contained in this Agreement shall constitute or be treated as an admission of liability or wrongdoing by the Judge or the District (or any of the District's employees or officers).

DATED: 1/20/2013



Enrico Callender
(Notarization Required)


DATED: 2/11/13



Beau Goldie, CEO
Santa Clara Valley Water District

APPROVED AS TO FORM:

Dated: 1/23/2013



Stanly Yamamoto
District Counsel
Santa Clara Valley Water District

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

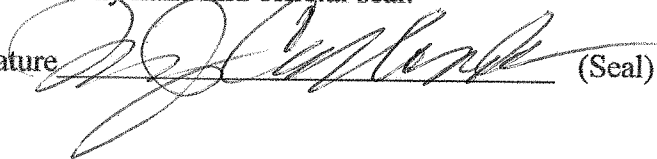
STATE OF CALIFORNIA)
COUNTY OF Santa Clara

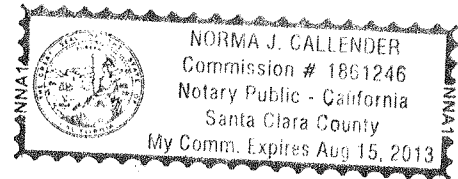
On January 20, 2013 before me, the undersigned notary public, personally appeared
Enricol Lydell Callender

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



SAN JOSE/SILICON VALLEY BRANCH OF THE
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

1313 N Milpitas Blvd #175 Milpitas Ca 95035 P.O. BOX 1345 San Jose, California 95109
Phone (669)284-2173

August 10, 2020

Ms. Amy Oppenheimer
Law Offices of Amy Oppenheimer
1442A Walnut Street #234
Berkeley, CA 94709

Dear Ms. Oppenheimer.

Discrimination and the harassment of African American men and women continue to persist in the workplace. Often, it's under the guise of trying to ensure equality and justice. It is way past the time for African American executives to be treated with the respect that they deserve when they are simply trying to progress in their careers. The attempts to malign African American men and paint them as hypersexualized, criminal, or unethical is a well-known Jim Crow type tactic. The intentional violations of Mr. Rick Callender's civil rights have risen to a level to which no employed human being should be subjected. It is atrocious how blatantly and in the open this was done to an African American executive.

Mr. Rick Callender was subjected to known discriminatory tactics by two members of his board of directors, Director Barbara Keegan and Director Linda LeZotte, both women of Caucasian descent.

What happened, and continues to happen, to Mr. Callender is exactly why we are marching in the streets. African American men and women should not be treated like slaves and in an unjustified and discriminatory way in the workplace.

The illegal, unethical, and discriminatory actions of Directors Keegan and LeZotte in this private and confidential employment matter, was nothing more than both of these Directors placing their collective knees on Mr. Callender's neck, in an attempt to suffocate any fair chance he would have to obtain a new job, as well as to kill his employment in his prior job by making him resign, or be fired.

It is clear to the SJ/SV NAACP that as a result of Mr. Callender's age, race, color, and gender, Directors Keegan and LeZotte intentionally retaliated against, intentionally harassed, intentionally discriminated against, and intentionally violated the rights of Mr. Callender in the following ways:

1. Directors Keegan and LeZotte engaged in a retaliatory campaign against Mr. Rick Callender due to his past complaints, settlements and DFEH findings against past Director Joe Judge.
2. Directors Keegan and LeZotte arranged for and/or participated in the stealing and release of confidential employee files of Mr. Callender. The release of partial and confidential information contained in the files of Mr. Callender was an intentional attempt to violate Mr. Callender's right to privacy, harass Mr. Callender, and was a retaliatory strike due to Mr. Callender's settlements, and an attempt to malign his good character and reputation.

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3. Directors Keegan and LeZotte violated The Fair Chance Act (Assembly Bill No. 1008), Government Code § 12952 which makes it illegal for employers in California to ask about, or investigate, the criminal record of job applicants before making a job offer. This was an attempt to harass and discriminate against Mr. Callender.
4. Directors Keegan and LeZotte intentionally attempted to malign Mr. Callender's reputation with local media, and the general public, and tried to promote false and misleading stories about him. This was an attempt to harass and discriminate against Mr. Callender.
5. Directors Keegan and LeZotte engaged in a public campaign, which included speaking with Valley Water staff, Directors, and other elected officials, to blacklist Mr. Callender. This was an obvious attempt to try and prevent Mr. Callender from applying for, or obtaining, the job of CEO, by trying to force him to quit, or to ultimately be fired, and as such violated at minimum the spirit of Labor Code (§1050-1053). This was an obvious attempt to harass and discriminate against Mr. Callender.

Issue 1

Directors Keegan and LeZotte engaged in a retaliatory campaign against Mr. Rick Callender due to his past complaints, settlements and DFEH findings against past Director Joe Judge

In California retaliation is defined as the following:

1. Your employer takes an adverse employment action against you or treats you in a discriminatory manner;
2. Because you engaged in a protected activity.

Mr. Callender filed a very public complaint against past Director Joe Judge, and it is well known and documented that Mr. Callender asserted, and asked for investigations into the fact that past Director Joe Judge attempted to discriminate against Mr. Callender and to have him fired and tried to malign his character and reputation.

A third party investigation by the DFEH found that many of Mr. Callender's assertions relative to Mr. Judge against him were valid. (See DFEH Findings attached). A third-party investigation by Valley Water resulted in mixed findings. (See Valley Water investigation findings). Regardless, there is evidence of past Director Joe Judge and Valley Water directly attempting to harass, target, and discriminate against Mr. Callender, and further, Mr. Callender's complaint against past Director Joe Judge should not result in retaliatory attempts to remove him from his job. In slightly over five years following Mr. Callender's settlement, Directors Keegan and LeZotte started to harass and retaliate against Mr. Callender.

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Directors Keegan and LeZotte engaged in phone conversations and meetings with retired Director Joe Judge in order to devise ways to retaliate and prevent Mr. Callender from keeping his job as Chief of External Affairs and to ensure that Mr. Callender would not be able to obtain the position of CEO.

Director Keegan openly bragged about her and Director LeZotte's coordination and assistance with, and from, Joe Judge, and as a result of his conversations with Directors LeZotte and Keegan, past Director Judge utilized his relationship with Congresswoman Zoe Lofgren to have her Chief of Staff, Sandra Soto, make phone calls to try and malign Mr. Callender's reputation, and to try and block votes for Mr. Callender for CEO.

Witness List

Internal Parties: Norma Camacho, Rick Callender, Director Kremen, Director Keegan, Director LeZotte

External Parties: Past Directors Don Gage and Joe Judge; Sandra Soto

ISSUE 2

Directors Keegan and LeZotte arranged for and/or participated in the stealing and release of confidential employee files of Mr. Callender. The release of partial and confidential information contained in the files of Mr. Callender was an intentional attempt to violate Mr. Callender's right to privacy, harass Mr. Callender, and was a retaliatory strike due to Mr. Callender's settlements, and an attempt to malign his good character and reputation.

The right to privacy guaranteed by the California Constitution protects employee personnel files from improper disclosure to third parties. Employers have the responsibility to ensure that personnel records are kept private and access to the records is limited to those persons with a legitimate business need.

Directors Keegan and LeZotte arranged for and/or participated in the stealing and release of Mr. Callender's confidential employee files in 2018. The release of partial and confidential information contained in the files of Mr. Callender was an intentional attempt to violate Mr. Callender's right to privacy, was a retaliatory strike due to Mr. Callender's settlements, and was an attempt to malign his good character and reputation.

In or around early November 2018, HR Deputy Anil Comelo asked then EEO Administrator Anna Noriega to make him a copy of the files of the EEO investigation of Rick Callender relative to Jessica Collins so that he could take it home and read it. Anna Noriega made the confidential copies and provided the files to Mr. Comelo. The following week Mr. Comelo told Ms. Noriega that she should also make copies of the files because they would be used when he applied for CEO.

Ms. Noriega reported this information to at the time CEO Norma Camacho. Mr. Comelo was later placed on leave due to this and other unrelated actions.

Ms. Noriega has long acted with animus towards Mr. Callender, even recently trying to suggest ways that his pay for performance for which he was rightfully due be blocked, and trying to block other benefits for which he was due as CEO. It may have been because of the animus of Ms. Noriega toward Mr. Callender that Ms. Noriega participated in the copying and stealing of confidential files.

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Directors Keegan and LeZotte read direct details and quotes from the stolen files during Mr. Callender's interview process, which directly demonstrates and proves that they were in receipt of, and utilizing, the stolen files which were reported taken and copied by Anna Noriega to past CEO Norma Camacho.

The Directors' release of partial information in Mr. Callender's employee files is a direct violation of California law Gov. Code, § 6254, subd. (c).

The Directors may try to claim a public interest exception, but the public interest exemption protects certain personnel records from disclosure. In determining whether to allow access to personnel files, the courts have determined that the tests under each exemption are essentially the same: the extent of the local agency employee's privacy interest in certain information and the harm from its unwarranted disclosure is weighed against the public interest in disclosure.

Decisions from the California Supreme Court have determined that local agency employees do not have a reasonable expectation of privacy in their name, salary information, and dates of employment. The disclosure of personnel records outside of the aforementioned record would likely constitute an unwarranted invasion of personal privacy.

Further, California state law provides that persons found guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, removing or secreting, the whole or any part of such a record, map, book, paper or proceeding, or who permits any other person to do so, are punishable by imprisonment in state prison, or in a county jail not exceeding one year, or by a fine not exceeding \$1000, or by both fine and imprisonment (Government Code [GC] section 6220-6201). The California Department of General Services applies this law to records of the Office of Human Resources.

Directors Keegan and LeZotte likely participated, and are accomplices, in the stealing of Mr. Callender's employee files, but at minimum they are clearly complicit in the stealing, removing and secreting of the files due to the fact they utilized the files during the interview process and shared copies with external parties, as will be discussed later.

Further, Director LeZotte read exact quotes directly from one of the stolen documents during Mr. Callender's consideration for CEO. Director LeZotte claimed that she had acquired the document from legal counsel during the course of Mr. Callender's settlement negotiations in the prior years.

Witness List

Internal Parties: Anna Noriega, Norma Camacho, Tina Yoke, Melanie Richardson, Rick Callender, Stan Yamamoto, Brian Hopper, Directors: All seven directors were present for the reading of the file by Director LeZotte.

External Parties: Past employee Anil Comelo

Issue 3

Directors Keegan and LeZotte violated The Fair Chance Act (Assembly Bill No. 1008), Government Code § 12952 which makes it illegal for employers in California to ask about, or investigate, the criminal record of job applicants before making a job offer. This was an attempt to harass and discriminate against Mr. Callender.

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As Valley Water knows, state law prevents several things as it relates to criminal background information and checks. Valley Water's recruitment process, both prior to the recruitment, and during the recruitment did not take The Fair Chance Act into account. Areas intentionally disregarded by Directors LeZotte and Keegan are as follows:

- Asking about or considering criminal history before a conditional job offer has been made.
- Considering information about arrests not followed by conviction, participation in pretrial or post trial diversion programs, or convictions that have been sealed, dismissed, expunged, or statutorily eradicated
- Not making an individualized assessment considering the nature and gravity of the conduct, the time passed, and the nature of the job held or sought
- Not explaining the applicant's right to submit evidence challenging the conviction history report, mitigating circumstances, or circumstances regarding your rehabilitation
- Not notifying Mr. Callender in writing of his right to file a complaint with DFEH

Director Keegan shared with many parties, both internally and externally, the fact that she believed that Rick Callender was a known felon, including having multiple felonies, and that this should prevent him from being considered for the CEO position, and should preclude him from being Chief of External Affairs. This is in direct violation of the spirit and the letter of the law.

Director Keegan has been quoted as saying, "over my dead body will Rick Callender ever advance at this organization." This was many months prior to the position ever becoming vacant, or even being announced that the past CEO was retiring.

After hearing about the conversation in which Director Keegan had asserted these facts with past COO Nina Hawk, and the fact that Nina Hawk was sharing with other Valley Water employees what she had been told by

Director Keegan and LeZotte pushed for Rick Callender to undergo a criminal background check, something that has never been done for an existing employee for any executive position in the history of Valley Water.

As evidenced by the text from Director Keegan to Director Kremen in December of 2019, Director Keegan was conducting her own investigation of Mr. Callender and pushing the information to the newspaper as an expose of Mr. Callender. This was well prior to the job of CEO being advertised.

Valley Water knows that California law provides that an employer cannot obtain prohibited arrest or conviction information from a source other than an employee and then use it for making any employment decisions.

Witness List

Internal Parties: Liz Bettencort, Norma Camacho, Melanie Richardson, Rick Callender, Odilia Leonardo, Patricia Medina, Tony Vye, Director Kremen, Director Varela, Director Santos

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External Parties: Jennifer Wadsworth, Metro Newspapers, Metro owner Dan Pulcrano, Past COO Nina Hawk

Issue 4

Directors Keegan and LeZotte intentionally attempted to malign Mr. Callender's reputation with local media, and the general public, and tried to promote false and misleading stories about him. This was an attempt to harass and discriminate against Mr. Callender.

The California Supreme Court addressed the importance of reputation and the damaging effects of employers trying to blacklist employees, stating:

“Good character, or reputation, consists of the general opinion of people respecting one. It is built up by a lifetime of conduct. It is probably the dearest possession that a man has, and once lost is almost impossible to regain. The possession of a good reputation is conducive to happiness in life and contentment. The loss of it, . . . brings shame, misery, and heartache.”

Society's interest in redressing the harm done to one's reputation is strong... Moreover, “[t]he harm done to one's reputation can never be fully undone.”

Directors Keegan and LeZotte have attempted to ensure that the harm to Mr. Callender's reputation can never be undone, with their accusations and falsehoods.

It is clear that Directors LeZotte and Keegan went on a campaign to malign and hurt Mr. Callender's reputation as described above and below.

Director Keegan worked with Metro Newspapers to encourage them to file multiple records requests in 2019, after she represented to Metro Newspaper that Mr. Callender had been the subject of multiple settlements because of his “behaviors.” This was entirely false, however the Metro submitted the requests to follow up on the lying witch hunt Director Keegan was promulgating. Further, Director Keegan released limited copies of Mr. Callender's employee files to the Metro to prove her accusation. These files may have been shared with many others, however that is not known.

Further, after conducting her own failed criminal investigation into Mr. Calendar's past, she falsely tried to represent to the Metro that Mr. Callender was a felon and that no one knew about his multiple convictions.

Ultimately the Metro did write several stories which had been long pitched by both Directors Keegan and LeZotte.

See issues 3 and 5.

Witness List

Same witnesses for issues 3 and 5

Issue 5

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Directors Keegan and LeZotte engaged in a public campaign that included speaking with Valley Water staff, Directors, and other elected officials, to blacklist Mr. Callender. This was an obvious attempt to try and prevent Mr. Callender from applying for, or obtaining, the job of CEO, by trying to force him to quit, or to ultimately be fired, and as such violated at minimum the spirit of Labor Code Labor Code (§1050-1053). This is an obvious attempt to openly harass and discriminate against Mr. Callender.

California law specifically prohibits blacklisting. Blacklisting is often due to discriminatory factors and intent based on race, sex, color, national origin, or gender.

Labor Code (§1050-1053) specifies the following acts as blacklisting:

- Preventing or attempting to prevent a former employee from getting work through misrepresentation.
- Knowingly permitting or failing to take reasonable steps to prevent blacklisting.
- In a statement about why an employee was discharged or left employment, implying something other than what is explicitly said, or providing information that was not requested. Furnishing information without a special request is prima facie evidence of a violation.

Even though Mr. Callender was not a former employee of Valley Water, the actions of Directors Keegan and LeZotte are the equivalent of blacklisting Mr. Callender as he sat in his job as the Chief of External Affairs and aspired to become CEO. This is due to the fact that the offending Directors actively activated and engaged in a public campaign designed to force Mr. Callender to quit by maligning his good reputation, by trying to engage other elected officials, members of the public, other elected officials' staff, past elected officials and employees to prevent Mr. Callender from applying for the position of CEO, obtaining the position of CEO, and to try and force him to resign.

This is evidenced by the phone calls and lobbying efforts with external and internal parties asking them to call sitting Directors of Valley Water, and other elected officials, to oppose Mr. Callender in his past job and to oppose his employment attempt for CEO.

Many elected officials and past elected officials received calls from Directors Keegan and LeZotte and engaged in conversations with other parties in an attempt to block Mr. Callender's candidacy, and from him being able to obtain the job.

Witness List

Internal Parties: All seven members of the Board of Directors, Norma Camacho
External Parties: Jennifer Wadsworth, Metro Newspapers, Don Gage, Sandra Soto (Zoe Lofgren Chief of Staff), CSJ Councilmember Maya Esparza, CSJ Councilmember Dev Davis, Angelica Ramos (Susan Ellenberg staff), Milpitas Councilmember Bob Nunez

Respect Us or Expect Us

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