



**OPPENHEIMER**  
INVESTIGATIONS  
GROUP LLP

**Report Concerning Complaint By:**

Grecia Figueroa

**Client:** San Diego Metropolitan Transit System

**Date:** December 14, 2023

**CONFIDENTIAL**  
**INVESTIGATIVE REPORT**

**LIMITED WAIVER OF PRIVILEGE:** This confidential investigation report was prepared by legal counsel and is protected by the attorney-client and attorney work product privileges. This report also discusses matters that are protected by employee privacy and closed session privileges. In the interests of transparency, the MTS Board of Directors authorized the release of a redacted version of the report. Redactions included in the report are intended to protect and preserve the confidential and privileged status of the redacted matters. Release of this redacted report is not intended to waive privilege for any information or document, except for this redacted report itself.

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### I. INTRODUCTION

On April 14, 2023, the San Diego Metropolitan Transit System (“MTS”) retained the Oppenheimer Investigations Group LLP (“OIG”) to conduct an impartial investigation of some of the issues that came up as a result of a complaint brought by Grecia Figueroa, a Public Relations Specialist who was terminated by MTS on February 6, 2023. Danielle Drossel was the principal investigator.

#### A. Background

This investigation arose as a result of a lawsuit filed by Figueroa, through her attorney Zachary Schumacher, on March 28, 2023. (Exhibit 1.) The gravamen of Figueroa’s complaint is that she was sexually harassed and sexually assaulted by Nathan Fletcher, the former Chairman of the MTS Board of Directors. Figueroa further alleged that MTS failed to prevent and address Fletcher’s sexual harassment of Figueroa, and terminated Figueroa because she was sexually harassed by Fletcher.

Nathan Fletcher is a prominent San Diego politician, who served on the San Diego County Board of Supervisors and the MTS Board of Directors. Fletcher was appointed to the MTS Board in January 2019, and served as the Chairman of the MTS Board from October 2019 to March 2023.

On February 6, 2023, Fletcher publicly announced his run for a seat on the state Senate. Figueroa was terminated from MTS on the same date. On March 26, 2023, Fletcher publicly announced that he was ending his run for the state Senate and going on leave to seek treatment for post-traumatic stress and alcohol abuse. Two days later (March 28), Figueroa filed a sexual harassment and assault lawsuit against Fletcher and MTS.

On March 29, 2023, Fletcher resigned as Chair of the MTS Board and issued a public statement acknowledging that he had “consensual interactions” with Figueroa but denying the sexual harassment and assault allegations. (Exhibit 23.) He also announced his resignation from the San Diego County Board of Supervisors.

#### B. Scope

OIG was retained to investigate that portion of Figueroa’s complaint that alleged MTS failed to prevent and address Fletcher’s sexual harassment and terminated her because she was sexually harassed by Fletcher. Based on this, and the allegations set forth in Figueroa’s lawsuit, MTS asked OIG to conduct an investigation addressing the following questions:

1. What are the facts and timelines related to the performance evaluations and Figueroa’s eventual termination?
2. What knowledge did MTS officials or employees have of a relationship between Nathan Fletcher and Grecia Figueroa?
3. What steps did any MTS employee take to respond to and/or report sexual harassment of Grecia Figueroa?
4. Did MTS officials act reasonably in their reporting of information regarding Grecia Figueroa and Nathan Fletcher to the MTS Board of Directors?

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5. Did Nathan Fletcher’s position(s) or relationships with MTS officials and agents impact:
  - a. The reporting of the relationship,
  - b. MTS’s treatment of Ms. Figueroa,
  - c. Communication of facts to the full Board of Directors,
  - d. Any other actions taken by MTS officials and agents?
6. What policies and procedures did MTS have in place to prevent, report, and address sexual harassment?
7. What policies and procedures of self-governance did the MTS Board of Directors have in place to prevent and address Board member misconduct?
8. Was this legal claim handled in a similar and consistent manner as comparable claims?

Once the scope of the investigation was determined and agreed upon, the investigator operated with complete independence as to witness identification, interview content, and preparation of findings.

This is a Confidential Investigative Report (“Report”). It contains detailed information, witness accounts, relevant documentation, analyses, and findings relating to the allegations. It is anticipated that this Report will be maintained confidentially by the decision-makers and will not be disseminated except as required by law or as determined by the decision-makers.

### **C. Methodology**

The findings in this Confidential Investigative Report do not reach questions of law as to whether the alleged misconduct supports a violation of applicable laws, but instead are factual findings. The undersigned utilizes a legal analysis in reaching the determinations in this Report. These determinations, however, are not intended to equate to a finding that applicable laws were violated.

The investigator analyzed the facts and determined whether the allegations were with or without merit under a preponderance of the evidence standard. “Preponderance of the evidence,” for purposes of this Report, means that the evidence on one side outweighs, or is more than, the evidence on the other side. This is a qualitative, not quantitative, standard.

The investigator has drawn the conclusions in this Report from the totality of the evidence and a thorough analysis of all the facts, and where necessary, has made credibility determinations. The investigator considered and gave appropriate weight to information that might be considered to be hearsay in legal proceedings. Finally, while numerous hours were spent reviewing documents and interviewing witnesses, this Report does not purport to include every detail as described by the individuals involved. Rather, it assesses the important facts as they pertain to the incidents investigated.

The investigator is not determining whether the below findings constitute a violation of MTS’s policies and/or improper conduct under California or Federal law. That determination should be made by MTS along with what corrective and remedial action is appropriate. Under the Fair Credit and Reporting Act (“FCRA”), if MTS decides to take adverse action against any employee in whole or in part based on this Report, it should disclose a summary of this Report to the employee. The sources of information need not be disclosed.



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### II. WITNESSES AND DOCUMENTS

#### A. Witnesses

The investigator conducted interviews of the following individuals:

Name of Interviewee	Title	Date(s) of Interview
Stacie Bishop	Manager of Marketing and Communications	May 11, 2023
Jeff Stumbo	Chief Human Resources Officer and EEO Officer	May 17, 2023
[REDACTED]	[REDACTED]	May 17, 2023
Mark Olson	Director of Marketing and Communications	May 24, 2023
[REDACTED]	[REDACTED]	May 30, 2023
[REDACTED]	[REDACTED]	May 31, 2023
[REDACTED]	[REDACTED]	May 31, 2023
[REDACTED]	[REDACTED]	May 31, 2023
[REDACTED]	[REDACTED]	June 2, 2023
Karen Landers	General Counsel	June 20, 2023 and October 5, 2023
Sharon Cooney	Chief Executive Officer	June 21, 2023
Sean Elo-Rivera	MTS Board Member; Councilmember, San Diego City Council	June 30, 2023
Steve Goble	Vice Chair of MTS Board; Councilmember, City of El Cajon	July 20, 2023
Stephen Whitburn	Chair of MTS Board; Councilmember, San Diego City Council	July 21, 2023
Patricia Dillard	MTS Board Member; Councilmember, La Mesa City Council	July 26, 2023
Marcus Bush	MTS Board Member; Councilmember, National City Council	July 26, 2023
John McCann	MTS Board Member; Mayor, City of Chula Vista	August 2, 2023
Caylin Frank	MTS Board Member; Councilmember, Poway City Council	August 11, 2023
Mike Donovan	MTS Board Member; Councilmember, Coronado City Council	August 17, 2023
Matthew Leyba-Gonzalez	MTS Board Member; Councilmember, Imperial Beach City Council	August 18, 2023
Ronn Hall	MTS Board Member; Councilmember, Santee City Council	August 28, 2023
Todd Gloria	MTS Board Member; Councilmember, San Diego City Council	August 28, 2023
Monica Montgomery Steppe	MTS Board Member; Councilmember, San Diego City Council	September 5, 2023
Vivian Moreno	MTS Alternate Board Member; Councilmember, San Diego City Council	September 7, 2023
George Gastil	MTS Board Member; Councilmember, Lemon Grove City Council	September 12, 2023

Grecia Figueroa was not interviewed for this investigation as the undersigned was unable to reach an agreement with Figueroa, through her attorney, as to her requested conditions for such an interview,

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some of which were contrary to the undersigned's investigation practices as well as the DFEH and EEOC guidelines on best practices for investigations.<sup>1</sup>

Nathan Fletcher, through his attorney, did not agree to a live interview for this investigation. He agreed instead to provide written responses to written questions. His responses are attached at Exhibit 2.

All other interviews were conducted virtually via videoconference. The investigator admonished the witnesses to keep the contents of the interview confidential and explained that the Report of findings would be treated as confidential, subject to the limitations of MTS's policies and the law. The investigator also informed the witnesses of the governing policies prohibiting retaliation for either bringing a claim or participating in an investigation.

Quotations in this Report are not verbatim recitations of witnesses' statements. Quotations are cited as accurately as possible from the undersigned's notes.

### **B. Documents**

The investigation included a review of documents. Not all documents reviewed are attached to this Report. The following documents that were reviewed and deemed relevant are attached to this Report:

	Document	Potential Privileges
1	Civil Complaint and First Amended Complaint in the matter of <i>Grecia Figueroa vs. Nathan Fletcher, San Diego Metropolitan Transit System, et al.</i>	N/A
2	Nathan's Fletcher's Responses to the Undersigned's Written Questions	Attorney Work Product Privilege
3	Mark Olson's Timeline and Supporting Documents	Attorney Work Product & Attorney-Client Communication Privileges
4	Figueroa's first year evaluations (six-month review and annual review)	Confidential Employee Personnel Information (employee privacy interest)
5	Figueroa's second year evaluation	Confidential Employee Personnel Information (employee privacy interest)
6	July 15, 2022 Performance Review Meeting Notes	Confidential Employee Personnel Information (employee privacy interest)
7	Emails between Bishop, Olson, and Stumbo re: Figueroa's Performance Review, dated July 2022	Confidential Employee Personnel Information (employee privacy interest)
8	Figueroa's third year evaluation – with Stumbo's edits	Confidential Employee Personnel Information (employee privacy interest)
9	Figueroa's third year evaluation	Confidential Employee Personnel Information (employee privacy interest)
10	Emails between Bishop, Figueroa, and Olson re: evaluation, dated August 19, 2022 (plus updated PE)	Confidential Employee Personnel Information (employee privacy interest)
11	Figueroa's written feedback	Confidential Employee Personnel Information (employee privacy interest)
12	Figueroa's final third year evaluation	Confidential Employee Personnel Information (employee privacy interest)

<sup>1</sup> For example, Figueroa's attorney requested that Figueroa and her counsel be allowed to attend and record all witness interviews and have full access to all information gathered by the investigator. Such a request is contrary to the undersigned's duty of impartiality and to protect the witnesses' confidentiality and privacy rights.



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	Document	Potential Privileges
13	Figueroa's Mid-Year Performance Review	Confidential Employee Personnel Information (employee privacy interest)
14	Email and Memo re: Figueroa's Employee Performance Evaluation, dated January 30, 2023	Confidential Employee Personnel Information (employee privacy interest)
15	Separation Agreements Process and Information	Attorney Work Product & Attorney-Client Communication Privileges
16	Draft Separation Agreement re: Figueroa	Confidential Employee Personnel Information (employee privacy interest)
17	Emails between Stumbo and Figueroa re: Severance Package, dated February 7-14, 2023	Confidential Employee Personnel Information (employee privacy interest)
18	Termination letter, dated February 17, 2023	Confidential Employee Personnel Information (employee privacy interest)
19	Screenshot images of texts messages between Figueroa and [REDACTED] dated February 7, 2023	Confidential Employee Personnel Information (employee privacy interest)
20	Letter from Zach Schumacher to MTS and Fletcher regarding representation, dated February 17, 2023	N/A
21	Letter from Zach Schumacher to MTS and Fletcher regarding Demand for Employment Records and Evidence Preservation, dated February 17, 2023	N/A
22	Confidential Memo to MTS re: Pending Litigation and MTS Leadership Status, dated March 29, 2023	Attorney Work Product & Attorney-Client Communication Privileges; Confidential Employee Personnel Information
23	Fletcher's public statement re: lawsuit, dated March 29, 2023	N/A
24	MTS's public statement re: lawsuit, dated March 30, 2023	N/A
25	Email from [REDACTED] to MTS re: call with Figueroa's attorney, dated March 17, 2023	Attorney Work Product & Attorney-Client Communication Privileges; Confidential Employee Personnel Information
26	Email from [REDACTED] to MTS re: witness interviews, dated May 10, 2023	Attorney Work Product & Attorney-Client Communication Privileges; could include Confidential Employee Personnel Information
27	April 6, 2023 Closed Session Handouts	Attorney Work Product & Attorney-Client Communication Privileges; Closed Session Privilege; could include Confidential Employee Personnel Information
28	MTS Management Handbook	N/A
29	Harassment Prevention Trainings	N/A
30	Letter of Reprimand and Investigation Closure (redacted)	Confidential Employee Personnel Information (employee privacy interest)
31	Administrative Code and Regulations	N/A
32	MTS Policies and Procedures Nos. 16 and 51	N/A
33	MTS Policy 22 Rules of Procedure	N/A
34	EEO Complaint Logs and Litigation Log	Attorney Work Product & Attorney-Client Communication Privileges
35	Documents related to [REDACTED] and [REDACTED]	Attorney Work Product & Attorney-Client Communication Privileges; Closed Session Privilege; Confidential Employee Personnel Information (employee privacy interest)

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	Document	Potential Privileges
36	Figueroa's Certificate of Harassment Training	Confidential Employee Personnel Information (employee privacy interest)
37	[REDACTED] (prior lawsuit naming individual Board members as defendants) and correspondence between Board member and Landers re: same	Correspondence contains information that is Attorney Work Product & Attorney-Client Communication
38	EEO Annual Policy Statements, from 2018 to 2021	N/A

### III. BACKGROUND INFORMATION

The San Diego Metropolitan Transit System (MTS) is a public transit agency that provides bus and rail services throughout San Diego County. MTS is governed by a 15-member Board of Directors, which includes: four members appointed from the City of San Diego; two members appointed from the City of Chula Vista; one member appointed from each council of Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, and Santee; and one member appointed from the San Diego County Board of Supervisors.

The current members and alternate members of MTS's Board of Directors are:<sup>2</sup>

- **Stephen Whitburn**, Chair (San Diego City Council)
  - Alternate: **Raul Campillo**
- **Steve Goble**, Vice Chair (El Cajon City Council)
  - Alternate: **Phil Ortiz**
- **Sean Elo-Rivera**, Board Member (San Diego City Council)
  - Alternate: **Joe LaCava**
- **Monica Montgomery Steppe**, Board Member (San Diego City Council)
  - Alternate: **Marni von Wilpert**
- **Todd Gloria**, Board Member (Mayor, San Diego)
  - Alternate: **Vivian Moreno**
- **Carolina Chavez**, Board Member (Chula Vista City Council)
  - Alternate: **Andrea Cardenas**
- **John McCann**, Board Member (Chula Vista)
  - Alternate: **Andrea Cardenas**
- **Mike Donovan**, Board Member (Coronado City Council)
  - Alternate: **John Duncan**
- **Matthew Leyba-Gonzalez**, Board Member (Imperial Beach City Council)
  - Alternate: **Paloma Aguirre**

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<sup>2</sup> The seat for the San Diego County Supervisor, previously occupied by Nathan Fletcher, has been vacant since Fletcher's resignation from the MTS Board on April 4, 2023.

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- **Patricia Dillard**, Board Member (La Mesa City Council)
  - Alternate: **Mark Arapostathis**
- **George Gastil**, Board Member (Lemon Grove City Council)
  - Alternate: **Jennifer Mendoza**
- **Marcus Bush**, Board Member (National City Council)
  - Alternate: **Jose Rodriguez**
- **Caylin Frank**, Board Member (Poway City Council)
  - Alternate: **Brian Pepin**
- **Ronn Hall**, Board Member (Santee City Council)
  - Alternates: **Laura Koval** and **John Minto**

### **IV. ALLEGATIONS**

Grecia Figueroa began working as a Public Relations Specialist for MTS in June 2019. She was terminated from her position with MTS on February 6, 2023.

On March 28, 2023, Figueroa filed a lawsuit against MTS and former MTS Chair of the Board of Directors Nathan Fletcher, alleging that she was sexually harassed and sexually assaulted by Fletcher, and that MTS officials had knowledge of said harassment and assault. She further alleged that MTS failed to take action to prevent and respond to Fletcher's sexual harassment and wrongfully terminated her employment at the direction or recommendation of Fletcher and due to Fletcher's harassment.

Figueroa's First Amended Complaint alleges causes of action for: sexual harassment, gender violence, sexual assault and battery, gender discrimination, retaliation, failure to prevent sexual harassment, discrimination and retaliation, wrongful termination, and intentional infliction of emotional distress.<sup>3</sup>

Nathan Fletcher was an elected member of the San Diego County Board of Supervisors from 2019 to 2023. Fletcher was appointed to the MTS Board of Directors by the San Diego County Board of Directors in January 2019, and served the MTS Board until 2023. He served as the Chairman of the MTS Board from October 2019 to March 2023.

As previously mentioned, Figueroa was not interviewed for this investigation. As such, the following allegations are based solely on the lawsuit Figueroa filed, which is attached to this Report at Exhibit 1.

#### **A. Allegations Against Fletcher: Sexual Harassment and Sexual Assault and Battery<sup>4</sup>**

In her lawsuit, Figueroa alleged that around May 2021, she began receiving notifications that Fletcher was viewing content on her personal Instagram account, including pictures and videos of Figueroa that were "purely personal." Around the same time, Figueroa also noticed that Fletcher was paying closer

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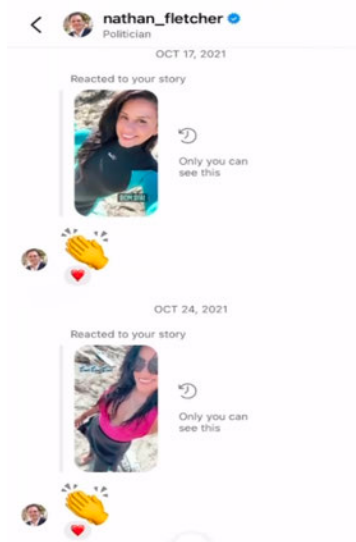
<sup>3</sup> As of the date of this Report, the parties stipulated to a Second Amended Complaint, which would remove the wrongful termination claim and add a cause of action for Intentional Infliction of Emotional Distress.

<sup>4</sup> The allegations involving sexual harassment and sexual assault against Nathan Fletcher are outside the scope of the undersigned's investigation but are included here for context and completeness.

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attention to her during MTS Board meetings and news conferences, including by staring or smiling at her. Figueroa found this “odd” because she and Fletcher “barely knew each other.”

Figueroa alleged that, in October 2021, Fletcher “made his first open appearance” on Figueroa’s Instagram account by voting on her social media “poll” on her profile. Around the same time, he began posting emojis in reaction to many of Figueroa’s pictures and videos. The emojis consisted of “hearts, heart-eyes smiley faces, and fire/hot.” The following screenshots were included in Figueroa’s complaint as examples:



Figueroa alleged that, around November 2021, Fletcher directly spoke to Figueroa for the first time by approaching her at an MTS event and asking, “How you been?” Figueroa alleged that they had “never really interacted” prior to this.

Figueroa alleged that, on February 14, 2022, Fletcher approached her in the parking lot after a press conference and “wrapped his arm around her shoulder (without her consent), and commented on one of her recent social media posts.” After that interaction, Fletcher sent Figueroa a private, direct message through Instagram. The below screenshot of this interaction was included in Figueroa’s complaint:



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Figuroa alleged that Fletcher continued to send her private messages through Instagram. Figuroa “felt obliged to entertain the Chairman of the MTS Board – the pinnacle managing agent of her employer – and thus, she responded in kind to most of Fletcher’s messages.” The following screenshot was included in Figuroa’s complaint as an example:



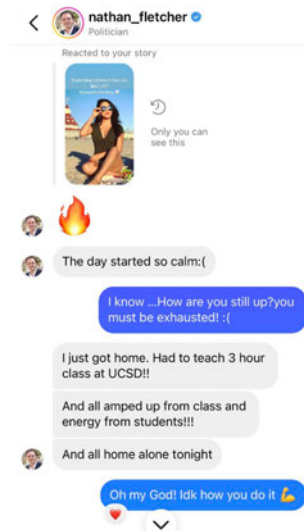
Figuroa alleged that Fletcher began sending her messages that included “hints that his wife and children were out of town and that he might be looking for Ms. Figuroa’s companionship.” She provided the following examples:

- On February 28, 2022, Fletcher sent Figuroa a private message that read, “Home alone – no wife and kids.”
- On March 7, 2022, Fletcher sent Figuroa a message that read, “I have another rare Monday night with no wife or kids. I get bored with nothing to do...”
- On May 2, 2022, Fletcher sent the following messages to Figuroa:

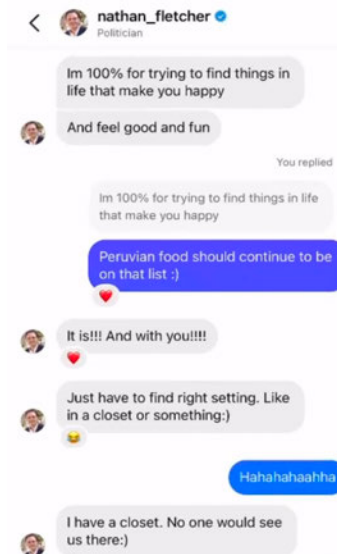
*[Rest of page left intentionally blank.]*

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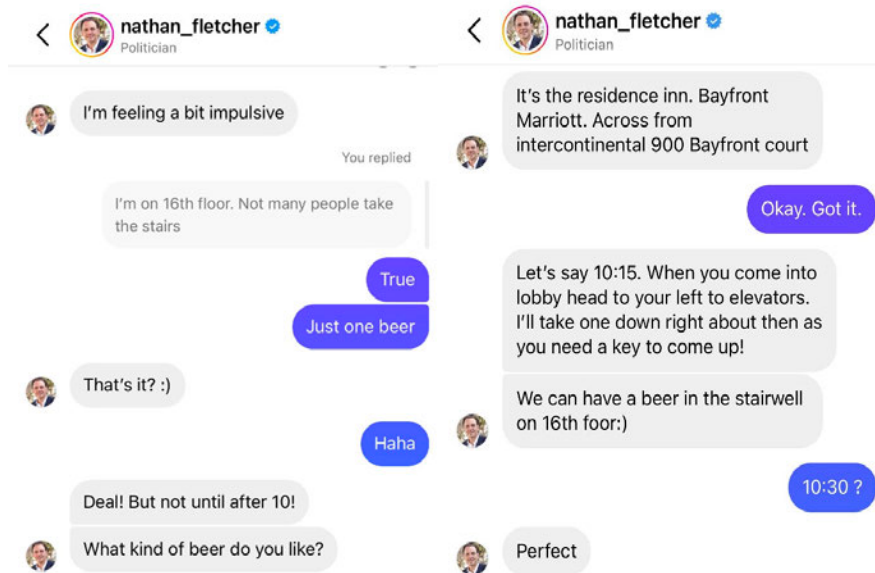
Figueroa alleged that, on May 2, 2022, Fletcher “began to solicit Ms. Figueroa to meet with him outside of work but insisted that Ms. Figueroa keep it very discreet.” The following screenshot was included in Figueroa’s complaint as an example:



Figueroa alleged that, on May 12, 2022, Fletcher asked Figueroa to visit him at his hotel while his wife was out of town. Fletcher “convinced Ms. Figueroa to visit but asked that she come after 10:00pm because that’s when his security guards would be off-duty.” The below screenshots of this interaction were included in Figueroa’s complaint:

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Figuroa alleged that when she arrived at the hotel, Fletcher met her outside and instructed her to follow him through the lobby to the elevators to avoid being seen by staff who knew Fletcher. Fletcher then took Figuroa to the 16<sup>th</sup> floor of the hotel and led her down the hallway to an emergency stairwell. Regarding this interaction, Figuroa alleged:

*Once in the stairwell, Fletcher quickly asked to kiss Ms. Figuroa, but she rejected his advance, pointing out that he was married and she had no intention of having anything more than a conversation. Fletcher then confessed to stalking Ms. Figuroa's Instagram account and obsessing over her for at least a year. He said he had a crush on her, and he encouraged her to have a few drinks so they could continue talking. Shocked and confused, but feeling powerless to say no to the Chair of the MTS Board, Ms. Figuroa reluctantly agreed to stay. Over the next 2-3 hours, Fletcher continued to make advances towards her, until eventually, near the end of the night, he put his hands on her and kissed her. Unsure of what she was getting into, Ms. Figuroa soon insisted they stop and that she go home, which she did around 2:00am.*

Figuroa alleged that on the following morning, May 13, 2022, Fletcher messaged Figuroa thanking her for the “nice escape” in the stairwell and that he would “check in” with her the following week, when he returned from a trip with Governor Gavin Newsom.

Figuroa alleged that, after May 13, 2022, she and Fletcher saw each other in-person “only a few times per month – always at MTS headquarters or at a press conference – but he regularly sent her messages encouraging her to meet for another intimate encounter.” Figuroa “felt pressured to reciprocate Fletcher’s advances because she knew he had authority, as both a career-politician and as Chair of the MTS Board, to destroy her career at MTS and to potentially humiliate her publicly if she made him angry.”

Figuroa alleged that, on June 9, 2022, during an MTS Executive Committee meeting, Fletcher messaged Figuroa, who was sitting in the audience, asking her to meet in an adjacent conference room when the meeting was over. Figuroa described this encounter as follows:

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*When she got to the room, Fletcher asked her to close the door. He then put his mouth against hers, and began to grab her breasts through her clothes. Ms. Figueroa pushed him back because she was not comfortable having this type of encounter with him, especially at MTS headquarters, while coworkers and managers were immediately outside the door. Fletcher assured her that “no one will bother us in here,” but Ms. Figueroa felt shocked and uncomfortable and soon left the room.*

Figueroa alleged that Fletcher continued to pursue her via private messages during the next several months, by pushing for another encounter when he was in town. Figueroa “felt compelled to mimic his erotic tone because she was afraid that Fletcher would ruin her career at MTS if she did not appear receptive to his interests.”

Figueroa alleged that, on September 19, 2022, she learned people had posted allegations on Fletcher’s Instagram account accusing him of cheating on his wife. On October 5, 2022, Figueroa told Fletcher on a phone call that she was afraid of being publicly exposed or dragged into a scandal because it would ruin her career and reputation. She suggested Fletcher “keep things strictly professional.” In response, Fletcher assured Figueroa that there was nothing to worry about.

Figueroa alleged that, on December 1, 2022, Fletcher messaged her from his phone while he was conducting an MTS Executive Committee meeting, asking her to meet in the adjacent conference room after the event. Figueroa described this encounter as follows:

*When Ms. Figueroa arrived at the room, Fletcher asked her to close the door and then sexually assaulted her a second time – this time grabbing her breasts underneath her blouse, pulling off some of her clothes, exposing her breasts, and putting his mouth on her nipple, while forcefully shoving his hand back and forth over her vaginal area.*

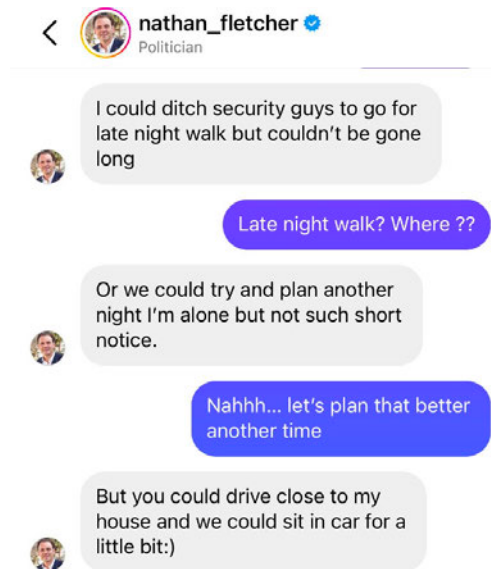
*Ms. Figueroa was shocked, scared, and humiliated – not only from being sexually objectified, but from the reality that this was happening in an MTS conference room, immediately adjacent to the MTS Boardroom where a committee meeting had just concluded. This was simply not something Ms. Figueroa was comfortable doing. She (again) pushed Fletcher back, told him she was too nervous to continue, and insisted that he stop or she would leave, at which point Fletcher allowed her to put her clothes back together.*

Figueroa alleged that the next day, on December 2, 2022, Fletcher grinned at her while she spoke publicly at a MTS press conference. Figueroa was standing at a podium while Fletcher was sitting at a table beside her.

Figueroa alleged that, on December 5, 2022, Fletcher sent messages inviting Figueroa to his house that evening, which Figueroa declined. The below screenshot of these messages was included in Figueroa’s complaint:

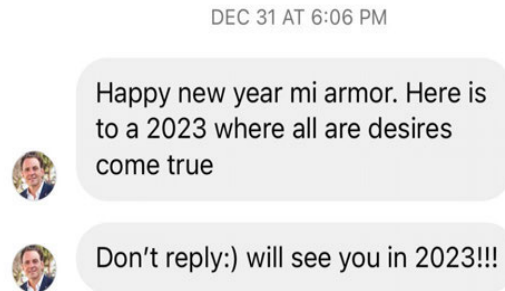
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Figueroa alleged that by late 2022, she felt ashamed and trapped by the situation with Fletcher and went out of her way to avoid him. However, due to the nature of her work, it was impossible not to see him at board meetings and press conferences, and each time she saw Fletcher, he would send her a message “as a reminder that he was still pursuing her.”

Figueroa alleged that on the evening of December 31, 2022, Fletcher sent her the following message:



Figueroa alleged that Fletcher messaged her again on January 19, 2023, while he was conducting a Zoom video conference for a MTS Advisory Committee meeting.

Figueroa alleged that her last communication with Fletcher was on January 26, 2023, during a MTS Board meeting. Thereafter, on February 6, 2023, Figueroa was “abruptly fired” by MTS. (Figueroa’s allegations regarding her termination are set forth in more detail below).

Figueroa alleged that on the afternoon of February 17, 2023, she delivered a letter to Fletcher and MTS indicating that she was investigating potential claims of harassment and sexual assault and instructing the defendants to preserve all relevant evidence in anticipation of litigation.

Figueroa alleged that on the morning of February 18, 2023 (a Saturday), Fletcher contacted Figueroa’s counsel to request that Figueroa keep the matter “strictly between herself and Fletcher and that she remain absolutely silent about her story, not even sharing with MTS.” As a professional courtesy,

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Figueroa agreed and provided Fletcher with a confidential draft complaint, in the hopes of opening a good faith settlement dialogue.

Figueroa alleged that over the next several weeks, Fletcher pushed for settlement options. At Fletcher's request, Figueroa "provided a dollar figure representing the amount of money it would take to keep her from ever speaking about what Fletcher had done to her."

Figueroa alleged that her settlement discussions with Fletcher were short-lived "because Fletcher resorted to threats of bullying, intimidation, and defamation" against Figueroa if she spoke up. Specifically, on March 26, 2023, Fletcher's counsel conveyed that Fletcher and his wife intended to sue Figueroa for extortion if Figueroa filed a lawsuit, and would make Figueroa "look terrible, and it's going to follow her for the rest of her life." A few hours later, Fletcher publicly announced his withdrawal from the California State Senate race, citing the need to address post-traumatic stress and alcohol abuse.

### **B. Allegations Against MTS**

#### **1. Sexual Harassment and Gender Discrimination**

Figueroa alleged that MTS is strictly liable for Fletcher's sexual harassment of Figueroa. Alternatively, she alleged that MTS is liable because "they knew or should have known of the sexual harassment and failed to take immediate and appropriate corrective action."

Figueroa further alleged that MTS discriminated against Figueroa on the basis of gender because it was "fully aware of Fletcher's conduct yet did nothing to address it in any meaningful way, or any way whatsoever."

The following allegations relate to MTS's knowledge of Fletcher's alleged sexual harassment:

Figueroa alleged that Fletcher sent her private messages from his cell phone during MTS Board and Executive Committee meetings and news/media events. Sometimes this was "quite obvious" because Fletcher had his phone open "within eyesight of other MTS Board members and executives, and because he usually stared or smirked at Ms. Figueroa while sending these communications." In addition, "Fletcher would occasionally break conversation with important board members and other high-ranking leaders to smile at, compliment, or otherwise cast a look towards Ms. Figueroa."

Figueroa alleged that during a MTS Board meeting, around September 2022, Fletcher "locked eyes and smirked" at Figueroa while he was messaging her from his seat. Figueroa said that anyone sitting near Fletcher could likely see he was messaging her. She noted, for example, that CEO Sharon Cooney was sitting to Fletcher's left and MTS Board member Sean Elo-Rivera was sitting to Fletcher's right. Figueroa alleged that "department head Mark Olson seemed to notice what was going on between Fletcher and Ms. Figueroa that day, and he shot a gaze at Ms. Figueroa, appearing unhappy about the interaction."

Figueroa alleged that from that day on, she had "an unremitting sense of anxiety, wondering if her entire department – or even the entire MTS organization – knew that Fletcher was pursuing her sexually." She further alleged that she felt "trapped" because:

*...on the one hand, Fletcher's relentless pursuit of her was changing the conditions of her employment and would likely destroy her career and professional reputation, as people learned*



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*of the situation and drew their own conclusions about Ms. Figueroa; but on the other hand, she knew Fletcher was too powerful, especially within MTS, to risk upsetting him by trying to make him stop.*

Figueroa alleged that during a Board meeting, on December 8, 2022, MTS Board Member Sean Elo-Rivera “stared intently” at Figueroa while she was entering the MTS Boardroom. This interaction “further supported Figueroa’s fearful suspicion that members of the MTS Board and/or other managers or coworkers were indeed aware that Fletcher was pursuing her sexually and that his actions were indeed affecting Ms. Figueroa’s professional reputation.”

### **2. Failure to Prevent**

Figueroa alleged that MTS “failed to take all reasonable steps to prevent the harassment, discrimination, and retaliation inflicted by [Fletcher], and failed to take immediate and appropriate corrective action to address, remedy and cure such conduct...”

### **3. Wrongful Termination and Retaliation**

Figueroa alleged that, on February 6, 2023, she was unexpectedly called into a meeting with Human Resources Officer Jeff Stumbo, where she was “abruptly fired.” This happened on the same day that Fletcher announced his official candidacy for a seat in the California State Senate. Figueroa alleged that Stumbo could not confirm the reason for her termination, and she was asked to leave immediately.

Figueroa alleged that on February 7, 2023, Stumbo offered \$10,000 as a severance if Figueroa agreed to release all known and unknown claims against MTS and Fletcher.<sup>5</sup> The offer was conditioned on Figueroa’s agreement not to discuss the settlement or make any statements disparaging MTS or Fletcher. Figueroa did not accept the severance offer and “is informed and believes that Fletcher and MTS expected otherwise.”

## **V. ISSUE #1: WHAT ARE THE FACTS AND TIMELINES RELATED TO THE PERFORMANCE EVALUATIONS AND FIGUEROA’S EVENTUAL TERMINATION**

### **A. Allegation**

Figueroa alleged that MTS terminated her employment “at the recommendation and/or direction of” Fletcher “because she had been sexually harassed and assaulted by Fletcher and because she possessed information that could be damaging to MTS and Defendant Fletcher.” According to the complaint, Figueroa “received good marks for her work, generally scoring ‘Exceeds Job Requirements’ or higher on annual performance reviews.”

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<sup>5</sup> The draft separation that was offered to Figueroa is attached at Exhibit 16. It does not include Fletcher’s name, as Plaintiff alleged. As of the date of this Report, the parties stipulated to a Second Amended Complaint, which would remove statements suggesting that the severance agreement was specifically targeted at releasing Fletcher from wrongdoing.

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### **B. Nathan Fletcher's Response to Allegation**

As noted, Fletcher's complete written answers to written questions from the investigator are attached at Exhibit 2. With respect to the allegation that Fletcher directed or recommended Figueroa's termination, Fletcher's responses to questions relevant to this allegation are included below:

**Question: Were you involved in any manner, either directly or indirectly, in the decision to terminate Grecia Figueroa's employment from MTS?**

Fletcher's Response: "No."

**Question: Please describe the details and circumstances surrounding how you first became aware of the decision to terminate Grecia Figueroa's employment from MTS?**

Fletcher's Response: "On Friday, February 17, 2023, Mr. Fletcher was emailed a document by counsel for Ms. Figueroa. It alluded to the possibility of Ms. Figueroa filing litigation regarding her termination from MTS. That was the first time Mr. Fletcher became aware that Ms. Figueroa was no longer employed by MTS."

**Question: Did you ever discuss Grecia Figueroa with any MTS employee or official? If so, for each discussion or conversation you had, please answer the following: a) Identify each of the MTS employees or officials with whom you had this discussion; b) Provide the approximate date and location/format of each of those discussions (e.g., in your office, by phone, Zoom, email, text, etc.); and c) Describe the content of each of the discussions (What did you say? What did they say?).**

Fletcher's Response: "...Mr. Fletcher did not have any discussions with anyone about his interactions with Ms. Figueroa prior to her termination. On Friday, March 24, 2023, Mr. Fletcher had a brief virtual conversation with Sharon Cooney and Karen Landers, along with his legal counsel, to provide them background on the allegations underlying facts and possibility of a public revelation."

**Question: Did you ever discuss Grecia Figueroa's termination with any MTS employee or official? If so, for each discussion or conversation you had, please answer the following: a) Identify each of the MTS employees or officials with whom you had this discussion; b) Provide the approximate date and location/format of each of those discussions (e.g., in your office, by phone, Zoom, email, text, etc.); and c) Describe the content of each of the discussions (What did you say? What did they say?).**

Fletcher's Response: "On either Friday, February 17, 2023 or Saturday, February 18, 2023, Mr. Fletcher received a text message from Sharon Cooney. The message conveyed something to the effect of an apology for the attorney for Ms. Figueroa including Mr. Fletcher in the email and listing his name in their document. Ms. Cooney said MTS had to terminate an employee and that Mr. Fletcher had nothing to do with it.

On or around Saturday, February 18, 2023, Mr. Fletcher had a brief phone conversation with Ms. Cooney. She reiterated they had to fire an employee for cause and that person now had an attorney. She speculated that they listed Mr. Fletcher in the documents to try and draw more attention to their prospective lawsuit. She mentioned a history with this attorney in particular

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and said they had ample cause for ending the employment with the individual and she wasn't concerned about that being justified.

At an MTS meeting in March 2023 (unsure of exact date), Ms. Cooney mentioned she had reviewed the personnel records of the person terminated and felt confident they were on solid ground in ending the employment. This was a quick conversation in passing.

On Friday, March 24, 2023, Mr. Fletcher had the conversation outlined above with Ms. Cooney,<sup>6</sup> Karen Landers, and his legal counsel to provide additional information regarding his interactions with Ms. Figueroa and subsequent discussions between his counsel and hers.”

**Question: Please share any other information you have related to the question above (What are the facts and timelines related to the performance evaluations and Grecia Figueroa's eventual termination?)**

**Fletcher's Response:** “Mr. Fletcher has no knowledge of any performance evaluations or reviews, other than Sharon Cooney telling him she felt they had adequate documentation of poor work performance to justify the termination.”

### **C. MTS Officials' Response to Allegation**

According to witnesses who were interviewed by the undersigned, the individuals who were involved in the decision to terminate Figueroa's employment with MTS were Mark Olson, Stacie Bishop, Jeff Stumbo, and Sharon Cooney. All of them denied Fletcher was involved in Figueroa's termination and said her termination was performance related and had nothing to do with Fletcher. Further, all of them said that prior to Figueroa's termination, they had no knowledge or suspicion of a relationship between Figueroa and Fletcher. Their full responses to this allegation are set forth below.

#### **1. Mark Olson**

Mark Olson is the Director of Marketing and Communications. He has been in this role since January 2022, and with MTS since June 2014. In his current role, Olson oversees the Marketing and Communication department, which consists of eight to ten employees. Olson reports to CEO Sharon Cooney. He has three direct reports, including [REDACTED], Manager of Marketing and Communications Stacie Bishop, and [REDACTED].

Olson said Figueroa began working for MTS in July 2019. At the time, the department was looking for someone who could help with media relations, project management, and backfill some of Olson's work. Olson interviewed three or four candidates for the position. Ultimately, Figueroa was offered the position because she had the desired qualifications. In particular, she was “well-spoken,” bilingual (English and Spanish), and had media experience.

Olson said he directly supervised Figueroa from July 2019 until January 2022, at which point Olson was promoted to the Director position and Stacie Bishop became Figueroa's direct supervisor.

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<sup>6</sup> See Fletcher's response to previous question (“Did you ever discuss Grecia Figueroa with any MTS employee or official?”).



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Olson said Figueroa's first year at MTS was "overall okay." The only thing he expected of employees during their first year was that they "work hard, learn the industry, and have a good attitude." Figueroa was "nice and pleasant" and got along well with people. Although Figueroa's writing had spelling errors and needed "heavy editing," she did a good job in other areas, such as promoting MTS events. Overall, Olson did not have any significant concerns about Figueroa's performance the first year.<sup>7</sup>

Olson said Figueroa's second year went "okay," though this was when he began noticing she struggled with project and time management. For example, she missed deadlines for completing weekly "Reader Advertisements" publications, which was one of her assigned duties. (See Exhibit 3.) In addition, she often waited until the last minute to prepare for events and projects and this delay put pressure on other people who were involved in the projects and events. Olson said he noted in Figueroa's second year performance evaluation that her time management was a "big issue."<sup>8</sup> Overall, Figueroa did well with media relations, which consisted of about 35% of her workload; however, she struggled with project management and partnerships, which accounted for about 65% of her workload.

Olson said he was never able to give Figueroa a "full plate" of the assignments he wanted to give her because he lacked confidence in her ability to handle some of those assignments. For example, he had to take back the "Reader Advertisements" assignment because Figueroa struggled to complete these publications on time.

Olson said Stacie Bishop began supervising Figueroa in January 2022. At that time, Figueroa was halfway through her third year at MTS. In July 2022, Bishop reached out to Olson to discuss Figueroa's upcoming performance evaluation. (See Exhibit 7.) During this discussion, Bishop highlighted concerns she had about Figueroa's performance, including her time management. Olson said that if an employee continues to have the same performance issues by their third year of employment, "that's when alarm bells go off." In Figueroa's case, she continued to struggle with project and time management by waiting until the last minute or missing deadlines entirely. For example, Olson received a call from [REDACTED], from Bus Operations, about Figueroa's lack of communication and coordination with his department in the days leading up to the Stuff the Bus event, a media event that Figueroa had been responsible for managing.<sup>9</sup>

Olson said that after meeting with Bishop, he then met with Chief HR Officer Jeff Stumbo to get Stumbo's feedback on ways to approach Figueroa's ongoing performance issues. Stumbo noted that MTS's marketing department ran "pretty lean" as compared to other public agencies, and could not afford to "work around" employees who were not meeting expectations. That said, Stumbo's recommended approach was to "continue with encouragement," by giving Figueroa a 3% salary raise with the promise of an additional 3% later if Figueroa showed some improvement. Stumbo and Olson also discussed adding language to the review to warn Figueroa of the need to see "immediate and

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<sup>7</sup> Figueroa's first year evaluations are attached at Exhibit 4.

<sup>8</sup> In Figueroa's second year performance evaluation, Olson noted three "Areas for Improvement," including: 1) project management; 2) developing strategic work plans; and 3) earned media strategy development. With respect to project management, Olson wrote: "While Grecia managed some high profile projects, there is room for growth. This was her second time managing MTS events...so there was an expectation to see some improvement. That happened, and she can continue to get better. I want to have total confidence in her organization and execution of these events." (See Exhibit 5.)

<sup>9</sup> The feedback regarding the Stuff the Bus event was included in Figueroa's performance evaluation. (See Exhibit 12, at page 10.)

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sustained improvement.”<sup>10</sup> That language was later incorporated into Figueroa’s final third year evaluation. (See Exhibit 12.)

Olson said Bishop met with Figueroa on July 15, 2022, to go over Figueroa’s annual evaluation. Following the meeting, Bishop reported to Olson that Figueroa was “kind of shocked” by her review. Thereafter, Figueroa reached out to Olson and asked to meet with him separately to discuss the review.

Olson said that on August 23, 2022, he met with Figueroa, per her request, to discuss the review. During this meeting, Figueroa was “definitely in a defensive posture,” and disagreed with some of the feedback provided in the draft evaluation. Olson told Figueroa that she was good at 35% of her job, but that she needed to “step up” in the other areas that amounted to 65% of her work. Olson said, “I wanted to make it clear that these were opportunities to improve as opposed to being critiques.” Olson did not recall discussing with Figueroa what would happen if she did not improve. However, he did tell Figueroa, “We need you to improve in these areas.”

Olson said he and Bishop met with Figueroa on September 12, 2022, to discuss her updated review, which included the warning language and some other minor edits.<sup>11</sup> By this point, Figueroa had time to absorb the feedback she had been given and seemed less defensive during this meeting than she had been in prior meetings. Olson told Figueroa that the concerns noted in her evaluation were “legitimate” and they needed to see improvement in those areas. Figueroa received the feedback and “wasn’t overly emotional or defensive.”

Olson said that following the September 12 meeting, Figueroa’s performance improved for a short period of time. Olson and Bishop created a calendar of deadlines and a media events checklist for Figueroa to help her stay organized. This helped for a short period of time before the same issues returned.

Olson said that, ultimately, Figueroa’s performance did not improve to the level needed to maintain employment. On December 16, 2022, he met with Bishop to discuss Figueroa’s performance. By this point, it had been three to four months since Figueroa’s last review, but she continued to have the same performance issues. For example, one of Figueroa’s projects was the Laptop Scholarship Program, which was an annual project that she had managed for the first two years. The project had a “final wrap goal” of November 10, 2022, but Figueroa did not get it done until January 2023. In addition, Figueroa’s writing continued to require “heavy editing.”<sup>12</sup> Then, in December 2022, Figueroa “totally blew off” two writing publications that CEO Cooney had assigned to her. Olson told Bishop that he thought it was time to “part ways” with Figueroa. He said getting Bishop’s reaction was important to him, and she did not give any “major pushback.” Ultimately, they decided to revisit the issue after the winter holidays.

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<sup>10</sup> On August 3, 2022, Stumbo sent Olson and Bishop an edited version of Figueroa’s evaluation, which proposed adding the following language to Figueroa’s evaluation:

***“We believe that Grecia has the potential to be a high performer, as her ‘Areas of Strength’ are excellent, and want to see her succeed in her new position. However, immediate and sustained improvement in the “Areas of Improvement” section is necessary to maintain employment. Due to ongoing performance issues, we are recommending a 3% merit increase. However, Mark and I will formally re-review your performance in 3 to 6 months. If there is significant improvement, we will recommend an additional 3% increase.”*** (See Exhibit 8.)

<sup>11</sup> Attached at Exhibit 9 is a copy of the evaluation that was provided to Figueroa on September 12, 2022.

<sup>12</sup> As an example, Olson provided the undersigned with a copy of his edits made to one of Figueroa’s press releases, dated September 15, 2022. (See Exhibit 3.)

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Olson said that when the office reopened after the holiday break, he called the team into a meeting, on January 3, 2023, and stressed that everyone needed to be at work by 9:00 a.m. The next week, Figueroa was regularly late to work, arriving between 9:05 a.m. and 9:15 a.m. Olson said, "I'm not a stickler for time, but given the situation, I was being a stickler." He noted that Figueroa was the only employee on the team who did not arrive to work on time.

Olson said that on January 10, 2023, he met with Bishop to follow-up on the discussion about parting ways with Figueroa. They decided to move forward with terminating Figueroa because she had not demonstrated improvement or the ability to manage the multiple projects required of her role.

Olson said that, shortly after the January 10 meeting with Bishop, he met with Jeff Stumbo to discuss Figueroa's separation. Stumbo asked Olson if he considered giving Figueroa one more month to turn around her performance. Olson told Stumbo he did not think that would work, as they had seen what happened after Figueroa's last evaluation – they saw short-term improvement and then Figueroa went "back to the status quo." Stumbo did not give pushback on that decision.

Olson said the only people who were involved in the decision to part ways with Figueroa were himself, Bishop, Stumbo, and Cooney. Cooney told Olson that she would support whatever decision he made. No one else had knowledge of that decision. Once the four of them agreed, Olson drafted a memo with Bishop's help, which documented Figueroa's performance issues and recommended that MTS "part ways" with Figueroa. (Exhibit 14.)

Olson said the plan was for Stumbo to talk to Figueroa about her separation from MTS on Friday, February 3, 2023. However, Figueroa called in sick that day, so the discussion was delayed to Monday, February 6.<sup>13</sup> Olson was not at the office that day and did not participate in the discussion with Figueroa. Afterwards, he learned from Stumbo that Figueroa did not take it well: she was defensive and seemed "very surprised" by the decision. Olson was surprised by Figueroa's reaction, as he thought she should have known that she was in a "probationary period" based on her last performance review, which contained the warning that Figueroa's performance needed to improve in order to maintain employment.

Olson said he never terminated anyone before, and the decision to terminate Figueroa "didn't come lightly." He believes he took all the appropriate steps before coming to this decision, such as giving Figueroa "a path for improvement." He said, "It was tough, I felt bad; but we needed to do it for the team."

Olson said Fletcher had no involvement in Figueroa's termination. Prior to Figueroa's termination, he had no knowledge or suspicion of a relationship between Figueroa and Fletcher.

## **2. Stacie Bishop**

Stacie Bishop is Manager of Marketing and Communications. Bishop has been in this role since January 2022, and with MTS since August 2014. In her current role, Bishop serves as one of three managers in the Marketing and Communications department, the other two being Director Mark Olson and Manager

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<sup>13</sup> Olson provided the undersigned with a copy of an email he sent to Stumbo, dated February 3, 2023, which attached a screenshot of Figueroa's text message calling in sick that day. In his email to Stumbo, Olson wrote, "This just came in from Grecia. How do you want to proceed?" (See Exhibit 3.)

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of Creative Services [REDACTED]. Each manager supervises a team of three employees. Bishop's team supports the department's "content development side," which includes social media, press releases, blog posts, and community outreach. Bishop reports to the Director, Mark Olson. She has three direct reports, including a Public Relations Specialist (Figueroa's former role), [REDACTED], [REDACTED], and [REDACTED].

Bishop said Figueroa joined MTS in June 2019 as a Marketing Specialist. Bishop was also a Marketing Specialist at the time, as was another employee, [REDACTED]. The three of them – Bishop, Figueroa, and [REDACTED] – worked as a team, reporting to Olson.

Bishop said that in March 2022, she began supervising Figueroa and two other employees, [REDACTED] and [REDACTED]. Bishop was nervous about supervising Figueroa because she and Figueroa had worked as colleagues for nearly three years, whereas [REDACTED] and [REDACTED] were newer employees. As colleagues, Bishop's working relationship with Figueroa had been average. They never had any major conflicts, and Figueroa brought a positive energy to the team. However, Bishop was unsure how to navigate the transition from working with Figueroa as a peer to working with her as a supervisor. She already had some "ideas" about Figueroa's work ethic, including that she was "drawn to the fun things but not the nitty-gritty things."

Bishop said she arranged initial meetings with each of her supervisees to learn about them and how they liked to be managed. When Bishop asked Figueroa about her preferred management approach, Figueroa said it was important to her that "they had each other's backs" and did not undermine one another. Figueroa said she did not like being micromanaged and preferred Olson's management style, which she described as "flexible." Figueroa also mentioned she did not like being rushed and given tight deadlines.

Bishop said that, around April 2022, she and Olson received feedback regarding Figueroa's media events from other MTS employees. [REDACTED] [REDACTED] reported that Figueroa's lack of planning ahead had put stress and pressure on [REDACTED]'s team to carry out Figueroa's "last minute" requests. Around the same time, Olson told Bishop that he received feedback from [REDACTED] [REDACTED] that Figueroa's "Stuff the Bus" event was extremely disorganized.

Bishop said one of the first projects that "stood out" as highlighting Figueroa's poor project and time management was the South Bay Charging Infrastructure groundbreaking event, which was held on May 5, 2022.<sup>14</sup> This was the first event that Figueroa had been responsible for managing "from start to finish," including booking the date, sending out invitations, confirming speakers, and developing the "run of show" for the event. Bishop had asked Figueroa to create a "media checklist" to outline each of the components that went into a media event and track deadlines for each of those components. Figueroa never created that checklist and fell behind on the deadlines. By Monday, May 2, Figueroa admitted she was "totally overwhelmed." With only 72 hours remaining before the event, Figueroa had not developed the press release or the speaking points for each of the speakers. Bishop stepped in and worked with Figueroa to get everything done before the event.

Bishop said she met with Figueroa on July 15, 2022, to verbally go over her performance review, covering the period of July 2021 to June 2022. At this point, Bishop had not given Figueroa her review in writing because she was waiting on feedback from Olson, who had supervised Figueroa for a majority of

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<sup>14</sup> Bishop said this media event was to celebrate MTS's launching of a new overhead electric bus charging system.



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the review period. Prior to the meeting, Bishop had asked Figueroa to complete a self-evaluation. On July 12, Figueroa sent Bishop her self-evaluation, which was “pretty bare” and did not include any goals or areas of weaknesses. Bishop said, “That makes it harder going into a meeting, if you haven’t self-reflected on things yet.”

Bishop said she began the July 15 meeting by asking Figueroa how the last year went.<sup>15</sup> Figueroa said she experienced a lot of growth, the Stuff the Bus event had gone smoothly, and she had excelled in media relations and social media. Figueroa did not identify any areas of growth and her personal goal was to work on speech writing and attend a conference. Bishop told Figueroa that she and Olson had received feedback that the Stuff the Bus event was disorganized. Figueroa was surprised by this feedback. Overall, Figueroa was “a bit defensive” and did not seem to acknowledge the issues.

Bishop said she prepared the initial draft of Figueroa’s written review, and then sent it to Olson for review. Olson emailed Bishop on August 2, providing some of his comments and letting her know that he reached out to Stumbo for feedback as well.<sup>16</sup> Thereafter, Stumbo added some warning language about the need to see “immediate and sustained improvement to maintain employment.”<sup>17</sup> Bishop said the warning was added because Figueroa’s role had changed in that she was taking on more project management responsibilities, and Olson questioned whether Figueroa had the ability to step into this role and manage things from start to finish. Olson had said, “If she’s not the right fit, we may have to go in another direction.”

Bishop said that on August 19, 2022, she sent the written review to Figueroa. (See Exhibit 10.) That review included the warning language and gave Figueroa an overall rating of 2.0 (“Meets Expectations”). Figueroa then set up a meeting with Olson to discuss the review. Bishop assumed Figueroa thought Olson’s review would be more generous because he had given her higher ratings on her two previous evaluations.<sup>18</sup> However, Olson “was very much on the same page” as Bishop.

Bishop said Figueroa met with Olson in late August 2022. Bishop was not part of that meeting, but she received Figueroa’s written feedback. (See Exhibit 11.) After Figueroa’s meeting with Olson, Bishop and Olson made some minor revisions to the evaluation after taking Figueroa’s feedback into consideration.

Bishop said that on September 12, 2022, she and Olson met with Figueroa to give her the updated performance review. Bishop said there was not a lot of discussion during this meeting. Bishop could not recall whether the warning language was specifically discussed during this meeting; however, they “definitely talked about the need to see improvement.”

Bishop said that after the September 12 meeting, she made one final change to the review before submitting it in the system. Specifically, Bishop extended the deadline for one of Figueroa’s development goals because she knew Figueroa would not be able to meet the original deadline and Bishop “didn’t want to set her up to fail.”

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<sup>15</sup> Bishop’s notes from this meeting are attached at Exhibit 6.

<sup>16</sup> See Exhibit 3, at page 12.

<sup>17</sup> See Exhibit 8.

<sup>18</sup> Figueroa’s overall rating in the first year was 3.0 (“Exceeds Job Requirements”); and in the second year it was 3.1 (“Exceeds Job Requirements”). (See Exhibits 4-5.)

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Bishop said that, on October 19, 2022, she and Figueroa had a quarterly progress meeting to discuss Figueroa's progress on the goals outlined in the most recent evaluation. At that point, Figueroa was not meeting most of her goals, though she had made progress with some of them. During this review period, Bishop had given Figueroa "clear dates" for distributing the first edition of the MTS Connections newsletter. When Bishop returned from a vacation in late July/early August, she noticed that all of the deadlines had been pushed back two weeks without any explanation. (See Exhibit 13.) The newsletter was supposed to be distributed in September 2022; however, it was not distributed until November 2022.

Bishop said that after the October 2022 check-in, Figueroa continued to miss other deadlines. For example, she missed the deadlines to submit two articles that Olson had assigned to her: one had a deadline in November and the other had a deadline in December. Figueroa also missed the December 16 deadline to submit an outline of the second edition of MTS Connections. Bishop then asked Figueroa to submit it by December 20; however, Figueroa did not send it to Bishop until after hours on December 23.

Bishop said that, in December 2022, Olson asked to meet with her to discuss Figueroa's upcoming mid-year review. When they met, Olson said he was not happy with Figueroa's performance and had lost confidence in her, but he wanted to know what Bishop thought. Bishop told Olson that she agreed, and the issues they had discussed with her starting in July 2022 were still ongoing. Bishop noted that Figueroa was getting better at executing media events, but the process of getting there involved last minute scrambling and disorganization, which put pressure on others. Bishop asked Olson if they should give Figueroa one final warning. Olson said his concern was that she would have a "short spike" of improvement and then return to the status quo.

Bishop said Olson spoke with Stumbo about the decision in early January 2023. Figueroa had a media event scheduled for January 26, so they decided to wait until after that event to let her go. The plan was for Stumbo to talk to Figueroa about her separation from MTS on Friday, February 3, 2023. However, Figueroa called in sick that day, so the discussion was delayed to Monday, February 6. Bishop was not at the office that day and did not participate in the discussion with Figueroa.

Asked whether she agreed with the decision to part ways with Figueroa, Bishop said:

*I know what it feels like to feel shocked by being let go; it's happened to me. But I also understand that probationary periods might not work. Maybe her self-awareness doesn't match up with the reality. She doesn't want to be micromanaged but she kind of needed the micromanagement.*

Bishop said if it had been up to her, she would have liked to schedule one more quarterly check-in with Figueroa to make it clear these were serious issues and give her one final warning. She then added, "I guess it kind of was up to me."

Bishop said Fletcher had no involvement in Figueroa's termination. Prior to Figueroa's termination, she had no knowledge or suspicion of a relationship between Figueroa and Fletcher.

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### **3. Jeff Stumbo**

Jeff Stumbo is the Chief Human Resources (“HR”) Officer and EEO Officer. He has been in this role since he was hired by MTS in January 2003, although his title changed in 2018-2019 from the VP of HR and Labor Relations to his current title. Stumbo occupies the highest-level HR role at MTS. He oversees all HR functions, including compensation, labor relations and negotiations, and investigations. Stumbo reports to CEO Cooney. Four people report directly to Stumbo, including Director of HR [REDACTED], Leadership Development Specialist [REDACTED], Talent Acquisition Manager [REDACTED], and Senior HR Analyst [REDACTED].

Stumbo said he was not involved in Figueroa’s hiring and had limited interactions with her throughout her tenure at MTS. They occasionally saw each other in the hallway and exchanged work-related emails, but they otherwise did not work together or socialize with one another.

Stumbo said that, in summer of 2022, Olson and Bishop reached out to him seeking his help with Figueroa’s performance review. Olson expressed concerns that Figueroa missed deadlines, made errors, and that her performance was not consistent. Olson and Bishop wanted Figueroa to succeed. Stumbo suggested putting language in her review that would put her on notice that her performance needed to improve. They also realized Figueroa was underpaid and decided to give her an immediate 3% salary increase and make a conditional offer of an additional 3% if she showed sustained improvement.

Stumbo said he sent Olson some warning language that he had used on another employee’s review. At that point, they had not specifically discussed termination. Figueroa had strengths in certain areas and the goal was to keep her and incentivize her to improve in the other areas.

Stumbo said the next time he spoke with Olson and Bishop about Figueroa’s performance was in January 2023, when they reported Figueroa was still missing deadlines, including two important editorial deadlines. They were at the point of wanting to let Figueroa go, and asked Stumbo for his thoughts. Stumbo told them one option was to put Figueroa on a more formal performance improvement plan. A second option was to terminate her. Olson said they had similar conversations with Figueroa in the past, which would result in short-term improvement and then the same issues would return. Stumbo said “okay,” and the conversation turned to timing. Stumbo said it could take one to two months to find a replacement and asked what projects Figueroa was working on. Olson decided to wait until after Figueroa completed the Laptop Scholarship project.

Asked who made the decision to terminate Figueroa, Stumbo said Olson made the decision in conjunction with Bishop. Olson and Bishop also sought Stumbo’s and Cooney’s input and both concurred with the decision.

Stumbo said termination decisions were usually communicated through him or through the Director of HR; the rationale being that HR knows what to do and what to say. They did not usually include the managers in these discussions to avoid a back-and-forth exchange. Stumbo said:

*It’s cleaner for me to deliver the message as opposed to the employee’s manager. We have them pack up and go home and not stick around. We have the conversation, give them the separation agreement, tell them to go home on paid leave, will call in the morning to discuss.*

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Stumbo estimated having been involved with “hundreds” of terminations over the years, which involved delivering the message and going over the separation agreement. It was typical practice for MTS to offer a separation agreement and release of all claims. In this case, Stumbo and Olson talked to Cooney and got her approval for both the termination and the separation offer.

Stumbo said separation agreements typically fall into the range of \$2,000 to \$20,000, depending on the position, the salary of the position, and how long the employee has been with MTS.<sup>19</sup> They rarely offer more than \$50,000. Figueroa made \$60,000 per year and worked at MTS for three and a half years. Cooney gave Stumbo authority to offer up to \$10,000 in separation agreement, which Stumbo said was “probably on the high side.”<sup>20</sup>

Stumbo said he was planning on having the conversation with Figueroa on February 3, 2023. However, she was out that day, so they met on February 6 instead. He said Figueroa was not in fact terminated on February 6, despite her lawsuit claiming otherwise. Rather, when he met with Figueroa on this date, he told her that MTS was “interested in terminating her but wished to negotiate a separation agreement.” Figueroa seemed “totally surprised” and like she “didn’t see this coming.” Stumbo had prepared a draft separation offer of \$7,500, but after seeing her resistance to the termination, Stumbo decided to offer \$10,000 instead.<sup>21</sup> At some point, Figueroa asked, “Who made this decision?” Stumbo responded that Olson and Bishop had made the decision. Figueroa “kept showing disbelief” and since Stumbo did not have “the specifics” in front of him, he decided to send Figueroa home with pay and said he would “do a little digging” and get back to Figueroa the next day.

Stumbo said that on the following day, he emailed Figueroa with more specifics about the reason for her termination by looking at Olson’s January 30 memo. (See Exhibit 17.) He also left her several messages, but she did not return his calls or respond to his emails. Later that day (February 7), Figueroa sent Stumbo a text message saying that she had a lawyer (but not identifying her lawyer by name). Stumbo asked Figueroa to have her attorney call MTS’s outside counsel. On February 17, after not hearing from Figueroa or her attorney, Stumbo sent Figueroa a formal termination letter. (Exhibit 18.)

Regarding the allegation that Fletcher was involved in Figueroa’s termination, Stumbo said Fletcher had “absolutely no role in her termination.” He said:

*Nathan Fletcher has never been involved in a termination decision. He has zero role in personnel matters. The Board doesn’t have a role. In my 20 years we’ve never sought Board input in advance.*

Stumbo said MTS takes sexual harassment and assault seriously and would never tolerate this behavior at work. He said, “The allegation that Fletcher could cause us to terminate an employee for non-business-related reasons is insulting to me as a 20-year HR professional.”

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<sup>19</sup> As discussed more fully below, MTS provided the undersigned with documentation regarding severances, attached at Exhibit 15. The documentation states, in part: “The most common circumstance where a Separation Agreement would be offered is when a management (non-union) employee is being terminated based on performance shortcomings that were not malicious or purposeful. [REDACTED]”

<sup>20</sup> MTS’s Policies and Procedures provide the CEO with authority to settle claims and lawsuits for up to \$50,000, without Board approval. (See Policies and Procedures No. 16.2 and No. 51.10.2, attached at Exhibit 32.)

<sup>21</sup> The draft separation agreement is attached at Exhibit 16.



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### 4. Sharon Cooney

Sharon Cooney is the Chief Executive Officer (“CEO”) of MTS. She has been in this role since May 2020, and with MTS since 2005. As CEO, Cooney oversees all MTS staff and is responsible for administering the policies and direction of the MTS Board, to whom Cooney reports. Those who directly report to Cooney include General Counsel Karen Landers, Chief HR Officer Jeff Stumbo, and Director of Marketing and Communications Mark Olson.

Cooney said the first time she received feedback regarding Figueroa’s performance was when Figueroa reported to the previous Director of Marketing and Communications, ██████████.<sup>22</sup> ██████████ was one of Cooney’s direct reports, and they had regular discussions about staff. Cooney said, “We have a small staff, so I wanted to make sure things are going well with everyone.” MTS has a Performance Incentive Program (“PIP”) which provides bonuses to employees who show strong performance. When Cooney asked ██████████ which employees on his team should receive an incentive bonus, he provided a list of names that did not include Figueroa. When Cooney asked about Figueroa, ██████████ said, “No, she’s not really pulling her weight.” That discussion happened in 2020. Then in 2021, Cooney sat down with ██████████ before his retirement in December 2021, and discussed the “dynamics” in his department. At that time, ██████████ did not praise Figueroa or see her moving into a new role.

Cooney said Olson became the Director in January 2022, and he began supervising Figueroa. By the end of the summer of 2022, Cooney told Olson that Figueroa’s writing needed to be edited because it was coming to Cooney with a lot of typos and she was tired of correcting Figueroa’s typos.

Cooney said that around December 2022, Olson remarked that he was disappointed in Figueroa’s work and had to give her a poor performance review. He said her performance was still declining, despite the evaluation. Cooney recommended to Olson that he consult with Stumbo if he was considering termination and “the sooner the better” because their team was small. Cooney also told Olson not to take the decision lightly, as people can sometimes regain their performance levels. Cooney said, “I was basically just coaching him; I left the decision up to him.”

Cooney said that while Olson made the termination decision, she knew about the decision and supported it. Cooney could have decided against terminating an employee if she thought termination was inappropriate; however, in Figueroa’s case, Cooney “didn’t think it was inappropriate.”

Cooney said Fletcher had no involvement or input in Figueroa’s termination. Prior to Figueroa’s termination, she had no knowledge or suspicion of a relationship between Figueroa and Fletcher.

#### D. Witness Information

The undersigned interviewed fourteen MTS Board members, including one alternate Board member. Those witnesses were: Sean Elo-Rivera, Steve Goble, Stephen Whitburn, Patricia Dillard, Marcus Bush, John McCann, Caylin Frank, Mike Donovan, Matthew Leyba-Gonzalez, Ronn Hall, Todd Gloria, Monica Montgomery Steppe, George Gastil, and Vivian Moreno.

Each of the Board members denied having any involvement in Figueroa’s termination. Nearly all the Board members had never met Figueroa, and most did not even know who she was prior to the lawsuit.

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<sup>22</sup> ██████████ supervised Figueroa from June 2019 until his retirement from MTS in December 2021.

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All the Board members reported that the first time they learned of Figueroa's termination was either on or after March 28, 2023 (the date Figueroa filed her lawsuit).

The undersigned also interviewed all current employees in the Marketing and Communications Department. Those witnesses were: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

- [REDACTED] is the [REDACTED]. She has been in this role since September 2018, and with MTS since January 2016. [REDACTED] is one of three managers in the Marketing and Communications Department. She reports to Olson and has three direct reports.
- [REDACTED] is a [REDACTED]. He has been in this role since January 2023, when he was promoted from Marketing and Communications Specialist to his current title. [REDACTED] has worked at MTS since July 2017. He reports to [REDACTED].
- [REDACTED] is a [REDACTED]. She has been in this role since June 2022, and with MTS since November 1, 2021. [REDACTED] reports to Mark Olson.
- [REDACTED] is a [REDACTED]. She has been in this role since she joined MTS in May 2022. [REDACTED] reports to Stacie Bishop.
- [REDACTED] is a [REDACTED]. He has been in this role since he joined MTS on July 11, 2022. [REDACTED] reports to [REDACTED].
- [REDACTED] is a [REDACTED]. She has been in this role since joining MTS in July 2021. [REDACTED] reports to Stacie Bishop.

Each of the employee witnesses denied having any involvement in Figueroa's termination. Many employees shared their general impressions of Figueroa, including her work performance. The information from witnesses that is relevant to Figueroa's performance and eventual termination is set forth below.

### 1. General Impressions of Figueroa

#### a. [REDACTED]

[REDACTED] [REDACTED] said she worked with Figueroa on a variety of projects. Although they worked on separate teams, almost all the projects that Figueroa managed involved assistance from [REDACTED] and her team in some capacity. For example, if Figueroa managed a campaign that needed ads or posters, [REDACTED]'s team would provide support for that.

[REDACTED] said she enjoyed talking with Figueroa and found her to be "a pleasant person." However, she was less impressed with Figueroa's actual work, which was "pretty bad." Figueroa was disorganized and had poor time management. Over the three years they worked together, almost every project [REDACTED] worked on with Figueroa was "a last-minute crisis." For example, [REDACTED]'s team often got only two to three days' notice that they needed to print posters for Figueroa's event, when they needed at least a week to do the work. This meant that [REDACTED]'s team had to put other work aside and ask vendors for

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favors in order to get the work completed on time. ██████ said, “Once in a while it’s fine, but with her it was very consistent; and it seemed preventable.” These issues came up frequently enough that ██████ brought this issue to the attention of Olson and Bishop and “kept them in the loop” as things came up.

b. ██████

████████████████████ ██████ said he knew Figueroa before she joined MTS. They had both been in a group called the South County Association of Marketing Professionals (“SCAMP”). At the time, Figueroa worked for a Nature Reserve called Living Coast Discovery Center. ██████ saw Figueroa about once a month during the SCAMP meetings. They had each other’s phone numbers and kept in touch now and then. When Figueroa applied for the Marketing Specialist at MTS, ██████ may have mentioned that he knew Figueroa and that she seemed to have a good background.

████████████████████ said that when Figueroa joined MTS, he took on the role of guiding her and “showing her the ropes.” Although they chatted at work, ██████ did not consider their relationship to be a friendship. They had “different lifestyles” – Figueroa was single and went out after work while ██████ was married with kids and never went out. ██████ did not socialize with Figueroa outside of work. He once invited all his co-workers to his son’s birthday party, including Figueroa, but she did not attend.

In terms of Figueroa’s performance, ██████ said Figueroa had some strengths. For example, she was great with social media, knew the trends, and made MTS’s social media accounts personable. She also had a good camera presence in that she looked polished and had a good voice. At the same time, however, Figueroa had issues with organization and staying on top of deadlines. ██████ said that during their monthly team meetings, it was clear who was making progress and who was not. He said, “I would periodically see that her reports were lacking in progress, deadlines weren’t being met. You can tell there was visible frustration – people saying, ‘Let’s talk about this offline.’”

████████████████████ said his working relationship with Figueroa had “challenges and friction,” especially towards the end of 2022. As the “official videographer,” ██████ tried to work with Figueroa on the video and editing elements of her events. Figueroa was “combative,” “did whatever she wanted to do,” and “ignored people’s directions.”

████████████████████ said Figueroa was “more free form” and did not like structure, whereas ██████ was more detail oriented. For example, when they worked on projects together, ██████ would ask Figueroa questions, such as, “Where is the bus going to be staged?” and “Is there an exit way?” Figueroa did not like being asked these questions and would tell ██████ he was “overthinking things.” On one occasion, ██████ was working with Figueroa on shooting two ads for MTS’s Free Ride Day event. When ██████ told Figueroa they needed to develop a “gameplan,” Figueroa told ██████ he was “overthinking things.” Around September 2022, ██████ brought this incident up with Bishop, telling her that Figueroa’s disorganization was going to make them look bad and set them up for failure. Bishop said she would talk to Figueroa.

████████████████████ said that on three or four occasions Figueroa had accused him of “yelling” at her, when he was not actually yelling. He said co-workers afterwards came to him and said, “You clearly were not yelling.”

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c. [REDACTED]

[REDACTED] [REDACTED] said she and Figueroa worked on the same team and collaborated on projects. Their working relationship was “negative for the most part.” At times, Figueroa tried managing things that were in [REDACTED]’s scope of work. For example, there was an incident when Figueroa tried to prevent [REDACTED] from letting another department borrow a tent and tables for an MTS event. [REDACTED] reported this to Bishop; then Bishop facilitated a conflict meeting between [REDACTED] and Figueroa. [REDACTED] generally tried to avoid working with Figueroa because they “buted heads.”

[REDACTED] said she was aware of Figueroa’s performance issues, but not the full extent of it. Sometimes it seemed Figueroa’s deadlines were missed or she would assign out projects at the last minute. For example, one of Figueroa’s jobs was to manage the MTS Connections newsletter, including assigning articles for people to write. Whenever [REDACTED] was asked to write an article, the turnaround was tight because Figueroa would assign the article at the last minute, which created added pressure for [REDACTED].

d. [REDACTED]

[REDACTED] [REDACTED] said she and Figueroa were placed on the same team when the department reorganized, and Bishop became their supervisor (around March 2022). Overall, her relationship with Figueroa was “neutral to positive.” They chatted at work and occasionally worked together on projects. They did not socialize outside of work but occasionally texted one another about soccer or exchanged “likes” on Instagram.

[REDACTED] said there were a couple of times when she had asked Figueroa to go over some translations. A few days would go by without any response, so [REDACTED] would send Figueroa another email or walk over to her desk and ask her again. Figueroa eventually did the work, but only after [REDACTED] reminded her several times. [REDACTED] also knew that Figueroa was often late to work. [REDACTED] typically arrived at work at 7:00 a.m., and Figueroa frequently arrived after 9:00 a.m. Olson called a meeting once and told everyone they needed to be in by 9:00 a.m.

e. [REDACTED]

[REDACTED] [REDACTED] started working with Figueroa around June 2022. [REDACTED] and Figueroa are both Latina and share a common interest in urban Latin music and pop culture. [REDACTED] said some people thought Figueroa “came off a little strong,” but [REDACTED] liked her and thought she was “really nice” once you got to know her. They chatted at work, but otherwise did not socialize outside of work.

f. [REDACTED]

[REDACTED] [REDACTED] did not have much work that overlapped with Figueroa’s work, and they rarely interacted with one another. [REDACTED] recalled one incident where he overheard [REDACTED] trying to talk to Figueroa about a project and she got upset and told [REDACTED], “Stop yelling at me.” [REDACTED] thought Figueroa’s remark was “very strange and crazy” because [REDACTED] was not yelling or being uncivil in any way. [REDACTED] also thought Figueroa’s remark was “manipulative and juvenile” and it made him relieved that he did not have to work with her.

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█████ did not have personal knowledge of Figueroa’s work performance since they did not work together. However, after Figueroa was fired, he heard from ██████ that Figueroa “wasn’t known for doing a particularly good job.” ██████ also recalled once or twice when Figueroa was late to work. On a positive note, he recalled seeing her at a press conference and “it seemed like she did a great job.”

### **2. Figueroa’s Termination**

The only employee who reported having advance knowledge of Figueroa’s termination was ██████. ██████ said she believes she learned during a January 2023 managers’ meeting that Figueroa was going to be terminated. She said the three managers (█████, Olson, and Bishop) had regular meetings every other week. During one of the January 2023 meetings, Olson and Bishop mentioned that Figueroa was going to be terminated for performance reasons. They did not go into much detail, but ██████ already knew Figueroa had performance issues, and had discussed some of those issues with Figueroa’s supervisors before (as discussed in the previous section). ██████ said Figueroa’s termination “wasn’t a huge surprise.”

All other employees said they learned about Figueroa’s termination after the fact. Most learned about it on the Wednesday after Figueroa was let go, when Olson called a meeting with the department and announced that Figueroa and MTS had “parted ways.” Those who were at the meeting reported that Olson did not share any further details. One employee, ██████, said he assumed at the time that Figueroa had quit.

Several employees in the Marketing and Communications Department said they were surprised by the news because they were unaware of Figueroa’s performance issues, either because they did not work with her or because they thought she was doing a good job. Others said they were aware of her performance issues, and for that reason, they were less surprised by the news of Figueroa’s separation. All the witnesses said they were not privy to Figueroa’s performance reviews and their knowledge of her performance was based solely on their own observations and not anything they heard from Figueroa’s managers.

### **E. Documentary Evidence**

#### **1. Six-month Probationary Performance Review (Exhibit 4)**

A review of Figueroa’s six-month probationary evaluation, dated February 18, 2020, indicates that Figueroa received an overall rating of 2.85 (Scale: 0 – Unacceptable; 1.0 needs improvement; 2.0 meets job requirements; 3.0 exceeds job requirements; 4.0 Distinguished performance).

“Areas of Strength” included ability to help the marketing team in multiple areas, media relations, and social media.

“Areas for Improvement” included continuing to learn about MTS and ‘transit’ marketing, project management skills/missed deadlines, and improved copywriting work product.

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### **2. Year 1 Annual Performance Review (Exhibit 4)**

A review of Figueroa's first year Annual Performance Review, dated August 6, 2020, shows that Figueroa received an overall rating of 3.0 (Scale: 0 – Unacceptable; 1.0 needs improvement; 2.0 meets job requirements; 3.0 exceeds job requirements; 4.0 Distinguished performance).

"Areas of Strength" included media relations/digital content and social media.

"Areas for Improvement" included finding new ways to develop community partnerships, project management, continuing to learn about 'transit' marketing, and increased community engagement activities.

### **3. Year 2 Annual Performance Review (Exhibit 5)**

A review of Figueroa's second year Annual Performance Review, dated August 2021, shows that Figueroa received an overall rating of 3.1 (Scale: 0 – Unacceptable; 1.0 needs improvement; 2.0 meets job requirements; 3.0 exceeds job requirements; 4.0 Distinguished performance).

"Areas of Strength" included media relations/digital content, social media, and multi-faceted skillset (media relations, writing style, Spanish speaking and translation, digital media).

"Areas for Improvement" included project management, better organization and execution of projects, and increased attention to MTS's earned media strategy development.

### **4. Year 3 Performance Review and Related Emails (Exhibit 7-12)**

On July 29, 2022, Olson emailed Stumbo to consult on Figueroa's upcoming performance review. (Exhibit 7.) In his email, Olson asked, "Can you suggest language to include in her evaluation related to what we discussed – potential changes should performance not improve in key areas?"

On August 3, 2022, Stumbo sent Olson and Bishop an edited version of Figueroa's evaluation, which proposed adding the following language to Figueroa's evaluation (see Exhibit 8):

*"We believe that Grecia has the potential to be a high performer, as her 'Areas of Strength' are excellent, and want to see her succeed in her new position. However, immediate and sustained improvement in the "Areas of Improvement" section is necessary to maintain employment. Due to ongoing performance issues, we are recommending a 3% merit increase. However, Mark and I will formally re-review your performance in 3 to 6 months. If there is significant improvement, we will recommend an additional 3% increase."*

On August 19, 2022, Bishop emailed Figueroa her third-year performance evaluation. (Exhibit 10.) In Bishop's email she advised Figueroa that she would make a 3% merit increase recommendation now, and then do a mid-year performance check-in to consider another 3% increase.

A review of the draft third year review sent to Figueroa on August 19, 2022, shows that Figueroa received an overall rating of 2.0 (Scale: 0 – Unacceptable; 1.0 needs improvement; 2.0 meets job requirements; 3.0 exceeds job requirements; 4.0 Distinguished performance).

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“Areas of Strength” included media relations/digital content, media reporting, and brainstorming new ideas and creative content.

The review included the following language in the “Areas for Improvement” section:

**Project and Time Management** – *As Grecia takes on more responsibility in her role as Public Relations Specialist (media event lead, MTS Connections project manager, etc.), implementing project and time management tools will be essential. At times, Grecia’s lack of planning ahead has put stress on other team members to complete projects under tight/unrealistic deadlines, and prior assignments to implement project management foundations have been incomplete.*

- *Stuff the Bus: Following this year’s Stuff the Bus event, bus operations reported issues with the event coordination between Marketing and Bus Divisions. Some specific areas of concern include: lack of communication throughout and leading up to event; scattered communication vs working through bus ops leads; getting event details less than 24 hours before the event including last minute requests for materials/support from bus ops; lack of execution on event needs (no checklist of items provided, inconsistent materials at each site, etc.) With the extra time allotted for the campaign (moving from the winter to spring), it would be expected that these items would be finalized and ready to go in a timely manner.*
- *Creative services support requests: There have been several instances in recent months where requests come through to creative services for help/support with unrealistic deadlines, even with advance notice of projects. Or, not providing creative services with the sufficient or necessary information to create content (media report recap, CTAC advertisement, Hazard Center SDCC ad, SDCC media event poster, etc.)*
- *Incomplete or no progress on assignments for project management tools:*
  - *Last year, Mark assigned Grecia to take project management courses through HR, as well as develop strategic work plans (options like Asana, Excel, etc.). To-date, those haven’t been completed (4/6 of modules).*
  - *Earlier this year (April), and in biweekly check-ins since, Stacie assigned Grecia with creating a media event checklist template to help establish standard protocols and tracking for media events. To-date, that template has not been created. There have been several media events where items have not had progress or completion far enough in advance (South Bay Charging Infrastructure, Comic-Con), and an event template would help to clearly define and establish expectations and timelines for all team members involved.*

**Follow-Through and Feedback Loops:** *One other area for improvement will be project follow-through and better feedback on project status. At times, projects Grecia has managed or tasks she has been assigned take longer to complete than expected. Following through on assignments in a more timely manner and more proactively communicating project updates will benefit her personal workflow and the entire department. Some examples include:*

- *SDM Mailer: Grecia was originally tasked with development and strategy for the SDM mailer. Started out strong organizing a call and recapping the next steps for team members. However, midway through the process, project management/pushing the process along seemed to shift to other team members and/or departments (follow-ups, asking about status, editing process, etc.)*
- *Wifi Pilot Project: Managed project content (webpage creation, onboard advertisements, initial social media announcement), but there weren’t active updates or progress reports throughout the year. For example, webform comments and results; ongoing social promotion/strategy.*

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- *Partnership Deliverables: Some major deliverables on partnerships have gone unused or there hasn't been much progress on. Being proactive to help ensure we're taking advantage of all these benefits will be important (e.g. video with SD Loyal players, feature of MTS staff for San Diego Black Magazine).*

*We believe that you have the potential to be a high performer, as your "Areas of Strength" described above are excellent. We want you to succeed in this position. However, immediate and sustained improvement in the "Areas of Improvement" section is necessary to maintain employment. Due to performance concerns, I am only recommending a 3% increase. However, I will formally re-review your performance in 3 to 6 months. If there is significant improvement, I will recommend an additional 3%.*

On the same date, Figueroa emailed Olson to request a meeting to discuss her performance review and merit increase. (Exhibit 10.)

On September 12, 2022, Olson and Bishop met with Figueroa and provided her with an updated review. (See Exhibit 9.)

A review and comparison of the September 12, 2022 version and the August 19, 2022 version, shows that these two reviews are nearly the same, with some minor revisions. It has the same overall rating of 2.0 (Scale: 0 – Unacceptable; 1.0 needs improvement; 2.0 meets job requirements; 3.0 exceeds job requirements; 4.0 Distinguished performance). It also contains the same language about the need for "immediate and sustained improvement... in order to maintain employment."

The differences between the two versions of the review are as follows:

- The September version increased Figueroa's score in the "Initiative" performance dimension, from a score of 1.0 ("Needs Improvement") to a score of 2.0 ("Meets Job Requirements")
- The September version added the following comments:
  - "Brings valuable skillset to team with Spanish language media and translation capabilities."
  - "Has shown some initiative in job role (like with TikTok account, social media promotion); however, needs to create and establish better media management protocols as has been previously requested/directed."
- The September version deleted "Hazard Center SDCC ad, SDCC media event poster" as examples of "not providing creative services with the sufficient or necessary information to create content." (See Exhibits 9 and 11, at page 9)
- The September version deleted "Comic Con" as an example of "media events where items have not had progress or completion far enough in advance." (See Exhibits 9 and 11, at page 9)

### **5. January 30, 2023 Memo re: Employee Performance Evaluation (Exhibit 14)**

On January 30, 2023, Olson sent Stumbo a memo outlining Figueroa's performance issues. (Exhibit 14.)



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The memo contains the following recommendation:

*It is my recommendation that MTS take the necessary steps to part ways with Grecia Figueroa as an employee as soon as possible in order to recruit candidates and find a replacement prior to the start of the busy spring/summer season for MTS special events and promotions (Padres Opening Day and season, Comic-Con, summer festivals, etc.).*

The memo states the “justification” for Figueroa’s separation as follows:

*In Grecia’s annual performance review in July 2022, it was stated by her manager and director:*

*“We believe that Grecia has the potential to be a high performer, as her ‘Areas of Strengths’ are excellent, and want to see her succeed in her new position. However, immediate and sustained improvement in the ‘Areas of Improvement’ section is necessary to maintain employment. Due to ongoing performance issues, we are recommending a 3% merit increase. However, Mark and I will formally re-review your performance in 3 to 6 months. If there is significant improvement, we will recommend an additional 3% increase.”*

*Stacie and I have reviewed Grecia’s work over the past six months and still share serious concerns regarding her performance. After her July 2022 review, we saw some immediate improvement in a few areas of improvement outlined in her performance review. While this was a positive development, unfortunately many of those same improvement areas became challenges again in the last 4-5 months. At this time, I’ve lost confidence in Grecia’s ability to take on special projects and perform up to the level her position demands. She has been with MTS for three years. Grecia has had ample opportunity to learn on the job, take training courses necessary and adhere to the advice of her superiors about a path to perform at a higher level. Unfortunately, she has not taken this path. As such, her performance in a high-profile position continues to not be up to the level the Marketing & Communications Department needs for the agency.*

The memo goes on to outline specific issues that came up during Figueroa’s review period:

- **Missed Assignments:** *In the fall and winter 2022, there were several assignments that were given to Grecia that missed deadlines or were forgotten about. Specific examples include:*
  - a. *Intelligent Transport:*
    - *Mark forwarded an inquiry for a guest article in Intelligent Transport to Grecia on 10/18 and asked her to secure a spot. On November 10, hearing no response, Mark followed up. (Grecia had not seen the original email, and subsequently reached out to secure a December 5 deadline.)*
    - *On December 2, Mark asked Stacie to reached out for a status, and Grecia confirmed she did secure the spot, but that no progress had been made to outline/develop content; at that time the deadline was extended one week to December 12.*
    - *Grecia left work early on 12/8 due to illness, and stayed home Friday, December 9 as well due to illness. Staff requested the draft article/current outline several times due to the pending deadline Monday. When staff finally received the copy at 4:30 p.m. 12/12, only 40 – 50% of the word count requirement had been met.*
    - *The final article did not get submitted until 12/16, 11 days after first deadline and four days after second deadline.*

- b. *Progressive Railroading Article:*
  - *Query from Progressive Railroading came in November 28, with a deadline of December 16. In an email to Rail Operations and Grecia on the same day, Mark asked Grecia to gather the responses and make submission to reporter.*
  - *Rail operations staff provided their responses on November 29. However, no progress was made in finalizing the content until Mark reached out to Grecia to ask about the status on December 12. (Grecia responded that she thought Mark had already handled.)*
  - *Mark provided final edits to content to Grecia on the morning of December 15.*
  - *As of the deadline (12/16), the response had not been submitted and Mark had to send a reminder on Monday 12/19 to ask Grecia to submit the responses.*
  
- c. *News Releases: Several special event news releases that had been discussed in check-in meetings with Stacie were never executed (Elton John, December Nights).*
  
- **Project Management:**
  - a. *MTS Connections:*
    - *Discussions for the first edition of MTS Connections began in July, and the original distribution date was set for mid-September. Upon Stacie returning from vacation in late July/early August, the deadline for the newsletter had been pushed back two weeks seemingly arbitrarily (no reason was given for why). There wasn't clear (or possibly, realistic) project management / processes throughout the process, and ultimately the edition did not get distributed until mid-November.*
    - *Given the challenges and process management from the first edition Grecia managed, conversations about the next edition of MTS Connections were discussed with Grecia in check-in meetings on 12/1 and 12/7. Stacie requested she create a project timeline by working backward from a distribution deadline of mid-February. Grecia was asked to provide topics by December 16; as of that day, nothing had been provided and Stacie followed up to ask her for them by 12/20 at the latest. Topics weren't provided until after staff had left office (early for holiday weekend) on 1/23, and most of the content ideas had to be reworked entirely by Mark and Stacie. Story deadlines for staff were 1/25. As of 1/26, Grecia and two other support staff had not written their assignments (about half the edition content), and the distribution is expected to be delayed from initial goal a minimum of two weeks.*
  - b. *Laptop Scholarship:*
    - *The Laptop Scholarship Essay contest was another instance where a lack of planning led to delayed implementation. Very initial conversations with Stacie discussed October / early November process. At the time her initial performance review was submitted August 19, the date outlined for the Laptop Scholarship submission deadline was November 4 (in an effort to avoid holidays and related school breaks).*
    - *Some examples of lapses in timeline/process management include: reported to have had essay topics that she would send "in a few days" on 8/23, but no prompts were submitted until 9/16. In an email response on 9/22 Mark stated he wanted the deadline to be 11/18 before the holiday (earlier launch/submission date), but Grecia pushed for/selected the 11/25 deadline. Approval for the laptop purchase was given from Mark and Stacie in early December (12/5) but the order was not submitted by Best Buy until December 28.*

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- c. *News Releases: In general, timelines that were outlined in the media management document she created were not consistently met (i.e. submitting news releases with little time for review), putting pressure on other staff and departments to turn around content same day or next day in many cases.*
- d. *Professional Development:*
  - *Grecia has been assigned to take / complete project management professional development courses in three annual reviews (2020, 2021, 2022). To-date, those have not been finished.*
- **Timeliness**
  - a. *In December, Stacie sent an email to a few of her staff, including Grecia, recognizing that we had been a little lax in start times for staff, but reiterating the expectation that time at the office should start by 9 a.m. Mark also made a verbal announcement to the entire department in a team meeting on January 4 stating start times need to be by 9 a.m. To-date, Grecia has not consistently met that arrival time, often showing up between 9:10 – 9:30.*

### **6. Emails re: Severance Package (Exhibit 17)**

MTS provided the undersigned with emails between Stumbo and Figueroa following Figueroa's separation from MTS. These emails show that on February 7, 2023, Stumbo sent the following email to Figueroa:

*Hi Grecia,  
I have tried to call you a couple of times this morning, but you have your phone forwarded to voicemail. Please let me know the best time to call you.*

Stumbo reached out to Figueroa again on February 14, 2023:

*Hi Grecia,  
Your attorney has not attempted to contact MTS attorney [REDACTED] since we requested that they do so on Thursday, February 9, 2023. If we do not hear from them by Friday, February 17, 2023, MTS will assume you do not wish to work out a severance package and will proceed with terminating your employment. If you wish to work out the terms of the separation agreement with me directly, please let me know the best time to call you.*

Figueroa responded to Stumbo's email on February 14, 2023:

*Hi Jeff, thanks for the update. I will make sure he does. Before that, could you please send me my previous annual reviews:*

- *First probation-period review from when I first began my work at MTS*
- *1 Year review*
- *2 year review*
- *(These should be copies of the PDFs that have my signature on them)*
- *The PDF of my job description- "Public Relations Specialist" (This should be the same that I requested from Thuy a few months ago)*

*Lastly, please let me know when I can come pick up my stuff.  
I also need to return the loaner laptop I still have at home. Thank you.*

## 7. Termination Letter (Exhibit 18)

On February 17, 2023, Stumbo sent Figueroa a letter notifying that her employment was being terminated, effective that day.

### F. Findings

- **What are the facts and timelines related to performance evaluations and Figueroa’s eventual termination?**

#### 1. Timeline of Figueroa’s Performance Evaluations and Termination

A preponderance of the evidence gathered in this investigation, including interviews conducted by the undersigned and a review of documents, supports the following factual findings and timeline related to Figueroa’s performance and eventual termination:

1. On **June 26, 2019**, MTS hired Figueroa as a Marketing Specialist.
2. On **February 18, 2020**, Figueroa received her Six-month Probationary Evaluation, prepared by Olson, in which she received an overall rating of 2.85 (“Meets Job Requirements”).<sup>23</sup> (Exhibit 4.)  
  
“Areas of Strength” included her ability to help the marketing team in multiple areas, media relations, and social media. “Areas for Improvement” included continuing to learn about MTS and ‘transit’ marketing, project management skills/missed deadlines and improved copywriting work product.
3. On **August 6, 2020**, Figueroa received her first year Annual Performance Evaluation, prepared by Olson, in which she received an overall rating of 3.0 (“Exceeds Job Requirements”).<sup>24</sup> (Exhibit 4.)  
  
“Areas of Strength” included media relations/digital content and social media. “Areas for Improvement” included finding new ways to develop community partnerships, project management, continuing to learn about ‘transit’ marketing, and increased community engagement activities.
4. In **August 2021**, Figueroa received her second year Annual Performance Evaluation, prepared by Olson, in which she received an overall rating of 3.1 (“Exceeds Job Requirements”).<sup>25</sup> (Exhibit 5.)  
  
“Areas of Strength” included media relations/digital content, social media, and multi-faceted skillset (media relations, writing style, Spanish speaking and translation, digital media). “Areas for Improvement” included project management, need for better organization and execution of projects, and increased attention to MTS’s earned media strategy development.

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<sup>23</sup> Scale: 0 – Unacceptable; 1.0 needs improvement; 2.0 meets job requirements; 3.0 exceeds job requirements; 4.0 Distinguished performance.

<sup>24</sup> Same scale as above.

<sup>25</sup> Same scale as above.



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5. In **March 2022**, Stacie Bishop began supervising Figueroa.<sup>26</sup>
6. On **April 19, 2022**, Figueroa's title changed to Public Relations Specialist.
7. In **April 2022**, Olson and Bishop received feedback regarding Figueroa's media events from [REDACTED] and [REDACTED]. [REDACTED] reported that Figueroa's lack of planning ahead had put stress and pressure on [REDACTED]'s team to carry out Figueroa's "last minute" requests. [REDACTED] reported that Figueroa's "Stuff the Bus" event was disorganized.
8. In the days leading up to the **May 5, 2022** groundbreaking event for the South Bay Charging Infrastructure, Figueroa fell behind in pre-event deadlines. As a result, Bishop had to step in to help.
9. On **July 15, 2022**, Bishop met with Figueroa to discuss Figueroa's third year Performance Evaluation. Figueroa was surprised by some of the feedback provided during their review meeting and said she wanted a chance to respond.
10. On **July 29, 2022**, Olson sought Stumbo's advice regarding language to include in Figueroa's evaluation about "potential changes should performance not improve in key areas." (Exhibit 7.)
11. On **August 3, 2022**, Stumbo proposed adding the following language to Figueroa's evaluation (emphasis added; see Exhibit 8):

*"We believe that Grecia has the potential to be a high performer, as her 'Areas of Strength' are excellent, and want to see her succeed in her new position. **However, immediate and sustained improvement in the "Areas of Improvement" section is necessary to maintain employment.** Due to ongoing performance issues, we are recommending a 3% merit increase. However, Mark and I will formally re-review your performance in 3 to 6 months. If there is significant improvement, we will recommend an additional 3% increase."*

On **August 19, 2022**, Bishop emailed Figueroa her third-year performance evaluation, in which she received an overall rating of 2.0 ("Meets Job Requirements").<sup>27</sup> Bishop told Figueroa that she was recommending a 3% merit increase and would consider an additional 3% at the time of Figueroa's mid-year performance review. The review contained the warning language noted above regarding the need for "immediate and sustained improvement."

12. On **August 23, 2022**, Olson met with Figueroa at her request to discuss her performance review. Olson told Figueroa that she was good at 35% of her job but she needed to improve in the other areas that amounted to 65% of her work.
13. On **September 12, 2022**, Olson and Bishop met with Figueroa to go over her updated review, which contained minor revisions to the August 19 version. (Exhibit 9.) Figueroa's overall rating remained the same: 2.0 ("Meets Job Requirements"); however, her score increased in the "Initiative" performance dimension, from a score of 1.0 ("Needs Improvement") to a score of

<sup>26</sup> Prior to this, Figueroa reported to Olson.

<sup>27</sup> Same scale as above.

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2.0 (“Meets Job Requirements”). The review contained the warning language noted above regarding the need for “immediate and sustained improvement.”

14. On **October 19, 2022**, Bishop and Figueroa had a quarterly progress meeting. At that point, Figueroa had made progress on some of her goals but had not met most of them.
15. On **December 16, 2022**, Bishop and Olson met to discuss Figueroa’s upcoming mid-year review. They agreed that the performance issues they had identified back in July 2022 remained ongoing. Olson told Bishop that he was leaning towards terminating Figueroa, but that they would revisit the issue after the winter holidays.
16. In **December 2022**, Olson met with Cooney to discuss Figueroa’s ongoing performance issues. Cooney told Olson that she would support whatever decision he made, and suggested that he consult with HR if he was considering termination.
17. On **January 3, 2023**, Olson called a departmental meeting where he stressed that everyone needed to arrive at work by 9:00 a.m. The next week, Figueroa showed up late on several occasions.
18. On **January 10, 2023**, Olson met with Bishop, and they decided to move forward with terminating Figueroa. Thereafter, Olson met with Stumbo to discuss next steps.
19. On **January 30, 2023**, Olson sent Stumbo a memo regarding his recommendation to “part ways” with Figueroa “as soon as possible.” (Exhibit 14.)
20. Stumbo planned to inform Figueroa about MTS’s termination decision on **February 3, 2023**; however, Figueroa called in sick that day. (Exhibit 3.)
21. On **February 6, 2023**, Stumbo met with Figueroa and told her that MTS wished to negotiate a separation agreement, offering a severance payment of \$10,000. (Exhibit 16.) Figueroa appeared surprised and asked Stumbo who made the decision and why. Stumbo told Figueroa that it was Olson and Bishop’s decision and that he would follow-up with her the following day with more specific information related to that decision.
22. On **February 7, 2023**, Stumbo emailed Figueroa with more specifics regarding the reasons for her termination. Stumbo also left Figueroa messages, but she did not return his calls or respond to his email. Later that day, Figueroa sent Stumbo a text message saying she had a lawyer (but not identifying her lawyer by name).
23. On **February 17, 2023**, Stumbo sent Figueroa a formal termination letter after not hearing from Figueroa or her attorney. (Exhibit 18.)

### **2. Was Fletcher Involved in Figueroa’s Termination?**

Figueroa alleged that MTS terminated her employment “at the recommendation and/or direction of” Fletcher “because she had been sexually harassed and assaulted by Fletcher and because she possessed information that could be damaging to MTS and Defendant Fletcher.”

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The witnesses involved in Figueroa's termination – Olson, Bishop, Stumbo, and Cooney – denied Fletcher had any involvement in the termination decision. Their accounts in that regard were consistent with Fletcher's written account, whereby he stated that he first learned about Figueroa's termination on February 17, when he received a letter from Figueroa's attorney, which "alluded to the possibility of Ms. Figueroa filing litigation regarding her termination from MTS."

Figueroa was informed of her termination on February 6, which was the exact same day that Fletcher announced his run for state Senate, suggesting a possible nexus between the two events. However, there is credible evidence that managers had planned to inform Figueroa of the termination decision on February 3, which was before Fletcher's announcement, but ended up having to delay informing Figueroa because she called out sick that day. (Exhibit 3.)

Moreover, other than the timing, which appears to be coincidental, there is little evidence to support that Figueroa's termination had anything to do with Fletcher. To the contrary, some of the allegations in Figueroa's written complaint contradict this contention. For example, in Figueroa's complaint she alleged that Fletcher made various efforts to hide his sexual pursuits, including by contacting her on February 18 (after Figueroa's termination) to request that she keep the matter strictly private, "not even sharing with MTS." If true, this undermines Figueroa's claim that MTS had knowledge of an inappropriate relationship between Figueroa and Fletcher and terminated her for that reason.

Indeed, not a single person interviewed for this investigation, including Board members who worked closely with Fletcher for many years, reported having any knowledge or suspicion of a relationship between Fletcher and Figueroa. The fact that every witness – including Figueroa's co-workers who had no apparent motive to downplay Figueroa's allegations – expressed being surprised by the allegations suggests a level of discreetness on Fletcher and Figueroa's part, making MTS's lack of knowledge appear reasonable under the circumstances.

Nor does it make much sense that Fletcher would direct or recommend Figueroa's termination. MTS's policies provide that the CEO is responsible for MTS personnel matters, including hiring and firing decisions.<sup>28</sup> MTS employees and Board members consistently reported that the Board does not get involved in personnel matters, including termination decisions.

Finally, Figueroa's supervisors, Olson and Bishop, articulated a plausible explanation for Figueroa's termination that was unrelated to Fletcher – that Figueroa's termination was based on ongoing performance issues.

Figueroa's first- and second-year performance reviews were positive and gave no indication that Figueroa's job was in jeopardy. The fact that Figueroa received a negative evaluation only after the alleged sexual harassment and assault by Fletcher, could suggest that her job performance was not the reason for the termination. Many witnesses, including Figueroa's supervisors, acknowledged that Figueroa excelled in certain areas of her work, including media relations and social media.

On the other hand, however, there was evidence from multiple witnesses that Figueroa consistently struggled in areas of her work, including project and time management. This appeared to become a growing source of frustration for her supervisors. Olson and Bishop provided detailed and consistent

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<sup>28</sup> See MTS Ordinance No. 1, Administrative Code of Regulations, available at <https://www.sdmts.com/business-center/reports-records-and-policies/ordinances>

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accounts of the facts and circumstances leading up to her termination, and the concerns they reported were documented in Figueroa's most recent performance evaluation, which she received in mid-August of 2022 (six months prior to her termination). In that evaluation, Figueroa was warned that her job was in jeopardy if her performance did not improve, stating:

*"We believe that Grecia has the potential to be a high performer, as her 'Areas of Strength' are excellent, and want to see her succeed in her new position. **However, immediate and sustained improvement in the "Areas of Improvement" section is necessary to maintain employment.** Due to ongoing performance issues, we are recommending a 3% merit increase. However, Mark and I will formally re-review your performance in 3 to 6 months. If there is significant improvement, we will recommend an additional 3% increase."* [Emphasis added.]

The concerns Olson and Bishop reported about Figueroa's performance issues were echoed by other employees on the Marketing and Communications Team. For example, [REDACTED], [REDACTED], and [REDACTED] spoke about Figueroa's disorganized and sometimes chaotic approach when it came to project management. The witnesses' credible descriptions of their own experiences working with Figueroa, including how her last-minute scrambling created added pressure for other employees in the department, were consistent with the issues described by Figueroa's supervisors.

Olson said he lost confidence in Figueroa's ability to perform at the level he expected, and this statement was believable given the overall evidence of Figueroa's performance. Moreover, there was little to support that Figueroa's termination had anything to do with Fletcher. While the decision to terminate Figueroa only six months after giving her a warning seemed somewhat hasty, other managers, including Stumbo and Bishop, corroborated Olson's assertion that the Marketing and Communications Team ran "lean" and could not afford to "work around" employees who were not meeting expectations.

### **VI. ISSUE #2: WHAT KNOWLEDGE DID MTS OFFICIALS OR EMPLOYEES HAVE OF A RELATIONSHIP BETWEEN NATHAN FLETCHER AND GRECIA FIGUEROA?**

### **ISSUE #3: WHAT STEPS DID ANY MTS EMPLOYEE TAKE TO RESPOND TO AND/OR REPORT SEXUAL HARASSMENT OF GRECIA FIGUEROA?**

#### **A. Allegations**

As previously discussed, Figueroa alleged that MTS officials knew, or should have known of Fletcher's sexual harassment against Figueroa and failed to take appropriate action to respond to and report Fletcher's conduct.

In Figueroa's complaint, she pointed to the following incidents as support for her allegation regarding MTS's knowledge:

- Sometimes it was "quite obvious" that Fletcher was sending Figueroa messages during MTS meetings and events because Fletcher had his phone open "within eyesight of other MTS Board members and executives, and because he usually stared or smirked at Ms. Figueroa while sending these communications."
- "Fletcher would occasionally break conversation with important board members and other high-ranking leaders to smile at, compliment, or otherwise cast a look towards Ms. Figueroa."

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- During a MTS Board meeting, around September 2022, Fletcher “locked eyes and smirked” at Figueroa while he was messaging her from his seat. CEO Sharon Cooney was sitting to Fletcher’s left and MTS Board member Sean Elo-Rivera was sitting to Fletcher’s right. Figueroa further alleged that “department head Mark Olson seemed to notice what was going on between Fletcher and Ms. Figueroa that day, and shot a gaze at Ms. Figueroa, appearing unhappy about the interaction.”
- During a Board meeting, on December 8, 2022, MTS Board Member Sean Elo-Rivera “stared intently” at Figueroa in the audience while she was entering the MTS Boardroom. This interaction “further supported Figueroa’s fearful suspicion that members of the MTS Board and/or other managers or coworkers were indeed aware that Fletcher was pursuing her sexually and that his actions were indeed affecting Ms. Figueroa’s professional reputation.”

### **B. Nathan Fletcher’s Response**

With respect to the allegation that MTS officials knew, or should have known of Fletcher’s sexual harassment towards Figueroa, Fletcher’s responses to questions relevant to this allegation are included below:<sup>29</sup>

**Question: Did you ever discuss Grecia Figueroa with any MTS employee or official? If so, for each discussion or conversation you had, please answer the following: a) Identify each of the MTS employees or officials with whom you had this discussion; b) Provide the approximate date and location/format of each of those discussions (e.g., in your office, by phone, Zoom, email, text, etc.); c) Describe the content of each of the discussions (What did you say? What did they say?)**

Fletcher’s Response: “In response to No. 3(a)-(c), Mr. Fletcher did not have any discussions with anyone about his interactions with Ms. Figueroa prior to her termination. On Friday, March 24, 2023, Mr. Fletcher had a brief virtual conversation with Sharon Cooney and Karen Landers, along with his legal counsel, to provide them background on the allegations underlying facts and possibility of a public revelation.”

**Question: Are you aware of any MTS employees or officials having knowledge or suspicion of an intimate relationship between you and Grecia Figueroa (prior to the reporting of Ms. Figueroa’s lawsuit in the media)? If so, please answer the following: a) Identify each MTS employee or official who had knowledge or suspicion of a relationship between you and Grecia Figueroa; b) Provide the date on which each individual acquired such knowledge or suspicion; and c) Describe the details and circumstances surrounding how each of the individuals you identified had knowledge or suspicion of relationship between you and Grecia Figueroa.**

Fletcher’s Response: “No.”

**Question: Please share any other information you have related to the question above (“What knowledge did MTS officials or employees have regarding a relationship between Nathan Fletcher and Grecia Figueroa?”)**

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<sup>29</sup> Fletcher’s full written responses are attached to this report at Exhibit 2.



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Fletcher's Response: "Please see Mr. Fletcher's response to no. 3, above, regarding his communication with Ms. Cooney, Ms. Landers, and his legal counsel on Friday, March 24, 2023. Mr. Fletcher had no previous or subsequent conversations or communications with anyone at MTS about his interactions with Ms. Figueroa."

### **C. Response From Those Specifically Named in Figueroa's Complaint**

#### **1. Sean Elo-Rivera**

Sean Elo-Rivera was appointed to the MTS Board of Directors ("Board") in December 2020. He also serves as a Councilmember for the San Diego City Council.

Elo-Rivera said he had extensive interactions with Fletcher, particularly between December 2021 through March 2023 (when Fletcher resigned from his roles on the San Diego County Board of Supervisors and the MTS Board). During this period, their work often overlapped, not only in their duties on the MTS Board, but also in their respective roles serving on the San Diego City Council and San Diego County Board of Supervisors.<sup>30</sup> Elo-Rivera described his working relationship with Fletcher as positive, with no significant challenges. His personal relationship with Fletcher was "friendly;" they occasionally socialized together, though Elo-Rivera has not spoken with Fletcher since learning about Figueroa's allegations in the media.

Elo-Rivera said he recalled having only one brief interaction with Figueroa during a press conference announcing the launch of the Youth Opportunity Pass Program. The interaction was brief and consisted solely of Figueroa introducing herself and giving Elo-Rivera a pin. This occurred sometime between May and August of 2022.

Elo-Rivera said the first time he learned about Figueroa's termination was when the media reported on her lawsuit. This was also when he first learned of a potential relationship between Fletcher and Figueroa.

Regarding the allegation in Figueroa's lawsuit that Elo-Rivera sat next to Fletcher while Fletcher smiled at Figueroa and messaged her from his seat, Elo-Rivera said, "I didn't see anything along those lines." He reiterated that he had no knowledge or suspicion of a relationship, either consensual or non-consensual, between Fletcher and Figueroa.

Regarding the allegation in Figueroa's lawsuit that Elo-Rivera "stared intently" at Figueroa in the audience when she entered the MTS Boardroom on December 8, 2022, Elo-Rivera said, "I have no recollection whatsoever of staring at her when she walked in." Elo-Rivera felt this allegation was included in the complaint for the purpose of creating additional exposure for MTS. He said, "It felt like a situation where you throw spaghetti and see if it sticks."

#### **2. Mark Olson**

Olson said that prior to Figueroa's termination, he had no knowledge or suspicion of a relationship between Figueroa and Fletcher. The only interactions he ever witnessed between them were at media

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<sup>30</sup> Elo-Rivera was elected as Council President for the San Diego City Council in December 2022 and Fletcher served as the Chair for the San Diego County Board of Supervisors from 2021-2023.

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events. Those interactions were work-related, and Olson never noticed anything unusual between them. He said, “Looking back, everything seemed normal.”

Regarding the allegation that Olson “seemed to notice what was going” between Fletcher and Figueroa during a September 2022 Board meeting and “shot a gaze at Ms. Figueroa appearing unhappy,” Olson said he did not attend the September Board meeting because he had flown out of town to visit his father. He said that while it was common for Figueroa to attend Board meetings as a Spanish translator, he never saw anything “out of the ordinary at all” between Figueroa and Fletcher.

Olson said the first time Fletcher’s name came up in reference to Figueroa was on February 7, 2023, the day after Figueroa was terminated. (Olson’s statement regarding the information available to him regarding a potential relationship between Fletcher and Figueroa after February 6, 2023 is addressed in the next section of this Report.)

### **3. Sharon Cooney**

Cooney said that prior to Figueroa’s termination, she had no knowledge or suspicion of a relationship between Figueroa and Fletcher. The only interactions she ever witnessed between them were at media events and consisted of Figueroa handing Fletcher materials and talking him through the event. Cooney described these interactions as typical; there was nothing to suggest anything untoward was going on between them.

Regarding the allegation in Figueroa’s lawsuit that Cooney sat next to Fletcher during a Board meeting while Fletcher smiled at Figueroa and messaged her from his seat, Cooney said, “[Fletcher] texts the whole time he’s sitting there. I don’t look over his shoulder or into his private affairs.” She noted that while she typically sat to the left of Fletcher during Board meetings, there was a degree of separation between them due to COVID-19 social distancing protocols.

Cooney said the first time Fletcher was mentioned in reference to Figueroa, was when Olson came to Cooney and Landers on February 7, 2023, to discuss some text messages that employee [REDACTED] had received from Figueroa following her termination. (Cooney’s statement regarding the information available to her regarding a potential relationship between Fletcher and Figueroa after February 6, 2023 is addressed in the next section of this Report.)

## **D. Witness Information**

### **1. MTS Employees**

The undersigned interviewed eleven MTS employees, including the employees mentioned above (Olson and Cooney), General Counsel Karen Landers, Chief HR Officer Jeff Stumbo, and all current employees in the Marketing and Communications Department (Stacie Bishop, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]).

Each of the MTS employees interviewed for this investigation denied having any knowledge of a potential relationship between Fletcher and Figueroa prior to Figueroa’s termination on February 6, 2023.

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The only MTS officials or employees who reported having any information regarding a potential relationship between Fletcher and Figueroa during the period after Figueroa's termination on February 6, 2023, and before the filing of her lawsuit on March 28, 2023, were: Sharon Cooney, Mark Olson, Karen Landers, Jeff Stumbo, Stacie Bishop, and [REDACTED]. Their statements regarding the information that was available to them after February 6, 2023, is addressed in the next section of this Report.

### **2. MTS Board Members**

The undersigned interviewed fourteen MTS Board members, including one alternate Board member, Vivian Moreno.

Each of the Board members denied having any knowledge or suspicion of a relationship between Fletcher and Figueroa prior to March 28, 2023, the date on which Figueroa's lawsuit was filed. Most did not even know who Figueroa was prior to the lawsuit. All the Board members reported that the first time they learned of Figueroa's termination was when her lawsuit was reported in the media.

### **E. Findings and Discussion**

#### **1. What knowledge did MTS Officials or Employees have of a relationship between Nathan Fletcher and Grecia Figueroa?**

A preponderance of the evidence supports a finding that MTS officials and employees did not have any knowledge of a relationship between Fletcher and Figueroa prior to Figueroa's termination on February 6, 2023.<sup>31</sup>

Figueroa alleged that MTS officials knew, or should have known, of Fletcher's sexual harassment against her and failed to take appropriate action to respond to and report Fletcher's conduct.

That there was some sort of personal relationship between Fletcher and Figueroa was not contested. Fletcher publicly denied allegations of harassment and assault but acknowledged having engaged in "consensual interactions" with Figueroa. (Exhibit 23.) But his statement shed little light on the nature or pervasiveness of his interactions with Figueroa, whether and to what extent those interactions occurred at work, and whether there was equal initiation or participation by Figueroa.

There is evidence to support that at least one of Fletcher and Figueroa's sexual interactions occurred in an MTS conference room, as Figueroa alleged. According to Cooney, when she and Landers met with Fletcher and his attorney on March 24, Fletcher acknowledged that one or two interactions may have occurred at MTS. This evidence tends to increase the plausibility that MTS officials or employees had knowledge of a relationship between Fletcher and Figueroa.

On the other hand, even if some of the alleged conduct occurred at MTS, that does not automatically mean that MTS was aware of the conduct. According to Figueroa's complaint, Fletcher's alleged assault that occurred at MTS took place in a conference room with the door closed. She does not allege that

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<sup>31</sup> The question of what knowledge MTS officials or employees had during the period after Figueroa's termination on February 6, 2023, and before the filing of her lawsuit on March 28, 2023, is addressed in the next section of this report.

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anyone had witnessed them enter or leave the conference. Even if someone had witnessed this, there are legitimate work-related reasons for Fletcher to meet with Figueroa. Thus, it cannot be said that a closed-door meeting between Fletcher and Figueroa in an MTS conference room could be considered sufficient evidence to put someone on notice of Fletcher's alleged sexual misconduct.

Figueroa's complaint speculated certain individuals knew or should have known of Fletcher's alleged misconduct based on incidents where Fletcher sent text messages and stared or smirked at Figueroa during Board meetings and MTS events.

Each of the witnesses specifically named in Figueroa's complaint – Cooney, Olson, and Elo-Rivera – were interviewed and denied having knowledge or suspicion of a relationship, either consensual or non-consensual, between Fletcher and Figueroa prior to Figueroa's termination on February 6, 2023. Regarding the specific allegations:

- Cooney denied witnessing Fletcher messaging and smiling at Figueroa from his seat at Board meetings. Cooney noted that while she typically sat to the left of Fletcher during Board meetings, there was a degree of separation between them due to COVID-19 social distancing protocols and she did not "look over his shoulder or into his private affairs."
- Elo-Rivera denied the allegation that he "stared intently" at Figueroa when she entered the MTS Boardroom on December 8, 2022. He also denied witnessing Fletcher messaging or smiling at Figueroa during Board meetings.
- Olson denied the allegation that he "shot a gaze" at Figueroa during a September 2022 Board meeting. Olson said he did not attend the meeting in question because he was out of town, and never saw anything "out of the ordinary at all" between Figueroa and Fletcher.

Although the witnesses had a motive to deny the allegations, given that each of them would have had a duty to report any knowledge of sexual harassment, they appeared genuinely surprised by the allegations. Interestingly, while each of these witnesses expressed being surprised by the allegations, none of them went as far as to say that the sexual harassment and assault allegations were untrue. Nor did they appear to downplay the allegations. To the contrary, each of these witnesses acknowledged the seriousness of the allegations and expressed the belief that even a consensual relationship between Fletcher and Figueroa would be problematic at best, and possibly a breach of Fletcher's fiduciary duty to MTS. This tended to enhance their overall credibility.

Also, since neither Figueroa nor Fletcher likely wanted others to know what was going on between them, it makes sense that they would try to prevent the disclosure of this information. By Figueroa's own account, Fletcher made various efforts to hide his sexual pursuits. For example, she alleged the following:

- When Fletcher began to "solicit" Figueroa to meet with him outside of work, he insisted that she "keep it very discreet."
- When Figueroa met Fletcher at his hotel, he instructed her to meet him in a stairwell to avoid being seen by staff who knew Fletcher.

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- Fletcher contacted Figueroa’s counsel on February 18, 2023 (after Figueroa’s termination) to request that Figueroa keep the matter “strictly between herself and Fletcher and that she remain absolutely silent about her story, not even sharing with MTS.”

If true, these allegations undermine Figueroa’s claim that MTS had knowledge of an inappropriate relationship between Figueroa and Fletcher and terminated her for that reason.

Moreover, not a single person interviewed for this investigation, including Board members who worked closely with Fletcher for many years, reported having any knowledge or suspicion of a relationship between Fletcher and Figueroa. The undersigned interviewed 25 witnesses regarding this allegation, including fourteen MTS Board members and eleven MTS employees. Each of the witnesses interviewed denied having any knowledge or suspicion of a relationship, either consensual or non-consensual, between Fletcher and Figueroa prior to Figueroa’s termination on February 6, 2023. The fact that every witness – including Figueroa’s co-workers who had no apparent motive to downplay Figueroa’s allegations – expressed being similarly surprised by the allegations suggests a level of discreetness on Fletcher and Figueroa’s part, making MTS’s lack of knowledge appear reasonable under the circumstances.

For the foregoing reasons, there is insufficient evidence that MTS officials or employees had reason to know or suspect a relationship between Fletcher and Figueroa prior to Figueroa’s termination on February 6, 2023.

### **2. What steps did any MTS employee take to respond to and/or report sexual harassment of Grecia Figueroa?**

Because there is insufficient evidence to support a finding that MTS employees had knowledge or suspicion of a relationship between Fletcher and Figueroa, it follows that MTS did not, and could not reasonably be expected to respond to and/or report sexual harassment of Figueroa.

## **VII. ISSUE #4: DID MTS OFFICIALS ACT REASONABLY IN THEIR REPORTING OF INFORMATION REGARDING GRECIA FIGUEROA AND NATHAN FLETCHER TO THE MTS BOARD OF DIRECTORS?**

### **A. Complaints from Board Members**

Each of the fourteen MTS Board members who were interviewed for this investigation were asked whether they had concerns about how MTS officials reported information regarding the relationship between Figueroa and Fletcher to the Board.

- **Nine Board members – Elo-Rivera, Moreno, Frank, Dillard, Montgomery Steppe, Hall, Donovan, Bush, and Goble – expressed concerns regarding how MTS officials reported information to the Board.**

Elo-Rivera said he believes that “at a minimum,” Cooney and Landers should have called each Board member after the March 24 meeting with Fletcher and his attorney. At that point, Fletcher had acknowledged having a relationship with Figueroa. Elo-Rivera believes that, even if their relationship was consensual, it was still a breach of Fletcher’s fiduciary duty to MTS and exposed the agency to risk.



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Moreno said she was also concerned about the March 24 meeting and thought it was “bad form” for the agency’s governing Board to not know about this meeting. Moreno believes MTS managers should have called an emergency meeting with the Board within 24 hours of the March 24 meeting. Moreno was also concerned about the allegation that MTS offered \$10,000 to Figueroa as a severance in exchange for a release of all claims against MTS. She said the Board was never told about this, including at the April 6, 2023 closed session meeting.

Hall, Donovan, Frank, and Goble were concerned that the Board was not given a heads-up before the media reported the lawsuit. Frank said she wanted to be more prepared: “To find out from the media about something internally is very concerning. It put me in a position where I look foolish.”

Montgomery Steppe said she believes the February 17, 2023 letters from Figueroa’s attorney should have triggered a notice to the Board. She said:

*I think the Board should have been given a heads up. We did not get that at all. Now we are in a position where any narrative is up for grabs. Just the fact that we as a Board would be in conversations with the public as having known something about this is problematic because we had zero information.*

Dillard said she was concerned with how MTS officials reported information to the Board during the April 6, 2023 closed session meeting. She thought the documentation regarding Figueroa’s performance issues was insufficient and not up to HR standards. In addition, Dillard found it suspicious that it took outside counsel less than ten days to interview multiple witnesses and confirm that no one knew anything. She said, “The whole process was lackluster at best.” Overall, Dillard felt that she could not trust the information that was presented to the Board.

- **Five Board members – Gastil, Gloria, Whitburn, Leyba-Gonzalez, and McCann – said they thought MTS officials acted reasonably.**

Whitburn said he believes information was shared with the Board “in as timely a fashion as could be expected.” He said Cooney and Landers were put in a difficult position because Fletcher had denied his involvement in the allegations and offered a plausible explanation for being named in the claim. He said:

*It’s pretty common for elected officials to be named in their official capacity and that’s what [Fletcher] said was going on. And that would not be an unreasonable explanation; it has a ring of truth to it. If Sharon and Karen relied on that, then I don’t know that they could be expected, based on their knowledge, to go around Fletcher and inform the Board when Fletcher is still the Chair. Some of that would be Fletcher’s responsibility.*

Gastil said he believes MTS leadership “acted in the most responsible way they could at the time.” He does not believe there was any “ill intent or intention to obfuscate.” He said:

*They were trying to deal with it in the most efficient way and with the least damage to the parties involved. In retrospect, we can say they could have told us, but honestly, I don’t know what I would have done.*

Gloria said he believes MTS leadership has a lot of integrity, particularly Cooney. He does not believe leadership was being intentionally deceptive and said he would be very surprised and disappointed if he

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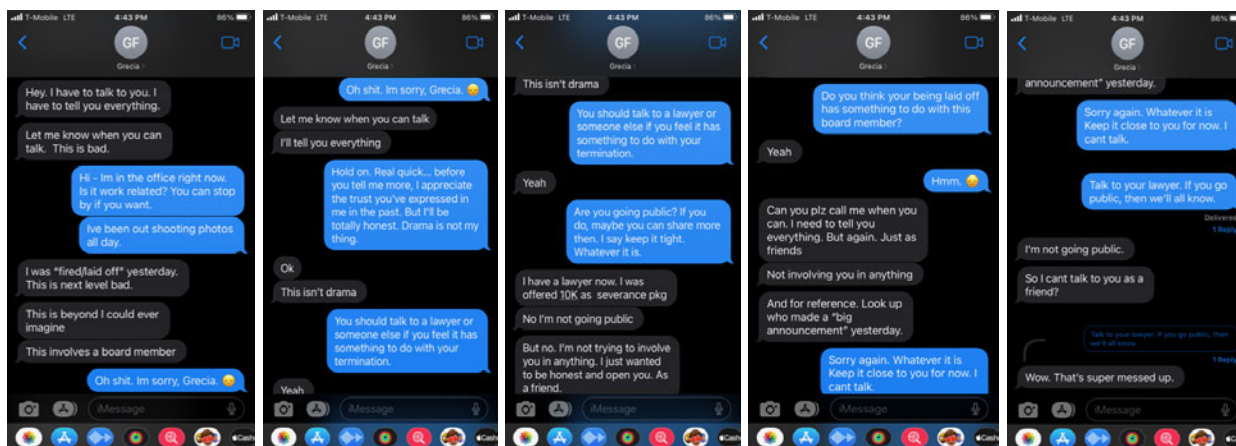
was proven wrong. He noted that since the lawsuit was filed, Cooney and Whitburn have made reasonable efforts to keep the Board updated.

McCann said he did not have concerns with how MTS officials reported information to the Board; however, he noted that he did not have all the facts yet.

### B. Response from MTS Officials

#### 1. Mark Olson

Olson said the first time Fletcher's name came up in reference to Figueroa was on February 7, 2023, the day after Figueroa was terminated. On this date, ██████████ showed Olson some text messages he had received from Figueroa that day. Olson asked ██████████ to send him screenshots of the messages, which ██████████ did. The screenshots depicted the following conversation between Figueroa and ██████████:<sup>32</sup>



Olson said he "put two and two together" and figured out that Figueroa was likely referring to Fletcher when stating, "This involves a board member," and "Look up who made a 'big announcement' yesterday," since Fletcher had recently announced his run for the California Senate. However, even then, it was not clear why Figueroa had mentioned Fletcher. Olson then took the messages to General Counsel Karen Landers' office and discussed the messages with Landers and CEO Cooney. The three of them tried to figure out what the text messages meant. Cooney said, "It could be anything; we can't speculate."

Olson said it was not until the media reported on Figueroa's lawsuit that he understood why Figueroa had indirectly referenced Fletcher in her text messages to ██████████. He said, "It was a complete shock to be honest."

#### 2. Karen Landers

Karen Landers serves as General Counsel for MTS. She has been in this role since January 2011. She reports to CEO Cooney.

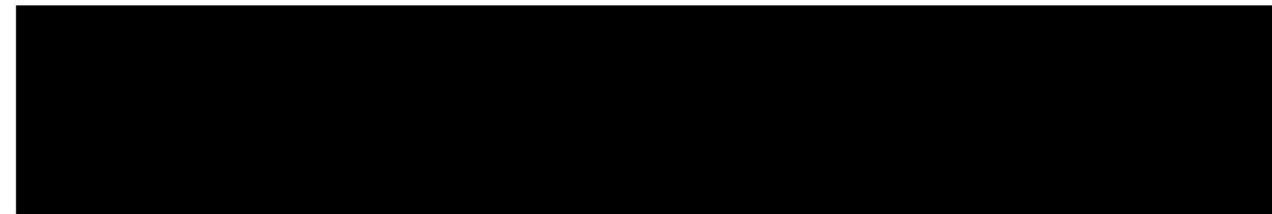
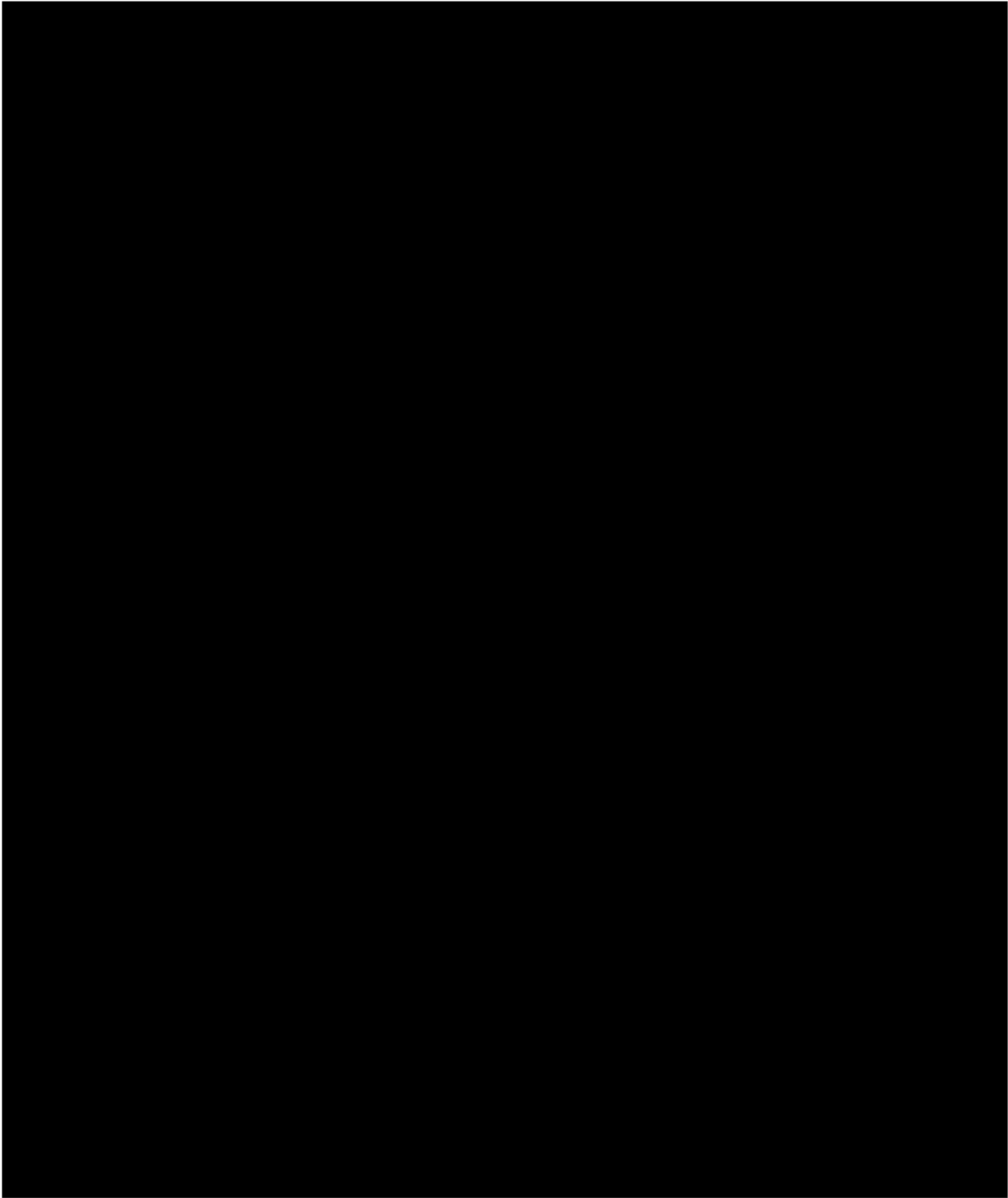
<sup>32</sup> See Exhibit 19.

[REDACTED]

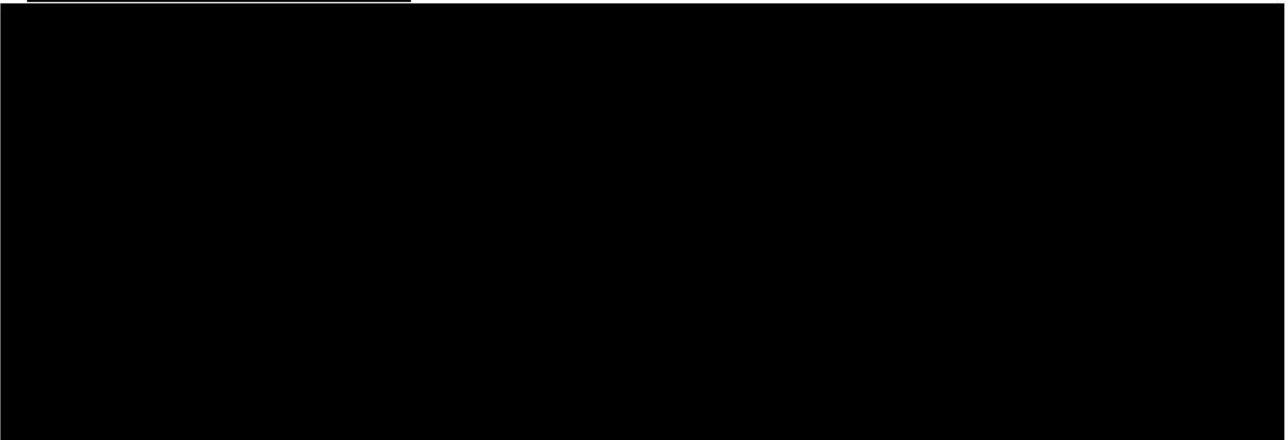
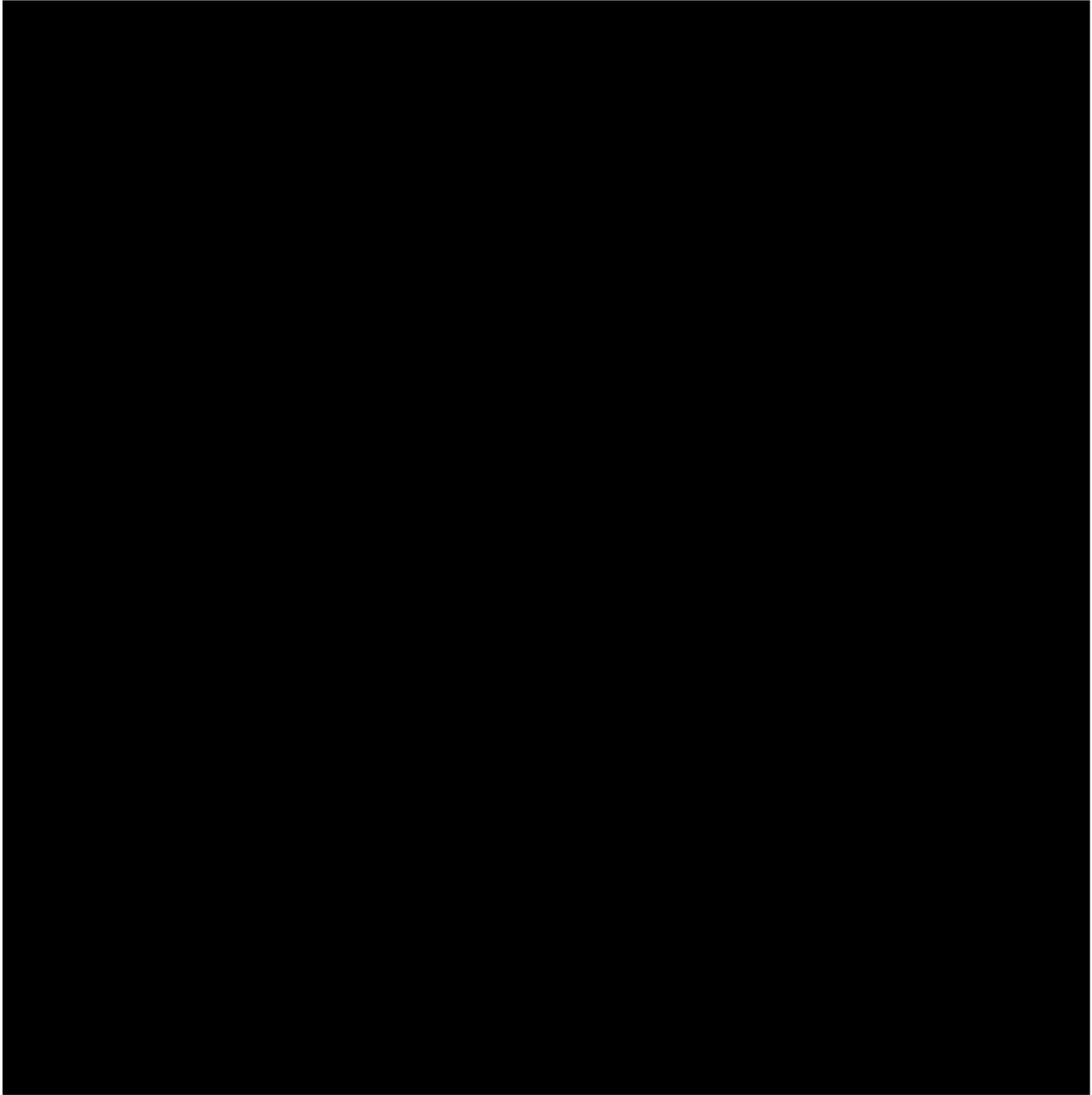
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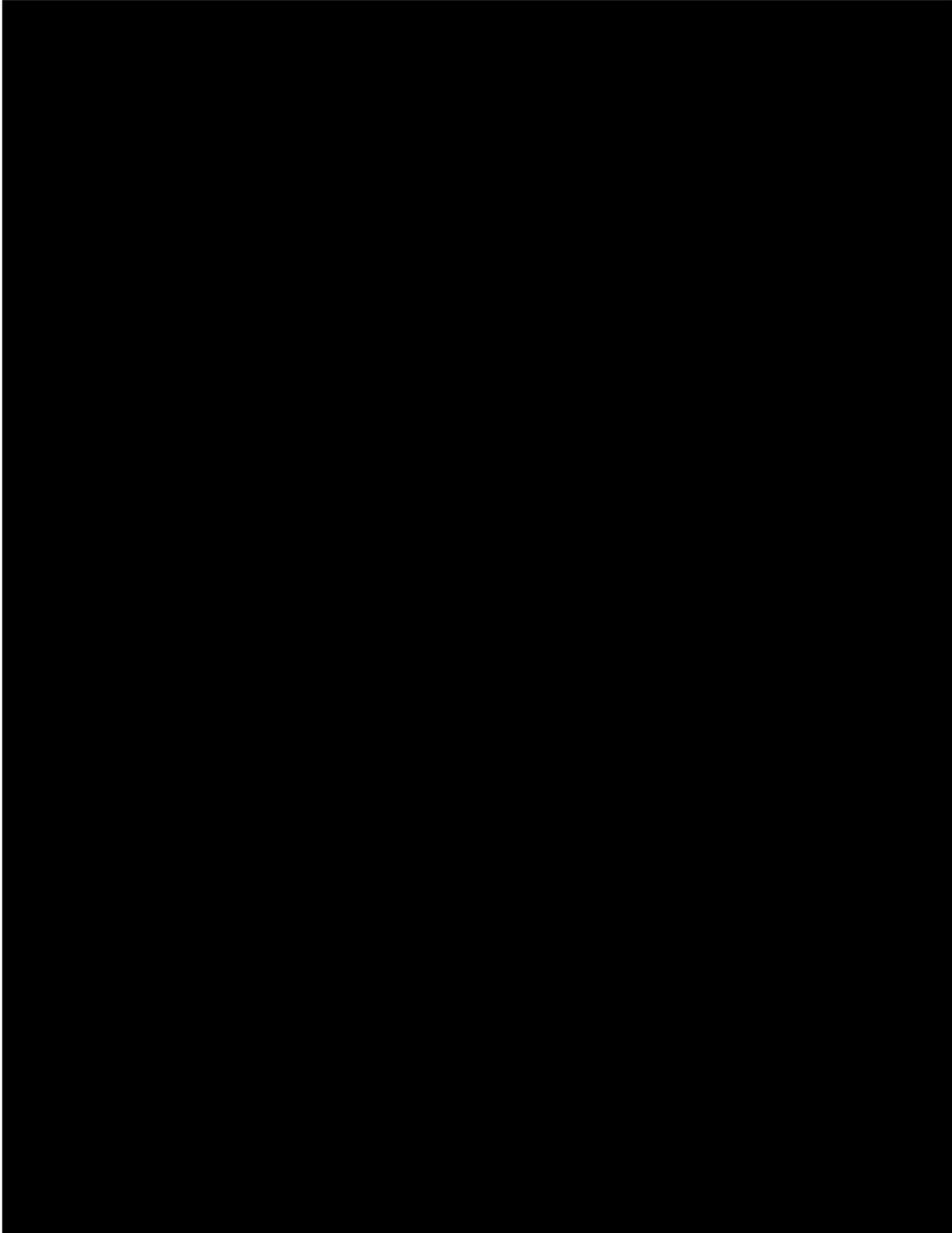


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**3. Sharon Cooney**

**a. Cooney's Timeline of Events**

Cooney said the first time Fletcher was mentioned in reference to Figueroa, was when Olson came to Cooney and Landers on February 7, 2023, to discuss some text messages that employee [REDACTED] had received from Figueroa following her termination.

Cooney's initial reaction to those messages was that Figueroa was upset about being terminated and might be making something up, though Cooney did not know what exactly. Although Fletcher's name was not mentioned in the text messages, Figueroa referred to a Board member who made a "big announcement," and Fletcher had just announced his run for the California Senate. Based on these text messages, Cooney speculated that "it could be anything from [Fletcher] looked at [Figueroa] funny to an actual relationship." Cooney said she had "no clue the extent of it" until the lawsuit was filed.

Cooney said that, on February 17, 2023, Stumbo sent her a text message stating that Figueroa's attorney, Zachary Schumacher, sent a letter of representation to MTS and Fletcher. Cooney said it was not unusual for Fletcher's name to be included on the letter, as people often included the Chair of MTS in order to bring the Board into any settlement negotiations. At this point, Cooney did not know what Figueroa's claims or allegations were, so she sent Fletcher a text message later that evening, stating: "FYI we have a terminated employee, Grecia, contacting you. Our counsel is aware. Sorry to involve you." The next morning, on February 18, Fletcher called Cooney and said he got named in these things all the time. Cooney said the conversation was normal, and nothing stood out as unusual.

Cooney said that, on either March 9 or March 16, she had a brief conversation with Fletcher while they were waiting for a Board meeting to start. During this conversation, Fletcher asked Cooney what was going on with "that case," and Cooney responded, "We don't know." Fletcher then said something along the lines of, "I'm having someone get my name removed. I don't want my name associated with a case like that."

Cooney said that, on March 23, Fletcher reached out via text asking to meet with Cooney and General Counsel Karen Landers the next day. Cooney arranged for the three of them to meet via Zoom the following day. Although Fletcher did not say why he wanted to meet, his request made Cooney nervous, and she suspected it had to do with Figueroa.

Cooney said that on March 24, 2023, at 11:00 a.m., she and Landers met via Zoom with Fletcher and his attorney, Danielle Moore, of Fisher Phillips. During that meeting, Fletcher disclosed he had a consensual relationship with Figueroa outside of his marriage, and that one or two interactions may have occurred at MTS. Fletcher said Figueroa was suing him for sexual assault and sexual harassment, even though "everything was consensual." He said the truth would come out once he was able to retrieve copies of his text messages with Figueroa. Fletcher said he told his wife about the allegations, and that it was "the worst thing he ever had to do." He also shared that he planned to step down as Chair of MTS and seek treatment for personal issues related to Post-Traumatic Stress Disorder ("PTSD") and alcohol abuse.

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Fletcher's lawyer shared that they were trying to reach a personal settlement with Figueroa, and that Figueroa's attorney had asked them to "hold off on making anything public."

### **b. Cooney's Response to Issue No. 4**

Cooney said she was "flabbergasted" by the information Fletcher shared during the March 24 meeting. At that point, however, they still did not know the details as to what Figueroa was alleging, as she did not have a copy of Figueroa's complaint. Cooney and Landers talked after the meeting about what to do next. They assumed Landers would speak with Fletcher's attorney on the following Monday (March 27) to get a better understanding of what Figueroa's complaint would look like. Unfortunately, the news broke faster than expected. On Sunday, March 26, Fletcher publicly announced he was ending his Senate campaign and seeking treatment for PTSD and alcohol abuse. Two days later, on Tuesday, March 28, Figueroa's lawsuit was filed. Cooney said,

*We felt like we had to see the complaint filed and then we could put it out there. This was uncharted territory; we didn't know what to do with the information. Everything moved really fast.*

Cooney said no one was trying to hide information from the Board or protect Fletcher. Up until March 24, they had no knowledge, beyond speculation, of any relationship between Fletcher and Figueroa. Cooney was "flabbergasted" by the information Fletcher shared during the March 24 meeting. After that meeting, Cooney and Landers talked about what to do next. Landers was going to speak with Fletcher's attorney on the following Monday (March 27) to get a better understanding of what Figueroa's complaint would look like. Unfortunately, the news broke faster than expected. Regarding the decision not to bring this information to the Board sooner, Cooney said:

*We felt like we had to see the complaint filed and then we could put it out there. This was uncharted territory; we didn't know what to do with the information. Everything moved really fast... No one writes a playbook on how to handle this. I can be judged in hindsight; but there was definitely no knowledge of anything. Her performance issues were well-documented and Fletcher had no involvement in her termination.*

## **4. Jeff Stumbo**

### **a. Stumbo's Timeline of Events**

Stumbo said that on February 7, 2023, Olson showed him text messages that employee [REDACTED] had received from Figueroa earlier that day. In those messages, Figueroa said she was terminated from MTS and implied that Fletcher was involved. Stumbo knew Fletcher had nothing to do with Figueroa's termination and thought this was "wild speculation."

Stumbo said that on February 17, 2023, he received an email from Schumacher advising that he was representing Figueroa. Stumbo immediately forwarded the email to Cooney, Landers, and [REDACTED] (MTS's outside counsel). The following Tuesday, February 21, Stumbo received Schumacher's preservation of documents letter. While the second letter had also been emailed to Stumbo, Stumbo did not see it until the hard copy arrived in the mail on February 21 because the email had gone to Stumbo's "spam" folder. Stumbo gave copies of the letter to Cooney, Landers, and [REDACTED], which was his normal practice when receiving these types of letters.

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Stumbo said that while Schumacher's letters were also addressed to Fletcher, he did not suspect that Fletcher was involved in a relationship with Figueroa. Stumbo had worked with Schumacher before and knew he was a "sensationalist." Stumbo also knew Figueroa's termination had nothing to do with Fletcher. Therefore, when Stumbo received the February 17 letters, he thought Schumacher was probably using Fletcher's name to leverage a bigger settlement.

Stumbo said that after receiving Schumacher's letters, [REDACTED] immediately contacted Schumacher to ask what this was about. Schumacher told [REDACTED] that he was working with Fletcher's attorney and that MTS did not need to do anything at that time. Stumbo said there was some speculation at that point as to why Fletcher's personal attorney was involved. Fletcher told Cooney that it was normal for him to be named in lawsuits in which he was not involved, and that his attorney was trying to get his name removed. Stumbo thought Fletcher's explanation was reasonable.

Stumbo said the first time he learned that Fletcher had a relationship with Figueroa was on March 24, 2023, when Cooney and Landers met with Fletcher and his attorney. After that meeting, Cooney and Landers told Stumbo that Fletcher acknowledged having a relationship with Figueroa, but said the relationship was consensual and he was being "extorted" by Figueroa, for "five to six million dollars."

### **b. Stumbo's Response to Issue No. 4**

Stumbo said this was a unique and unfortunate situation where they were trying to "read between the lines" of Schumacher's letters, without having any specific allegations to investigate. He said Landers and Cooney were "two of the most open and ethical people" he has worked with and would never try to hide information from the Board or protect Fletcher. He said the "take away" from this situation is that MTS needs to tighten its policies with respect to Board member misconduct. Currently, MTS has a fraternization policy that only extends to MTS employees and not to Board members. Another "take away" is that MTS needs to ensure Board members have received harassment training and keep track of when they received it.

### **C. Witness Evidence from MTS Employees**

1. [REDACTED]

As discussed in the previous section, [REDACTED] [REDACTED] said he knew Figueroa before she joined MTS as they had both been part of a marketing professionals group called SCAMP. [REDACTED] did not socialize with Figueroa and said their relationship was strictly professional. There were some challenges in their working relationship, as Figueroa was "more free form" and did not like structure, whereas [REDACTED] was more detail oriented. In addition, there were three or four occasions where Figueroa accused him of "yelling" at her, when he was not actually yelling.

[REDACTED] said he had an interaction with Figueroa around the beginning of January 2023 that, in hindsight, may have been a hint that something else was going on with her. Figueroa went into [REDACTED]'s office, closed the door, and said she needed to talk. This was around the time [REDACTED] and Figueroa were having some "professional friction," so [REDACTED] assumed she wanted to talk about that. Figueroa sat down, looked up at the ceiling for about ten seconds, and then asked, "Do you know what my secret is?" [REDACTED] had no idea what she was talking about and said, "No, why are you asking me that?" Figueroa then said, "You are very observant, and I want to see if you've picked up anything about this thing I'm hiding?" [REDACTED] then asked Figueroa whether it was work-related, to which Figueroa

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replied, “No, but it could be.” ██████ then asked Figueroa if she wanted to talk about it, and Figueroa responded, “No, I’ll tell you about it in a year. I’ll call you and tell you everything.” ██████ considers himself to be a private person and “very anti-gossip,” so he thought this encounter was strange, especially since he and Figueroa “weren’t really friends.” ██████ thought it seemed like Figueroa was trying to test whether he knew something, which he did not.

██████ said Figueroa did not bring up her “secret” again until February 7, the day after she was terminated, when Figueroa sent ██████ a series of text messages.<sup>42</sup> The text messages were cryptic and seemed to be related to the “secret” Figueroa had brought up in January. ██████’s first reaction when seeing Figueroa’s text messages was to protect himself and he thought, “If it’s a secret, maybe I shouldn’t know about it.” ██████ said he responded to Figueroa’s texts by basically telling her to talk to someone else if she felt it was related to her termination. Figueroa responded, “So I can’t talk to you as a friend?” This “didn’t land” with ██████ because he never considered her to be a friend.

██████ said he stopped responding to Figueroa’s texts and went to Bishop’s office to show her the text messages. At the time, ██████ did not know for certain who Figueroa was referencing when she said, “This involves a board member,” and then said, “Look up who just made a ‘big announcement’ yesterday.” However, he and Bishop speculated she was referring to Nathan Fletcher, since Fletcher had just announced his run for the State Senate. Bishop called Olson into the office and Olson asked ██████ to send him screenshots of the messages, which he did.

██████ said that when he was heading home from work later that day, on February 7, he received another text message from Figueroa, which included a screenshot of a message from Fletcher wishing her a happy new year, “but with misspellings and typos.” ██████ said the screenshot was the exact same one that was later included in Figueroa’s lawsuit. This was the final message Figueroa sent ██████, as he then blocked her and deleted all her messages. He said, “I didn’t know what was going on, and I didn’t want to be a part of it.”

██████ said, “All of this happened on Tuesday. I was nervous and confused and brought in Mark [Olson] and that’s where it ends.” Olson told ██████ that Stumbo might reach out to him with questions, but Stumbo never reached out. ██████ thought, “Good, let’s move on.” About two or three weeks later, ██████ was doing a video shoot with Bishop when she casually asked if Figueroa had ever tried to contact ██████ again. ██████ told Bishop about the last message he had received from Figueroa, which included the New Year’s Eve message from Fletcher. Bishop was “kind of shocked and in disbelief.” They did not have a lot of time to discuss further because they were busy shooting interviews. After that conversation, Figueroa’s text messages were never brought up again until the lawsuit was reported in the media.

██████ said he knew something had happened between Figueroa and Fletcher based on Figueroa’s hints in her text messages, but he did not know what. The first time he learned Figueroa was alleging sexual harassment was when she filed her lawsuit.

Asked whether he ever saw anything unusual between Figueroa and Fletcher, ██████ said they had an “interesting dynamic.” Fletcher seemed “very comfortable around females,” and always had female staffers around him. ██████ noticed Figueroa would ask Fletcher about his dog and there seemed to

<sup>42</sup> As previously discussed, ██████ screenshotted those texts and shared them with Olson and Bishop. (See Exhibit 19.)



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be “a certain closeness” between them; they seemed “like buddies.” At the time, ██████ thought they just had a positive and friendly rapport with one another. He said, “To me that was a strength; I thought it was a good thing.”

### **2. Stacie Bishop**

Bishop said the first time Fletcher’s name came up in relation to Figueroa was on February 7, 2023, the day after Figueroa’s termination. On this date, ██████ came to Bishop’s office and shut the door behind him. He then said, “Grecia just sent me a text that said she’s fired, and she thinks it’s because she has dirt on a Board member.” This was before the department had been notified of Figueroa’s termination, so Bishop confirmed to ██████ that Figueroa had been let go but that she had no idea what Figueroa was referring to in her text message.

Bishop said ██████ seemed anxious and kept saying, “She keeps texting me and won’t stop.” Then ██████ went on to describe an incident towards the end of 2022, where Figueroa went to ██████’s office and asked him, “Do you know my secret?” ██████ said he told Figueroa, “No, and I don’t want to know.” ██████ kept telling Bishop that he and Figueroa “weren’t really friends,” so he did not understand why she was trying to have these conversations with him.

Bishop said she told ██████ that they needed to tell HR about the text messages. She tried calling Stumbo three times, but he did not pick up. Since Bishop could not reach Stumbo, she contacted Olson and told him about the text messages. Olson then asked ██████ to send him screenshots of the messages. ██████ sent Olson the messages and Bishop believes Olson then sent them to HR and Legal. Bishop said she was not a part of that process and never saw the messages herself, though ██████ had read them to her while he was in her office.

Bishop said that later that evening, she went on Twitter to see who had made an announcement and saw that Fletcher had. She said, “I put together the pieces that she thinks she was fired because she has dirt on Nathan.” Bishop also thought there might have been an “inappropriate interaction” between Fletcher and Figueroa, based on Figueroa’s conversation with ██████ about having a secret.

Bishop said that the next day, on February 8, she asked ██████ how he was doing. ██████ then shared that Figueroa had texted him a screenshot of a message from Fletcher, saying words to the effect of, “Happy New Year; may all of our dreams come true.” Bishop said that was when she assumed that there had been “some sort of non-professional interaction” between Fletcher and Figueroa. Bishop said ██████ never showed her the screenshot message from Fletcher, and she never told anyone about it. She said, “I didn’t make the connection to follow up or report it.” Bishop had forgotten about the screenshot until it came up during her interview with defense counsel. (See Exhibit 26.)

### **D. Documentary Evidence**

#### **1. MTS Policy No. 16 Re: Legal Action by or Against the Board**

Policy No. 16 states, in part:

The Chief Executive Officer shall have the authority to settle claims or lawsuits for \$50,000 per claim or lawsuit or less without Board approval. The Chief Executive Officer shall report to the Board concerning all

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settlements made for \$50,000 or less. Prior Board approval shall be required to settle any claim or lawsuit for more than \$50,000.

### **2. MTS Policy No. 51 Re: Claims Against MTS**

Policy No. 51 states, in part:

#### 51.6 Response to Claims

General Counsel for MTS (or his or her designee) shall allow or reject claims within the limitations set forth in Section 10. General Counsel's allowance or rejection of the claim shall have the same effect as allowance or rejection by the Board of Directors of the applicable entity against whom the claim is made.

#### 51.9 Agreements Subject to Claims Procedures

In accordance with Government Code Section 930.2, the Board may include claims-presentation requirements in any written agreement to which the Board, or its governing body, or any board, or any employee thereof in an official capacity, is a party.

The agreement must expressly provide that its claims presentation requirements govern in lieu of the claims presentation requirements set forth in Government Code Section 900, et seq. and this regulation.

#### 51.10 Action by General Counsel and Chief Executive Officer on Claims

51.10.1 Unless otherwise provided by this regulation, all claims required to be presented to the Board under the provisions of Government Code Section 900, et seq., or this regulation, shall be presented to General Counsel. For purposes of Government Code Section 915 only, General Counsel is designated as a Clerk of the Board.

51.10.2 Chief Executive Officer (or his or her designee) is authorized to allow, deny, compromise, or settle any claim or action that is filed against the Board, its officers, or employees, provided:

51.10.2.1 The amount to be paid pursuant to such allowance, compromise, or settlement does not exceed fifty thousand dollars (\$50,000);

51.10.2.2 The claim or action is not subject to the terms of an insurance policy wherein the insurer is granted the authority to allow, deny, compromise, or settle claims or actions within the scope of such policy; and

51.10.2.3 If the matter is in litigation and General Counsel does not represent the Board of Directors of the agency being sued, the counsel retained by the Board of Directors of that agency concurs with the allowance, compromise, or settlement.

51.10.3 If the amount to be paid exceeds fifty thousand dollars (\$50,000), the allowance, compromise, or settlement must be approved by the Board of Directors of the applicable agency. In settlements of workers' compensation claims, the fifty thousand dollar (\$50,000) limit shall apply to amounts designated for discretionary payments, and shall not include non-discretionary payments for temporary or permanent disability benefits that are established by the workers' compensation adjudicatory system.

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### 3. Separation Agreements Process and Information (Exhibit 15)

MTS provided the undersigned with a document related to its process for offering separation agreements (Exhibit 15). That document, entitled “Severance Pay – Separation Agreement Process, states, in part:

*When deemed appropriate by Staff, MTS offers severance pay and/or continuation of benefits within Separation Agreements to limit legal liability and to provide a measure of financial assistance to employees who are being laid off or terminated. MTS’s external employment counsel... has drafted a boilerplate Agreement that is modified by Human Resources Staff to fit each employee’s unique circumstances. The Agreement requires that the employee relinquish the right to sue MTS in exchange for severance pay and/or continuation of benefits. The amount of severance pay is typically based on the employee’s length of service, the circumstances of the separation (e.g., layoff, termination), perceived liability associated with the separation, and the employee’s salary at the time of separation.*

*Not all employees are offered Separation Agreements. The most common circumstance where a Separation Agreement would be offered is when a management (non-union) employee is being terminated based on performance shortcomings that were not malicious or purposeful.*

MTS also provided the undersigned with a spreadsheet listing severance payments made to terminated employees between January 1, 2020 and April 4, 2023. (Exhibit 15.) [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

### 4. Draft Separation Agreement for Figueroa (Exhibit 16)

MTS provided the undersigned with a copy of the draft Separation Agreement that was offered to Figueroa, which Figueroa declined. [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

<sup>43</sup> The only difference being that Figueroa’s draft specifically references the San Diego Trolley, Inc. (“SDTI”) in this clause.

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### 5. February 17, 2023 Letters from Zach Schumacher (Exhibits 20-21)

On February 17, 2023, Schumacher sent emails to MTS and Fletcher.

One email included a “Letter of Representation” and stated:

*Dear Mr. Fletcher and Mr. Stumbo,*

*As stated in my earlier letter of today’s date, I have been retained by Grecia Figueroa to represent her legal interests with regard to unlawful employment practices at MTS. As such, all communications from you or MTS should be directed to this office. Please do not contact Ms. Figueroa directly. If you have any questions, I encourage you to share this letter with your attorney, who will no-doubt recommend that you heed my advice.*

The other email included a “Demand for Employment Records and Evidence Preservation,” and stated, in part:

*Please be advised, this office has been retained by YOUR former employee, Grecia Figueroa (“MS. FIGUEROA”), to represent her legal interests with regard to what we believe are unlawful employment practices committed by San Diego Metropolitan Trans System (“MTS”); Chair of the MTS Board, Nathan Fletcher; and, potentially, other related entities or individuals (hereinafter collectively, “EMPLOYER”, “YOU”, or “YOUR”).*

The letter goes on to demand production of Figueroa’s employment records and the preservation of evidence. The letter does not provide any facts about the alleged misconduct, but includes general categories of “potential legal claims:”

*MS. FIGUEROA’s potential legal claims, including allegations that YOU: (1) discriminated against MS. FIGUEROA; (2) sexually harassed MS. FIGUEROA; (3) sexually assaulted MS. FIGUEROA; and (4) retaliated against MS. FIGUEROA because she complained or otherwise protested against sexual harassment that was perpetrated against her;...*

### 6. Fletcher’s Public Statement on March 29, 2023 (Exhibit 23)

On March 29, 2023, Fletcher issued the following public statement regarding Figueroa’s lawsuit:

*[Rest of page left intentionally blank.]*

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FOR IMMEDIATE RELEASE

## Nathan Fletcher & Attorney Release Statements About False Allegations

**SAN DIEGO (MARCH 29, 2023)** – Nathan Fletcher and his attorney Danielle Hultenius Moore released statements in response to the false allegations being made in a lawsuit filed with the San Diego Superior Court.

Danielle Hultenius Moore, the attorney for Nathan Fletcher says:

“My client and his wife have been facing an attempt by a former colleague to obtain millions of dollars. We have asked the authorities to investigate these efforts and are pursuing our own legal response. The allegations are false and are designed to drive headlines and not tell the truth. It is also notable that they only include one side of the communications. The simple truth is that Ms. Figueroa pursued my client, their interactions were consensual and Mr. Fletcher does not and never had authority over her employment. We will aggressively fight this issue in court and the full record will show the truth.”

Nathan Fletcher, in response to the lawsuit, says:

“Last year, I made a terrible mistake engaging in consensual interactions with someone outside my marriage. I made clear it could not continue or advance and desperately hoped I could leave this mistake in my past. However, this individual and an attorney demanded millions of dollars from me and my family with the threat of not only embarrassment but a willingness to lie about the circumstances and nature of the interactions.

I have not done the things they are alleging, but I did violate the basic trust and loyalty of my marriage and set a terrible example for our children. Lorena and I have already started to work through this, and that work must continue after I complete treatment for trauma and alcohol abuse. My wife has done nothing but love me completely and without reservation and the blame for allowing myself to be in this situation rests entirely on my shoulders. I will spend my life working to repair the damage done to my family.”

*Nathan Fletcher is outside the state of California seeking treatment for post traumatic stress, trauma and alcohol abuse.*

## 7. March 30, 2023 Confidential Memo to MTS Board (Exhibit 22)

[REDACTED]

[REDACTED]

[REDACTED]

## 8. MTS’s Public Statement on March 30, 2023 (Exhibit 24)

In response to media inquiries, Landers issued the following public statement regarding Figueroa’s lawsuit:

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### Lawsuit Allegations

*The termination of Grecia Figueroa was solely related to ongoing performance concerns and followed MTS's normal practice of documenting such concerns and attempting to work with the employee towards improvement over a reasonable period of time. None of the decision makers involved in this personnel decision were aware of the allegations about Nathan Fletcher until after the decision to terminate Ms. Figueroa's employment was communicated to her. Neither Mr. Fletcher nor any other MTS Board Member was aware of or involved in the decision to terminate Ms. Figueroa. The filing of Ms. Figueroa's lawsuit on March 28, 2023 was the first time that MTS executive management was provided with the specific details of Ms. Figueroa's allegations.*

*As this case is a pending lawsuit, MTS does not intend to make additional statements regarding the lawsuit and details surrounding it.*

### MTS Investigation and Legal Representation

*MTS has assigned this lawsuit to the law firm of Paul Plevin Quarles, which handles labor & employment matters for MTS. There is no set budget/cost estimate for this representation. MTS's existing legal services contract sets hourly rates that may be charged. Since this matter proceeded directly to litigation, the investigation will take place as part of MTS's response to that lawsuit. In every case, MTS must first conduct an investigation to understand the facts and the legal standards that apply. This also helps MTS determine whether liability is disputed, or if the case primarily relates to the fair amount of damages that should be paid.*

## **E. Findings and Discussion**

- **Did MTS Officials act reasonably in their reporting of information regarding Grecia Figueroa and Nathan Fletcher to the MTS Board of Directors?**

It is undisputed that MTS officials had knowledge of a potential relationship between Fletcher and Figueroa, but they did not report that information to the Board until after Figueroa's lawsuit was filed on March 28, 2023, and the media had already reported on it. At issue here, is whether MTS officials acted reasonably in not reporting information to the Board at an earlier date.

This finding will address: 1) what information these individuals had available to them and when; and 2) whether they acted reasonably in reporting that information to the Board:

### **1. What information did MTS Officials have and when?**

Based on the interviews conducted by the undersigned and a review of relevant documents, a preponderance of the evidence gathered in this investigation supports the following timeline of events regarding what MTS officials knew and when:

- On **February 7, 2023**, Figueroa informed Stumbo that she retained a lawyer, but she did not provide her lawyer's name or any information as to why she had a lawyer. On the same date, Figueroa sent text messages to her co-worker, [REDACTED]. (Exhibit 19.) Figueroa's text messages state that she was fired and that she believes her firing "involves a board member." In a subsequent text message, Figueroa wrote: "And for reference. Look up who made a 'big announcement' yesterday."

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On the same date (February 7), ██████ shared Figueroa's text messages with Olson, who then shared them with Landers, Cooney, and Stumbo. Thus, it is fair to assume that by February 7, it was known that Figueroa was telling people there was a connection between her termination and Fletcher.

- From **February 7-9, 2023**, Stumbo left multiple messages for Figueroa to follow-up regarding MTS's proposed settlement agreement, but she did not return his calls. On February 9, Stumbo emailed Figueroa asking her to have her attorney contact MTS's outside counsel ██████. (See Exhibit 17.)
- On **February 17, 2023**, after not hearing from Figueroa or her attorney, Stumbo sent Figueroa a formal termination letter. (Exhibit 18.)

At 4:43 p.m., Stumbo received a letter from Figueroa's attorney, Zachary Schumacher. (Exhibit 20.) The letter was directed to MTS and Fletcher, and advised that Schumacher had been retained by Figueroa to "represent her legal interests with regard to unlawful employment practices at MTS." Stumbo forwarded this letter to Cooney, Landers, and outside counsel ██████.

At 11:08 p.m., Cooney sent the following text message to Fletcher: "Fyi we have a terminated employee Grecia contacting you. Our counsel is aware. Sorry to involve you." Fletcher did not respond to Cooney's text message, but he called Cooney the next day. (See below).

- On **February 18, 2023**, Cooney spoke with Fletcher by phone and told him that an employee, Figueroa, had retained an attorney after being fired for cause. Fletcher told Cooney it was common for him to be named in claims/lawsuits as the MTS Chair.
- Sometime between **February 18 and February 21, 2023**, outside counsel ██████ called Figueroa's attorney, Schumacher, to ask what the case was about. Schumacher told ██████ that he was attempting to settle the matter with Fletcher's attorneys and that MTS should "hold tight for now." Schumacher did not provide any details regarding the allegations or why Fletcher was involved.
- On **February 21, 2023**, Stumbo received a mailed copy of a second letter from Schumacher.<sup>44</sup> (Exhibit 21.) The letter states that Schumacher was retained to represent Figueroa with respect to "unlawful employment practices committed by San Diego Metropolitan Transit System ("MTS"); Chair of the MTS Board, Nathan Fletcher; and, potentially, other related entities or individuals." The letter does not provide any facts about the alleged misconduct, but includes general categories of "potential legal claims," including sexual harassment, sexual assault, and retaliation.

Stumbo shared the letter with Cooney, Landers, and ██████.

- On either **March 9 or March 16, 2023**, Cooney and Fletcher had a brief conversation while waiting for a Board meeting to start. During this conversation, Fletcher asked Cooney what was going on with "that case," and Cooney responded, "We don't know." Fletcher then said

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<sup>44</sup> This letter was emailed to Stumbo on February 17, but Stumbo said he did not see it until February 21 as the email had gone to his "spam" folder. (See Exhibit 21.)

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something along the lines of, “I’m having someone get my name removed. I don’t want my name associated with a case like that.”

- On **March 17, 2023**, Schumacher called [REDACTED] to ask for a status update. [REDACTED] told Schumacher that they were “sitting tight” as they did not have any information to act upon. Schumacher told [REDACTED] that Fletcher was retaining a new attorney, but he did not disclose the name of the new attorney or provide any further information regarding the allegations or Fletcher’s involvement in the allegations. (See Exhibit 25.)
- On **March 23, 2023**, Fletcher reached out to Cooney via text asking to meet with her and Landers the next day. Fletcher did not say why he wanted to meet. Cooney arranged for the three of them to meet via Zoom the following day.
- On **March 24, 2023** (a Friday), at 11:00 a.m., Cooney and Landers met via Zoom with Fletcher and his attorney, Danielle Moore. During this meeting, Fletcher said he had a consensual affair with Figueroa. He said that while the affair was inappropriate because he is married, Figueroa was now claiming it was sexual harassment and sexual assault. He said the truth would come out once he was able to retrieve copies of his text messages with Figueroa. Fletcher’s lawyer said they were trying to negotiate a settlement with Figueroa’s attorney. Landers and Cooney advised Fletcher that MTS had to conduct an investigation and the Board had to approve any settlement over fifty-thousand dollars. Fletcher and Moore said they understood. Fletcher said he was going to seek treatment for PTSD and alcoholism and would step down as Chair of MTS.

Note that at this point, Landers and Cooney first heard about Figueroa’s allegations about Fletcher. However, they had not yet seen Figueroa’s written complaint, or heard about the allegations from her.

- On **March 26, 2023** (a Sunday), Fletcher publicly announced he was ending his Senate campaign and seeking treatment for PTSD and alcohol abuse.
- On **March 27, 2023** (a Monday), Landers spoke by phone with Fletcher’s attorney, Moore, and Moore verbally shared some of the allegations in the draft complaint.
- On **March 28, 2023**, at 5:41 p.m., Figueroa electronically filed her lawsuit against MTS and Fletcher. MTS learned about it via a court filing service that evening. [REDACTED] downloaded the complaint and sent it to MTS. This was the first time MTS was provided with a written copy of Figueroa’s complaint and the first time MTS knew the details of the allegations from Figueroa’s perspective.
- On **March 29, 2023**, Fletcher issued a public statement acknowledging “consensual” interactions with Figueroa, but denying her claims of sexual harassment and assault. (See Exhibit 23.)
- On **March 30, 2023**, Landers sent the MTS Board a confidential memo regarding Figueroa’s lawsuit. (Exhibit 22.) [REDACTED]

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Also on this date, Landers issued a public statement in response to media inquiries. The statement said Figueroa's termination was related to ongoing performance concerns and that the decision-makers were unaware of the allegations regarding Fletcher until after the decision to terminate Figueroa was communicated to her. (Exhibit 24.)

### **2. Did MTS officials act reasonably in their reporting of information to the Board?**

A preponderance of the evidence supports a finding that MTS officials acted reasonably in their reporting of information to the MTS Board of Directors.

Of the fourteen MTS Board members who were interviewed for this investigation, nine Board members questioned why MTS officials did not report information to the Board sooner. While one Board member thought MTS officials had a duty to report information to the Board as early as February 21, 2023 (when MTS received Schumacher's second letter demanding preservation of evidence), most of the Board members in this group viewed the meeting with Fletcher on March 24 as the key event that triggered a duty to notify the Board.

Therefore, in determining whether MTS officials acted reasonably, it must first be determined what information they had available to them as of these two dates – February 21 and March 24.

The timeline above shows that, as of February 21, 2023, MTS officials (Cooney, Landers, Stumbo, and Olson) had knowledge of the following:

- That Figueroa had sent text messages to her co-worker, [REDACTED], the day after she was fired implying that her firing had to do with a Board member who made a "big announcement yesterday;"
- That Figueroa had retained attorney Zach Schumacher in connection with her potential claims against MTS and Fletcher; and
- That Figueroa's potential claims included discrimination, sexual harassment, sexual assault, and retaliation.

Landers and Cooney acknowledged that Figueroa's text messages to [REDACTED] seemed to imply that Figueroa thought Fletcher was involved in her termination. However, as discussed in the previous section, the witnesses involved in Figueroa's termination credibly denied that Fletcher had any involvement in Figueroa's termination. Also, there was significant evidence that Figueroa had performance issues. Since the individuals who saw these messages had reason to believe that Figueroa's termination was unrelated to Fletcher, it is easy to see why they speculated that Figueroa "might be making something up."

While the letter of representation and demand for preservation of documents provided another clue about Figueroa's potential claims, it is important to note that as of February 21, 2023, Figueroa had not yet made a formal claim or complaint against MTS and Fletcher. The letters from Figueroa's attorney referred to potential claims of sexual harassment and sexual assault, but they were drafted in a way that made it difficult to determine whether Fletcher was directly involved in those claims.

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Moreover, Fletcher denied being involved and said he was named in complaints “all the time.” Given Fletcher’s role as Chair of the Board, it made sense that he might be named due to his official capacity rather than his personal behavior. As Board member Whitburn noted:

*It’s pretty common for elected officials to be named in their official capacity and that’s what [Fletcher] said was going on. And that would not be an unreasonable explanation; it has a ring of truth to it. If Sharon and Karen relied on that, then I don’t know that they could be expected, based on their knowledge, to go around Fletcher and inform the Board when Fletcher is still the Chair.*

Under these circumstances, it was reasonable for MTS officials to try to gather more information about the potential claims before bringing the matter to the Board, which is what they did by having ██████ contact Figueroa’s attorney. However, Schumacher did not provide any details except that he was speaking with Fletcher’s attorney. All these factors support a finding that prior to March 24, 2023 there was little basis to notify the Board about Figueroa’s complaint.

The question then, is whether MTS officials acted reasonably in not immediately reporting the information learned during the meeting with Fletcher and his attorney on March 24, 2023, at which time Fletcher shared the following additional information:

- That Fletcher had an inappropriate relationship with Figueroa. According to Fletcher, his relationship with Figueroa was consensual, though Figueroa was now claiming it was sexual harassment and sexual assault;
- That Fletcher was trying to negotiate a settlement with Figueroa; and
- That Fletcher was going to seek treatment for PTSD and alcoholism and planned to step down as Chair of MTS.

Landers and Cooney acknowledged that the information they learned on March 24 was the closest they came to having something to report to the Board. Although they had yet to see Figueroa’s complaint or hear about the allegations from her, they knew at that point that Fletcher had a relationship with Figueroa and that she was claiming it was sexual harassment and sexual assault. It was foreseeable that a potential lawsuit that involved Fletcher, a well-known and prominent politician, would likely attract significant community and media interest and attention; and in fact, it did. Therefore, it is understandable why Board members wanted to have knowledge of this information before responding to the media storm that ensued.

In hindsight, it is easy to see missed opportunities to bring this matter to the Board before the media reported on it. However, since the decision-makers did not have the benefit of hindsight, it would be unfair to consider information learned after the fact. Thus, in considering whether MTS officials acted reasonably, the undersigned considered only the information they had available at the time.

First, there was no policy or procedure in place for reporting this type of information to the Board. Landers said the only policy that triggers a duty to notify the Board of a claim or lawsuit is MTS Policy No. 16-2, which requires the Board to approve settlements of claims or lawsuits that are greater than \$50,000. Not only was there no settlement to report, but there was not even a claim or lawsuit to report at that point.



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Second, by all witness accounts, Figueroa's lawsuit was the first to involve allegations against a MTS Board member. As Cooney pointed out, there was no "playbook" on how to handle the situation. Instead, MTS officials were left to rely on their best judgment in determining how to proceed.

Finally, Landers provided a plausible explanation as to why they did not immediately report this information to the Board, stating:

*While we prefer [Board members] not have relationships with employees, that, in and of itself, is not illegal. So if it was purely consensual and voluntary, that puts us in a bad position because I have no policy that tells them they can't do that. Am I just gossiping at that point?*

At the end of the day, MTS officials found themselves in a difficult and unenviable situation. Fletcher acknowledged having a relationship with Figueroa, but said the relationship was consensual. While they knew from Fletcher that Figueroa was claiming otherwise, Figueroa's attorney refused to provide MTS officials with any details about the allegations. Thus, they only had Fletcher's side of the story, which was that he had an inappropriate but consensual affair with Figueroa. That relationship was obviously problematic, but it did not constitute a violation of existing MTS policy.

Nevertheless, Landers said that despite the absence of a policy that would trigger notice to the Board, she and Cooney planned to immediately report Figueroa's lawsuit or potential lawsuit once they knew Figueroa's specific allegations and claims. Landers said she expected Figueroa's attorney to send MTS a government claim in the coming days, at which point she would have something beyond mere speculation to bring to the Board before the lawsuit went public. A government claim would likely have been kept private for at least enough time for Landers to notify the Board. However, no government claim was filed because Figueroa bypassed the tort claim process and filed the lawsuit on March 28, only four days after MTS officials learned about Fletcher's relationship with Figueroa.

The question then, is whether it was reasonable for MTS officials to wait for Figueroa to file a government claim before reporting the information to the Board. As an attorney for MTS, Landers was aware that employees claiming wrongful termination against a public entity are required to present a government claim before filing a lawsuit.<sup>45</sup> Unlike a lawsuit, government claims are not automatically available to the public. Instead, such claims "shall be presented to General Counsel." (See MTS Policy No. 50, subsection 51.10.1). Thus, it was reasonable for Landers to expect to receive Figueroa's claim before the lawsuit was filed and made public, and it is likely that many, if not most public agency attorneys would have had a similar expectation. Of course, it was possible that Figueroa would bypass the government claim process, which is what happened. Regardless, Landers had a good faith and reasonable belief that Figueroa's government claim was forthcoming, and she acted in a reasonable manner when she decided to await receipt of that claim prior to informing the Board.

For the foregoing reasons, a preponderance of the evidence supports a finding that MTS officials acted reasonably in their reporting of information to the MTS Board of Directors.

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<sup>45</sup> MTS Policies and Procedure, Policy No. 50, states, in part: "No suit for money or damages may be brought against the Board on a cause of action for which this regulation requires a claim to be presented until a written claim has been presented in conformity with the provisions of this regulation." While there are exceptions to this requirement for statutory claims brought under the FEHA, common law claims such as wrongful termination, require compliance with the government claim process. (See California Government Code, section 911.)

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### VIII. ISSUE #5: DID NATHAN FLETCHER'S POSITION(S) OR RELATIONSHIPS WITH MTS OFFICIALS AND AGENTS IMPACT: A) THE REPORTING OF THE RELATIONSHIP; B) MTS'S TREATMENT OF MS. FIGUEROA; C) COMMUNICATION OF FACTS TO THE FULL BOARD OF DIRECTORS; OR D) ANY OTHER ACTIONS TAKEN BY MTS OFFICIALS OR AGENTS?

#### A. Complaints from Board Members

Each of the MTS Board members were also asked whether they had any knowledge or opinion as to whether Fletcher's positions or relationships with MTS officials impacted any actions taken by MTS, including how they reported information to the Board.

None of the Board members said they had any knowledge in this regard; however, several Board members expressed concern that Fletcher's position of power may have influenced MTS Officials' handling of the matter.

- Hall said, "Nathan Fletcher is a powerful person and so is his wife. That could have affected things."
- Frank said, "Nathan Fletcher is well-known and high up; so maybe there was pressure from him about how things went out. It's hard to know."
- Bush said he had "no knowledge, evidence, or proof," but that he did believe Fletcher's position as Chair could have impacted things. He said: "At the least, I think Sharon and staff were thinking that Nathan Fletcher was going to fix this. At worst it was a cover up. That's what I want to uncover."
- Montgomery Steppe said, "I want to know what the conversations were."

#### B. Response from MTS Officials

Cooney, Landers, Stumbo, and Olson each denied that Fletcher's positions or relationships with MTS officials impacted any actions taken by MTS, including how information was reported to the Board.

#### C. Findings and Discussion

- **Did Nathan Fletcher's position(s) or relationships with MTS officials and agents impact:**
  - a. **The reporting of the relationship,**
  - b. **MTS's treatment of Ms. Figueroa,**
  - c. **Communication of facts to the full Board of Directors,**
  - d. **Any other actions taken by MTS officials and agents?**

A preponderance of the evidence does not support a finding that Fletcher's positions on the MTS Board and/or County Board of Supervisors or his relationships with MTS officials or agents impacted the reporting of information to the Board, MTS's treatment of Figueroa, or any other actions taken by MTS.

Several Board members appeared to have genuine concerns regarding MTS officials' handling of Figueroa's complaint. The fact that most Board members learned about a high-profile lawsuit involving its Chair from the media, coupled with the belief that MTS officials knew about the complaint earlier,

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understandably led some to question whether Fletcher’s political power and influence had impacted MTS officials’ better judgment.

However, while Board members’ concerns in this regard appeared genuine and were understandable, each of them acknowledged that they did not have any direct knowledge or evidence that MTS officials acted with nefarious intent.

Cooney, Landers, Stumbo, and Olson denied this allegation, and said no one was trying to protect Fletcher or hide information from the Board. Indeed, none of the witnesses reported that Fletcher attempted to exert any pressure on MTS officials to hide information from the Board or otherwise influence the reporting of information in a manner favorable to Fletcher.

As previously discussed, it was found that MTS officials acted reasonably considering the information they had available to them at the time. Figueroa’s lawsuit was the first to involve allegations against a MTS Board member. Since there was no “playbook” on how to handle the situation, MTS officials were left to rely on their best judgment in determining how to proceed.

For the foregoing reasons, there is insufficient evidence to suggest that anyone was trying to protect Fletcher or otherwise acted in bad faith.

### **IX. ISSUE #6: WHAT POLICIES AND PROCEDURES DID MTS HAVE IN PLACE TO PREVENT, REPORT AND ADDRESS SEXUAL HARASSMENT?**

#### **A. Witness Information**

##### **1. Karen Landers**

Landers said MTS had policies and trainings in place to prevent, report, and address sexual harassment. The relevant policies are contained in the MTS Management Handbook. (Exhibit 28.) New employees (including management and non-management employees) receive a copy of the handbook and are asked to sign an acknowledgment of receipt.<sup>46</sup> The primary policy regarding sexual harassment is referred to as the “Harassment, Discrimination and Retaliation Prevention Policy,” which is contained in Section 2.3.3 of the MTS Management Handbook.<sup>47</sup> MTS prepares statements regarding its compliance with Equal Employment Opportunity guidelines on an annual basis.<sup>48</sup>

Landers said MTS also has a “Fraternization” policy, contained in Section 2.12 of the handbook. The Fraternalization policy states that employees “are strongly discouraged from fraternizing or becoming romantically involved with other employees.” The policy further states that if a supervisor engages in a romantic relationship with a subordinate, the supervisor must disclose the relationship to Human Resources.<sup>49</sup>

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<sup>46</sup> MTS provided the undersigned with documentation showing that Figueroa electronically signed the acknowledgement on March 4, 2022. (See Exhibit 36.)

<sup>47</sup> This policy is set forth on pages 7-11 of the handbook, and includes definitions and examples of harassment, mandatory reporting procedures, and training information. (Exhibit 28.)

<sup>48</sup> MTS’s EEO Annual Policy Statements, from 2018 to 2021, are attached to this report, at Exhibit 38.

<sup>49</sup> The fraternization policy is set forth on page 19 of the handbook. (See Exhibit 28.)

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Landers said that all new employees (including management and non-management employees) receive a copy of the handbook and are asked to sign an acknowledgment of receipt. In addition to receiving a copy of this policy, employees receive a mandatory sexual harassment training within six months of their date of hire, and every two years thereafter.<sup>50</sup>

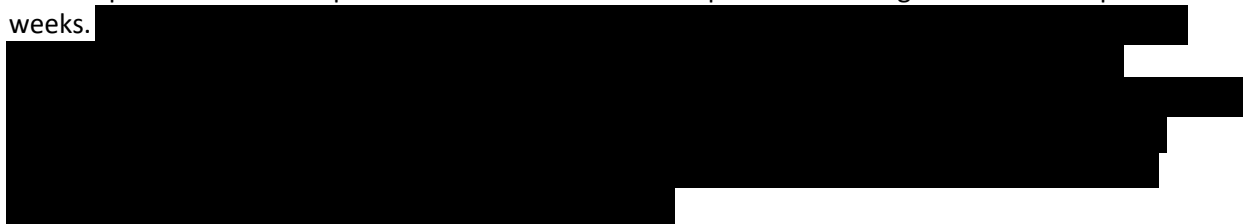
Landers said Figueroa completed the mandatory sexual harassment training on August 5, 2020, and acknowledged receipt of the Management Handbook on March 4, 2022. (See Exhibit 36.) She said Figueroa also served on a Diversity Equity and Inclusion (“DEI”) committee, where members of the committee discussed various issues, including how to report complaints of discrimination, harassment and retaliation.

### **2. Jeff Stumbo**

Stumbo said MTS has well-known policies prohibiting sexual harassment. Figueroa was trained on those policies and had “many options” available to report Fletcher’s alleged conduct.<sup>51</sup> He said, “It’s impossible to believe that this person wouldn’t feel comfortable going to anyone in the agency.”

Stumbo said he has worked in an HR role at MTS for over twenty years, and he has been involved in “dozens” of sexual harassment investigations. He said, “We’ve done an amazing job at holding people accountable. We have plenty of examples of terminating supervisors for sexual harassment.”

Stumbo provided the example of a sexual harassment complaint he investigated within the past two weeks.



### **B. Documentary Evidence**

#### **1. MTS Management Handbook (Exhibit 28)**

##### **a. Harassment, Discrimination and Retaliation Prevention Policy**

MTS’s “Harassment, Discrimination and Retaliation Prevention Policy” states:

It is the policy of San Diego Metropolitan Transit System (MTS) and its operating entities, San Diego Trolley, Inc. (SDTI) and San Diego Transit Corporation (SDTC) (collectively, the “Agency”), to provide a work environment that is free from harassment, discrimination and retaliation as defined below.

Any unwelcome verbal, physical and/or visual conduct that is based on any protected characteristic and interferes with work performance constitutes harassment that is prohibited by this policy. “Protected characteristics” include sex (including pregnancy, childbirth, breastfeeding or related medical conditions), gender, gender expression, gender identity, race, color, religion (including religious dress and grooming practices), national origin, ancestry, age, physical or mental disability, legally protected medical condition,

<sup>50</sup> MTS’s harassment training materials are attached to this report, at Exhibit 29.

<sup>51</sup> A copy of Figueroa’s harassment training certificate is attached at Exhibit 36.

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pregnancy, marital status, sexual orientation, military or veteran status, genetic information or any other basis protected by applicable federal, state or local law, as well as the perception that a person has any of the above characteristics or is associated with a person who has or is perceived as having any of the above characteristics. Bullying behavior is also prohibited.

### **Definitions**

Harassment is unwelcome verbal, visual or physical conduct based on a protected characteristic described above that creates an intimidating, offensive or hostile working environment or that interferes with work performance.

Discrimination is the act of differentiating among employees or applicants for employment in the terms and conditions of employment on the basis of any protected characteristic described above.

Sexual Harassment is one form of unlawful harassment and deserves special mention. Applicable state and federal law define sexual harassment as: Unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual or sex-based nature when:

- submission to that conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- submission to or rejection of the conduct is used as a basis for employment decisions affecting the individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Sexual Harassment may take the following forms:

- Verbal – epithets, derogatory or suggestive comments, slurs, unwanted sexual advances, sexual innuendoes, sexually oriented teasing or practical jokes invitations, or comments.
- Visual – derogatory posters, cartoons, drawings, display or distribution of sexually suggestive pictures, graphic emails or text messages or other materials.
- Physical – assault, blocking normal movement, unwanted touching, looks or gestures and interference with work because of gender.
- Threats or Demands – requirements of sexual acts as a condition of keeping a job or avoiding disciplinary proceedings, or offers of job benefits in return for sexual favors.

Other conduct of a sexual nature, whether intended or not, that is unwelcome and has the effect of creating a work environment that is hostile, offensive, intimidating, or humiliating to workers may also constitute sexual harassment. For example, inquiries into one's sexual experiences or discussion of one's sexual activities may create an offensive work environment.

This policy prohibits a wide variety of conduct, including all inappropriate conduct, even if that conduct is less severe than harassment that violates local or federal law.

This policy applies to conduct at all Agency locations, Agency-sponsored business or social events, during business travel and all activities at which an employee represents the Agency. This policy may also apply to conduct that occurs outside of work or work-related events, but which has an impact on the working

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environment of Agency employees (such as sending emails from a home or from a non-Agency owned computer).

This policy and the laws protecting against harassment, discrimination and retaliation apply to all applicants for employment, employees (including coworkers, managers, and supervisors), interns and other third parties with whom the Agencies or its employees have a business, service or professional relationship (such as customers, vendors and independent contractors).

### **Required Internal Reporting Procedure**

All Agency employees are responsible for helping to ensure that the work environment is free from harassment, discrimination and retaliation. Employees who are subjected to, or are a witness to, harassment, discrimination, retaliation and/or other inappropriate conduct prohibited by this policy must immediately report such conduct to any of the following individuals: Jeff Stumbo, Chief Human Resources Officer (EEO Officer), phone number: 619-557-4509, email address: [jeff.stumbo@sdmts.com](mailto:jeff.stumbo@sdmts.com); Brendan Shannon, Director of Human Resources; employee's supervisor, manager, director or department head.

The Chief Human Resources Officer (EEO Officer) or his/her designee has full responsibility to receive, investigate and resolve complaints involving violations of the policies stated herein, and to take appropriate corrective action. If the complaint relates to, or in some way involves, the Chief Human Resources Officer (EEO Officer), the complaint should be filed with the Chief Executive Officer (phone number: 619-557-4513; email address: [sharon.cooney@sdmts.com](mailto:sharon.cooney@sdmts.com)) who may designate another individual to investigate.

When a supervisor or member of management becomes aware that harassment, discrimination or retaliation might exist, they must report any such misconduct to the Chief Human Resources Officer (EEO Officer).

Every complaint of harassment, discrimination and/or retaliation that is reported to management or Human Resources will receive a timely response and closure and will be treated with as much confidentiality as possible, consistent with the need to conduct an investigation. In response to every complaint concerning conduct prohibited by this conduct, the Agency will conduct a prompt, impartial, fair and thorough investigation. The investigation will be conducted by qualified personnel and will provide all parties due process and reach reasonable conclusions based on the evidence collected. Such an investigation typically requires the cooperation of the person making the complaint. This may include providing the details of the basis for the complaint orally and/or in writing, as well as any other information the Agency may require to investigate the complaint. The investigation will be kept as confidential as reasonably possible, but complete confidentiality cannot be guaranteed. Information will be shared on a need-to-know basis. All complaints and investigations will be documented and monitored to ensure reasonable progress. The Agency expects all employees to cooperate in all investigations whether as a witness, third party, complainant, or accused.

If the Agency determines, based on the investigation, that misconduct in violation of this policy has occurred, the Agency will take appropriate action designed to remedy any violation of this policy, stop any harassment, discrimination and/or retaliation and prevent future harassment, discrimination and/or retaliation. Corrective action may include without limitation, training, counseling, discipline, up to and including termination, and other personnel action. Any employee who is found to have violated this policy is subject to disciplinary action up to and including termination of employment. The parties involved will be notified of the outcome of the investigation; however, because of privacy concerns, specific personnel actions taken in response to an investigation may not be shared.

Individuals who engage in unlawful harassment may also be held personally liable for their conduct, including monetary penalties as determined by a court.

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To the extent a customer, vendor or other person with whom the Agency does business with engages in conduct in violation of this policy, the Agency will take appropriate corrective action.

### **Non-retaliation**

The Agency will not tolerate retaliation against any employee for making a good faith complaint of harassment, discrimination, or any other unlawful conduct, or for initiating, assisting, or participating in any investigation, action or proceeding regarding harassment or discrimination.

Retaliation means adverse conduct taken because an individual reported an actual or perceived violation of this policy, opposed practices prohibited by this policy, or participated in the reporting and investigation process described above. "Adverse conduct" could include but is not limited to:

1. shunning and avoiding an individual because they reported or opposed harassment, discrimination or retaliation;
2. express or implied threats or intimidation intended to prevent an individual from reporting harassment, discrimination or retaliation; or
3. denying employment benefits or altering the terms and conditions of employment because an applicant or employee reported harassment, discrimination or retaliation or participated in the reporting and investigation process.

Any employee who believes that he or she has been retaliated against or who witnesses retaliation against another employee must immediately inform the Chief Human Resources Officer (EEO Officer). Any complaint of retaliation prohibited by this policy will be promptly and thoroughly investigated as outlined above.

### **Additional Enforcement Information**

In addition to following the required internal complaint procedure, employees may also seek legal relief by filing a complaint with the appropriate state or federal agency. The California Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC) will, in appropriate cases, investigate a complaint, and attempt to resolve the matter. If either of these agencies finds evidence of unlawful conduct and conciliation efforts fail, it may file a formal accusation. This can lead to a hearing before the Fair Employment and Housing Commission (FEHC) or the EEOC, which will make a final determination in the matter. If the FEHC or the EEOC finds a violation of the law, it can order appropriate remedies including back pay, limited emotional distress damages and administrative fines. The local office of the EEOC or DFEH can be contacted by consulting the government listings section of your telephone directory. For more information about eliminating sexual or other unlawful harassment, discrimination or retaliation in the workplace, please contact the Chief Human Resources Officer (EEO Officer).

### **Training**

All supervisors and managers will receive training that is mandated by law. In California, all employees will receive mandatory harassment-prevention training within six months of hire, and every two years thereafter.

### **b. Fraternalization Policy**

Section 2.12 of MTS's Management Handbook states:

**2.12 Fraternalization**

The Agency wishes to avoid misunderstandings, complaints of favoritism, possible sexual harassment claims, and any adverse impact on employee morale or disruption to the workplace that can result from certain personal relationships between employees. Therefore, all employees are strongly discouraged from fraternizing or becoming romantically involved with other employees. In addition, if an employee in a supervisory position engages in a romantic relationship with a subordinate (whether reporting directly to the supervisor or not), such supervisory employee must disclose that fact to the Chief Human Resources Officer (EEO Officer) so that the Agency involved can take appropriate steps to avoid work-related problems. The Agency reserves the right to take appropriate corrective measures when it is determined that: 1) a personal relationship causes or has the potential to cause disruption to, or have a negative effect upon, the work environment, or 2) to avoid claims of sexual harassment, an actual or potential conflict of interest, or concerns regarding supervision, safety, security, or morale. The Agency maintains a strict policy against unlawful harassment of any kind, including sexual harassment.

**C. Findings and Discussion**

- **What policies and procedures did MTS have in place to prevent, report, and address sexual harassment?**

A preponderance of the evidence gathered in this investigation, including interviews conducted by the undersigned, and a review of documents support the following factual findings:

- MTS’ relevant policies are contained in the Management Employee Handbook. (Exhibit 28.) All new employees (including management and non-management employees) receive a copy of the handbook and are asked to sign an acknowledgment of receipt. The following policies were in place to prevent, report, and address sexual harassment:
  - MTS’s “Harassment, Discrimination and Retaliation Prevention Policy,” contained in Section 2.3.3 of the Management Employee Handbook.<sup>52</sup> This policy sets forth, among other things, definitions and examples of behaviors that are prohibited, how such behavior is to be reported, and how it will be addressed by MTS.
  - MTS’s “Fraternalization” policy, contained in Section 2.12 of the Management Handbook.<sup>53</sup> This policy states that employees “are strongly discouraged from fraternizing or becoming romantically involved with other employees.” The policy further states that if a supervisor engages in a romantic relationship with a subordinate, the supervisor must disclose the relationship to Human Resources and MTS has the right to take appropriate corrective measures in certain circumstances.
- In addition to receiving the above-mentioned policies, employees receive a mandatory sexual harassment training within six months of their date of hire, and every two years thereafter.<sup>54</sup>

<sup>52</sup> This policy is set forth in full in the section above, and also attached to this report at Exhibit 28.

<sup>53</sup> This policy is set forth in full in the section above, and also attached to this report at Exhibit 28.

<sup>54</sup> MTS’s harassment training materials are attached to this report, at Exhibit 29.

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### **X. ISSUE #7: WHAT POLICIES AND PROCEDURES OF SELF-GOVERNANCE DID THE MTS BOARD OF DIRECTORS HAVE IN PLACE TO PREVENT AND ADDRESS BOARD MEMBER MISCONDUCT?**

#### **A. Witness Information**

Landers said the policies that apply to Board members are contained in Policy 22, “Rules and Procedures for the San Diego Metropolitan Transit System (MTS) Board of Directors.” This policy prohibits certain financial and personal dealings that would constitute a conflict of interest. However, it does not address whether Board members can have relationships with MTS employees. As previously mentioned, Landers and Stumbo said MTS has a fraternization policy that only extends to MTS employees and not to Board members.

Stumbo said the “take away” from this situation is that MTS needs to tighten its policies with respect to Board member misconduct. Currently, MTS has a fraternization policy that only extends to MTS employees and not to Board members. Another “take away” is that MTS needs to ensure Board members have received harassment training and keep track of when they received it.

#### **B. Documentary Evidence**

##### **1. Policy No. 22: Rules and Procedures for the San Diego Metropolitan Transit System (MTS) Board of Directors (Exhibit 33)**

Policy No. 22: “Rules and Procedures for the San Diego Metropolitan Transit System (MTS) Board of Directors” provides, in relevant part:

###### 22.10 Board Member Standards of Conduct

22.10.1 The purpose of this policy is to emphasize that each Board member occupies a position of public trust that demands the highest moral and ethical standard of conduct.

22.10.2 This policy shall be supplemental and in addition to the Conflict of Interest Code of the Board and any applicable laws or regulations (including, but not limited to, the Brown Act, Government Code section 1090 and the Political Reform Act) and is not intended to supersede any provisions thereof.

22.10.3 Board members shall not engage in any business or transaction or have a financial or other personal interest, actual, potential, or apparent, which is incompatible with the proper discharge of his or her official duties or would tend to impair his or her independence of judgment or action in the performance of such duties. Such business, transaction, or interest shall constitute a conflict of interest.

22.10.4 No Board member shall engage in any enterprise or activity that shall result in any of the following:

- a. Using the prestige or influence of the Board office for private gain or advantage of the member or another person.
- b. Using time, facilities, equipment, or supplies of the Board for the private gain or advantage of the member or another person.

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- c. Using official information not available to the general public for private gain or advantage of the member or another person.
- d. Receiving or accepting money or other consideration from anyone other than the Board for the performance of acts done in the regular course of duty.
- e. Receiving or accepting, directly or indirectly, any gift or favor from any one doing business with the Board under circumstances from which it could reasonably be inferred that such was intended to influence such person in such person's duties or as a reward for official action.
- f. Soliciting any gift or favor in such person's official capacity, either directly or indirectly, when such solicitation might reasonably be inferred as to have a potential effect on such person's duties or decision, or when the individual's position as a Board member would in any way influence the decision of the person being solicited.
- g. Engaging in or accepting private employment or rendering services for private interest, direct or indirect, which may conflict with such person's responsibility or duty, or which, because of that person's position, may influence a decision to the benefit of the organization in which such person has an interest.

22.10.5. If a Board member has an actual, potential, or apparent conflict of interest in the subject of an agenda item, and the Board will make a decision regarding this agenda item during an open session meeting, the Board member must recuse himself or herself or, in the case of uncertainty, request a binding determination from the Board's General Counsel. If the Board member has a conflict, he or she may observe, but not participate, in the decision-making process.

22.10.6 If a Board member has an actual, potential, or apparent conflict of interest in the subject of an agenda item to be discussed during a closed session meeting, the Board member shall be disqualified and not present during such discussion so as not to make, participate in making, or in any way attempt to use his or her official position to influence the discussion or decision. In such case, the Board member must recuse himself or herself or, in the case of uncertainty, request a binding determination from the Board's General Counsel. In accordance with the Brown Act, the Board member would be entitled to any information that is publicly reported. The Board member would not, however, be privy to any confidential or privileged information or communications pertaining to the closed session agenda item.

22.10.7 No Board member shall disclose to any person, other than members of the Board and other Board staff designated to handle such confidential matters, the content or substance of any information presented or discussed during a closed session meeting unless the Board authorizes such disclosure by the affirmative vote by a majority of the Board.

22.10.8 No Board member may disclose confidential or privileged information or communications to any person other than a Board member, General Counsel to the Board, or other Board staff designated to handle such matters, unless disclosure is mandated by law or the Board authorizes such disclosure by the affirmative vote of a majority of the Board.

22.10.9 A Board member shall not be privy to confidential or privileged information or communications concerning threatened, anticipated, or actual litigation affecting the Board where the Board member has an actual, potential, or apparent conflict of interest. In the case of uncertainty as to whether a conflict of interest exists, the Board's General Counsel shall issue a binding determination.

22.10.10 No Board member shall represent a position on an issue to be the Board's unless the Board has formally adopted such position at a public meeting.

22.10.11 Any violation of this policy shall constitute official misconduct if determined by an affirmative vote of the majority of the Board in an open and public meeting. The Board may elect to censure the

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Board member and the violation may be subject to criminal and/or civil penalties as provided for by applicable law.

### **2. Administrative Code and Regulations (Exhibit 31)**

MTS's Administrative Code and Regulations provides, in relevant part:

#### 1. POWERS AND DUTIES OF BOARD OFFICERS

##### 1.1 Board of Directors

The Board members provided for in Public Utilities Code Section 120050.2 shall be known as the San Diego Metropolitan Transit System of Directors, hereinafter "Board of Directors." In addition to such other powers and duties as the Board of Directors may have under the law, it shall conduct an annual evaluation of the performance of the Chief Executive Officer and discuss such evaluation with the Chief Executive Officer.

##### 1.2 Chairman

The Chairman shall preside at all meetings of the Board of Directors and perform such other duties as may be prescribed by this Code or as may be imposed by the Board of Directors, consistent with the duties of the office.

##### 1.3 Vice Chairman

The Vice Chairman shall act for the Chairman in the absence of the Chairman.

#### 6.1 Code of Ethics

6.1.1. Purpose: The purpose of this Code is to:

- a. Summarize in a single document a broad code of ethics and conduct which will apply equally to all Board members and employees, regardless of individual job duties and responsibilities.
- b. Emphasize that each Board member and employee in our municipal government occupies a position of public trust which demands the highest moral and ethical standard of conduct.

6.1.1.2 This Code shall be supplemental and in addition to the Conflict of Interest Code of the Board and is not intended to supersede such Code or any provisions thereof.

#### 6.2 POLICY - PROHIBITION OF CERTAIN ENTERPRISES OR ACTIVITIES AND DISCLOSURE OF CONFLICTING INTEREST

6.2.1 No Board member or employee shall engage in any business or transaction or shall have a financial or other personal interest, direct, or indirect, which is incompatible with the proper discharge of official duties or would tend to impair independence or judgment or action in the performance of such duties.

6.2.2 No Board member or employee shall accept from anyone, including employees, customers, vendors, or anyone else who does business with MTS or its affiliates, any gifts, favors, loans, remuneration, or entertainment that is intended or which might be reasonably be construed as an attempt to influence a personnel action, procurement, or other business transaction. Excluded from

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this general prohibition are *de minimis* gifts (valued at \$50 or less) that are consistent with customary business practices and gifts or favors that have the express prior approval of the Chief Executive Officer. Violation of this policy shall result in disciplinary action up to and including termination.

6.2.3 [This section contains the same language cited above, in Policy No. 22.10.4, Rules and Procedures for the San Diego MTS Board of Directors]

### **C. Findings**

- **What policies and procedures of self-governance did the MTS Board of Directors have in place to prevent and address Board member misconduct?**

A preponderance of the evidence gathered in this investigation, including interviews conducted by the undersigned, and a review of documents support the following factual findings:

- The relevant policies and procedures that apply to MTS Board members are contained in: (1) the Administrative Code and Regulations (Exhibit 31); and 2) Policy 22, “Rules and Procedures for the San Diego Metropolitan Transit System (MTS) Board of Directors” (Exhibit 33.)
  - Administrative Code and Regulations sets forth, among other things, MTS Board members’ powers and duties, method of appointment, and code of ethics.
  - MTS Policy No. 22 sets forth, among other things, MTS Board members’ appointment and organization, meeting requirements, and standards of conduct.
- While the applicable policies cited above require MTS Board members to comport themselves with “the highest moral and ethical standard of conduct,” they do not specifically address intimate relationships between Board members and MTS employees. (Note that the Fraternalization policy discussed in the previous section applies to MTS employees and does not extend to Board members). The only conduct in which Board members are specifically prohibited from engaging is certain types of dealings that would constitute a conflict of interest.

## **XI. ISSUE #8: WAS THIS LEGAL CLAIM HANDLED IN A SIMILAR AND CONSISTENT MANNER AS COMPARABLE CLAIMS?**

### **A. Witness Information**

Landers and Cooney both stated that they were not aware of any claims against MTS that were comparable to Figueroa’s claim. Landers noted that Figueroa’s lawsuit was the first to involve allegations against a MTS Board member. She said it was also unique because employees usually file a government tort claim with MTS before filing a lawsuit; however, in this case Figueroa bypassed the government claim procedures and went straight to filing a lawsuit.<sup>55</sup>

Stumbo said he has worked in an HR role at MTS for over twenty years, and he has been involved in “dozens” of sexual harassment investigations. MTS’s typical practice when receiving a complaint of

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<sup>55</sup> As previously discussed, although claims brought under the FEHA are not subject to the government claim filing requirements, “common law” claims such as wrongful termination are subject to the claim filing requirements.

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sexual harassment was to initiate an investigation.<sup>56</sup> In Figueroa’s case, however, the February 17 letters from Figueroa’s attorney were vague and did not detail the specific allegations or the nature and extent of Fletcher’s involvement. Since Figueroa’s attorney was unwilling to provide clarification, Stumbo thought it seemed reasonable to wait for more information before initiating an investigation.

**B. Documentary Evidence**

Because one of the issues in this case is whether MTS handled Figueroa claim in a similar and consistent manner as comparable claims, the undersigned requested and was provided data regarding: 1) Equal Employment Opportunity (“EEO”) complaints from MTS employees from 2012 to 2022; and 2) employment-related lawsuits filed by MTS employees from 2009 to 2022. (Exhibit 34.)

Based on this and other information provided by MTS, the undersigned prepared the table below regarding the thirteen EEO complaints and/or lawsuits that involved allegations of sexual harassment/misconduct. For each complaint, the spreadsheet indicates the following: employee’s name; date of the complaint; complaint type (EEO claim and/or lawsuit); nature of the allegations; outcome; severance information (if applicable); and MTS Board notification information (if applicable).

Employee Name	Date of Complaint	Type of Complaint	Details of Complaint	Outcome	Severance Offered?	Board notification?
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

<sup>56</sup> Stumbo provided the example of a recent sexual harassment complaint that he investigated, [REDACTED]

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Employee Name	Date of Complaint	Type of Complaint	Details of Complaint	Outcome	Severance Offered?	Board notification?
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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Employee Name	Date of Complaint	Type of Complaint	Details of Complaint	Outcome	Severance Offered?	Board notification?
						[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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Employee Name	Date of Complaint	Type of Complaint	Details of Complaint	Outcome	Severance Offered?	Board notification?
			[REDACTED]	[REDACTED]		
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] with [REDACTED]	[REDACTED]	[REDACTED]

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Employee Name	Date of Complaint	Type of Complaint	Details of Complaint	Outcome	Severance Offered?	Board notification?
				[REDACTED]		

**C. Findings**

- **Was this legal claim handled in a similar and consistent manner as comparable claims?**
  - **Are there recent claims with similar allegations?**
  - **If there were other similar claims, was the Board notified of the claims and at what point in the claim process was the Board notified?**
  - **Was there a difference between the process for the other identified claims and the Figueroa claim?**

A preponderance of the evidence supports a finding that Figueroa’s legal claim was handled in a similar and consistent manner as comparable claims.

**1. Are there recent claims with similar allegations?**

To gather relevant comparator evidence, the undersigned requested and was provided with historical data regarding: 1) Equal Employment Opportunity (“EEO”) complaints from MTS employees; and 2) employment-related lawsuits filed by MTS employees. (Exhibit 34.)

The information provided by MTS shows that:

- Between 2012 and 2022, MTS received a total of forty-five (45) employment-related claims.<sup>57</sup>
- Of the forty-five cases reviewed, twelve (12) of them involved allegations of sexual harassment and/or misconduct.
- None of the claims or lawsuits involved allegations against a MTS Board member.

Thus, a preponderance of the evidence supports a finding that MTS received approximately twelve claims with similar allegations involving sexual harassment and/or misconduct. Although none of these claims involved allegations against a MTS Board member, the nature of the allegations was such that

<sup>57</sup> Employment related claims include complaints involving wrongful termination, discrimination, retaliation, and/or harassment.

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they served as the closest comparators for purposes of determining whether Figueroa's claim was handled in a similar and consistent manner.

### 2. If so, was the Board notified of the claims and at what point in the claim process was the Board notified?

As previously discussed, the undersigned identified a total of twelve sexual harassment complaints against MTS. Of those twelve complaints, the MTS Board was notified of only two of them: the complaints brought by [REDACTED] and [REDACTED]

- [REDACTED]
- [REDACTED]

### 3. Was there a difference between the process for the other identified claims and the Figueroa claim?

For purposes of determining whether Figueroa's claim was handled in a similar and consistent manner as other comparable claims, the lawsuits filed by [REDACTED] and [REDACTED] are not particularly useful comparators. In both of those cases, MTS had an existing policy, Policy No. 16, that required notice to the Board. With respect to Augustino's lawsuit, Board notification was triggered because MTS officials were seeking to file a cross-complaint.<sup>60</sup> With respect to [REDACTED] lawsuit, Board notification was triggered because MTS officials were seeking settlement authority that was greater than \$50,000.<sup>61</sup>

By contrast, there was no policy or procedure in place by which to report information concerning Figueroa's *potential* claims to the Board. Not only was there no settlement to report, but there was also no claim or lawsuit to report until March 28, 2023, which was the first time MTS received a copy of Figueroa's complaint. Prior to that, Figueroa had not shared her allegations with MTS, nor filed a government claim. Once Figueroa filed a complaint, MTS called a special closed session meeting with the Board on April 6, 2023.

Thus, it makes more sense to compare Figueroa's claim with the other ten claims that did not have a policy or procedure that required Board action or approval. In comparison to those claims, none of which appeared to be taken to the Board, the evidence suggests that Figueroa's legal claim was handled in a similar and consistent manner.

<sup>58</sup> See Confidential Closed Session memo re: Agenda Item No. 24b, attached at Exhibit 35.

<sup>59</sup> See Confidential Closed Session memo re: Agenda Item No. 24a, attached at Exhibit 35.

<sup>60</sup> Policy 16.1 states that the CEO "shall report to the Board concerning all claims and lawsuits filed on behalf of the Board.

<sup>61</sup> Policy 16.2 states that Board approval "shall be required to settle any claim or lawsuit for more than \$50,000."



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### XII. CONCLUSION

In sum, a preponderance of the evidence gathered in this investigation supports the following:

- That MTS officials and employees did not have any knowledge of a personal and/or intimate relationship between Fletcher and Figueroa prior to Figueroa's termination;
- That Fletcher was not involved in Figueroa's termination;
- That MTS officials acted reasonably in their reporting of information to the MTS Board of Directors;
- That Fletcher's positions on the MTS Board and/or County Board of Supervisors or his relationships with MTS officials or agents did not impact the reporting of information to the Board, MTS's treatment of Figueroa, or any other actions taken by MTS;
- That MTS's relevant policies and procedures for preventing, reporting, and addressing sexual harassment, include: (1) MTS's "Harassment, Discrimination and Retaliation Prevention Policy," in Section 2.3.3 of the Management Employee Handbook; (2) MTS's "Fraternization" policy, in Section 2.12 of the Management Handbook. In addition to receiving these policies, employees receive a mandatory sexual harassment training within six months of their date of hire, and every two years thereafter;
- That the relevant policies and procedures that apply to MTS Board members are contained in: (1) the Administrative Code and Regulations; and (2) Policy 22, "Rules and Procedures for the San Diego Metropolitan Transit System (MTS) Board of Directors." While these policies require MTS Board members to comport themselves with "the highest moral and ethical standard of conduct," they do not address romantic relationships between Board members and MTS employees. The only conduct specifically prohibited by Board members is certain types of dealings that constitute a conflict of interest; and
- That Figueroa's legal claim was handled in a similar and consistent manner as comparable claims.

That there was some sort of personal relationship between Fletcher and Figueroa was not contested. Whether that relationship was consensual, or whether it amounted to sexual harassment or assault by Fletcher, was beyond the scope of the undersigned's investigation. Instead, the undersigned was tasked with investigating Figueroa's specific allegations against MTS, including the allegation that MTS terminated Figueroa because she was sexually harassed by Fletcher.

The undersigned's investigation did not uncover evidence that anyone from MTS had knowledge or suspicion of a personal or intimate relationship, either consensual or non-consensual, between Fletcher and Figueroa prior to Figueroa's termination. Nor was there evidence that MTS terminated Figueroa at the recommendation or direction of Fletcher. Figueroa's supervisors articulated a plausible explanation for the termination decision – that it was based on Figueroa's ongoing performance issues – and the concerns they reported were documented in Figueroa's most recent performance evaluation and corroborated by other employees who worked with Figueroa.

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The next question was whether MTS officials acted reasonably in their reporting of information to the MTS Board. It was undisputed that MTS officials had had knowledge of a potential relationship between Fletcher and Figueroa *after* Figueroa was terminated. The fact that most Board members learned about a high-profile lawsuit involving its Chair from the media, coupled with the belief that MTS officials knew about the complaint earlier, understandably led some Board members to question MTS's handling of Figueroa's complaint, including whether Fletcher's political power and influence had impacted MTS officials' better judgment.

However, the undersigned did not uncover evidence that MTS officials were trying to protect Fletcher, hide information from the Board, or otherwise acted in bad faith. The undersigned considered the information that was available to MTS officials prior to the filing of Figueroa's lawsuit, and determined that MTS officials acted reasonably in their reporting of information to the Board.

Respectfully submitted,



Danielle Drossel



Amy Oppenheimer

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