

GRADY AND ASSOCIATES

ATTORNEYS AT LAW

DEL MAR HEIGHTS OFFICE
12707 HIGH BLUFF DR.
SUITE 200
SAN DIEGO, CA 92130
(858) 481-4956
FAX (619) 528-1580

3517 CAMINO DEL RIO SOUTH
SUITE 400
SAN DIEGO, CALIFORNIA 92108
(619) 528-2530
FAX (619) 528-1580

CARLSBAD OFFICE
701 PALOMAR AIRPORT RD.
SUITE 300
CARLSBAD, CA 92009
(760) 431-2010
FAX (619) 528-1580

December 19, 2017

Jack Shelver, President
Brian Kramer
Aida Tucker
Kirsten Starlin
Harry Seifert
Board of Directors
Julian Cuyamaca Fire Protection District
P.O. Box 516
Julian, CA 92036

Re: District Employee Karen Keifer
Our File No: 6150

Dear Members of the Board,

This firm has been retained to represent current Julian Cuyamaca Fire Protection District ("JCFPD" or "District") employee Karen Keifer in her claims against the JCFPD for: 1) Violation of First Amendment Rights; 2) Age Discrimination; 3) Gender Discrimination; and 4) Sexual Orientation Discrimination. Please address all future communications regarding this matter to the undersigned.¹

The purpose of this letter is to outline the facts surrounding Ms. Kiefer's claims, inform you of the legal liabilities resulting to the District therefrom, and to make a proposal for resolution of those claims.

This letter and the settlement demand contained herein are a settlement proposal protected from disclosure under California Evidence Code §1152 and analogous provisions of federal law.

¹This letter is not a Government Claim pursuant to the Government Claims Act. One will be filed separately.

FACTS

The facts as presented to us by Ms. Kiefer are as follows:

Ms. Kiefer is a 52 year old woman who began working part time for the JCFPD in 2003. In or around January of 2005, Ms. Kiefer began working full time for the JCFPD as a firefighter paramedic. In or around 2008, Ms. Kiefer was promoted to the position of EMS Director. For most of Ms. Kiefer's career with the JCFPD she had no issues, however, in or around 2013, a new Fire Chief, Rick Marinelli, took office. Prior to the 2015 fiscal year, Ms. Kiefer was approved for a 1.5% pay increase by the board. After seeing her paychecks, Ms. Kiefer realized that she had only received an eight cent per hour raise. When Ms. Kiefer brought it to the attention of Mr. Marinelli, he refused to honor her raise and told her that he "didn't have to." In fact, he often threatened Ms. Kiefer by stating that he would cut her pay if she didn't do whatever it was he was asking. He also frequently reminded her that if she didn't like it, she could quit.

In or around March of 2016, a subordinate of Ms. Kiefer came to her to discuss a discrepancy in his pay. Ms. Kiefer, as a supervisor, brought the issue to Mr. Marinelli's attention. He became upset, dismissive, and disrespectful. Anytime Ms. Kiefer brought a matter to the attention of Mr. Marinelli, he brushed it off and would reprimand Ms. Kiefer for bringing such issues to him. The Chief often stated "I am the Chief, what I say goes."

In or around April of 2016, Ms. Kiefer had recently ended a long term relationship with a woman. Ms. Kiefer confided in Marcia (Missy) Spahr, Mr. Marinelli's secretary, about her identity as a lesbian. Some time later, Ms. Spahr stated to Ms. Kiefer that the chief thought he could "convert her", meaning that after having sex with him, she would convert and be interested in men. This statement made Ms. Kiefer extremely uncomfortable and she began to avoid the chief as much as possible.

In or around March of 2017, JCFPD was notified that a grant was approved. Mr. Marinelli gathered everyone together and discussed the grant and his intentions for the grant. In doing so, he distressed Ms. Kiefer when he explained that with the grant everyone would get a raise, "except for [Ms. Kiefer], she makes too much." Ms. Kiefer was horrified that the Chief of JCFPD (Mr. Marinelli) would mention her pay in front of all the paid staff.

In 2017, Ms. Kiefer had discussed with Mr. Marinelli the option of running a backup ambulance on busy weekends. Mr. Marinelli, as always, dismissed the idea. At first by simply stating that it was against the EMS contract. Later, his excuse was that it would cost too much money and that it would not make any revenue for the JCFPD. In a board meeting held on September 12, 2017, which was open to the public, Ms. Kiefer was invited by a board member to provide information regarding the possibility of a backup ambulance. Ms. Kiefer provided previous JCFPD statistics that contradicted the information that Mr. Marinelli had previously provided as a reason not to run a backup ambulance. Ms. Kiefer showed how the ambulance, in fact, was profitable in 2012.

The following day, on or about September 13, 2017, Mr. Marinelli sent an email to his staff regarding Ms. Kiefer's actions at the board meeting. He reminded them that nothing is to be said without his approval. Shortly after, Mr. Marinelli met with Ms. Kiefer and she was reprimanded for speaking at the board meeting. Mr. Marinelli banned Ms. Kiefer from attending board meetings and from speaking to the board without his approval first.

On or around November 13, 2017, Mr. Marinelli called Ms. Kiefer into his office. The two discussed one of Ms. Kiefer's subordinates and the issue she had been having with him. Mr. Marinelli took this as another opportunity to discuss Ms. Kiefer's pay and her speaking at the board meeting. Ms. Kiefer reminded Mr. Marinelli that he never honored her previous pay raise and Mr. Marinelli responded that "the board thinks [she is] making too much." When Mr. Marinelli began discussing the board meeting, Ms. Kiefer asked for another person to be present in the room and called in Nathan Duggie-Carr. When Mr. Duggie-Carr had to attend to an emergency call, Ms. Kiefer asked her partner, Jorge Acosta to be present. Mr. Marinelli was upset that, in his words, Ms. Kiefer contradicted him. Mr. Marinelli stated "you answer to me, you do not follow any direction from the board or department members, they do not tell you what to do, I do." Ms. Kiefer was told that she would be written up and given a warning that would be placed in her file.

On or around November 14, 2017, at a board meeting, the JCFPD firefighters submitted a vote of "No Confidence" regarding Mr. Marinelli which described his abhorrent actions towards his staff, volunteers and the community. In this same meeting, JCFPD presented Jack Shelver, President of the Board of Directors of JCFPD with an Intent to Recall him as President of the Board.

On or around November 22, 2017, Ms. Kiefer submitted a complaint to the Attorney General regarding Mr. Marinelli's actions towards her and his inappropriate behavior.

On or around December 5, 2017, Ms. Kiefer contacted the Department of Fair Employment and Housing.

On or around December 12, 2017, in the board meeting, Jack Shelver, president of the board, stated that vote of "No Confidence" would be placed on the agenda if another board member agreed that it should be placed on the agenda. Board member Brian Kramer believed an independent investigation would be proper. Still, the board refused to investigate.

LEGAL LIABILITIES TO JCFPD

1. Violation of Free Speech Rights

Under the Federal Constitution and California Constitution, a person has a right to free speech. More specifically, in Article I Section 2(a) of the California Constitution, "every person may freely speak, write and publish his or her sentiments on all subjects..." Additionally, Article I Section 3(a) states that "the people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good." Here, Ms. Kiefer spoke at a board meeting regarding the false or inaccurate information previously provided by Mr. Marinelli. Ms. Kiefer did this because the JCFPD along with the community were worried about having a backup ambulance. Ms. Kiefer spoke on a subject of public interest and then was reprimanded by her employer. Due to Ms. Kiefer's speech, she was reprimanded by Mr. Marinelli, banned from all board meetings, and prohibited from speaking to members of the board without Ms. Marinelli's consent. This is a clear violation of Ms. Kiefer's rights to free speech. Mr. Marinelli's actions were in breach of the California Constitution and U.S. Constitution, and therefore the JCFPD is liable to Ms. Kiefer for her damages.

2. Age Discrimination

Under California and federal law an employer is prohibited from discriminating against an employee on the basis of age if she is over 40.

Here, Ms. Kiefer is fifty two years old. Many of the people with whom she works are substantially younger than she. As you

are aware, with experience, comes an increase in pay. Experience level and maximum pay correlate with an individual's age. The older an employee is, the more experience she likely has, thus the more she is paid. Here, Mr. Marinelli has made comments to Ms. Kiefer regarding her being paid more than everybody else. Even after a 1.5% raise was approved for Ms. Kiefer, Mr. Marinelli never actually gave her the raise. Instead, Ms. Kiefer was only paid an additional .08 cents per hour. Ms. Kiefer's pay was a proxy for age discrimination. JCFPD refused to pay Ms. Kiefer due to her making the most money because of her age and the experience that comes with it. Ms. Kiefer's adverse treatment was motivated by, at least in substantial part, her age. Due to JCFPD's actions, Ms. Kieffer has suffered damages. JCFPD is liable accordingly.

3. Gender Discrimination

Under California law it is unlawful to discriminate in employment decisions on the basis of gender. Assignments, promotions, demotions, discipline, suspension, and termination are all such decisions. Here, Ms. Kiefer is the only woman on the JCFPD paid staff. Mr. Marinelli treats Ms. Kiefer differently than the men on staff by alienating her, reprimanding her, writing her up and making comments about how much she is paid in front of her male counterparts. JCFPD is accordingly liable to Ms. Kiefer for his resultant damages.

4. Sexual Orientation Discrimination

Under both California and federal law, an employer is prohibited from discriminating against an employee based on actual or perceived sexual orientation. Discrimination based on sexual orientation can be established by evidence of the disparate treatment of "homosexuals, bisexuals or heterosexuals." Here, Ms. Kiefer is a lesbian woman who confided in Marcia (Missy) Spahr, Mr. Marinelli's secretary, about her identity as a lesbian. Some time later, Ms. Spahr stated to Ms. Kiefer that the chief thought he could "convert her", meaning that after having sex with him, she would convert and be interested in men. After this statement, Ms. Kiefer was often reprimanded, alienated, targeted and disrespected. Ms. Kiefer was discriminated against and disparately treated based on her sexual orientation. Therefore, JCFPD is liable to Ms. Kiefer for her damages.

DAMAGES

If these matters are litigated, Ms. Kiefer will be entitled to a significant amount, including damages for emotional distress, attorneys' fees and court costs. Ms. Kiefer is fully prepared to commence litigation if settlement is not reached.

SETTLEMENT OFFER

Despite the fact that Ms. Kiefer will prevail at trial, and that JCFPD will be exposed to a significant judgment, Ms. Kiefer is currently willing to settle her employment related claims with the District in exchange for a significant sum, categorized as compensation for her emotional distress and attorneys' fees and subject to a written settlement agreement approved and signed by thy parties.

We look forward to your prompt response.

Sincerely,

A handwritten signature in cursive script that reads "Jessica Coronado". The signature is written in black ink and is positioned above the typed name.

Jessica Coronado, Esq.

cc: Ms. Kiefer