Division of Human Rights

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS on the Complaint of

JACQUELINE URLI,

Complainant,

v.

TOWN OF HEMPSTEAD, BOARD OF COMMISSIONERS, MATTHEW HOROWITZ, THOMAS LANNING, JOHN MANNONE, AUSTIN GRAFF, PATRICK DOHERTY, TOWN OF HEMPSTEAD - DEPARTMENT OF SANITATION, SANITARY DISTRICT NO.7,

Respondents.

DETERMINATION AFTER INVESTIGATION

Case No.
10200633

Federal Charge No. 16GB902714

On 2/7/2019, Jacqueline Urli filed a verified complaint with the New York State Division of Human Rights ("Division"), charging the above-named Respondents with an unlawful discriminatory practice relating to employment because of sex, opposed discrimination/retaliation in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division has determined that it has jurisdiction in this matter and that PROBABLE CAUSE exists to believe that the Respondents have engaged in or are engaging in the unlawful discriminatory practice complained of.

Pursuant to the Human Rights Law, this matter is recommended for public hearing. The parties will be advised of further proceedings.

Dated: 8/27/19
Brooklyn, New York

STATE DIVISION OF HUMAN RIGHTS

By: _____
Joyce Vearwood-Drury
Director O.S.H.I.

NEW YORK STATE

DIVISION OF HUMAN RIGHTS

TO: Files

REGION: O.S.H.I.

FROM: Joyce Yearwood-Drury
Director O.S.H.I.

DATE: June 25, 2019

SDHR CASE NO: 10200633-19-E-SO-E

Federal Charge No. 16GB902714

SUBJECT: Jacqueline Urli v. Town of Hempstead, Board of Commissioners, Matthew Horowitz, Thomas Lanning, John Mannone, Austin Graff, Patrick Doherty, Town of Hempstead - Department of Sanitation, Sanitary District No.7

FINAL INVESTIGATION REPORT AND BASIS OF DETERMINATION

I. CASE SUMMARY

This is a verified complaint, filed by Complainant, Jacqueline Urli, on Thu 2/7/2019. The Complainant who is female, charges the Respondents with unlawful discriminatory practices in relation to employment because of sex, opposed discrimination/retaliation.

II. SUMMARY OF INVESTIGATION

Complainant's Position:

1. I am a 52-year-old woman, and Secretary to Sanitary District No. 7 (hereinafter "District"), for the Town of Hempstead and to the Board of Commissioners. The herein complaint represents my original and first complaint filed against Respondents to the related charges of discrimination. I submit the within Charge of Discrimination, Hostile Work Environment and Retaliation against said Respondents for the adverse employment actions that have been taken against me based upon my gender, race, voicing of opposition to their wrongful acts; unlawful retaliation, gender, and sex discrimination in employment. I further wish to incorporate all of the facts and allegations as referenced in my complaint and attachments as filed with my employer, Town of Hempstead Sanitary District No. 7, to this Charge of Discrimination, Hostile Work Environment and Retaliation.

2. As background, I was hired as a Secretary to Sanitary District No. 7 by the Respondent on December 23. 2013. I am the only female employed at the District. At all times during my employment, I performed my duties in an exemplary fashion, despite the fact that my work environment became increasingly hostile, toxic and manifesting in emotional abuse and sexual harassment.

3. I was hired by the Town of Hempstead, Sanitary District No, 7, in 2013, to work as a Secretary to the District and to the Board of Commissioners. I have been subjected to hearing and have been forced to listen to racist, sexist, homophobic, xenophobic and anti-sematic slurs since August 2018, while working with the Board of Commissioners. The sexual harassment that I experience at the District also began on or about August 2018, when Commissioner Matthew Horowitz began making sexually inappropriate remarks towards me in the presence of my Supervisor, Mr. Daniel Faust, my co-workers, and other members of the Board of Commissioners.

4. On one occasion, in or about August 2018, Mr. Faust was walking with mc as I was leaving for the evening following a board meeting and walking to my car. Upon seeing this, Commissioner Horowitz insinuated, in the presence of two (2) other Commissioners, Commissioner John Mannone and Commissioner Austin Graff, and Mr. Faust, that I was being unfaithful to my husband with Mr. Faust, because he was walking with me. Feeling humiliated and embarrassed, I got into my car and left. I immediately called my husband to tell him what had occurred. No such comments are made to men who walk with each other to their cars,

5. Following that incident, on September 13, 2018, I was subjected to the harassing treatment of Commissioner Horowitz, when Commissioner Graff and I were reading an anonymous letter that was received at the District. Commissioner Horowitz approached and upon learning that the letter was not about him, he asked why no one has ever written a letter about him. Commissioner Horowitz then asked me if anyone had ever written a letter to the District referring to myself. When I responded "No", Commissioner Horowitz stated, in front of Commissioner Graff, "Why don't we say we're having an affair, so they write one about us?" Once again, as I walked away feeling shocked and nervous by the question, I said "Nobody would believe that.".

6. Feeling extremely uncomfortable, I immediately went upstairs to the office. Commissioner Horowitz followed me and attempted to continue the unwanted conversation in the presence of my Supervisor, Daniel Faust and Treasurer, Douglas Hernandez. He tried to include Mr. Faust and Mr. Hernandez in the conversation by stating to them, "Did you hear I'm having an affair with Jackie?" He then turned to me and said, "We should have a three-way, me you, and Doug and you can tell me and Doug what to do." Once again, I was utterly embarrassed and felt sick to my stomach that Commissioner Horowitz or anyone would say such a thing. I believe we were all in shock, myself, Mr. Faust and Mr. Hernandez. Then, later on near the end of the meeting, as the Commissioners were discussing cigars, Horowitz said, "Jackie looks like a big cigar, is she hot?" These comments were unwanted and intensely offensive.

7. We then proceeded to the Boardroom for the scheduled meeting. Once again, Commissioner Horowitz announced, while at the table with Commissioners Thomas Lanning, John Mannone and Austin Graff, "Did you hear I'm having an affair with Jackie and Doug?" Commissioner Lanning responded "no", and Commissioner Horowitz went on to state, "Yeah, Dan is going to tell us what to do, put it on Facebook." None of the other Commissioners said anything to Commissioner Horowitz, about his actions.

8. I left as soon as the meeting was over. I called my husband as soon as t got into my ear and told him what had occurred. My husband wanted to come to my office to confront Commissioner Horowitz, but I pleaded with him not to out of fear of retaliation. When I arrived home, I was still very upset. My children were home when I arrived, and upon seeing my state, they asked what was wrong. I told them what had occurred. My children were appalled and became very concerned for my well-being. This series of events impacted me and my household greatly.

9. At this point, I became very anxious about going to work and particularly attending Board meetings.

10. Commissioner Horowitz's inappropriate and sexually harassing behavior continued. On one occasion, during a General Meeting on or about October 4, 2018, Commissioner Horowitz sat across from me and stared at me for a long period of time. His glare was so intense that my Supervisor, Daniel Faust, noticed and asked Horowitz if everything was okay? Feeling the support of Mr. Faust, I somehow mustered up the courage to also address Commissioner Horowitz. I asked him "what the hell are you doing?" Horowitz laughed and then eventually stopped staring, but then I noticed Horowitz wrote "I ♥ Matt" on my attendance folder which I sent around the meeting for signatures. Commissioner Horowitz' behavior was revolting, creepy and disturbing to me. I was not amused, nor was I flattered by this. I was indeed disgusted and intimidated by his actions.

11. On another occasion, on or about October 17, 2018, during a Special Meeting, Commissioner Horowitz persisted with profane and vulgar insinuations in my presence and toward me. Horowitz was in the downstairs boardroom waiting for the meeting to begin. As he waited, Horowitz began talking about celebrities he met and hung around when he was in Las Vegas. He irreverently used the word "Fuck" numerous times as he talked about Ron Jeremy and his time spent at a Bunny Ranch, and a New York City cigar bar. Horowitz also spoke about how he hates Al Sharpton, which prompted Attorney Keith Corbett, who is a white man, to comment that "Sharpton doesn't go to Bensonhurst anymore". Commissioner Lanning then chimed in and stated something about needing "a bigger knife. "

12. At some point, General Supervisor Faust, attempting to change the conversation, began speaking about the Halloween event in town and that Assemblyman Curran wanted to know if the District would attend. Mr. Faust said the event was called "Halloween Fest" and it would follow "Trunk or Treat". Commissioner Horowitz however, kept referring to the event as "Junk in the Trunk", and he repeated it numerous times. I understand Commissioner Horowitz' reference to "Junk in the Trunk" to be a statement which is slang for a large behind that's often directed at women.

13. Attorney Corbett and the other Commissioners witnessed the inappropriate behavior, but said nothing to Commissioner Horowitz. In fact, Commissioner Mannone was laughing as he found Commissioner Horowitz' behavior amusing. Commissioner Mannone then said he would go to anything called "Junk in the Trunk". This conversation was offensive, disturbing and once again, I left the meeting shaken and disturbed.

14. Then on October 19th Commissioner Horowitz came to the District to install new computer software. I felt extreme anxiety and was sick to my stomach as he stood unusually close to me on this day, while he requested that I provide him with my password. Commissioner Horowitz also kept touching me on my right arm, telling mc "Come on Jackie, act excited" and "What' s wrong with you, you're not acting excited about this?" Commissioner Horowitz' proximity to me was uncomfortable and made me anxious as he touched my arm and made undue sexual advances toward me. I never gave this man permission to touch me and his doing so was not only intimidating but offensive.

15. On another occasion, on November 1, 2018, while at the General Meeting, Commissioner Graff soddenly brought up the need for a Sexual Harassment Policy. This was discussed in a very lewd and inappropriate manner during the open session, and then again, in the boardroom. The discussion made me extremely uncomfortable. Commissioner Doherty asked me at one point, if I felt uncomfortable, and I told him in no uncertain terms, "yes, very!" Then, Commissioner Horowitz, seemed to threaten me as he stared at me from across the table and stated, "I told them at my job, anyone who accuses me of anything, better be prepared to have that happen to them," His comment was clearly a threat. Not knowing what to do, or how to handle the situation, I left the meeting shaking and crying, as I felt Horowitz was sending a message to instill fear in me and intimidate me.

16. On November 2, 2018, Commissioner Horowitz came to the office for a training on Office 365. I had a knot in my stomach and a severe headache the entire time he was there from the stress and anxiety of having to work so closely with him, and not knowing what he would do. During the training, I had a difficult time concentrating and I made sure to refrain from making small talk in hopes that he would leave quickly once the training was done.

17. To add insult to injury, I received an email on November 19, 2018, from Commissioner Graff accusing me of lying about an unrelated matter. This email was also sent to the rest of the Board and to Attorney Keith Corbett. I believe Commissioner Graff sent this email in an attempt to intimidate me and discredit my character because I informed the Board I was very uncomfortable and showed the same in my manner, facial expressions and statements. It was also done in an attempt to coerce me and dissuade me from taking any legal action in light of the events that were transpiring at the District, due to the behavior of Commissioner Horowitz and Mannone and the complicit behavior of the rest of the Commissioners.

18. I felt threatened and very concerned upon receiving the email from Commissioner Graff, and although I was fearful to respond, I felt Commissioner Graff had crossed the line and gone too far, so I responded and asked that he not call me a liar. Once again, Commissioner Doherty was the only one to speak up and confirm that Commissioner Graff was out of line. This attack on my character only further exacerbated my anxiety and I was literally shaking as I left work that afternoon.

19. After months of enduring this ongoing level of abuse, on or about November 27, 2018, I submitted a formal letter of complaint to the attention of Mr. Daniel Faust, my Supervisor as I had reached a point of exhaustion. (Exhibit A). Mr. Faust acknowledged my

letter and informed the Board of Commissioners about it. He informed me that night that the Board of Commissioners said they would discuss my letter at the December 6, 2018 General Meeting when Counsel would be present. This letter enumerated specific incidents, dates and witnesses. The Board of Commissioners did not respond to my letter or discuss it at the December 6, 2018 General Meeting.

20. When the evening of December 6, 2018 arrived, instead of receiving a response to my letter, I was retaliated against, by the wives of the Commissioners. Ms. Marcia Horowitz, the wife of Commissioner Horowitz, and Ms. Ann-Marie Mannone, the wife of Commissioner Mannone, who were present at the Board meeting, tried to intimidate me by sitting extremely close to me and unusually far from their husbands, while glaring at me throughout the meeting. Each time I looked up from taking notes, I was met with stares and dirty looks from both of these women, who were clearly acting as agents for both of their spouses, I felt nervous and Uneasy as I attempted to perform my duties.

21. Later that evening, as I was walking to the boardroom for Executive Session, Mrs. Horowitz said, in a very harsh tone, "Don't you stare at me!" Fearing for my security, I did not say a word and just kept walking. She then said, "Just you wait, just you wait!?' Mr. Faust also heard the threat. Again, I did not respond, but I was very frightened by what Ms. Horowitz said and the manner in which she said it, and then I had to go and sit in the Executive Session with the 5 Commissioners and District Counsel after this. I was very upset, anxious and fearful.

22. During this meeting, and in retaliation for being named as witnesses in my complaint, both General Supervisor Daniel Faust and Treasurer Douglas Hernandez were terminated without cause. These gentlemen witnessed some of the sexual harassment I endured and several other acts Of the Commissioners towards me and were willing to oppose these outrageous and offensive acts.

23. To further retaliate against me for submitting my letter of complaint, I have had responsibilities removed from me without reason. I have not been allowed to attend Special Meetings since November 27, 2018, and therefore, I have been prevented from taking the minutes at these meetings. I am the only person with the CSEA Union title bearing the responsibility for taking notes at these meetings. Additionally, I am being denied the ability to partake in overtime by not being allowed to attend the meetings. Prior to my letter of complaint, I attended every General and Special Board meeting the four (4) years and eleven (11) months I have been employed with the District. These meetings were with the Commissioners and Attorney Corbett..

24. Once the Notice of Claim was served, on or about January 14, 2019, I was invited to begin attending the Special Board Meetings once again. At the January 16, 2019 Special Meeting, Commissioner Horowitz joined in on conversations with me; uninvited, as if nothing was wrong. In fact, during the Special Meeting, on or about January 3 1, 2019, I was asked to leave the Executive Session as they discussed a confidential matter, and when it was time to return, Commissioner Horowitz was the person who called me to ask me to return to the boardroom. There were five (5) other Commissioners who could have called me especially in

light of the pending matter, yet they chose to have Horowitz make the call, I believe the Board allowed him to call to intimidate me and make me uncomfortable.

25. This removal of responsibilities; isolation from "my co-workers, disparate treatment and termination of the only support I had in the office, has left me feeling isolated, extremely anxious, stressed and uneasy. I have been embarrassed and humiliated innumerable times which has created feelings of self-doubt and powerlessness. It has become very difficult to perform my duties as the environment has become very toxic, unhealthy and tense the hostility created by the Commissioners.

26. As a result of what these people have done, my sleep is impacted daily and I experience constant pain in my neck and shoulders as I anticipate with fear, the next work day and what may occur. This is further exacerbated when the evenings come when I know I will have to directly interact with Commissioner Horowitz, the Board and District Counsel the following day.

27. Based on the foregoing, I charge the above-named Respondents with unlawful employment practices because of gender, sex, hostile environment and in retaliation For opposing discriminatory actions and practices and request that this complaint be cross filed with Equal Employment Opportunity Commission.

Respondents' Position:

Town of Hempstead: The Town of Hempstead Department of Sanitation is in receipt of the above referenced complaint. This letter will serve to advise you that Sanitary District No. 7, Town of Hempstead is an Independent Sanitary District established pursuant to an act of the New York State Legislature and pursuant to Chapter 273 of the Laws of 1939, otherwise known as the Nassau County Civil Divisions Act. As Such, the independently elected Board of Commissioners is solely responsible for the operations of the District 7. They are responsible for the hiring and firing of all employees. The Town of Hempstead Department of Sanitation has absolutely no control or authority over the District and its' employees. Jacqueline Urli is not employee of the Town of Hempstead Department of Sanitation. Accordingly, the Town of Hempstead-Department of Sanitation is not a proper party in this matter and the complaint should be dismissed as against the Department.

Department of Sanitation:

The Town of Hempstead, Sanitation District No. 7 ("District 7") operates garbage collection throughout Oceanside, New York. The Board of Commissioners ("the Board") is responsible for the overall operation of District 7, while non-Board members (District 7 employees employed pursuant to the Civil Service Law) are responsible for the day-to-day operations thereof. The Board consists of five individual Commissioners, each of whom is elected to a five-year term. Currently, the Board is comprised of the following Commissioners: Patrick Doherty, Austin Graff, Matthew Horowitz, Thomas Lanning, and John Mannone.

Overview of Complainant's Employment

In December 2013, District 7 hired Complainant as a Secretary. She remains employed in the same position to date. As Secretary to the Board, Complainant works in District 7's main office along with three other individuals: The General Supervisor, the Treasurer and a Supervisor. During the relevant time-period, Daniel Faust was the General Supervisor, Douglas Hernandez was the Treasurer, and Wayne Vurture was the Supervisor. Complainant's job duties include, but are not limited to, interacting with the public/local taxpayers, opening mail, tracking the status of pending insurance matters, attending meetings of the Board when necessary, and taking minutes during certain meetings which she is asked to attend.

Allegations of Improper Receipt of Dental Benefits.

In an August 2018 election, Graff was elected as Commissioner. During his campaign, he promised to rid District 7 of corruption. Soon after taking office in August 2018, Commissioner Graff learned that several former commissioners were receiving dental benefits despite the fact they were not current or retired employees. Since Graff believed this ran afoul of the terms of the dental plan, from August 2018 through November 2018, the Board requested from Faust, Hernandez, Complainant, Vurture and others, information regarding the dental benefits received. For the most part, it appeared District 7 paid for these dental benefits directly, and former commissioners reimbursed District 7 via separate check. However, it appeared that some individuals received dental benefits without reimbursement for a significant period of time and were improperly receiving benefits when they were no longer working for District 7. For example, former commissioner Joseph Cibellis (who was ineligible for benefits) received dental benefits for approximately seven months (June 2016 — January 2017) without paying for them, was removed from the benefits plan and then inexplicably was reinstated to the plan in April 2018 (22 months after his position with District 7 ceased). The Board questioned Faust, Hernandez and Complainant about these issues (and specifically sought information regarding who authorized this practice). Faust, Hernandez and Complainant advised that various unnamed former commissioners approved the practice, and District 7 continued to follow the same practice over several years. No detail was provided regarding who purportedly approved the practice or who secured benefits. Ultimately, the Board concluded these benefits were issued and obtained improperly (The issuance of improper benfits is reminiscent of the fac that in 2014 the NYS Comptroller's office determined that the District had provided two former commissioners Michael and Charles Scarlata approximately $800,000 in improper deferred compensation payments. The current Board of Commissioners took steps to recover these funds and recently accepted approximately $300,000 in a settlement that sought to recover the funds) and contrary to the dental plan and that Complainant, and others, may have been involved.

Accordingly, on November 26, 2018, Commissioner Graff publicly posted on Facebook his conclusion that there was corruption in the District due to the issue surrounding dental benefits. (Ex. A — Facebook Posting). Within the post, Commissioner Graff calls for the termination of any individual who knew about, or "turned a blind eye" to the issue. Id. On the same day, Complainant became aware of this post, and "liked" it. (Ex. B — Facebook Like). At that time, Complainant had not yet made any allegation of sex harassment, discrimination or retaliation.

Complainant First Alleged Harassment After Learning That Those Involved in the Dental Plan Scheme Would Be Terminated.

On November 27, 2018, the very next day after learning that those involved in the dental corruption scheme may be terminated, Complainant first advised Respondents of her allegations of sexual harassment and retaliation. (Ex. C — November 27, 2018 letter). The timing of her complaint, which included alleged harassment beginning as early as August 2018 (the same time period Respondents began investigating the dental benefits issue) supports a conclusion that her allegations are not credible. Regardless, they are not sufficient to support a claim of sexual harassment or retaliation.

To support her claims of sexual harassment and discrimination, Complainant solely relies on the following alleged incidents occurring between August 2018 and November 2018:

- In August 2018, Commissioner Horowitz "insinuated" that Complainant was unfaithful to her husband by asking if her "husband knew that General Supervisor Faust was walking [her] to [her] car." (Ex. C — November 27, 2018 letter);
- On September 13, 2018, while commenting on an anonymous letter sent to District 7, Commissioner Horowitz suggested to Complainant that they have an affair, so an anonymous letter could be written about them. (Complaint ¶ ¶ 5-6);
- On September 13, 2018, Commissioner Horowitz compared Complainant to a big cigar, and asked if she was "hot." (Complaint ¶ 6);
- On October 4, 2018, Commissioner Horowitz stared at her and wrote "I heart Matt" on a folder. (Complaint ¶ 10);
- On October 17, 2018, Commissioner Horowitz and others referred to a Halloween event as "Junk in the Trunk" as opposed to "Trunk or Treat." (Complaint ¶ ¶ 12-13)
- On October 19, 2018, Commissioner Horowitz touched Complainant's arm while he was installing software on her computer and told her to "act excited." (Complaint ¶ 14);
- On November 1, 2018, members of the Board discussed its plan to implement a sexual harassment policy. (Complaint ¶ 15). During that same meeting, Commissioner Horowitz allegedly stated, "anyone who accuses me of anything, better be prepared to have that happen to them." (Id.); and,
- On November 19, 2018, Commissioner Graff sent Complainant an email accusing her of "lying about an unrelated matter" [the dental benefits issue]. (Complaint 17); (Ex. D –November 19, 2018 email).

To support her claim of retaliation, Complainant relies solely upon the following alleged incidents:

- On December 6, 2018, the wives of two of the members of the Board of Commissioners "glared" at Complainant (which cannot be substantiated). Later that evening, one stated to Complainant, "don't you stare at me" and ' 'just you wait, just you wait." (Complaint ¶ 21); and,
- Complainant was prevented from attending certain meetings. (Complaint ¶ ¶ 23-24). [1]

[1] Complainant also points to the termination on December 6, 2018 of two alleged witnesses to her allegations (Faust and Hernandez). However, no action was taken against Complainant and Respondent has a legitimate, non-retaliatory basis for discharge of both individuals. Indeed, these are the same individuals believed to be involved in the dental benefits scheme. (Complaint 22).

Respondents vehemently deny these allegations as set forth herein. For the reasons set forth above, Complainant's claims are without merit. Accordingly, Respondents respectfully submit that Complainant's administrative Complaint should be dismissed in its entirety for lack of probable cause.

Commissioner Horowitz

Mr. Horowitz, a member of the Board, adopts and joins in the position statements filed on behalf of Respondents Town of Hempstead-Department of Sanitation, Sanitary District NO. 7, Town of Hempstead Board of Commissioners (the "Board"), Patrick Doherty, Austin Graff, and John Mannone (collectively, "Co-Respondents")[1].

In addition, Mr. Horowitz supplements the position statements of Co-Respondents to note that the allegations of sexual harassment made by Complainant Urli are incredible for a reason in addition to those set forth therein. Specifically, Mr. Horowitz was elected to the Board in June of 2017. Based on the allegations in her Complaint, Complainant Urli worked alongside Mr. Horowitz from the date of his election, for 13 months, without issue. Then, beginning in August 2018, she allegedly suddenly perceived communications from him as inappropriate based on her gender. Notably, August 2018 also marked the beginning of the Board's investigation into an apparent dental benefit corruption issue, including Complainant Urli's possible involvement therein. The timing does not appear coincidental and further undermines the credibility of Complainant Urli's allegations.

For the reasons set forth in the position statements submitted on behalf of Co-Respondents and as supplemented herein, Mr. Horowitz submits that the Division should issue a determination of "no probable cause" in each of the three cases.

Commissioner Lanning

Commissioner Lanning was elected to the Board of Commissioners in 2014. While Commissioner Lanning does have the ability to make decisions that affect the District employees, he does not have the power to unilaterally make said decisions. Rather, he is able to vote on decisions, but his vote is one of five (5) that is considered in reaching a determination on any decision.

Complainant Urli was hired on or about December 23, 2013 as Secretary to the Town of Hempstead Sanitary District No. 7. She works in the District office and serves as Secretary to the Board. In the summer of 2018, several months prior to Complainant's written complaint of sexual harassment, the Board became aware that former board commissioners were continuing to receive benefits under the Board's health and dental benefit plans, without the Board's knowledge or approval, prompting an independent investigation. Following this investigation, a majority of the Board determined that Complainant Douglas Hernandez, issued the unauthorized benefits, in violation of his fiduciary duty to the District and its taxpayers. While Complainant Dan Faust was in charge of the entire District, he did not appear to know anything about the dental program and the payments received from retirees, Those in favor of Complainant Faust's termination reasoned that, as General Supervisor, Faust should have known what was going on with the insurance

benefits, but either had no knowledge of same, or lied about having no knowledge of A majority of the Board decided that Faust should be terminated because new leadership was necessary.

While Complainant Urli was not ultimately terminated, those members of the Board who supported the termination of Faust and Hernandez, also supported the termination of Urli, as they believed she had extensive knowledge of the District's benefits plans and was therefore aware of the improper issuance of benefits. Further, members of the Board believed that Complainant delayed the production of documents in order to frustrate the independent investigation and protect herself from a finding of misconduct. Those members of the Board who made this decision reached this conclusion prior to Complainant Urli's written complaint of November 27, 2018; they had already decided to terminate Complainant at the December 6, 2018 meeting prior to Urli's complaint. Notably, respondent Commissioner Lanning was not in favor of these terminations. Attached hereto collectively as Exhibit "A" are the original December 6, 201 8 meeting minutes and the revised meeting minutes. Ultimately the Board terminated Faust and Hernandez, but declined to terminate Complainant.

Importantly, the Commissioners in favor of the terminations made their feelings publicly known, prior to the date on which Complainant Urli made her written complaint of sexual harassment. Specifically, on November 4, 2018, a Facebook post by Austin Graff for Oceanside Sanitation Commissioner stated: "I uncovered corruption within the district and I want Oceanside to know..."; a November 8, 2018 Facebook post stated: "Tonight, the Board voted 4-0 to terminate the dental insurance people, including former employees, a widow, and a former Commissioner who should not have been provided the benefit. One Board member was absent from the meeting. The Board, working together, took decisive action to resolve this matter but also to protect the District and its taxpayers. As the Investigation proceeds, I will update Oceanside... "; and a November 26, 2018 Facebook post stated: "When I found out about this I realized that it is time to terminate the employment of all people who knew about this or turned a blind eye to this conduct or who played a role in this corruption". Copies of the aforementioned Facebook posts are collectively annexed hereto as Exhibit "B". The November 26, 2018 post was publicly posted the day prior to Complainant Urli's November 27, 2018 written complaint. Notably, just one day after learning of the possible termination of those individuals involved in the dental corruption scheme. Complainant Urli submitted her formal written complaint of sexual harassment. Further, she alleges that said harassment began in or about August of 2018; yet, this was the first complaint received by the Board, or any individual Board members.

Complainant Urli alleges sexual harassment and discrimination, based upon sex/gender, under Title VIJ and the NYSHRL, as well as hostile work environment and retaliation for her written complaint of sexual harassment, submitted on November 27, 2018. Complainant alleges that since the day she submitted her formal complaint she has not been allowed to attend Special Meetings and has been prevented from taking minutes at those meetings; this resulted in her being denied any potential overtime associated with said meetings. It should be noted that on January 14, 2019 she was invited to attend next Special Board Meeting on January 16, 2019. As such, Complainant's allegations amount to approximately 1.5 months of missed overtime at special meetings. Finally, the within respondent, Commissioner Lanning, is only referenced in two alleged incidents: (I) September 13, 2018 — in Boardroom for scheduled meeting and Horowitz stated "did you hear I'm having an affair with Jackie and Doug?" to which

Commissioner Lanning responded "No"; and (2) October 17, 2018 Special Meeting — Horowitz spoke about how he hates Al Sharpton; Attorney Keith Corbett stated that "Sharpton doesn't go to Bensonhurst anymore"; Commissioner Lanning added something about needing a "bigger knife."

In the instant matter, Complainant is still employed by the District, in the same position. At most, Complainant missed special meetings over the course of approximately 1.5 months. Importantly, Commissioner Lanning had nothing to do with the decision to invite or not invite Complainant to special meetings. Moreover, there is absolutely no indication that this had anything to do with her written complaint, as opposed to having to do with her alleged involvement in the dental scheme. In fact, Complainant Urli was treated more favorably than both Complainant Faust and Complainant Hernandez, her similarly situated male counterparts; both men were terminated, while Complainant Urli is still employed by the District.

Based on the above, Complainant's claims are without merit, and fail to establish probable cause. As such. Respondent respectfully requests that Complainant's Charge be dismissed in its entirety.

Complainant's Rebuttal

In their Position Statement, Respondents have failed to respond to a number of Complainant's allegations which were provided with great specificity in Complainant's complaint, yet at the same time cast unfounded and slanderous allegations against Complainant while continuing to ignore and diminish her complaints of sexual harassment and discriminatory treatment at the hands of the Respondents. Interestingly, Respondents' footnote one(l) states that Respondents' position statement is not an affidavit, not intended for use "as evidence in any investigation or court proceeding" and that Respondents may use "new or additional facts" at a later date if Respondents choose to, thus making Respondents' Position Statement unreliable.

In the instant rebuttal Ms. Urli offers factual allegations that show disparate treatment and a pattern of behavior displayed in her place of employment, which will shine a light on Respondents' misrepresentations of facts, fabrications and falsehoods.

Respondents' contention that Ms. Urli did not complain about sexual harassment and discrimination is patently false and an attempt to detract from the truth that: I) Ms. Urli was sexually harassed and treated in a discriminatory manner by the Respondents, 2) although her letter Of November 27, 2018 was her first written complaint, Respondents were fully aware of the harassment and discrimination, because Respondents were the ones Who subjected Ms. Urli to the harassing and discriminatory treatment; (3) her Supervisor Dan Faust was aware of and did oppose the harassment he witnessed, which is why he was terminated from the district; 4) each instance of harassment left Ms. Urli visibly upset, anxious and fearful; 5) the Commissioners acknowledged her November 27th letter and told Ms. Urli's Supervisor, Dan Faust that her concerns would be discussed at the December 6th, 2018 meeting, 5) Sanitary District No. 7 did not have a sexual harassment, retaliation, nor discrimination policy or procedure in place, for filing such complaints, and 6) to add insult to injury, to receive any form of relief from the discriminatory and harassing treatment she was being subjected to, Ms. Urli had to file her complaints to the Respondents, the very same people who were harassing and discriminating

against her. This fact magnified the hostile environment Ms. Urli had to endure and is still enduring to this day.

Respondents cannot claim lack of awareness of the harassing and discriminatory treatment towards Ms. Urli. In fact, Respondents were so aware of their inappropriate behavior and that it constituted sexual harassment and discrimination, such that at the November I , 2018 meeting, Commissioner Graff suddenly introduced the need for a sexual harassment policy in the District. This was the first time any type of harassment or discrimination policy had ever been discussed, despite the fact that Ms. Urli is the only female out of sixty-five (65) employees at Sanitary District 7. This sudden need for a policy came about after a Special Meeting which was held on October 17, 2018. During this meeting, Mr. Keith Corbett, Esq. of Harris Beach, PLLC, former counsel for District No. 7, witnessed the deplorable actions of Commissioners Horowitz, Lanning and Mannone, and the complicit behavior of the rest of the Commissioners. Daniel Faust was also present at this meeting to witness the despicable behavior of the Respondents.

Following the November 1, 2018 meeting, the very next month, at the December 6, 2018 meeting, the Commissioners voted to adopt the New York State template for the Sexual Harassment Policy. The Board of Commissioners asked that Attorney Corbett to write the policy using the New York State template. There was no discussion at this meeting to address Ms. Urli's letter of complaint as told to her by Supervisor Dan Faust. Mr. Faust was terminated on December 6, 2018 after opposing the Commissioners wrongful behavior and after being identified as a witness.

There was nothing else said concerning the policy until the May 2nd, 2019 meeting. During this meeting Attorney John Ciampoli was not in possession of the Sexual Harassment Policy, and said he had to get the policy from Mr. Corbett. As such, after five (5) months, there was still no harassment or discrimination policy of any kind implemented by the District. However, on June 11, 2019, Ms. Urli was given a Sexual Harassment Transmittal Letter (Exhibit A) and a copy of the Sanitary District No. 7 Sexual Harassment Policy (Exhibit B), with an effective date of December 6, 2018. It is unclear how a policy that did not exist on December 6, 2018, could be deemed effective on December 6, 2018.

Sanitary District No. 7 is a special district and is governed solely by the Respondents, the Board of Commissioners, and Commissioner Matthew Horowitz, There was no policy and/or procedure in place to ensure the protection of Ms. Urli, nor the sixty-four (64) other employees of Sanitary District No. 7, Thus, when Respondents assert that Ms. Urli's complaint Of sexual harassment is "incredible" due to the timing of the investigation regarding the alleged "dental benefits scheme" and the submission of her letter of complaint, this is merely their attempt to discredit Ms. Urli and diminish her claims by falsely accusing her of a contrived "dental benefits scheme" in which she played no role. Ms. Urli in turn contends that Respondents' sudden introduction of a Sexual Harassment Policy was disingenuous and a clear sign that the District was preparing to defend itself against the inevitable, while simultaneously plotting to diminish and discredit any allegations of wrongdoing at the basis of this administrative action. The introduction of the policy was so hypocritical and weak, that Commissioner Horowitz felt untouchable as he stated during this same meeting "1 told them at my job, anyone who accuses me of anything, better be prepared to have that happen to them." This statement was a pure threat, clearly made towards

Ms. Urli, in the presence of the rest Of the Commissioners. Mr. Dan Faust was also present at the meeting and witnessed this blatant level of arrogance and misogyny.

In an attempt to blame the victim, Respondents wrongfully levy false allegations against Ms. Urli regarding her alleged possible involvement with the issue of corruption with the District's dental benefit plan and her attempt to thwart the investigation by filing her complaint of sexual harassment and gender discrimination. This claim is outrageous, and Ms. Urli vehemently denies these allegations. 11 should be noted that as Secretary to the Board of Commissioners and to the Town of Hempstead District No. 7, Ms. Urli's responsibilities do not entail the issuance of Dental Benefits at the District, neither is she responsible for determining who is eligible for such benefits. Ms. Urli is not tasked with oversight of the Dental Benefits Plan at the District and the attempt by Respondents to turn the tables is in itself a further victimization or Ms. Urli.

In August of 2018, when Mr. Horowitz' behavior towards Ms. Ms. Urli became inappropriate, Ms. Urli sought support from her immediate Supervisor, Dan Faust and her family, as she was tear-till of retaliation from Respondents, who were also her employers. When Ms. Urli could no longer take any more of [he harassment. and discriminatory treatment, and unsure of where else to turn, Ms. Urli sought the advice or Counsel on or about November 12, 2018, to determine her rights, and to explore her options. Then. on November 27, 2018.

Ms. Urli mustered up the courage to submit her complaints in writing and submitted them to Mr. Faust, detailing all the incidents of sexual harassment and discrimination she endured at the hands of the Respondents since August 2018.

Ms. Urli Was Subject to an Adverse Employment Action As A Result or Discrimination

In its Position Statement, Co-Respondents have denied that they have discriminated against Ms. Urli based upon her gender. However, in November of 2018, Complainant reported Mr. Horowitz's sexually inappropriate behavior to her Supervisor, Mr. Daniel Faust via a formal letter of complaint, (EXHIBIT C). In this letter, Ms. Urli detailed the several instances of sexual harassment beginning in August of 2018. Ms. Urli also named Mr. Daniel Faust and Mr. Douglas Hernandez as witnesses to the incidents outlined. Mr. Faust put the Respondents on notice of Ms. Urli's letter and complaints. Mr. Faust told Ms. Urli, the Commissioners said her letter would be addressed at the General Meeting on December 6, 2018, when Counsel was present.

On December 6, 2018 al the General Meeting, the Board of Commissioners did not respond to Ms. Urli's letter of complaint or even discuss it. In an act of litter abuse and retaliation, they chose instead, to terminate the two (2) witnesses named in Ms. Urli's complaint, Mr. Dan Faust, Supervisor and Mr. Doug Hernandez, Treasurer. Faust and Hernandez were both terminated without cause in the very public session. At that time. Complainant's job responsibilities were also reduced without reason. An adverse action intended to further harm Ms. Urli, Complainant was no longer allowed to attend Special Meetings, and was therefore prevented from taking the minutes at those meetings, which had been part of her responsibilities. Additionally, Complainant was denied the ability to partake in overtime by not being allowed to attend these meetings. This caused financial loss.

It is the Complainant's position that the Board of Commissioners removed her from Special Meetings in retaliation to the sexual harassment complaint she made against them and their personal biases towards her as a female. Respondents' contention that Ms. Urli only missed a few meetings, is true only because once Respondents became aware of Ms. Urli's complaints, they invited her back to the meetings to "save face" and to avoid any further claims of retaliation in this regard. However, their action did not undo what they did to bar her from the meeting she did miss. Respondents continued to remove safe guards from around her however, in an attempt to intimidate her and to create a hostile work environment. Some of these actions includes terminating her witnesses Mr. Faust and Mr. Hernandez, the only supports she had at work, and changing her schedule such that she is the only employee in her building who works from 1:00 p.m. to 4 p.m. each day. This change in schedule not only isolates her from the rest of the employees, but it also creates an environment as there is no security guard in the building with Ms. Urli at all and she is there alone each day during her shift. The change in schedule also requires that Ms. Urli do the work of maintenance worker or supervisor, in that she must lock up the building each day before she leaves. Ms. Urli is not a maintenance worker, and she was not promoted to the position of Supervisor, yet she has been forced to accept these changes.

There is no question that Respondents have created a hostile work environment for Ms. Urli and retaliated against her for submitting the letter of complaint regarding the discriminatory and retaliatory behavior she has endured at the 'hands of the Respondents. Respondents contend however, that the Complainant identifies only a handful of incidents occurring between August 2018 and November 2018. They further contend that a few instances or banter laced with sexual innuendo and unwanted touching or mild isolated harassment is not enough to establish a hostile work environment. Their stated positions are at best problematic and at worst illustrative of the disregard of the law.

Here, all the incidents or sexual harassment at the hands of Matthew Horowitz and the complicity of the Board or Commissioners, created a very hostile work environment that Ms. Urli was made to endure each day. Respondents' consistent inappropriate, disrespectful and harassing behavior created a hostile environment when they staffed making various inappropriate statements 017 a sexual nature toward the Complainant. These incidents began in or about August, 20 J 8 and occurred regularly until Complainant tiled her letter detailing each instance she had [0 endure. At that point, the harassment and discrimination switched from sexually inappropriate action to retaliatory acts.

In one incident Commissioner Horowitz insinuated that the Complainant was unfaithful to her husband by walking with Mr. Faust causing the Complainant to be embarrassed and humiliated. Comments of this type were not made to any male workers. In another incident Mr. Horowitz suggested that he and the Complainant have an affair and a three-way with her Supervisor, Dan Faust. This statement was made in front of Mr. Faust, and Mr. Hernandez. All three parties, Faust, Hernandez and Complainant were all visibly disgusted by Commissioner Horowitz' behavior. In another incident Mr. Horowitz referred to the Halloween Fest called "Trunk or Treat" as "Junk in the Truck". This phrase is often used as a derogatory term directed toward a female's body, particularly a female with a large bottom. These were not the only incidents. On November l, 2018 the commissioners discussed the need for a new sexual discrimination policy at a General Meeting. This policy was discussed in such an inappropriate and lewd manner that

Mrs. Doherty asked the Complainant if she was uncomfortable. Ms. Urli responded "yes", Commissioner Horowitz then decided to use intimidation to send a clear message to Ms. Urli during the meeting. Horowitz stared at the

Complainant in a threatening manner and stated, "I told the people at my job that "anyone who accuses me of anything better be prepared to have that happen to them." This was a clear threat that was aimed right at Ms. Urli. This threat was meant to intimidate Ms. Urli, as Respondents were aware that the behavior of Commissioner Horowitz, and the rest of the Commissioners was inappropriate, discriminatory, retaliatory and unlawful.

Then, on December 6, 2018, the Retaliatory behavior began, and to turn up the heat on Ms. Urli, and send a clear message to her, the Respondents terminated the witnesses that were named in Ms. Urli's letter of complaint, Mr. Dan Faust and Mr. Douglas Hernandez. Faust and Hernandez were the only two (2) people who showed any support to Ms. Urli, and who opposed the Respondents' inappropriate behavior. Respondents were on notice of this and on December 6, 2018, nine (9) days after Respondents received Ms. Urli's letter, both Faust and Hernandez were terminated without cause. Ms. Urli's claims were never discussed, let alone investigated and she was forced to endure further intimidation through the office in retaliation for writing her letter of complaint.

During this same meeting, on December 6, 2018, Respondents' Horowitz and Mannone used their wives as an extension of themselves to further intimidate and threaten the Complainant. The wives or the Commissioners elected to sit as close as possible to the Complainant and unusually far from their husbands. Ms. Horowitz and Ms. Mannone glared at Ms. Urli throughout the entire meeting as Ms. Urli attempted to complete her duties at the General Meeting. Then, as the Complainant was walking to the boardroom for the Executive Session, Mrs. Horowitz stated in a very threatening tone, "Don 't stare at me, just you wait, just you wait!" These actions were done solely in retaliation of the submitted letter of complaint. Respondents then began a social media campaign wherein they posted videos on YouTube and chats on Facebook which were shared and "liked" multiple times by other employees of the District and members of the community. These social media posts accused Complainant along with Faust and Hernandez, of being involved in an alleged "dental benefits scheme" at the District. All three parties, Complainant, Faust and Fernandez,, were accused of defrauding the District. These videos were viewed by other employees of the District and members of the community. As a result, Ms. Urli began receiving threatening Calls at work, and the General Meeting turned increasingly contentious each month. During these meetings, Complainant was often yelled at and called a "liar". The Complainant found it difficult to complete her job in every aspect, from the office to General Meetings due to the hostile and toxic environment that the Respondents created. Complainant became increasingly anxious and fearful as a result.

Further, the Respondents attempted to isolate the Complainant by changing her hours, forcing her to work alone from 1pm – 4pm pm each day without a security guard. Ms. Urli is now doing the work of five (5) people as she is the only employee left in the office due to the District's termination of all her co-workers and Supervisors who once worked alongside her. Ms. Urli is required to lock up the building each day alone, thus taking away her sense of safety and

security, and causing the Complainant to: feel fear and intimidation so severe that it has impacted her sleep, caused emotional damage and physical pain as a result of the environment.

Investigator's Observations:

Aug 2, 2018

- Horowitz made comments about Urli for walking to her car with Faust, "being unfaithful to her husband"
- Mannone and Graff were there when he said it and didn't do anything

Sep 13, 2018

- Horowitz made comments about a letter written to the district
- He said that no letters are written about him and suggest him and Urli should say they are having an affair so people would write about them
    - Graff was present
- Continued the convo by saying Hernandez and Urli should have a three-way
- Then, went to the board meeting and said to Mannone and Graff that he was going to have a three way with Hernandez and Urli while Faust tells them what to do
    - Hernandez, Faust, Mannone and Graff present

Oct 4, 2018

- Horowitz stared at Urli during an executive session after a general meeting
- Faust noticed and asked if anything was wrong, but Horowitz just laughed
- He wrote "I heart matt" on the minutes which needed to be signed
- Urli said "what the hell are you doing?"

Oct 17, 2018

- Horowitz spoke in a derogatory ways and language about his trip to Vegas
- Lanning made racist remarks
- Attorney Corbett and Mannone were present, laughed during the conversation
- Faust began to talk about Halloween and Horowitz made remarks about "junk in the trunk"

Oct 25, 2018

- Came to install Office 365 and was very close to Urli
- Urli appeard uncomfortable in which Horowitz responded "act excited!" about the software and touched her right arm multiple times

Nov 1, 2018

- Graff said there was a need to discuss sexual harassment policy at a board meeting because they didn't have one before
- Graff asked Urli if she was uncomfortable and she said "yes, very!"
- Horowitz made a comment saying "if anyone ever accuses him of anything they'll get what's coming"
- Urli felt threatened by his comment

Nov 19, 2018

- Graff sent email that Urli lied about something
- Attempt to intimidate and discredit Urli
- Commissioner Doherty thinks Graff was out of line

Nov 27, 2018

- Urli officially reported her harassment to Faust
- Her retaliation began, and she was no longer allowed to go to special meetings which she had been going to her entire time employed here
- She is the only person with the responsibility of taking notes at these minutes but bc she's not allowed to attend she cannot do her duty
- Faust alleges he emailed the letter from Urli the same day she filed it

Dec 1, 2018

- There was a board meeting
- Faust handed out her letter to the board members

Dec 6, 2018

- General meeting happened and the wives of Mannone and Horowitz threatened and intimidated Urli
    - Faust was present
- Faust and Hernandez were fired without a cause; they were listed as her witnesses
- Horowitz's wife threatened her and said "Don't you look at me, just you wait...just you wait."

Jan 14, 2019

- Notice of claim served; allowed back to the Special meeting:
- No efforts of separating her and Horowitz at these meetings

Questions for Urli

1. **How long have you been working at the Dept. of Sanitation?**
   She has been working there for 5.5 years.
2. **When did the sexual harassment begin?**
   Aug 2, 2018 the first incident of her and Faust walking to their car.
3. **Do you work with the Commissioners on a day-to-day basis or is it only when they have meetings? What is the location of their offices in relation to where you work?**
   Several times a month for board meetings, general meetings, and special meetings
    a. **Do you still work with the Commissioners?**
       Yes, still has to see him at the meetings.
    b. **What's the current nature of your interactions at work?**
       The sexual harassment has stopped but there is retaliation:
        - Isolated her from everyone: since Faust & Hernandez have been terminated and Vurture retired on March 29, 2019, she is the only person in the office. Feels like it is humiliating she has to ask someone to come up to her office when she needs to go to the bathroom
        - Vurture received a phone call on Feb 19, 2019. After he got off a phone call he covered his mouth and said "you know what that was about, Graff says I'm not supposed to be talking to you."
        - Her work times got changed from 8:30-4:30 to 8-4 on Jan 1,2019, other staff ours have been changed to 5am-1pm so she is in the office alone until 4pm.
        - People stopped saying "Good Morning" and people wouldn't go alone to her office always came with 2 or more people.
        - She could no longer receive overtime when she wasn't allowed at the special meetings but has been invited back since Jan 14th, 2019.

4. **Who is present at the board meetings?**

General meetings

- Happens once a month (first Thursday of every month)
- People present at the meetings:
  - The 5 commissioners are present at the meetings during Aug 2018 – Nov 2018;
    - Chairman Mannone
    - Vice Chairman Doherty
    - Commissioner Lanning (no longer a commissioner)
    - Commissioner Horowitz (Became a commissioner in June 2017)
    - Commissioner Graff (Became a commissioner in July 2018)
  - Atty. Keith Corbett was also present but then John Ciampoli took over as the atty. in Jan 2019
  - Treasurer, Douglas Hernandez (Terminated Dec 6, 2018)
  - General supervisor, Daniel Faust (Terminated Dec 6, 2018)
  - The public is also allowed to attend the meetings

Special Meetings

- Happens whenever the board needs to meet approx. 2-3 times a month
- People present at the meetings:
  - The 5 commissioners are present at the meetings during Aug 2018 – Nov 2018;
    - Chairman Mannone
    - Vice Chairman Doherty
    - Commissioner Lanning (no longer a commissioner)
    - Commissioner Horowitz (Became a commissioner in June 2017)
    - Commissioner Graff (Became a commissioner in July 2018)
  - Atty. Keith Corbett was also present but then John Ciampoli took over as the atty. in Jan 2019
  - Treasurer, Douglas Hernandez (Terminated Dec 6, 2018)
  - General supervisor, Daniel Faust (Terminated Dec 6, 2018)

5. **Did anyone else in the office witness any of Mr. Horowitz's behavior?**
   a. **i.e. When he went to set up the new office 365, was anyone else around?**
   Vurture and Hernandez were in the office. *She said she will provide contact info for Vurture.*
6. **Other than the incidents mentioned in the complaint what is your regular interaction with Horowitz like?**
   Horowitz was a commissioner since June 2017. The sexual harassment began on Aug 2, 2018. Prior to that, Horowitz didn't make any sexual remarks but always used crude language in his speech.
7. **Do you have any other female co-workers?**
   At the time, Vurture, Faust & Hernandez were the only other co-workers in her office. There was another employee, James Mitchell, the messenger. In July 2018, Graff and Horowitz abolished his title at a board meeting and his last day of work was Aug 2. There is another office for the supervisors downstairs next to the garage where they hold the general meetings. However, that is a separate office from hers.
   They recently just hired a new female staff but not during the time of the harassment.

8. **Did you make any other complaints?**
   She had lunch with Faust every day and she would tell him how uncomfortable she felt. She also sent a letter to the commissioners after they retaliated saying that their actions are retaliatory. *Said she will provide the letter.*
9. **Not allowed to attend Special Meetings since Nov 27, 2018 but you are the only person that has the responsibility of taking notes for these meetings?**
   Told her that someone would take the meeting minutes and sent it over to her.
   a. **When did they tell you that you were not allowed to attend the Special Meetings?**
      Dec 7-9, she's not sure but it was before the special meeting that followed the Dec 6 meeting.
   b. **Was it in writing?**
      They told her through E-mail. *Said she can provide the email.*
10. **Was there an investigation into fraud? [Past or retired employees were receiving dental benefits and Graff called for the termination of anyone who knew/ turned a blind eye to the issue.]**
    There was a fraud investigation about the dental fraud in fall of 2018. They were asked questions by a Harris Beach attorney about dental insurance. They asked her was she involved, did she make decisions about the dental insurance, did she overhear conversations. She says she's not involved in the administration of dental insurance, so she doesn't know anything, Vurture is responsible for that. Joseph Cibellis asked Austin Graff in the May board meeting, "how much dental insurance cost tax payers?" Graff said "zero."
11. **What are your damages? What are you looking for?**
    - Horowitz to step down
    - Known that she is not a liar, Graff called her a liar, Mannone called her a liar on social media. *Said she can provide evidence of the posts.*
    - Faust & Hernandez to have their jobs back
    - Compensation for therapy and medication

    a. **Have your wages been dropped? When did you lose your overtime?**
       She could no longer receive overtime when she wasn't allowed at the special meetings but has been invited back since Jan 14th, 2019.
12. **Are you part of a union?**
    She had a meeting with the union rep, Lef Eason, from CSEA on Dec 7th, 2018. She gave them a copy of the letter she sent to Faust. The union said they don't do sexual harassment.

Submitted by: Barbara Fae Feldstein
Barbara F. Feldstein
Human Rights Specialist I

III. BASIS FOR DETERMINATION

Complainant, Jaqueline Urli, alleges she was sexually harassed by Commissioner of the Department of Sanitation No. 7, Matthew Horowitz ("Horowitz"), starting in August 2018. She states that she then was subjected to a retaliatory hostile work environment by the Board of

Commissioners in response to her filing a sexual harassment claim with her Supervisor, Daniel Faust, on November 27, 2018.

Respondents, the Department of Sanitation No. 7 ("Department"), alleges that the termination of those involved in Complainants sexual harassment claim were unrelated to their positions as witnesses to the sexual harassment incidents. The reason for termination of Faust and Hernandez were a result of their negligence in the Department's dental insurance fraud.

Respondent Horowitz separately submitted his position in addition to the Department's position. Horowitz alleges there is an issue of credibility on Complainant's claim because she was working with Horowitz for thirteen (13) months without any issues, prior to the first incident of sexual harassment she alleged. Horowitz alleges that this timely complaint was filed in response to the ongoing dental insurance fraud investigation within the Department.

The Division investigation reveals that Complainant alleges she was sexually harassed by one of the Commissioners, Matthew Horowitz. Her allegations include a series of inappropriate comments of a sexual nature including jokes about Complainant being unfaithful to her husband. In the complaint, Complainant has identified two (2) witnesses to her incidents. Douglas Hernandez ("Hernandez"), Treasurer for the Department of Sanitation, and Daniel Faust ("Faust"), General Supervisor, were both listed as witnesses. Mr. Faust and Mr. Hernandez both filed separate claims with the Division which support the various events of sexual harassment directed towards Complainant, in addition to their own claims of retaliation by the Department in response to their positions as witnesses. Not only were both witnesses present at the meetings where Horowitz made inappropriate comments, but Horowitz included the witnesses in his jokes.

Horowitz made jokes during a Board meeting on September 13, 2018, that himself, Faust and Hernandez were having a threesome with Urli. On October 25, 2018, Horowitz came to the Complainant's office to set up Office 365. He touched Complainant's arm and asked her why she was not acting "excited" for the new software. The Division investigated the details of the incident. Faust stated in a one-party conference that Horowitz installed the software for him and another employee, Wayne Vurture. Faust stated that he found Horowitz's actions inappropriate because he did not tell Faust or Vurture to "act excited" or touch their arms.

Prior to November 1, 2018, the Department of Sanitation did not have a sexual harassment policy in place. On the November 1, 2018, board meeting, Commissioner Austin Graff stated that there was a need to implement a sexual harassment policy. However, after the Division interviewed Complainant, Hernandez and Faust, they all stated that no action was taken to implement such a policy. However, it is documented in the December 6, 2018, board meeting that the Commissioners unanimously voted to implement a New York State standard policy, which is to be further revised by the Board - therefore indicating that an official policy had yet to be implemented.

As a result, when Complainant filed her letter, Faust stated that he was uncertain of the procedural steps that should follow. Faust alleges that he emailed the letters to the Board of Commissioners and also handed out copies of the letter at the December 1, 2018. Respondents allege that an internal investigation was conducted, but that Complainant refused to engage in the

process. The letter that Complainant had filed to her Supervisor, Faust, had adequate information for the Department to conduct an investigation. Complainant's letter enlisted all of the incidents in which the harassment occurred, identifying the alleged harasser and witnesses to the harassment. Complainant then filed a Notice of Claim on January 14, 2018. Subsequently, an internal investigation was conducted in connection to the Complainant's Notice of Claim. However, the Department did not conduct an internal investigation outside of the purposes of litigation.

Complainant alleges that the Department stopped inviting her to special meetings. She states that one of the primary responsibilities of her job requires her to take notes for the special meetings. As a result of her exclusion from the special meetings, Complainant was no longer able to receive overtime, because the special meetings occur in the late evenings and were her only source of overtime.

On January 14, 2019, Complainant was invited back to the special meetings. However, Horowitz was not only present at the meetings but was also the individual to call the Complainant into the meeting. It appears that there have been no efforts to separate the Complainant from her alleged harasser.

Consequently, the Division finds that Complainant filed an internal complaint alleging sexual harassment and the Division investigation revealed no information to support Respondent took reasonable actions to address the complaint. Regardless of Respondent's belief as to why the complaint was filed, Respondent had a duty to investigate and take action. A trier of fact must decide the relevancy of the fraud investigation, if any. The allegations of sexual harassment are supported by two (2) witnesses, therefore there is sufficient evidence for the Complainant's sexual harassment and retaliation claims. As such, this case should be forwarded to a hearing before an Administrative Law Judge.

Reviewed & Approved:

Michael Peel
Human Rights Specialist II

IV. DETERMINATION

Based on the foregoing, I find PROBABLE CAUSE to support the allegations of the complaint.

Joyce Yearwood-Drury
Director O.S.H.I

Division of Human Rights

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS on the Complaint of

DOUGLAS HERNANDEZ,

Complainant,

v.

TOWN OF HEMPSTEAD - DEPARTMENT OF SANITATION, SANITARY DISTRICT NO. 7, TOWN OF HEMPSTEAD, BOARD OF COMMISSIONERS, MATTHEW HOROWITZ, THOMAS LANNING, JOHN MANNONE, AUSTIN GRAFF, PATRICK DOHERTY,

Respondents.

DETERMINATION AFTER INVESTIGATION

Case No.
10200638

Federal Charge No. 16GB902718

On 2/21/2019, Douglas Hernandez filed a verified complaint with the New York State Division of Human Rights ("Division"), charging the above-named Respondents with an unlawful discriminatory practice relating to employment because of opposed discrimination/retaliation, sex in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division has determined that it has jurisdiction in this matter and that PROBABLE CAUSE exists to believe that the Respondents have engaged in or are engaging in the unlawful discriminatory practice complained of.

Pursuant to the Human Rights Law, this matter is recommended for public hearing. The parties will be advised of further proceedings.

Dated: 9/12/19
Brooklyn, New York

STATE DIVISION OF HUMAN RIGHTS

By: _____
Joyce Yearwood-Drury
Director O.S.H.I.

NEW YORK STATE

DIVISION OF HUMAN RIGHTS

TO: Files

REGION: O.S.H.I.

FROM: Joyce Yearwood-Drury
Director O.S.H.I.

DATE: August 15, 2019

SDHR CASE NO: 10200638-19-E-SO-E

Federal Charge No. 16GB902718

SUBJECT: Douglas Hernandez v. Town of Hempstead - Department of Sanitation, Sanitary District No. 7, Town of Hempstead, Board of Commissioners, Matthew Horowitz, Thomas Lanning, John Mannone, Austin Graff, Patrick Doherty

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FINAL INVESTIGATION REPORT AND BASIS OF DETERMINATION

I. CASE SUMMARY

This is a verified complaint, filed by Complainant, Douglas Hernandez, on Thu 2/21/2019. The Complainant who is male, charges the Respondents with unlawful discriminatory practices in relation to employment because of opposed discrimination/retaliation, sex.

II. SUMMARY OF INVESTIGATION

Complainant's Position:

I worked for Sanitary District No. 7 (herein "District") for twenty-eight and a half (28.5) years, my last position held was as Treasurer. I was unlawfully terminated on December 6, 2018 at a publicly held meeting in retaliation for supporting Ms. Jacqueline Urli (herein "Ms. Urli"), regarding her allegations of sexual harassment, discrimination, hostile work environment and retaliation against Respondents. (See Exhibit A, Minutes from Meeting #3358 of District [12/06/18J, p. 12-14). The herein complaint represents my original and first complaint filed against Respondents to the related charges of wrongful termination and retaliation based on my opposition of the discrimination, sexual harassment, hostile work environment and retaliation Ms. Urli suffered in her role as Secretary for the District. I submit the within Charge of Retaliation against said Respondents for the adverse employment actions that have been taken against me based upon my voicing of opposition to their wrongful acts, unlawful retaliation, gender, and sex discrimination in employment.

As background, Ms. Urli was hired as a Secretary to Sanitary District No. 7 by the Respondent on December 23, 2013. Ms. Urli is the only female employed at the District. I know Ms. Urli professionally as Secretary to the Board of Commissioners, as I regularly attend said Board

meetings in my capacity as Treasurer to the Board of Commissioners. At all times during Ms. Urli ' s employment, she performed her duties in an exemplary fashion, despite the fact that Ms. Urli's environment became increasingly hostile, toxic and manifesting in emotional abuse and sexual harassment.

Prior to my termination on December 6, 2018, I worked as the Treasurer to the Sanitary District No. 7 Board of Commissioners, with a career extending twenty-eight and a half (28.5) years at the District. Ms. Urli was hired as the Secretary to the District Board of Commissioners in or about December 2013, and I attended meetings with the Board of Commissioners where Ms. Urli was the Secretary on a regular basis up and to December 6, 2018, the date of my wrongful termination. I was witness to the first instances of sexual harassment that Ms. Urli experienced at the District, which began in or about August 2018, when Commissioner Matthew Horowitz began making sexually inappropriate remarks towards Ms. Urli in my presence and the presence of Ms. Urli's co-workers, and other members of the Board of Commissioners.

I witnessed in or about August 2018, Mr. Dan Faust (herien Mr. Faust) walking with Ms. Urli out of a board meeting towards the parking lot after the meeting of the Board of Commissioners. Upon seeing this, Commissioner Horowitz insinuated, in the presence of two (2) other Commissioners, Commissioner John Mannone and Commissioner Austin Graff, that Ms. Urli was being unfaithful to her husband because Ms. Urli was walking with Mr. Faust, her Supervisor, to the parking lot. Ms. Urli was visibly embarrassed by Commissioner Horowitz's inappropriate comments and got into her car and left- No such comments are made to men who walk with each other to their cars.

On or about September 13, 2018, Mr. Faust and I witnessed Commissioner Horowitz follow Ms. Urli upstairs to the office area where I was with Mr. Faust. Ms. Urli was visibly uncomfortable by the conversation Commissioner Horowitz was trying to have with her. Commissioner Horowitz tried to engaged Mr. Faust and myself in the conversation he was having with Ms. Urli by stating to us, "Did you hear I'm having an affair with Jackie?" Said Commissioner then turned to Ms. Urli and said, "We should have a three-way, me you, and Doug (me) and you can tell me and Doug what to do." Ms. Urli was clearly embarrassed and we, being Mr. Faust, myself and Ms. Urli were stunned by Commissioner Horowitz's comments. Then, later on near the end of the meeting, as the Commissioners were discussing cigars, Horowitz said, "Jackie looks like a big cigar, is she hot?" These comments were unwanted by Ms. Urli and intensely offensive to all in earshot.

I am aware of an incident on or about September 13, 2018 when Commissioner Horowitz stated to Ms. Urli, in front of Commissioner Graff "Why don't' we say we are having an affair so they write one [a letter] about us?" Ms. Urli and Commissioner Graff at the time had been reviewing an anonymous letter that had been sent to the District, unrelated to Commissioner Horowitz.
I witnessed Commissioner Horowitz's continual sexual harassment of Ms. Urli. For example, on October 19, 2018, Commissioner Horowitz went the District to install new computer software. While installing the software, Commissioner Horowitz stood unusually close to Ms. Urli. Commissioner Horowitz repeatedly touched Ms. Urli' s arm, uninvited, and stated, "Come on Jackie, act excited" and "What's wrong with you, you're not acting excited about this?" Commissioner Horowitz's behavior was highly inappropriate and visibly distressed Ms. Urli.

Similarly, Ms. Urli conveyed the great discomfort she felt on November 2, 2018, when Commissioner Horowitz came to the office for a training on Office 365, which Ms. Urli's attendance was required.

I have personal knowledge of the email circulated by Commissioner Graff on November 19, 2018, to the entire Board and then-Attorney for the Sanitary District No. 7 Board Keith Corbett, falsely accusing Ms. Urli of lying on an unrelated matter. Commissioner Graff s motive was to discredit Ms. Urli's character, as said email from Commissioner Graff came on the heels of Ms. Urli informing the Board of the level of discomfort she was feeling regarding the sexual harassment and inappropriate discriminatory comments made frequently by Commissioners and employees of the District during meetings and in the work place.

I am aware that on or about November 27, 2018, Mr. Faust received a formal letter of complaint regarding the discrimination, sexual harassment and hostile work environment Ms. Urli had endured since August 2018 by the Commissioners. On the same date, Mr. Faust circulated the written complaint to the Commissioners. (Exhibit B, Letter to Mr. Faust from Ms. Urli [11/27/18]).

The written complaint enumerated specific incidents, dates and witnesses, including myself and Mr. Faust. Both Mr. Faust and I were identified as witnesses to the sexual harassment of Ms. Urli by Commissioner Horowitz in particular and were and are willing to act as witnesses to support Ms. Urli's claims. The Board of Commissioners did not respond to Ms. Urli's written complaint or discuss it at the December 6, 2018 General Meeting.

I witnessed on the evening of December 6, 2018, Ms. Urli receive hostile and retaliatory treatment by 'Commissioners Horowitz' s and Mannone' s wives, who were present at the public meeting. Ms. Marcia Horowitz, the wife of Commissioner Horowitz, and Ms. Ann-Marie Mannone, the wife of Commissioner Mannone, tried to intimidate Ms. Urli by sitting extremely close to Ms. Urli and unusually far from their husbands, while glaring at Ms. Urli throughout the meeting. These women were clearly acting as agents for both of their spouses. Ms. Urli's written complaint was never addressed at the December 6, 2018 meeting or anytime later by the Respondents.

I personally witnessed later that evening, as I Ms. Urli was walking to the boardroom for Executive Session, Mrs. Horowitz said, in a very harsh tone, "Don't you stare at me!" followed by, "Just you wait, just you wait!" Ms. Urli did not respond to Mrs. Horowitz's threats but was visibly shaken.

During the December 6, 2018 meeting, and in retaliation for being named as witnesses in Ms. Urli's complaint, both myself, the then Treasure to the Board of Commissioners and Mr. Faust, then General Supervisor of the District and Ms. Urli's direct supervisor, were terminated without cause. My termination was based on my willingness to act as a witness to the sexual harassment and several other wrongful acts of the Commissioners towards Ms. Urli. Notably, only NINE days passed from the Commissioners receiving Ms. Urli 's written complaint, which was forwarded to the Commissioners on November 27, 2018 by Mr. Faust and my very public termination on December 6, 2018 at the General District Board of Commissioners' meeting.

I was publicly humiliated, as I was terminated without cause in a public meeting, not even an executive session of the Board, contrary to Attorney Corbett's recommendation. (Exhibit B, p. 12-13). Notably, Claimant's termination occurred within NNE days of the Board of Commissioners learning that Claimant was a witness who was willing, ready and able to speak out against the discriminatory behavior and sexual harassment Ms. Urli was subjected to by Commissioner Horowitz, other Commissioners and employees of Sanitary District No. 7. All Commissioners voted on the termination of Claimant with only Commissioner Thomas Lanning abstaining from said vote.

Since my wrongfully and retaliatory termination Commissioner Graff, in particular, has commenced a campaign of providing false, slanderous and libelous information to the media and posting such on his personal Facebook page. (See Exhibit C, Ocean/Island Park Herald, Vol. 54 No.7, A Divided District: Sanitation commissioner asks board chairman to step down, pg. I col. 4 [February 14-20, 2019]). Namely, Com-missioner Graff accusing Mr. Faust and Claimant of providing dental benefits to former Commissioner Cibellis, the Commissioner that Mr. Graff opposed in a contentious political race, without payment from Mr. Cibellis. Commissioner Graff made such claims while fully aware that Claimant had no oversight over dental insurance, that it was Wayne Vulture, (incorrectly referenced as Wayne "Hernandez "in the herein attached Exhibit C), actually that over saw dental insurance, and that Mr. Cibellis in fact had been paying his health insurance benefits out of pocket. (See Exhibit D, Letter from Joseph Cibellis, re: Dental Benefits [1/9/20191); see also Exhibit E, Letter from Edward Schartber, re: Medical Benefits [1/18/19]).

Any accounting error, if one actually existed, fell to the responsibility of Wayne Vurture who continues to be employed in the same position, overseeing health insurance benefits, at Sanitary District No.7. As such, Commissioner Graff s after-the-fact contention that Claimant's termination was based on the alleged dental insurance issue is entirely false and pretextual. As a result of Respondents' retaliation and wrongful termination I have sustained multiple damages including, but not limited to loss of income, loss of benefits, loss pension, loss of health and dental insurance, mental anguish, mental pain and suffering, damage to name and reputation, discomfort, humiliation, shame, embarrassment, extreme mental and emotional harm and stress, and injury to professional reputation.

Based on the foregoing, I charge the above-named Respondents with unlawful employment practices for wrongful termination and retaliation for voicing opposition to discrimination based on gender, sex, sexual harassment and hostile environment and request that this complaint be cross filed with Equal Employment Opportunity Commission.

Respondents' Position:

A. Overview of Respondents: The Town of Hempstead, Sanitation District No. 7 ("District 7") operates garbage collection throughout Oceanside, New York. The Board of Commissioners ("the Board") is responsible for the overall operation of District 7, while non-Board members (District 7 employees employed pursuant to the Civil Service Law) are responsible for the day-to-day operations thereof. The Board consists of five individual Commissioners, each of whom is

elected to a five-year term. Currently, the Board is comprised of the following Commissioners: Patrick Doherty, Austin Graff, Matthew Horowitz, Thomas Lanning, and John Mannone.

B. Overview of Complainant's Employment: Complainant began work for District 7 in 1990. He held the position of Treasurer, a position he held through the date of his termination on December 6, 2018. As Treasurer. Complainant worked in the main office, issued payments to vendors, performed payroll duties, and was in charge of District Ts finances. During the relevant time period, the other individuals who worked in the office were Daniel Faust (General Supervisor), Wayne Vurture (Supervisor), and Jacqueline Urli (Secretary to the Board).

C. Allegations of Improper Receipt of Dental Benefits: In a June 2018 election, Graff was elected as Commissioner, and took office in July 2018. During his campaign, he promised to rid District 7 of corruption. In August 2018, Commissioner Graff learned that a former commissioner and former employees were receiving dental benefits despite the fact they were not current employees. Since Graff believed this ran afoul of the terms of the dental plan, from August 2018 through November 2018, the Board requested from Urli, Faust, Complainant, Vurture and others, information regarding the dental benefits received. For the most part, it appeared District 7 paid for these dental benefits directly, and former commissioners reimbursed District 7 via separate check. However, it appeared that one individual (a former commissioner) received dental benefits without reimbursement for six months and was improperly receiving benefits when he was no longer working for District 7. Former commissioner Joseph Cibellis (who was ineligible for benefits) received dental benefits for approximately six months (July 2016 — January 2017) without paying for them, was removed from the benefits plan and then inexplicably was reinstated to the plan in April 2018 (22 months after his position with District 7 ceased). The Board questioned Urli, Faust and Complainant about these issues (and specifically sought information regarding who authorized this practice). Urli, Faust and Complainant advised that various unnamed former commissioners approved the practice in the past, and District 7 continued to follow the same practice over several years. No detail was provided regarding when the Board of Commissioners purportedly approved the practice or who secured benefits. Ultimately, the Board concluded these benefits were issued and obtained improperly (This issuance of improper benefits is reminiscent of the fact that in 2014 the NYS Comptroller's office determined that the District had provided two former commissioners (Michael and Charles Scarlata) approximately $800,000 in improper deferred compensation payments. The current Board of Commissioners took steps to recover these funds and recently accepted approximately $300,000 in a settlement that sought to recover the funds) and contrary to the dental plan and that Complainant, and others, may have been involved.

On November 26, 2018, Commissioner Graff publicly posted on Facebook his conclusion that there was corruption in the District surrounding dental benefits. (Ex. A — Facebook Posting). Within the post, Commissioner Graff calls for the termination of any individual who knew about, or "turned a blind eye" to the issue. Id. Respondent reasonably concluded that Complainant either knew about and/or "turned a blind eye" to the issue — either provide a legitimate and non-retaliatory basis for discharge.

D. Respondents Received a Copy of Urli's Complaint: On November 27, 2018, Respondents received an internal complaint letter from Urli alleging sexual harassment. (Ex. B — Urli's

Complaint Letter). The letter itself did not state that Complainant would support or agree with Urli's allegations, or that he opposed Respondents' purported actions in any manner whatsoever. (Id.). Complainant took no action in response to the internal complaint. (See, generally, Complaint).

Throughout his administrative Complaint, Complainant states he "witnessed" alleged wrongful conduct of others. (See, e.g., Complaint, 7 "1 witnessed Commissioner Horowitz's continual sexual harassment of Ms. Urli."). However, he does not state that he opposed or took any action as a result of what he allegedly witnessed at any time prior to discharge. (See, generally, Id.). Complainant therefore did not engage in any protected activity.

COMPLAINANT WAS NOT RETALIATED AGAINST: On December 6, 2018, Respondents discharged Complainant and Faust due to their respective roles in the dental benefits scheme identified above. After investigation, Respondents reasonably concluded that Complainant either turned a blind eye or knew about and perpetuated the suspected scheme and also that he misled the Board of Commissioners during the investigatory process. (Ex. C — December 28, 2018 Grievance Response).

CONCLUSION: Complainant did not engage in protected activity and was terminated for legitimate, non-retaliatory reasons. For the reasons set forth above, Complainant's claim is without merit. Accordingly, Respondents respectfully submit that Complainant's administrative Complaint should be dismissed in its entirety for lack of probable cause.

Commissioner Lanning's Answer: Commissioner Lanning was elected to the Board of Commissioners in 2014. While Commissioner Lanning does have the ability to make decisions that affect the District employees, he does not have the power to unilaterally make said decisions. Rather, he is able to vote on decisions, but his vote is one of five (5) that is considered in reaching a determination on any decision.

Complainant Hernandez served as Treasurer, and in the summer of 2018, several months prior to Complainant Urli's written complaint of sexual harassment, the Board became aware that former board commissioners were continuing to receive benefits under the Board's health and dental benefit plans; without the Board's knowledge or approval, prompting an independent investigation. Following this investigation, a majority of the Board determined that Complainant Douglas Hernandez, issued the unauthorized benefits, in violation of his fiduciary duty to the District and its taxpayers. While Complainant Dan Faust oversaw the entire District, he did not appear to know anything about the dental program and the payments received from retirees, Those in favor or Complainant Faust's termination reasoned that, as General Supervisor, Faust should have known what was going on with the insurance benefits, but either had no knowledge or same, or lied about having no knowledge of same. A majority of the Board decided that Faust should be terminated because new leadership was necessary.

Those members of the Board who made this decision made same prior to Complainant Urli's written complaint or November 27, 2018; they had already decided to terminate Complainant at the December 6, 2018 meeting prior to Urli's complaint. Notably, respondent Commissioner

Lanning was not 'in favor Of Complainant Hernandez' s termination or Complainant Faust's termination. Attached hereto collectively as Exhibit are the original December 6, 2018 meeting minutes and the revised meeting minutes.

Importantly, the Commissioners in favor of Hernandez's termination made their feelings publicly known, prior to the date on which Complainant Urli made her complaint of sexual harassment. Specifically, on November 4, 2018, a Facebook post by Austin Graff for Oceanside Sanitation Commissioner stated: "I uncovered corruption within the district and I want Oceanside to know... a November 8, 2018 Facebook post stated: "Tonight, the Board voted 4-0 to terminate the dental insurance for 10 people, including former employees, a widow, and a former Commissioner who should not have been provided the benefit. One Board member was absent from the meeting. The Board, working together, took decisive action to resolve this matter but also to protect the District and its taxpayers. As the Investigation proceeds, I will update Oceanside. . . and a November 26, 201 8 Facebook post staled: "When I found out about this I realized that it is time to terminate the employment of all people who knew about this or turned a blind eye to this conduct or who played a role ill this corruption". Copies of the aforementioned Facebook posts are collectively annexed hereto as Exhibit "B". The November 26, 8 post was publicly posted the day prior to Complainant Urli's November 27, 2018 written complaint. Those on the Board who were in favor of termination decided to terminate Complainant Hernandez, and Complainant Faust, al the December 6, meeting, for the aforementioned reasons; Ibis determination was made prior to the date on which Urli made her first complaint of harassment.

Commissioner Lanning Did Not Vote to Terminate Complainant: Complainant simply cannot sustain a claim of retaliation as against respondent Commissioner Lanning, as Commissioner Lanning did not vote to terminate Complainant. See Exhibit A. The instant retaliation claim is based upon the alleged adverse employment action or termination. However, Commissioner Lanning did not vote Lo terminate Complainant, and thus did not take part in the alleged retaliatory adverse employment action. While the December 6,2018 meeting minutes reflect that Commissioner Lanning abstained from the votes regarding Complainant's terminations the original meeting minutes accurately reflect that Commissioner Lanning actually affirmatively voted against Complainant's termination. The December 6, 2018meeting minutes attached to Complainant's Charge, were revised to reflect that Commissioner Lanning abstained from the vote after an email was circulated proposing said revision. However, the original meeting minutes show that Commissioner Lanning voted "no" on Complainant's termination; thus, he simply did not engage in any act of retaliation. See Exhibit "A".

It should also be noted that the revision in the meeting minutes was made in error, and the Board has already approved changing the December 6, 2018 minutes back to the original version. See Exhibit However, regardless of whether Commissioner Lanning opposed the vote, or abstained from same; he did not vote to terminate Complainant, and thus simply did not engage in retaliation.

Commissioner Horowitz's Answer: Mr. Horowitz, a member of the Board, adopts and joins in the position statements filed on behalf of Respondents Town of Hempstead-Department of Sanitation, Sanitary District NO. 7, Town of Hempstead Board of Commissioners (the "Board"), Patrick Doherty, Austin Graff, and John Mannone (collectively, "Co-Respondents")[1].

In addition, Mr. Horowitz supplements the position statements of Co-Respondents to note that the allegations of sexual harassment made by Complainant Urli are incredible for a reason in addition to those set forth therein. Specifically, Mr. Horowitz was elected to the Board in June of 2017. Based on the allegations in her Complaint, Complainant Urli worked alongside Mr. Horowitz from the date of his election, for 13 months, without issue. Then, beginning in August 2018, she allegedly suddenly perceived communications from him as inappropriate based on her gender. Notably, August 2018 also marked the beginning of the Board's investigation into an apparent dental benefit corruption issue, including Complainant Urli's possible involvement therein. The timing does not appear coincidental and further undermines the credibility of Complainant Urli's allegations.

For the reasons set forth in the position statements submitted on behalf of Co-Respondents and as supplemented herein, Mr. Horowitz submits that the Division should issue a determination of "no probable cause" in each of the three cases.

Investigator's Observations:

This case is a companion case to two (2) related cases: Case No. 10200633 - Jacqueline Urli v Town of Hempstead - Department of Sanitation, Sanitary District No.7; Town of Hempstead, Board of Commissioners; Matthew Horowitz; Thomas Lanning; John Mannone; Austin Graff; Patrick Doherty; and Case No. 10200641 – Daniel Faust v Town of Hempstead - Department of Sanitation, Sanitary District No. 7; Town of Hempstead, Board of Commissioners; Matthew Horowitz; Thomas Lanning; John Mannone; Austin Graff; Patrick Doherty.

Complainant provided along with his complaint as Exhibits: the Minutes from Meeting #3358 of District 12/06/18 p. 12-14; Jacqueline Urli's November 27, 2018 letter to Mr. Faust regarding her sexual harassment complaint against the Commissioners; Ocean/Island Park Herald, vol 54, No. 7 A Divided District: Sanitation Commissioner asks Board Chairman to step down pg. col. 4 February 14-20, 2019; Letter from Joseph Cibellis, re Dental Benefits 1/9/2019; and the letter form Edward Scharfber re Medical Benefits 1/18/2019.

Complainant's exhibits include Jacqueline Urli's November 27, 2018 sexual harassment complaint against the Commissioners; the Report of Personnel Action- Nassau County rejecting Mr. Faust's termination on 12/13/2018; and the letter from Nassau County Civil Service Commission signed by Martha Krisel, Esq., Executive Director to Mr. Faust stating, "Please be aware that the Nassau County Civil Service Commission rejected the decision of Sanitary District #7 to terminate your employment because it failed to conduct a pre-termination hearing pursuant to Section 75 of New York State Civil Service Law" .

The Respondent provided the November 4, 2018 Facebook posting where Commissioner Graf publicly posted his conclusion that there was corruption in the District surrounding dental benefits; Jacqueline Urli's November 27, 2018 sexual harassment complaint against the Commissioners; and the December 28, 2018 Grievance Response which included among the reasons for Mr. Faust's discharge his inability to obtain video surveillance footage as part of an internal investigation and failing to provide complete and accurate information to the Board regarding a smoke/fire issue with a truck.

regarding a smoke/fire issue with a truck.

Respondent Lanning included as exhibits the original December 6, 2018 Board Minutes and the revised meeting minutes; and the November 4, 2018 Facebook posting where Commissioner Graf publicly posted his conclusion that there was corruption in the District surrounding dental benefits.

Submitted by: Barbara Fae Feldstein
Barbara F. Feldstein
Human Rights Specialist I

III. BASIS FOR DETERMINATION

Prior to my termination on December 6, 2018, I worked as the Treasurer to the Sanitary District No. 7 Board of Commissioners, with a career extending twenty-eight and a half (28.5) years at the District. Ms. Jacqueline Urli was hired as the Secretary to the District Board of Commissioners in or about December 2013, and I attended meetings with the Board of Commissioners where Ms. Urli was the Secretary on a regular basis up and to December 6, 2018, the date of my wrongful termination. I was witness to the first instances of sexual harassment that Ms. Urli experienced at the District, which began in or about August 2018, when Commissioner Matthew Horowitz began making sexually inappropriate remarks towards Ms. Urli in my presence and the presence of Ms. Urli's co-workers, and other members of the Board of Commissioners.

Complainant states that on or about November 27, 2018, Mr. Faust received a formal letter of complaint regarding the discrimination, sexual harassment and hostile work environment Ms. Urli had endured since August 2018 by the Commissioners. On the same date, Mr. Faust circulated the written complaint to the Commissioners. The written complaint enumerated specific incidents, dates and witnesses, including Complainant and Mr. Faust. Both Mr. Faust and Complainant were identified as witnesses to the sexual harassment of Ms. Urli by Commissioner Horowitz in particular and were and are willing to act as witnesses to support Ms. Urli's claims. The Board of Commissioners did not respond to Ms. Urli's written complaint or discuss it at the December 6, 2018 General Meeting. Ms. Urli's written complaint was never addressed at the December 6, 2018 meeting or anytime later by the Respondents.

Complainant states that during the December 6, 2018 meeting, and in retaliation for being named as witnesses in Ms. Urli's complaint, both myself, the then Treasure to the Board of Commissioners and Mr. Faust, then General Supervisor of the District and Ms. Urli's direct supervisor, were terminated without cause. Complainant's termination was based on his willingness to act as a witness to the sexual harassment and several other wrongful acts of the Commissioners towards Ms. Urli. Notably, only NINE (9) days passed from the Commissioners receiving Ms. Urli 's written complaint, which was forwarded to the Commissioners on November 27, 2018 by Mr. Faust and Complainant's very public termination on December 6, 2018 at the General District Board of Commissioners' meeting.

Complainant states he was publicly humiliated as he was terminated without cause in a public meeting, not even an executive session of the Board, contrary to Attorney Corbett's recommendation. Complainant states his termination occurred within NNE (9) days of the Board of Commissioners learning that Claimant was a witness who was willing, ready and able to speak out against the discriminatory behavior and sexual harassment Ms. Urli was subjected to by Commissioner Horowitz, other Commissioners and employees of Sanitary District No. 7. All Commissioners voted on the termination of Claimant with only Commissioner Thomas Lanning abstaining from said vote.

Complainant states since his wrongfully and retaliatory termination Commissioner Graff, in particular, has commenced a campaign of providing false, slanderous and libelous information to the media and posting such on his personal Facebook page. Namely, Commissioner Graff accused Mr. Faust and Claimant of providing dental benefits to former Commissioner Cibellis, the Commissioner that Mr. Graff opposed in a contentious political race, without payment from Mr. Cibellis. Commissioner Graff made such claims while fully aware that Claimant had no oversight over dental insurance, that it was Wayne Vulture, (incorrectly referenced as Wayne "Hernandez "in the herein attached Exhibit C), actually that over saw dental insurance, and that Mr. Cibellis in fact had been paying his health insurance benefits out of pocket.

Complainant states any accounting error, if one actually existed, fell to the responsibility of Wayne Vurture who continues to be employed in the same position, overseeing health insurance benefits, at Sanitary District No.7. As such, Commissioner Graff s after-the-fact contention that Claimant's termination was based on the alleged dental insurance issue is entirely false and pretextual.

Respondent states Complainant began work for District 7 in 1990 and held the position of Treasurer through the date of his termination on December 6, 2018. As Treasurer. Complainant worked in the main office, issued payments to vendors, performed payroll duties, and was in charge of District Ts finances. During the relevant time period, the other individuals who worked in the office were Daniel Faust (General Supervisor), Wayne Vurture (Supervisor), and Jacqueline Urli (Secretary to the Board).

Respondent states in a June 2018 election, Graff was elected as Commissioner, and took office in July 2018. During his campaign, he promised to rid District 7 of corruption. In August 2018, Commissioner Graff learned that a former Commissioner and former employees were receiving dental benefits despite the fact they were not current employees. Since Graff believed this ran afoul of the terms of the dental plan, from August 2018 through November 2018, the Board requested from Urli, Faust, Complainant, Vurture and others, information regarding the dental benefits received. For the most part, it appeared District 7 paid for these dental benefits directly, and former Commissioners reimbursed District 7 via separate check. However, it appeared that one individual (a former Commissioner) received dental benefits without reimbursement for six months and was improperly receiving benefits when he was no longer working for District 7. Former commissioner Joseph Cibellis (who was ineligible for benefits) received dental benefits for approximately six months (July 2016 — January 2017) without paying for them, was removed from the benefits plan and then inexplicably was reinstated to the plan in April 2018 (22 months after his position with District 7 ceased). The Board questioned Urli, Faust and

Complainant about these issues (and specifically sought information regarding who authorized this practice). Urli, Faust and Complainant advised that various unnamed former Commissioners approved the practice in the past, and District 7 continued to follow the same practice over several years. No detail was provided regarding when the Board of Commissioners purportedly approved the practice or who secured benefits. Ultimately, the Board concluded these benefits were issued and obtained improperly (This issuance of improper benefits is reminiscent of the fact that in 2014 the NYS Comptroller's office determined that the District had provided two former commissioners (Michael and Charles Scarlata) approximately $800,000 in improper deferred compensation payments. The current Board of Commissioners took steps to recover these funds and recently accepted approximately $300,000 in a settlement that sought to recover the funds) and contrary to the dental plan and that Complainant, and others, may have been involved.

Respondent states on November 26, 2018, Commissioner Graff publicly posted on Facebook his conclusion that there was corruption in the District surrounding dental benefits. (Ex. A — Facebook Posting). Within the post, Commissioner Graff calls for the termination of any individual who knew about, or "turned a blind eye" to the issue. Id. Respondent reasonably concluded that Complainant either knew about and/or "turned a blind eye" to the issue — either provide a legitimate and non-retaliatory basis for discharge.

Respondent alleges on November 27, 2018, Respondents received an internal complaint letter from Urli alleging sexual harassment. The letter itself did not state that Complainant would support or agree with Urli's allegations, or that he opposed Respondents' purported actions in any manner whatsoever. Complainant took no action in response to the internal complaint.

Respondent avers that throughout his administrative Complaint, Complainant states he "witnessed" alleged wrongful conduct of others. ("I witnessed Commissioner Horowitz's continual sexual harassment of Ms. Urli."). However, he does not state that he opposed or took any action as a result of what he allegedly witnessed at any time prior to discharge. Complainant therefore did not engage in any protected activity.

Respondent avers that on December 6, 2018, Respondents discharged Complainant and Faust due to their respective roles in the dental benefits scheme identified above. After investigation, Respondents reasonably concluded that Complainant either turned a blind eye or knew about and perpetuated the suspected scheme and also that he misled the Board of Commissioners during the investigatory process.

Respondent alleges that the Complainant did not engage in protected activity and was terminated for legitimate, non-retaliatory reasons. For the reasons set forth above, Complainant's claim is without merit. Accordingly, Respondents respectfully submit that Complainant's administrative Complaint should be dismissed in its entirety for lack of probable cause.

This case is a companion case to two (2) related cases: Case No. 10200633 - Jacqueline Urli v Town of Hempstead - Department of Sanitation, Sanitary District No.7; Town of Hempstead, Board of Commissioners; Matthew Horowitz; Thomas Lanning; John Mannone; Austin Graff; Patrick Doherty; and Case No. 10200641 – Daniel Faust v Town of Hempstead - Department of

Sanitation, Sanitary District No. 7; Town of Hempstead, Board of Commissioners; Matthew Horowitz; Thomas Lanning; John Mannone; Austin Graff; Patrick Doherty.

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The Respondent provided the November 4, 2018 Facebook posting where Commissioner Graf publicly posted his conclusion that there was corruption in the District surrounding dental benefits; Jacqueline Urli's November 27, 2018 sexual harassment complaint against the Commissioners; and the December 28, 2018 Grievance Response which included among the reasons for Mr. Faust's discharge his inability to obtain video surveillance footage as part of an internal investigation and failing to provide complete and accurate information to the Board regarding a smoke/fire issue with a truck.

Respondent Lanning included as exhibits the original December 6, 2018 Board Minutes and the revised meeting minutes; and the November 4, 2018 Facebook posting where Commissioner Graf publicly posted his conclusion that there was corruption in the District surrounding dental benefits.

The Division investigation revealed controversies that must be resolved at public hearing.

Complainant alleges that his termination was in retaliation for his opposition to Jacqueline Urli's internal complaint of sexual harassment. Respondent states legitimate nondiscriminatory reasons, including but not limited to issues surrounding dental benefits being continued for former employees.

The underlying case filed by Jacqueline Urli, the Division investigation was unclear as to whether the behavior rose to the level of a violation but did support a Probable Cause Determination because the investigation raised issues surrounding whether Respondent may not have adequately addressed Urli's internal complaint of sexual harassment.

The Division investigation did support Respondent's position that prior to any incident of sexual harassment, and therefore prior to an internal complaint, there was political dissention between the Respondent's current Commissioners and the individuals seeking to remove them from office

in the upcoming election. The Division investigation also appears to support the following statement of Respondent, " prior in a June 2018 election, Graff was elected as Commissioner, and took office in July 2018. During his campaign, he promised to rid District 7 of corruption. In August 2018, Commissioner Graff learned that a former Commissioner and former employees were receiving dental benefits despite the fact they were not current employees. Since Graff believed this ran afoul of the terms of the dental plan, from August 2018 through November 2018, the Board requested from Urli, Faust, Complainant, Vurture and others, information regarding the dental benefits received." Complainant Urli alleged in her own complaint that that sexual harassment that began in August.

The Division also notes issues of fact and law surrounding whether Complainant opposed discrimination, as defined by law, that must also be decided by a trier of fact. Complainant states he was terminated because he was named as a witness. The Division investigation revealed it is unclear if Complainant was ever interviewed and/or expressly opposed discrimination but also supports Respondent may have known Complainant was supporting co-filer Complainant Jacqueline Urli.

Whether the Complainant's termination was a natural sequence of events given the political situation noted above or was related to Urli's internal complaint and/or was a mixed motive, should be decided by a trier of fact.

Reviewed & Approved:

Michael Peel
Human Rights Specialist II

IV. DETERMINATION

Based on the foregoing, I find PROBABLE CAUSE to support the allegations of the complaint.

Joyce Yearwood-Drury
Director O.S.H.I.

Division of Human Rights

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS on the Complaint of

DANIEL FAUST, Complainant,

v.

TOWN OF HEMPSTEAD - DEPARTMENT OF SANITATION, SANITARY DISTRICT NO. 7, TOWN OF HEMPSTEAD, BOARD OF COMMISSIONERS, MATTHEW HOROWITZ, THOMAS LANNING, JOHN MANNONE, AUSTIN GRAFF, PATRICK DOHERTY, Respondents.

DETERMINATION AFTER INVESTIGATION

Case No. 10200641

Federal Charge No. 16GB902721

On 2/21/2019, Daniel Faust filed a verified complaint with the New York State Division of Human Rights ("Division"), charging the above-named Respondents with an unlawful discriminatory practice relating to employment because of opposed discrimination/retaliation, sex in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division has determined that it has jurisdiction in this matter and that PROBABLE CAUSE exists to believe that the Respondents have engaged in or are engaging in the unlawful discriminatory practice complained of.

Pursuant to the Human Rights Law, this matter is recommended for public hearing. The parties will be advised of further proceedings.

Dated: 9/12/19
Brooklyn, New York

STATE DIVISION OF HUMAN RIGHTS

By: _____
Joyce Yearwood-Drury
Director O.S.H.I.

NEW YORK STATE

DIVISION OF HUMAN RIGHTS

TO: Files

REGION: O.S.H.I.

FROM: Joyce Yearwood-Drury
Director O.S.H.I.

DATE: June 25, 2019

SDHR CASE NO: 10200641-19-E-SO-E

Federal Charge No. 16GB902721

SUBJECT: Daniel Faust v. Town of Hempstead - Department of Sanitation, Sanitary District No. 7, Town of Hempstead, Board of Commissioners, Matthew Horowitz, Thomas Lanning, John Mannone, Austin Graff, Patrick Doherty

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FINAL INVESTIGATION REPORT AND BASIS OF DETERMINATION

I. CASE SUMMARY

This is a verified complaint, filed by Complainant, Daniel Faust, on Thursday 2/21/2019. The Complainant who is male, charges the Respondents with unlawful discriminatory practices in relation to employment because of opposed discrimination/retaliation, sex.

II. SUMMARY OF INVESTIGATION

Complainant's Position:

1. I worked for Sanitary District No. 7 (herein "District") for nearly twenty-four (24) years, my last position held was as General Supervisor, I was unlawfully terminated on December 6, 2018 at a publicly held meeting in retaliation for supporting Ms. Jacqueline Urli (herein "Ms. Urli"); regarding her allegations of sexual harassment, discrimination, hostile work environment and retaliation against Respondents, (See Exhibit A, Minutes from Meeting #3358 of District [12/06/181, p. 12-14). The herein complaint represents my original and first complaint filed against Respondents to the related charges of wrongful termination and retaliation based on my opposition of the discrimination, sexual harassment, hostile work environment and retaliation Ms. Urli suffered in her role as Secretary for the District. I submit the within Charge of Retaliation against said Respondents for the adverse employment actions that have been taken against me based upon my voicing of opposition to their wrongful acts, unlawful retaliation, gender, and sex discrimination in employment.
2. As background, Ms. Urli was hired as a Secretary to Sanitary District No. 7 by the Respondent on December 23, 2013, Ms. Urli is the only female employee at the District. I

supervised Urli as Secretary to District, to the Board of Commissioners. At all times during Ms. Urli's employments she performed her duties in an exemplary fashion, despite the fact that Ms. Urli's environment became increasingly hostile, toxic and manifesting in emotional abuse and sexual harassment.

STATEMENT OF FACTS

3. Prior to my termination on December 6, 2018, I worked as the General Supervisor at Sanitary District No. 7, for the last four and a half years of my almost twenty-four-year career with the Respondent. Ms. Urli was hired as the Secretary to the District Board of Commissioners in or about December 2013, and was under my supervision until December 6, 2018, the date of my wrongful termination. In my role as General Supervisor, I attended the Board of Commissioners' meetings. I was witness to the first instances of sexual harassment that Ms. Urli experienced at the District, which began in or about August 2018; when Commissioner Matthew Horowitz began making sexually inappropriate remarks towards Ms. Urli in my presence and the presence of Ms. Urli's co-workers, and other members of the Board of Commissioners.

4. On one occasion, in or about August 2018, I was walking with Ms. Urli out of a board meeting towards my car. Upon seeing this, Commissioner Horowitz insinuated, in the presence of two (2) other Commissioners, Commissioner John Mannone and Commissioner Austin Graff, Ms. Urli was being unfaithful to her husband because Ms. Urli was walking with me, her Supervisor, Ms. Urli was visibly embarrassed by Commissioner Horowitz' s inappropriate comments and got into her car and left. No such comments are made to men who walk with each other to their cars.

5. On or about September 13, 2018, Mr. Douglas Hernandez (herein "Mr. Hernandez"), the Treasure to the Board of Commissioners, and I witnessed Commissioner Horowitz follow Ms. Urli upstairs to the office area where I was with Mr. Hernandez. Ms. Urli was visibly uncomfortable by the conversation Commissioner Horowitz was trying to have with her. Commissioner Horowitz tried to engaged Mr. Hernandez and myself in the conversation he was having with Ms. Urli by stating to us, "Did you hear I'm having an affair with Jackie?" Said Commissioner then turned to Ms. Urli and said, "We should have a three-way, me, you, and Doug [Hernandez] and you can tell me and Doug what to do." Ms. Urli was clearly embarrassed and we, being Mr. Hernandez, myself and Ms. Urli were stunned by Commissioner Horowitz's comments. Then, later on near the end of the meeting, as the Commissioners were discussing cigars, Horowitz said, "Jackie looks like a big cigar, is she hot?" These comments were unwanted by Ms. Urli and intensely offensive to all in earshot.

6. We then proceeded to the Boardroom for the scheduled meeting. Once again, Commissioner Horowitz announced, while at the table with Commissioners Thomas Lanning, John Mannone and Austin Graff, 'Did you hear Tm having an affair with Jackie and Doug?' Commissioner Lanning responded "no"; and Commissioner Horowitz went on to state, "Yeah, Dan is going to tell us what to do, put it on Facebook." None Of the other Commissioners said anything to Commissioner Horowitz, about his actions.

7. Commissioner Horowitz's inappropriate and sexually harassing behavior continued unabated. I witnessed on another occasion, during a General Meeting on or about October 4, 2018, Commissioner Horowitz sat across from Ms. Urli and stared, leering at her for a long period of time. I found Commissioner Horowitz's behavior to be very creepy and disturbing enough to intercede. I broke Commissioner Horowitz's intense glare by asking him if everything was okay? Ms. Urli then addressed Commissioner Horowitz's- inappropriate behavior by stating "what the hell are you doing?" Horowitz laughed and then eventually stopped staring, but then noticed Horowitz wrote "I heart Matt" on Ms. Urli's Minutes folder which Ms. Urli sent around the meeting for signature, Commissioner Horowitz' behavior toward Ms. Urli was at the very least disturbing and not reciprocated or encouraged by Ms. Urli in any fashion.

8. I also personally witnessed, on or about October 17, 2018, during a Special Meeting, Commissioner Horowitz persisted with profane and vulgar insinuations in the presence of and directed toward Ms. Urli. Commissioner Horowitz was in the downstairs boardroom waiting for the meeting to begin. As he waited, Commissioner Horowitz began talking about celebrities he met and hung around when he was in Las Vegas, He irreverently used the word "Fuck" numerous times as he talked about Ron Jeremy and then mentioned the Bunny Ranch, and a New York City cigar bar, Commissioner Horowitz also spoke about how he hates Al Sharpton, which prompted Attorney Keith Corbett, who is a white man, to comment that "Sharpton doesn't go to Bensonhurst anymore", Commissioner Lanning then chimed in and stated something about needing "a bigger knife."

9. I then attempted to refocus the conversation on Sanitary District business and began to speak about the Halloween event in town and that Assemblyman Curran wanted to know if the District would attend. Informed the Board of Commissioner that the event was called "Halloween Fest" and it would follow "Trunk or Commissioner Horowitz however, kept referring to the event as "Junk in the Trunk", and he repeated it numerous times. Commissioner Horowitz' reference to "Junk in the Trunk" is well known slang for a large bottom that's often directed at women.

10. Attorney Corbett and the other Commissioners witnessed the inappropriate behavior but said nothing to Commissioner Horowitz. In fact, Commissioner Mannone was laughing as he found Commissioner Horowitz' behavior amusing. Commissioner Mannone then said he would go to anything called "Junk in the Trunk". Ms. Urli was visibly uncomfortable during the highly inappropriate conversation and by the "joining in" of Commissioner Mannone.

11. I also witnessed an incident that occurred on November 1, 2018, during the General Meeting, when Commissioner Graff suddenly brought up the need for a Sexual Harassment Policy. This was discussed in a very lewd and inappropriate manner during the open session, and then again, in the boardroom. The discussion made Ms. Urli visibly uncomfortable. Commissioner Doherty asked Ms. Urli at one point, if she felt uncomfortable and Ms. Urli told him in no uncertain terms, "yes, very!" Then, Commissioner Horowitz, seemed to threaten Ms. Urli as he stared at her from across the table and stated, "I told them at my job, anyone who accuses me of anything, better be prepared to have that happen to them." His comment was clearly a threat. Ms. Urli left the meeting shaking and crying, as Commissioner Horowitz was unmistakably sending a message to instill fear and intimidate Ms. Urli visibly shaken.

12. On or about November 27, 2018, I received a formal letter of complaint regarding the discrimination, sexual harassment and hostile work environment Ms. Urli had endured since August 2018 by the Commissioners. Ms. Urli addressed the letter to me as Ms. Urli's Supervisor. (Exhibit B, Letter to Mr. Faust from Ms. Urli [11/27/18]). I acknowledged Ms. Urli's letter and informed the Board of Commissioners about the written complaint and its contents. I then informed Ms. Urli that night that the Board of Commissioners said they would discuss Ms. Urli 's written complaint at the December 6, 2018 General Meeting when Counsel would be present.

13. The written complaint enumerated specific incidents, dates and witnesses, including myself and Mr. Hernandez. Both Mr. Hernandez and I were identified as witnesses to the sexual harassment of Ms. Urli by Commissioner Horowitz in particular and were and are willing to act as witnesses to support Ms. Urli's claims, The Board of Commissioners did not respond to Ms. Urli's written complaint or discuss it at the December 6, 2018 General Meeting.

14. I witnessed on the evening of December 6, 2018, Ms. Urli receive hostile and retaliatory treatment by Commissioners Horowitz' s and Mannone's wives, who were present at the public meeting. Ms. Marcia Horowitz, the wife of Commissioner Horowitz, and Ms. Ann-Marie Mannone, the wife of Commissioner Mannone, tried to intimidate Ms. Urli by sitting •extremely close to Ms. [Jr-Ii and unusually far from their husbands, while glaring at Ms. (Urli throughout the meeting. These women were clearly acting as agents for both of their spouses. Ms. Urli's written complaint was never addressed at the December 6, 2018 meeting or anytime later by the Respondents.

15. I personally witnessed later that evening, as Ms. Urli was walking to the boardroom for Executive Session, Mrs. Horowitz said, in a very harsh tone, "Don't you stare at me!" followed by "Just you wait, just you wait!" Ms. Urli did not respond to Mrs. Horowitz' threats but was

16. During the December 6, 2018 meeting, and in retaliation for being named as witnesses in Ms. Urli' s complaint, both myself, the then General Supervisor of the District and Ms. Urli's direct supervisor, and Treasurer Douglas Hernandez were terminated without cause. My termination was based on my willingness to act as a witness to the sexual harassment and several other wrongful acts of the Commissioners towards Ms. Urli. Notably, only NINE days passed from the Commissioners receiving Ms. Urli's written complaint, which I forwarded to the Commissioners on November 27, 2018 personally and my very public termination on December 6, 2018 at the General District Board of Commissioners' meeting,

17. I was publicly humiliated, as I was terminated without cause in a public meeting not even an executive session of the Board, contrary to Attorney Corbett's recommendation. (Exhibit B, p. 12-13). Notably, Claimant's termination occurred within NINE days of the Board of Commissioners learning that Claimant a witness who was willing, ready and able to speak out against the discriminatory behavior and sexual harassment Ms. Urli was subjected to by Commissioner Horowitz, other Commissioners and employees of Sanitary District No. 7. All Commissioners voted on the termination of Claimant with only Commissioner Thomas Lanning abstaining from said vote.

18. Since my wrongfully and retaliatory termination Commissioner Graff, in particulars has commenced a campaign of providing false, slanderous and libelous information to the media and posting such on his personal Facebook page. (See Exhibit C, Ocean/Island Park Herald, Vol. 54 Non, *A Divided District: Sanitation commissioner asks board chairman to step down*, pg. 1 col. 4 [February 14-20, 2019]). Namely, Commissioner Graff accusing Claimant of providing dental benefits to former Commissioner Cibellis, the Commissioner that Mr. Graff opposed in contentious political race for a vacant seat, without payment from Mr. Cibellis. Commissioner Graff made such claims while fully aware that Claimant had no oversight over dental insurance, that it was Wayne "Vurture" (incorrectly referenced as Wayne 'Hernandez "in the herein attached **Exhibit C**), actually that over saw dental insurance, and that Mr. Cibellis in fact had been paying his health insurance benefits out of pocket. (See **Exhibit D**, Letter from Joseph Cibellis, *re: Dental Benefits* [1/9/2019]); see also **Exhibit E**, latter from Edward Scharfber, re: Medical Benefits [1/18/19]), Any accounting error, if one actually existed, fell to the responsibility of Wayne Vurture who continues to be employed in the same position, overseeing health insurance benefits, at Sanitary District No.7. As such, Commissioner Graff' s after-the—fact contention that Claimant' s termination was based on the alleged dental insurance issue is entirely false and pretextual,

19. As a result of Respondents' retaliation and wrongful termination I have sustained multiple damages including, but not limited to loss of income, loss of benefits, loss pension, loss of health and dental insurance, mental anguish, mental pain and suffering, damage to name and reputation, of comfort, humiliation, shame, embarrassment. extreme mental and emotional harm and stress, and injury to professional reputation.

20. Based on the foregoing, I charge the above-named Respondents with unlawful employment practices for wrongful termination and retaliation against me voicing opposition to discrimination based on gender, sex, sexual harassment and hostile environment and request that this complaint be cross filed with Equal Employment Opportunity Commission.

Respondents' Position:

Town of Hempstead Department of Sanitation District No. 7

A. Overview of Respondents: The Town of Hempstead, Sanitation District No. 7 ("District 7") operates garbage collection throughout Oceanside, New York. The Board of Commissioners ("the Board") is responsible for the overall operation of District 7, while non-Board members (District 7 employees employed pursuant to the Civil Service Law) are responsible for the day-to-day operations thereof. The Board consists of five individual Commissioners, each of whom is elected to a five-year term. Currently, the Board is comprised of the following Commissioners: Patrick Doherty, Austin Graff, Matthew Horowitz, Thomas Lanning, and John Mannone.

B. Overview of Complainant's Employment: Complainant began work for District 7 in August 1995. The final position he held was General Supervisor, a position he held from in or about August 2014 through the date of his termination on December 6, 2018. As General

Supervisor, Complainant worked in the main office, supervised office staff, and was in charge of the day-to-day operations of District 7. During the relevant time period, the other individuals who worked in the office were Douglas Hernandez (Treasurer), Wayne Vurture (Supervisor), and Jacqueline Urli (Secretary to the Board).

C. Allegations of Improper Receipt of Dental Benefits: In a June 2018 election, Graff was elected as Commissioner, and took office in July 2018. During his campaign, he promised to rid District 7 of corruption. In August 2018, Commissioner Graff learned that a former commissioner and former employees were receiving dental benefits despite the fact they were not current employees. Since Graff believed this ran afoul of the terms of the dental plan, from August 2018 through November 2018, the Board requested from Urli, Hernandez, Complainant, Vurture and others, information regarding the dental benefits received. For the most part, it appeared District 7 paid for these dental benefits directly, and former commissioners reimbursed District 7 via separate check. However, it appeared that one individual (a former commissioner) received dental benefits without reimbursement for six months and was improperly receiving benefits when he was no longer working for District 7. Former commissioner Joseph Cibellis (who was ineligible for benefits) received dental benefits for approximately six months (July 2016 — January 2017) without paying for them, was removed from the benefits plan and then inexplicably was reinstated to the plan in April 2018 (22 months after his position with District 7 ceased). The Board questioned Urli, Hernandez and Complainant about these issues (and specifically sought information regarding who authorized this practice). Urli, Hernandez and Complainant advised that various unnamed former commissioners approved the practice in the past, and District 7 continued to follow the same practice over several years. No detail was provided regarding when the Board of Commissioners purportedly approved the practice or who secured benefits. Ultimately, the Board concluded these benefits were issued and obtained improperly[1] and contrary to the dental plan and that Complainant, and others, may have been involved.

On November 26, 2018, Commissioner Graff publicly posted on Facebook his conclusion that there was corruption in the District surrounding dental benefits. (Ex. A —Facebook Posting). Within the post, Commissioner Graff calls for the termination of any individual who knew about, or "turned a blind eye" to the issue. *Id.* Respondent reasonably concluded that Complainant either knew about and/or "turned a blind eye" to the issue — either provide a legitimate and non-retaliatory basis for discharge.

D. Complainant Received a Copy of Urli's Complaint: On November 27, 2018, Complainant received an internal complaint letter from Urli (his subordinate) alleging sexual harassment. (Ex. B — Urli's Complaint Letter). Complainant forwarded the letter without commenting on whether or the extent to which he agrees with its contents. The letter itself certainly did not state that

[1] This issuance of improper benefits is reminiscent of the fact that in 2014 the NYS Comptroller's office determined that the District had provided two former commissioners (Michael and Charles Scarlata) approximately $800,000 in improper deferred compensation payments. The current Board of Commissioners took steps to recover these funds (and recently accepted approximately $300,000 in a settlement that sought to recover the funds).

Complainant would support or agree with Urli's allegations, or that he opposed Respondents' purported actions in any manner whatsoever. (Id.). All that Complainant did, was inform the Board about the complaint (Complaint 12) and advise Urli the Board would discuss her internal complaint at an upcoming Board meeting. Complainant took no further action thereafter. (Id. – P 12 14).

Throughout his administrative Complaint, Complainant states he "witnessed" alleged wrongful conduct of others. (See, e.g., Complaint, '18 — "I also personally witnessed, on or about October 17, 2018, during a Special Meeting, Commissioner Horowitz persisted with profane and vulgar insinuations in the presence of and directed toward Ms. Urli."). However, he does not state that he opposed or took any action as a result of what he allegedly witnessed at any time prior to discharge. (See, generally, Id.). Complainant therefore did not engage in any protected activity.

II. COMPLAINANT WAS NOT RETALIATED AGAINST: On December 6, 2018, Respondents discharged Complainant and Hernandez due to their respective roles in the dental benefits scheme identified above. After investigation, Respondents reasonably concluded that Complainant either turned a blind eye or knew about and perpetuated the suspected scheme and also that he misled the Board of Commissioners during the investigatory process. In addition, during the investigation, Respondents uncovered other examples of what Respondents believed to be Complainant's incompetence or lack of truthfulness. (Ex. C — December 28, 2018 Grievance Response) (including among the reasons for his discharge, his inability to obtain video surveillance footage as part of an internal investigation and failing to provide complete and accurate information to the Board regarding a smoke/fire issue with a truck). Based on these facts, Respondents discharged Complainant on December 6, 2018. (Id.).

III . CONCLUSION: Complainant did not engage in protected activity and was terminated for legitimate, non-retaliatory reasons. For the reasons set forth above, Complainant's claim is without merit. Accordingly, Respondents respectfully submit that Complainant's administrative Complaint should be dismissed in its entirety for lack of probable cause.

LANNING - RESPONSE TO CHARGE OF RETALIATION

I. Commissioner Lanning Did Not Vote to Terminate Complainant: Complainant simply cannot sustain a claim of retaliation as against respondent Commissioner Lanning, as Commissioner Lanning did not vote to terminate Complainant. See Exhibit The instant retaliation claim is based upon the alleged adverse employment action or termination. However, Commissioner Lanning did not vote to terminate Complainant, and thus did not take part in the alleged retaliatory adverse employment action. While the December 6. 2018 meeting minutes reflect that Commissioner Lanning abstained from the votes regarding Complainant's termination, the original meeting minutes accurately reflect that Commissioner Lanning affirmatively voted against Complainant's termination. The December 6, 2018 meeting minutes attached to Complainant's Charge, were revised to reflect that Commissioner Lanning abstained from the vote, after an email was circulated proposing said revision. However, the original meeting minutes show that Commissioner Lanning voted "no" on Complainant's termination; thus, he simply did not engage in any act of retaliation. See Exhibit "A".

It should also be noted that the revision in the meeting minutes was made in error, and the Board has already approved changing the December 6, 2018 minutes back to the original version. See Exhibit "A". However, regardless of whether Commissioner Lanning opposed the vote, or abstained from same; he did not vote to terminate Complainant, and thus simply did not engage in the alleged act of retaliation.

Simply, as part of his duties as General Supervisor, Complainant Faust passed on Urli's written complaint to the Board. In fact, by Complainant's own admission, he states in his Charge that he witnessed Ille alleged instances of harassment and Failed to take any action with regard to same. As Complainant's Charge is devoid of any additional allegations of actions Complainant took in opposition to Urli's treatment, Complainant fails to establish that he was engaged in a protected activity.

III. The Board Terminated Complainant for Misconduct: Complainant's termination was due to his involvement in the aforementioned dental scam,, which constitutes a legitimate, non-discriminatory business reason. Moreover. discussions regarding Complainant's termination pre-date Urli's November 2.7, 2018 written complaint. and any alleged potential protected activities Complainant may have taken with regard to same. This is evidenced in the Facebook discussions attached hereto as **Exhibit "B",** and fully discussed above. As such, Complainant cannot establish a causal connection between his engagement in a protected activity and the alleged adverse employment action; he simply did not engage in any protected activity, and per Commissioner Graff's November 26, 2018 Facebook post, a warning was issued that anyone involved in the dental scheme would be subject to termination this is the day before he was listed as a "witness" in Urli's complaint. As such, there is no scenario in which a causal connection can be established.

CONCLUSION

Based on the Complainant's claims are without merit and fail to establish probable cause. As such, Respondent respectfully requests that Complainant's Charge be dismissed in its entirety.

Commissioner Horowitz's Answer: Mr. Horowitz, a member of the Board, adopts and joins in the position statements filed on behalf of Respondents Town of Hempstead-Department of Sanitation, Sanitary District NO. 7, Town of Hempstead Board of Commissioners (the "Board"), Patrick Doherty, Austin Graff, and John Mannone (collectively, "Co-Respondents") [1].

In addition, Mr. Horowitz supplements the position statements of Co-Respondents to note that the allegations of sexual harassment made by Complainant Urli are incredible for a reason in addition to those set forth therein. Specifically, Mr. Horowitz was elected to the Board in June of 2017. Based on the allegations in her Complaint, Complainant Urli worked alongside Mr. Horowitz from the date of his election, for 13 months, without issue. Then, beginning in August 2018, she allegedly suddenly perceived communications from him as inappropriate based on her gender. Notably, August 2018 also marked the beginning of the Board's investigation into an apparent dental benefit corruption issue, including Complainant Urli's possible involvement therein. The timing does not appear coincidental and further undermines the credibility of Complainant Urli's allegations.

For the reasons set forth in the position statements submitted on behalf of Co-Respondents and as supplemented herein, Mr. Horowitz submits that the Division should issue a determination of "no probable cause" in each of the three cases.

Investigator's Observations:

This case is a companion case to two (2) related cases: Case No. 10200633 - Jacqueline Urli v Town of Hempstead - Department of Sanitation, Sanitary District No.7; Town of Hempstead, Board of Commissioners; Matthew Horowitz; Thomas Lanning; John Mannone; Austin Graff; Patrick Doherty; and Case No. 10200638 - Douglas Hernandez v Town of Hempstead - Department of Sanitation, Sanitary District No. 7; Town of Hempstead, Board of Commissioners; Matthew Horowitz; Thomas Lanning; John Mannone; Austin Graff; Patrick Doherty.

Complainant provided along with his complaint as Exhibits: the Minutes from Meeting #3358 of District 12/06/18 p. 12-14; Jacqueline Urli's November 27, 2018 letter to Mr. Faust regarding her sexual harassment complaint against the Commissioners; Ocean/Island Park Herald, vol 54, No. 7 A Divided District: Sanitation Commissioner asks Board Chairman to step down pg. col. 4 February 14-20, 2019; Letter from Joseph Cibellis, re Dental Benefits 1/9/2019; and the letter form Edward Scharfber re Medical Benefits 1/18/2019.

Complainant's exhibits include Jacqueline Urli's November 27, 2018 sexual harassment complaint against the Commissioners; the Report of Personnel Action- Nassau County rejecting Mr. Faust's termination on 12/13/2018; and the letter from Nassau County Civil Service Commission signed by Martha Krisel, Esq., Executive Director to Mr. Faust stating, "Please be aware that the Nassau County Civil Service Commission rejected the decision of Sanitary District #7 to terminate your employment because it failed to conduct a pre-termination hearing pursuant to Section 75 of New York State Civil Service Law" .

The Respondent provided the November 4, 2018 Facebook posting where Commissioner Graf publicly posted his conclusion that there was corruption in the District surrounding dental benefits; Jacqueline Urli's November 27, 2018 sexual harassment complaint against the Commissioners; and the December 28, 2018 Grievance Response which included among the reasons for Mr. Faust's discharge his inability to obtain video surveillance footage as part of an internal investigation and failing to provide complete and accurate information to the Board regarding a smoke/fire issue with a truck.

Respondent Lanning included as exhibits the original December 6, 2018 Board Minutes and the revised meeting minutes; and the November 4, 2018 Facebook posting where Commissioner Graf publicly posted his conclusion that there was corruption in the District surrounding dental benefits.

Submitted by: Barbara Fae Feldstein

Barbara F. Feldstein
Human Rights Specialist I

III. BASIS FOR DETERMINATION

Complainant states worked for Sanitary District No. 7 (herein "District") for nearly twenty-four (24) years and that his last position held was as General Supervisor. Complainant states he was unlawfully terminated on December 6, 2018 at a publicly held meeting in retaliation for supporting Ms. Jacqueline Urli (co-filer) regarding her allegations of sexual harassment, discrimination, hostile work environment and retaliation against Respondents.

Complainant states Ms. Urli was hired as a Secretary to Sanitary District No. 7 by the Respondent on December 23, 2013, Ms. Urli is the only female employee at the District and that Complainant supervised Urli as Secretary to District, to the Board of Commissioners. At all times during Ms. Urli's employments she performed her duties in an exemplary fashion, despite the fact that Ms. Urli's environment became increasingly hostile, toxic and manifesting in emotional abuse and sexual harassment.

Complainant states prior to my termination on December 6, 2018, he worked as the General Supervisor at Sanitary District No. 7, for the last four and a half (4.5) years of his almost twenty-four (24) year career with the Respondent. Ms. Urli was hired as the Secretary to the District Board of Commissioners in or about December 2013, and was under Complainant's supervision until December 6, 2018, the date of his wrongful termination. Complainant states in his role as General Supervisor, he attended the Board of Commissioners' meetings and was witness to the first instances of sexual harassment that Ms. Urli experienced at the District, which began in or about August 2018, when Commissioner Matthew Horowitz began making sexually inappropriate remarks towards Ms. Urli in Complainant's presence and the presence of Ms. Urli's co-workers, and other members of the Board of Commissioners.

Complainant states on or about November 27, 2018, he received a formal letter of complaint regarding the discrimination, sexual harassment and hostile work environment Ms. Urli had endured since August 2018 by the Commissioners. Ms. Urli addressed the letter to him as Ms. Urli's Supervisor and Complainant acknowledged Ms. Urli's letter and informed the Board of Commissioners about the written complaint and its contents and then informed Ms. Urli that night that the Board of Commissioners said they would discuss Ms. Urli 's written complaint at the December 6, 2018 General Meeting when Counsel would be present. Complainant states the written complaint enumerated specific incidents, dates and witnesses, including himself and Mr. Hernandez and that both Mr. Hernandez and Complainant were identified as witnesses to the sexual harassment of Ms. Urli by Commissioner Horowitz in particular and that they were and are willing to act as witnesses to support Ms. Urli's claims. The Board of Commissioners did not respond to Ms. Urli's written complaint or discuss it at the December 6, 2018 General Meeting.

Complainant states that during the December 6, 2018 meeting, and in retaliation for being named as witnesses in Ms. Urli' s complaint, both himself the then General Supervisor of the District and Ms. Urli's direct supervisor, and Treasurer Douglas Hernandez were terminated without cause. Complainant states that his termination was based on his willingness to act as a witness to the sexual harassment and several other wrongful acts of the Commissioners towards Ms. Urli. Notably, only NINE (9) days passed from the Commissioners receiving Ms. Urli's written complaint, which Complainant forwarded to the Commissioners on November 27, 2018

personally and his very public termination on December 6, 2018 at the General District Board of Commissioners' meeting,

Complainant states his termination occurred within NINE days of the Board of Commissioners learning that Claimant a witness who was willing, ready and able to speak out against the discriminatory behavior and sexual harassment Ms. Urli was subjected to by Commissioner Horowitz, other Commissioners and employees of Sanitary District No. 7. All Commissioners voted on the termination of Claimant with only Commissioner Thomas Lanning abstaining from said vote.

Complainant states since his wrongful and retaliatory termination Commissioner Graff, in particulars has commenced a campaign of providing false, slanderous and libelous information to the media and posting such on his personal Facebook page accusing Claimant of providing dental benefits to former Commissioner Cibellis, the Commissioner that Mr. Graff opposed in contentious political race for a vacant seat, without payment from Mr. Cibellis. Commissioner Graff made such claims while fully aware that Claimant had no oversight over dental insurance, that it was Wayne "Vurture" actually that over saw dental insurance, and that Mr. Cibellis in fact had been paying his health insurance benefits out of pocket. Any accounting error, if one actually existed, fell to the responsibility of Wayne Vurture who continues to be employed in the same position, overseeing health insurance benefits, at Sanitary District No.7. As such, Commissioner Graff' s after-the—fact contention that Claimant' s termination was based on the alleged dental insurance issue is entirely false and pretextual.

Respondent states in a June 2018 election, Graff was elected as Commissioner, and took office in July 2018. During his campaign, he promised to rid District 7 of corruption. In August 2018, Commissioner Graff learned that a former Commissioner and former employees were receiving dental benefits despite the fact they were not current employees. Since Graff believed this ran afoul of the terms of the dental plan, from August 2018 through November 2018, the Board requested from Urli, Hernandez, Complainant, Vurture and others, information regarding the dental benefits received. For the most part, it appeared District 7 paid for these dental benefits directly, and former commissioners reimbursed District 7 via separate check. However, it appeared that one individual (a former Commissioner) received dental benefits without reimbursement for six (6) months and was improperly receiving benefits when he was no longer working for District 7. Former Commissioner Joseph Cibellis (who was ineligible for benefits) received dental benefits for approximately six (6) months (July 2016 — January 2017) without paying for them, was removed from the benefits plan and then inexplicably was reinstated to the plan in April 2018 (22 months after his position with District 7 ceased). The Board questioned Urli, Hernandez and Complainant about these issues (and specifically sought information regarding who authorized this practice). Urli, Hernandez and Complainant advised that various unnamed former Commissioners approved the practice in the past, and District 7 continued to follow the same practice over several years. No detail was provided regarding when the Board of Commissioners purportedly approved the practice or who secured benefits. Ultimately, the Board concluded these benefits were issued and obtained improperly (this issuance of improper benefits is reminiscent of the fact that in 2014 the NYS Comptroller's office determined that the District had provided two former commissioners, Michael and Charles Scarlata, approximately $800,000 in improper deferred compensation payments. The current Board of Commissioners took steps to

recover these funds and recently accepted approximately $300,000 in a settlement that sought to recover the funds) and contrary to the dental plan and that Complainant, and others, may have been involved.

Respondent states on November 26, 2018, Commissioner Graff publicly posted on Facebook his conclusion that there was corruption in the District surrounding dental benefits. Within the post, Commissioner Graff calls for the termination of any individual who knew about, or "turned a blind eye" to the issue. Respondent reasonably concluded that Complainant either knew about and/or "turned a blind eye" to the issue — either provide a legitimate and non-retaliatory basis for discharge.

Respondent alleges on November 27, 2018, Complainant received an internal complaint letter from Urli (his subordinate) alleging sexual harassment. Complainant forwarded the letter without commenting on whether or the extent to which he agrees with its contents. The letter itself certainly did not state that Complainant would support or agree with Urli's allegations, or that he opposed Respondents' purported actions in any manner whatsoever. All that Complainant did, was inform the Board about the complaint (Complaint 12) and advise Urli the Board would discuss her internal complaint at an upcoming Board meeting. Complainant took no further action thereafter.

Throughout his administrative Complaint, Complainant states he "witnessed" alleged wrongful conduct of others. However, he does not state that he opposed or took any action as a result of what he allegedly witnessed at any time prior to discharge. Complainant therefore did not engage in any protected activity.

Respondent states on December 6, 2018, Respondents discharged Complainant and Hernandez due to their respective roles in the dental benefits scheme identified above. After investigation, Respondents reasonably concluded that Complainant either turned a blind eye or knew about and perpetuated the suspected scheme and also that he misled the Board of Commissioners during the investigatory process. In addition, during the investigation, Respondents uncovered other examples of what Respondents believed to be Complainant's incompetence or lack of truthfulness, including among the reasons for his discharge, his inability to obtain video surveillance footage as part of an internal investigation and failing to provide complete and accurate information to the Board regarding a smoke/fire issue with a truck). Based on these facts, Respondents discharged Complainant on December 6, 2018.

Respondent avers Complainant did not engage in protected activity and was terminated for legitimate, non-retaliatory reasons. For the reasons set forth above, Complainant's claim is without merit. Accordingly, Respondents respectfully submit that Complainant's administrative Complaint should be dismissed in its entirety for lack of probable cause.

This case is a companion case to two (2) related cases: Case No. 10200633 - Jacqueline Urli v Town of Hempstead - Department of Sanitation, Sanitary District No.7; Town of Hempstead, Board of Commissioners; Matthew Horowitz; Thomas Lanning; John Mannone; Austin Graff; Patrick Doherty; and Case No. 10200638 - Douglas Hernandez v Town of Hempstead - Department of Sanitation, Sanitary District No. 7; Town of Hempstead, Board of

Commissioners; Matthew Horowitz; Thomas Lanning; John Mannone; Austin Graff; Patrick Doherty.

Complainant provided along with his complaint as Exhibits: the Minutes from Meeting #3358 of District 12/06/18 p. 12-14; Jacqueline Urli's November 27, 2018 letter to Mr. Faust regarding her sexual harassment complaint against the Commissioners; Ocean/Island Park Herald, vol 54, No. 7 A Divided District: Sanitation Commissioner asks Board Chairman to step down pg. col. 4 February 14-20, 2019; Letter from Joseph Cibellis, re Dental Benefits 1/9/2019; and the letter form Edward Scharfber re Medical Benefits 1/18/2019.

Complainant's exhibits include Jacqueline Urli's November 27, 2018 sexual harassment complaint against the Commissioners; the Report of Personnel Action- Nassau County rejecting Mr. Faust's termination on 12/13/2018; and the letter from Nassau County Civil Service Commission signed by Martha Krisel, Esq., Executive Director to Mr. Faust stating, "Please be aware that the Nassau County Civil Service Commission rejected the decision of Sanitary District #7 to terminate your employment because it failed to conduct a pre-termination hearing pursuant to Section 75 of New York State Civil Service Law" .

The Respondent provided the November 4, 2018 Facebook posting where Commissioner Graf publicly posted his conclusion that there was corruption in the District surrounding dental benefits; Jacqueline Urli's November 27, 2018 sexual harassment complaint against the Commissioners; and the December 28, 2018 Grievance Response which included among the reasons for Mr. Faust's discharge his inability to obtain video surveillance footage as part of an internal investigation and failing to provide complete and accurate information to the Board regarding a smoke/fire issue with a truck.

Respondent Lanning included as exhibits the original December 6, 2018 Board Minutes and the revised meeting minutes; and the November 4, 2018 Facebook posting where Commissioner Graf publicly posted his conclusion that there was corruption in the District surrounding dental benefits.

The Division investigation revealed controversies that must be resolved at public hearing.

Complainant alleges that his termination was in retaliation for his opposition the Jacqueline Urli's internal complaint of sexual harassment. Respondent states legitimate nondiscriminatory reasons, including but not limited to issues surrounding dental benefits being continued for former employees and that Complainant never opposed discrimination.

The Division investigation did support Respondent position that prior to any incident of sexual harassment, and therefore prior to an internal complaint, there was political dissention between the Respondent's current Commissioners and the individuals seeking to remove them for office in the upcoming election. The Division investigation also appears to support the following statement of Respondent, " prior In a June 2018 election, Graff was elected as Commissioner, and took office in July 2018. During his campaign, he promised to rid District 7 of corruption. In August 2018, Commissioner Graff learned that a former commissioner and former employees were receiving dental benefits despite the fact they were not current employees. Since Graff

believed this ran afoul of the terms of the dental plan, from August 2018 through November 2018, the Board requested from Urli, Faust, Complainant, Vurture and others, information regarding the dental benefits received." Complainant Urli alleged in her own complaint that the sexual harassment began in August.

The Division also notes issues of fact and law surrounding whether Complainant opposed discrimination, as defined by law, that must also be decided by a trier of fact. Complainant states he was terminated because he was named as a witness. It appears uncontested that Complainant submitted Urli's complaint to the Respondent Board of Commissioners, but the Division notes that would have been part of his affirmative responsibility as a supervisor and is not necessarily "opposing discrimination." There is no information to support that prior to Urli's complaint Complainant took any affirmative acts to formally report the alleged harassment. The Division investigation revealed it is unclear if Complainant was ever interviewed and/or expressly opposed discrimination.

In the underlying case filed by Jacqueline Urli the Division investigation was unclear as to whether the behavior rose to the level of a violation but did support that Respondent may not have adequately address Urli's internal complaint of sexual harassment.

Whether the Complainant's termination was a natural sequence of events given the political situation noted above or was related to Urli's internal complaint and/or was a mixed motive, should be decided by a trier of fact.

Reviewed & Approved:

Michael Peel
Human Rights Specialist II

IV. DETERMINATION

Based on the foregoing, I find PROBABLE CAUSE to support the allegations of the complaint.

Joyce Yearwood-Drury
Director O.S.H.I.