

## WRITTEN NOTICE OF RECOMMENDED DISCIPLINARY ACTION

November 29, 2010

Lisa Fleming  
[REDACTED]

### I. NATURE OF ACTION

This is to inform you that I recommend you be suspended for 5 days (40 hours) from your employment and be demoted to the classification of Assistant Engineer II, with the Santa Clara Valley Water District ("District"). Good cause exists to suspend you from your employment as well as issue a demotion due to your multiple infractions and significant and egregious acts of misconduct, including but not limited to: (1) You received and retained emails that contained profanity and derogatory commentary regarding disability, race, sexual orientation, and contained sexual connotation. (2) You sent emails that contained profanity and nudity and derogatory commentary re: disability, race, sexual orientation, and sexual connotation. I am proposing suspension for 5 days (40 hours), as well as demotion to classification of Assistant Engineer II, as the appropriate level of discipline, in part because of the significantly inappropriate nature of some of the emails in question, the volume of inappropriate emails, and despite completing sexual harassment prevention training on December 10, 2009, you (i) sent numerous emails to numerous District employees that contained profanity, violence, and derogatory commentary regarding disability, religion, sexual orientation, and sexual connotation, and (ii) were evasive and argumentative during the investigation and continue to minimize the inappropriate nature of a number of offensive emails you sent to others, including emails containing nudity and profanity.

### II. STATEMENT OF FACTS

The facts I relied upon in making this recommendation are contained in the attached documentation, emails and related materials and is summarized as follows:

#### A. Background

You have been employed with the District since May 30, 2001, and have worked as an Associate Civil Engineer since October 23, 2006.

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You have inexcusably misused your District email account by sending, receiving and/or retaining a large volume of inappropriate emails. This includes inappropriate communications with District staff, and non-District employees.

**B. You sent emails that contained profanity and nudity, and derogatory commentary re: disability, race, sexual orientation and contained a sexual connotation.**

On 7/26/2007, you sent an email to Reuben Castro, Jay Lee and Kristen O'Kane titled "Pictures not seen in Sports Illustrated". This email contained 10 photos with captions showing exposed genitals and contained sexual connotation.

On 8/28/2007, you sent an email to Jay Lee, Chad Grande and Reuben Castro titled "Times When you Don't Hyphenate your Name". These were purported clippings from newspapers of wedding announcements with sexual connotation - "Traylor Hooker"; "Best-Lay"; "Neisser-Ho"; "Wang-Holder"; "Beaver-Wetter".

On 11/5/2007, you sent an email with photos and captions to Chad Grande, Jay Lee, Reuben Castro, Joseph Aguilera, Kristen O'Kane and Jennifer Castillo titled "Found in a JC Penney catalog from 1977". The catalog photos included profanity, references to homosexuality and rape. Additionally, you wrote on this email, "Must read ALL captions!"

On 2/20/2008, you sent 5 photos to Chad Grande and Jay Lee titled "Background People". Photos contained nudity in the background of each shot. Additionally, you wrote "Check out the people in the background...then delete!"

On 7/21/2008, you sent 5 photos to Chad Grande, Jay Lee and Joseph Aguilera titled "Things you shouldn't find in your garden". This email was photos of vegetables that looked like genitals and contained a sexual connotation.

On 8/28/2008, You sent one photo to Chad Grande and Reuben Castro. This was a photo of Chad Grande and Reuben Castro with Castro giving the photographer the finger.

On 9/4/2008, you sent Jay Lee an email titled "Olympic Commentary". This email contained sexual connotations.

On 9/24/2009, you forwarded an internet site containing over 100 photos titled "Laughs" to Chad Grande, Jay Lee and Reuben Castro. Site depicted pictures of Walmart shoppers with derogatory commentary.

**C. You received and retained emails that contained profanity and derogatory commentary re: disability, race, sexual orientation and sexual connotation.**

On 4/15/2008, you received and retained a photo from Chad Grande titled "Old Photo of Barack and Hillary". This photo was of a black boy staring angrily at a white girl holding a fish. The caption read "Bitch Stole my fish".

On 1/20/2009 you received and retained a video clip from Jay Lee entitled "Unionforu.wmv". This appears to be an AFSCME ad with extreme language, profanity and derogatory comments.

On 6/30/2009, you received and retained a 27 photo slide show with captions from Chad Grande entitled "Very weird family photos". This email had racial, sexual and derogatory images, including a family dressed in genitally correct costumes with the daughter touching the father's costume penis. Additionally, you forwarded this to Jay Lee on 6/30/2009.

On July 22, 2009, you received an email from Linda Horenstein titled "Stevie Wonder on M. Jackson". This email poked fun at disabilities. Additionally, you forwarded this email to Jay Lee and Chad Grande on 7/22/2009.

On 11/12/2009, you received and retained an email with photo from Chad Grande titled "Nice Hat". This was a picture of Barack Obama appearing to wear an acorn on his head. The caption read, "Acorn cap with nut still attached".

### **III. POLICY VIOLATIONS**

I propose to take this action on the grounds that good cause exists for your suspension and demotion pursuant to the following sections of the Engineers Society Memorandum of Understanding ("MOU") and District Rules, Policies and Procedures:

1. Discipline Process - MOU Article XIII

The District will issue no discipline without just and sufficient cause.

2. District Policy and Procedure - Ad-7.5 Email

The District's e-mail system is to be used for business purposes in serving the interests of the District and its customers.

Employees are responsible for exercising the same care and consideration when using e-mail regarding appropriate content as with any other written communications. Content that is misleading, inaccurate, embarrassing, harassing, sexually explicit, profane, obscene, intimidating, and defamatory or that violates any law, regulation, or District policy is prohibited.

3. Computer and Electronic Communication Support Services - Ad-7.2.101

All messages communicated over the District's electronic systems must be courteous and professional in nature. E-mail/Voice Mail is not to be used for gossip, sharing of personal information, or for emotional responses to business correspondence or work situations.

Employees must ensure that messages comply with the District's non-discrimination policies, including sexual harassment. The e-mail/voice mail systems shall not be used in anyway that can be construed to harass or disparage others based on their sex, race, sexual orientation, age, national origin, religion, disability, marital status, or veteran status.

4. Ad - 2.8.107 Equal Opportunity Policy

Employees have the right to work in an environment that is free from all forms of discrimination, including sexual harassment. It is the policy of the District that sexual harassment by or of any District employee is unacceptable and will not be tolerated. Sexual harassment is a form of

discrimination. District supervisors and managers are expected to take proactive steps designed to ensure a harassment-free work place and to convey their clear disapproval of conduct that violates this policy.

Examples of conduct that may constitute sexual harassment, contribute to a hostile work environment or violate this policy, includes, but is not limited to:

- verbal conduct such as derogatory comments, slurs, sexually explicit jokes and comments, unwanted invitations, epithets, sexually explicit or graphic comments or discussion about an individual's body or physical appearance.
- posting, sending or downloading derogatory, demeaning or sexually suggestive/explicit materials, photographs, posters, cartoons, calendars, graffiti or drawings in any medium including sending by electronic mail or by the use of the internet.

#### 5. Ad-2.9.100 Employee Conduct – Overview

Employees will be treated fairly and consistently in accordance with written rules of conduct in accordance with adopted District policies and procedures and MOU provisions.

Employees are protected against working in a hostile work environment.

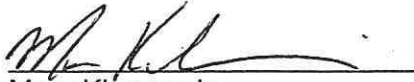
### **IV. CONCLUSION AND APPEAL RIGHTS**

I conclude that in light of the above, as well as the attached materials, you have engaged in serious and inexcusable misconduct. Your egregious abuse of the District's email system is an unacceptable departure from the expectations of your position. Moreover, the significantly inappropriate nature of some of the emails in question, as well as the volume of inappropriate communications, separately and independently form a basis for my recommendation that you be suspended for 5 days (40 hours) and be demoted to classification of Assistant Engineer II.

You have the right to respond to this notice orally (i.e. Skelly Hearing) or in writing. Your deadline for requesting a Skelly Hearing or providing a written response is 15 days from your receipt of this Written Notice of Recommended Disciplinary Action. If you timely request a Skelly Hearing, you will have an opportunity to respond to these charges orally within 15 working days of your request, with an individual who has the authority to recommend to uphold, modify or revoke the recommended disciplinary action. A copy of the Skelly Hearing notice will be provided to the Bargaining Unit and the Labor Relations Unit.

Upon conclusion of the Skelly Hearing, within 15 working days, the District shall issue the NOTICE OF FINAL DISCIPLINARY ACTION, including the effective date of any discipline to be imposed. You have the right to request bargaining unit representation or to have a representative of your choice at the Skelly Hearing. Failure to respond within the deadlines described above shall be deemed an intentional and knowing waiver of your right to a pre-discipline hearing. If you fail to respond orally or in writing to the Proposed Disciplinary Action in this notice it shall become final.

Copies of any documents or other materials giving rise to this action are attached for your inspection. You are also instructed not to violate any privacy rights of District employees who are mentioned or involved in these charges. In addition, District Policy prohibits any form of retaliation against employees who have filed claims or have been party to an investigation, regardless of whether a complaint is sustained.



Marc Klemencic  
Chief Operating Officer

11-24-10  
DATE

cc: Sharon Judkins, Chief Administrative Officer  
Anthony Fulcher, Assistant District Counsel  
Chris Elias, Deputy Operating Officer  
Luis Ortiz, ES President  
Labor Relations  
Personnel File

## LIST OF SUPPORTING MATERIAL

The following materials, consisting of all materials upon which the [redacted] based, are attached and served herewith:

### Exhibits:

1. Ad-2.8.107 Equal Opportunity Policy
2. Ad-2.9.100 Employee Conduct – Overview
3. Ad – 2.9.103 Discipline
  - a. The District Guidelines for Disciplinary Action [redacted] Discipline
4. Ad-7.2 Computer and Electronic Communication Support [redacted]
5. Ad-7.5 E-mail
6. Classification Specification for Associate Civil Engineer
7. ES/Union MOU
  - a. Article XIII, Discipline Process
  - b. Article II, Section 2. District Rights
8. Confidential Witness Interview Summary
9. Attendance of sexual harassment prevention training [redacted] materials)
10. Employee Communication message from CEO dated [redacted]
11. Inappropriate Emails
12. DVD of inappropriate videos