

**MCPHARLIN
SPRINKLES &
THOMAS LLP**
ATTORNEYS AT LAW

160 W. SANTA CLARA ST., STE. 400
SAN JOSE, CALIFORNIA 95113
TELEPHONE (408) 293-1900
FACSIMILE (408) 293-1999
WWW.MSTPARTNERS.COM

PAUL S. AVILLA
JEANINE D. DeBACKER
AIMEE G. GOLDSTEIN
LINDA HENDRIX McPHARLIN
JANE P. RELYEA
ELAINE M. SEID
CATHERINE C. SPRINKLES
ANNE C. STROMBERG
N. DAVID THOMAS

January 29, 2014

To: Board of Directors, Marina Coast Water District
From: Jeanine DeBacker, Special Legal Counsel
Subject: Investigation Regarding Complaints against Director Peter Le

This memorandum is to provide a brief update of the status of the investigation regarding the employee complaints against Director Peter Le (the “harassment investigation”) and to answer questions posed by Director Le via email.

Engagement of Outside Investigator

At the January 6, 2014 meeting, Special Legal Counsel was directed to hire an investigator to investigate complaints against Director Peter Le.

On January 20, 2014, Anne Olsen of Ottone Leach Olsen & Ray LLP in Salinas was retained as the investigator. She was engaged to investigate allegations of inappropriate, unprofessional, and potentially harassing behavior. Ms. Olsen’s role is to act as a neutral fact-finder to conduct an independent fact investigation. Ms. Olsen began her investigation on January 21, 2014.

Ms. Olsen asked that the District arrange for interviews of persons identified by her. Special Legal Counsel made arrangements for meetings via email with the persons identified by Ms. Olsen.

Status of Investigation

As of the date of this memorandum, the investigation is ongoing and will not conclude prior to your February 3, 2014 Board meeting.

Questions Posed by Director Le Regarding the Investigation

In an email dated January 21, 2014, Director Peter Le posed several questions about the harassment investigation. Attached to this memorandum is the email for your reference.

Below are Director Le's questions regarding the harassment investigation, grouped according to their general theme. Special Legal Counsel's responses are also below. In a second memorandum, Special Legal Counsel has responded to questions regarding the Brown Act investigation.

* * *

- “3. I have not received the contact information on both investigators so that I can ask questions on the interviews.”
- “3. Please also forward my questions to the investigators so that they can address my questions.”
- “6. I previously provided Ms. DeBacker with my available interview schedule assuming that I would receive all the requested documents and contact information of the investigators so that I could discuss my questions before the actual interview on the complaints.”
- “7. I like to have the investigators contact me directly. I do not wish to have Ms. DeBacker contact me on these investigations since she may have undue influence on the investigations.”

In response to Director Le's January 21, 2014 email, Special Legal Counsel emailed Ms. Olsen, informed her of the request by Director Le and provided the investigator with Director Le's email address in the event she elected to contact him. Please note, no one can be compelled to speak with Ms. Olsen for her investigation.

* * *

- “1. When will I receive the documents on the complaints that I have previously asked for from the Board? I like to review them before the interview. Additionally, the Board has not made a decision on my request for legal representation. I cannot have any complaint interview until the Board makes a decision on my request and I have reviewed details of the complaints and the District approved procedures handling this type of complaint.”
- “5. It appears that Ms. DeBacker has unnecessarily involved in these investigations and will affect the neutrality of the investigations. I did not see that the Board authorized Ms. DeBacker to set up any interview on

- behalf of the investigators. I did not believe that the Board authorized Ms. DeBacker to approve the investigators on behalf of the Board either. Ms. DeBacker should not be involved in the investigations once the investigators have been identified and later approved by the Board. The Board needs to approve the investigators first and let the investigators contact all the Directors to set up the interviews and answer my questions. The District Counsel needs to provide the Board his opinion on the actions the Board took at the Board meetings on January 6 and 11, 2014. The Board also needs to ask Ms. DeBacker to remove herself immediately from the investigation processes to maintain the integrity of the investigations.”
8. I do not believe Ms. DeBacker conducted the complaint made against me properly and appropriately. I do not believe Ms. DeBacker has any authority whatsoever to request me to meet her to resolve the complaint unless the Board can provide me with District written and approved procedures, policies, signed MOU's, ordinances, resolutions or any other document that indicate she has such authority. The District Counsel needs to provide the Board his opinion on these matters.
 9. Once the complaints were expressed, the District needed to write down the verbal complaints and other pertinent information of the complaints. Since the complaints were made against me, I am entitled to receive full and specific details of the complaints such as statements of the complaints, the complaining parties, etc. so that I can respond to the complaints. Without providing me full details of the complaints, it will be very difficult for me to prepare and provide responses to the investigator at or after the interviews. I have not received any specific and full details of the complaints and the proper procedure to handle these complaints as of today.

This memorandum will not address the request for legal representation. A memorandum dated January 9, 2014 was presented to the Board on this issue.

Special Legal Counsel's function is to provide labor and employment law advice and counsel to the District. Under state and federal law, employers such as the District must undertake reasonable care to prevent and promptly correct harassment. Such steps can include training, internal or external investigation, discipline, and counseling an individual in a manner likely to stop the harassment.

Prior to the January 6, 2014 meeting, Special Legal Counsel sought to meet informally with Director Le in order to prevent any alleged behavior from recurring. The purpose of the meeting was to make him aware of the various state and federal laws and the rules of the District that place limitations on all Directors' conduct so as to ensure that violations of those laws, policies and rules do not occur. Director Le was reminded that, in lieu of an informal resolution of the matter, California's Brown Act requires that complaints against a public agency director, when considered by the public agency's Board of

Directors, must be conducted at a noticed public meeting in open session. The Brown Act provides that an elected director is not considered an “employee” entitled to a closed session when the Board considers the specific complaints brought against the director. (Cal. Gov. Code § 54957(b)(4)).

Director Le refused the request to meet with Special Legal Counsel. Therefore, in order to satisfactorily address the complaints of District staff, the Board was advised that it must investigate the employees’ complaints and take appropriate action based upon the Board’s findings. At the January 6, 2014 meeting, Special Legal Counsel was directed to hire an investigator to investigate complaints against Director Peter Le. Ms. Olsen was thereafter retained.

Ms. Olsen has been hired to act as a neutral fact-finder to conduct an independent fact investigation. Ms. Olsen is charged with using her experience, skills and knowledge to determine the best steps to conduct the investigation, including but not limited to the order of obtaining information from the complaining parties and the alleged harasser. The investigator is to determine the information to be provided in advance to each interviewee. Among other things, such determinations are designed to help the investigator obtain responses from each interview based on personal knowledge to the extent possible.

Special Legal Counsel sought to arrange the interviews for Ms. Olsen at her request. The entity hiring the investigator normally handles such scheduling so communications go smoothly. Special Legal Counsel is handling the scheduling because the very matter at issue relates to communications by and between District staff and Directors.

###

I hope this brief update is helpful. I will be available to discuss this memorandum at your February 3, 2014 meeting.

Jeanine DeBacker

From: PETER LE [mailto:peter381@sbcglobal.net]
Sent: Tuesday, January 21, 2014 1:30 PM
To: Tom Moore; janet shriner; bill lee; Howard Gustafson
Cc: Roger Masuda
Subject: Questions on Investigations & Interviews

January 21, 2014

Dear Board of Directors:

I have the following questions, comments and requests on the proposed interviews from Ms. DeBacker:

1. When will I receive the documents on the complaints that I have previously asked for from the Board? I like to review them before the interview. Additionally, the Board has not made a decision on my request for legal representation. I cannot have any complaint interview until the Board makes a decision on my request and I have reviewed details of the complaints and the District approved procedures handling this type of complaint.
2. I like the Brown Act interview at the Marina City Council Chamber or at the Marina Conference Room.
3. I have not received the contact information on both investigators so that I can ask questions on the interviews.
4. Please also forward my questions to the investigators so that they can address my questions.
5. It appears that Ms. DeBacker has unnecessarily involved in these investigations and will affect the neutrality of the investigations. I did not see that the Board authorized Ms. DeBacker to set up any interview on behalf of the investigators. I did not believe that the Board authorized Ms. DeBacker to approve the investigators on behalf of the Board either. Ms. DeBacker should not involved in the investigations once the investigators have been identified and later approved by the Board. The Board needs to approve the investigators first and let the investigators contact all the Directors to set up the interviews and answer my questions. The District Counsel needs to provide the Board his opinion on the actions the Board took at the Board meetings on January 6 and 11, 2014. The Board also needs to ask Ms. DeBacker to remove herself immediately from the investigation processes to maintain the integrity of the investigations.
6. I previously provided Ms. DeBacker with my available interview schedule assuming that I would receive all the requested documents and contact information of the investigators so that I could discuss my questions before the actual interview on the complaints.
7. I like to have the investigators contact me directly. I do not wish to have Ms. DeBacker contact me on these investigations since she may have undue influence on the investigations.
8. I do not believe Ms. DeBacker conducted the complaint made against me properly and appropriately. I do not believe Ms. DeBacker has any authority whatsoever to request me to meet her to resolve the complaint unless the Board can provide me with District written and approved procedures, policies, signed MOU's, ordinances, resolutions or any other document that indicate she has such authority. The District Counsel needs to provide the Board his opinion on these matters.

9. Once the complaints were expressed, the District needed to write down the verbal complaints and other pertinent information of the complaints. Since the complaints were made against me, I am entitled to received full and specific details of the complaints such as statements of the complaints, the complaining parties, etc. so that I can respond to the complaints. Without providing me full details of the complaints, it will be very difficult for me to prepare and provide responses to the investigator at or after the interviews. I have not received any specific and full details of the complaints and the proper procedure to handle these complaints as of today.

10. As usual, you cannot discuss my questions, requests or comments between yourselves or in a chained discussion due to the prohibition of the Brown Act. I hope you will place my previous request and this email on the February 3, 2014 Board agenda for consideration by the Board.

Please provide me with responses on the above questions and ask the investigators to contact me directly, preferably by emails. Once I receive the complaint documents and the Board decision on my legal representation request, I will contact the investigator to set up an interview.

Peter Le
Director

----- Original message -----

From: Jeanine DeBacker
Date: 01/21/2014 10:20 AM (GMT-08:00)
To: peter381@sbcglobal.net
Subject: Investigation interviews

Dir. Le:
Please let me know if the following will work:

1. Brown Act interview on Friday, 1/24 at 2:30 at Reservation Road office.
2. Complaint interview on Thursday, 1/23 at 9:30 AM at Reservation Road office.

If you have an alternative location that works better for a face-to-face meeting, please let me know and I'll see if that will work.

Best,
Jeanine

Jeanine D. DeBacker | McPharlin Sprinkles & Thomas LLP
160 West Santa Clara Street, Suite 400 | San Jose, CA 95113
Phone: 408.293.1900 | Facsimile: 408.293.1999
Email: jdebacker@mstpartners.com | mstpartners.com

Notice to recipient: This e-mail is meant only for the intended recipient of the transmission, and may be a communication privileged by law. If you received this e-mail in error, any review, use, distribution, or copying of this e-mail is strictly prohibited. If you have received this message in error, please immediately notify us by telephone or e-mail and delete the message from your system.