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April 5, 2022

**VIA FIRST CLASS MAIL AND EMAIL** (cgreene@greeneandhafer.com)

Corrine Hood Greene  
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529 Main Street, Ste PH200  
Charlestown, MA 02129

**Re: Melissa Noe, Town of Monterey Administrator**

Dear Attorney Greene:

This firm represents Melissa Noe, Town Administrator of the Town of Monterey (“Town”), in connection with her contractual employment with the Town. I write with regard to your report dated March 17, 2022 (“Report”), that details your investigation of behalf of the Town concerning complaints against Ms. Noe. As set forth herein, the Report is replete with inaccuracies. We request that you review these concerns and revise your Report accordingly. We are also copying the Members of the Town of Monterey Select Board (“Select Board”) and this letter further constitutes a formal request that the Select Board reverse its decision to accept the Report as written as fact.

The only finding against Ms. Noe that is supported by a finding of fact is that on one occasion Ms. Noe yelled at Terry in a confrontation in which Terry was also yelling at Ms. Noe. Ms. Noe and Terry have both acknowledged their error on that occasion. The Report completely fails to provide any evidence that Ms. Noe harassed Terry in any way. Of course, Ms. Noe agrees that harassment is contrary to Town policy. But Ms. Noe strongly affirms that she has not and will not engage in such conduct.

The Report makes a number of factual errors. You claim that “no procedure for resolution” of problems between employees “is spelled out.” (Report, p. 3.) Actually, the straightforward procedure is clear. Under subsection P of the Employment Manual, when a supervisor is concerned about an employee’s conduct “[t]he initial step will be a discussion between the supervisor and the employee . . . .” The next step is “a written warning” from the supervisor. The last step is a hearing before the Select Board. In addition, “[e]mployees who feel the need for review or clarification of a particular personal situation should present their problem to their immediate supervisor. If they are not satisfied with a decision, or are reluctant to address the issue with their supervisor, they may take their concern to the Select Board.” To say these are not procedures makes no sense.

You suggest that the Employee Manual policy on harassment “does not provide any remedy for addressing harassment other than to direct complaints be made to the Select Board and Chief of Police . . . .” You also assert that the manual lacks penalties and procedures. But the manual

clearly spells out the forms of discipline for any violations, which of course includes harassment. Those penalties expressly include “unpaid suspensions” and dismissal (Manual, p. 14, subsection P), and implicitly include any penalties allowed by state law.

In Section C of your Report, entitled “Conclusions,” you take issue with Ms. Noe’s job description, asserting that the “list of duties is unconstrained, as is the authority it grants with seemingly unlimited supervisory capacity.” (Report p. 17). You also assert that Ms. Noe drafted the list. Ms. Noe participated in the drafting based on such lists commonly available from other towns and on a list drafted by Mr. Weingold. The draft was fully discussed by the Select Board, amended by it, and approved by it at a public meeting. Ms. Noe’s authority is clearly not unlimited. The most important limitation is that Ms. Noe is not authorized to hire, discipline, or fire employees, all powers reserved to the Select Board. Ms. Noe did not just “technically answer() to the SB.” It appoints Ms. Noe, and Ms. Noe is totally subject to its “jurisdiction and policy direction.” The only limits on the Select Board’s powers in relation to Ms. Noe are those set out in Ms. Noe’s publicly approved contract and in state law.

You say that Ms. Noe “arguably” has “supervisory authority over” Terry. Actually, that authority is absolutely clear, although you and she have tended to ignore that fact. Of course, the Select Board has the authority to modify Ms. Noe’s job description to make her answerable only to it, but Ms. Noe cannot imagine how reason could support such an approach.

At various points in the Report, you suggest that the complaints, if proven, could expose the Town to liability. However, none of the complaints even suggest that Ms. Noe acted toward Terry or anyone else, for that matter, because of her or their membership in a statutorily protected class (race, religious, sex, etc). Please identify what claims could arise based on the conduct alleged.

You state that your objective is “to be impartial, precise, and thorough and to produce a fair and balanced report . . .” (Report p. 1). You also claim that your credibility determinations would be supported by a description of your “rationale” for accepting or rejecting someone’s testimony. Ms. Noe’s ability to respond to the findings about her conduct has been made very difficult because you have not met any of the above standards. With regard to the allegations, Ms. Noe responds as following using the numbering system to address each complaint as numbered in the Report:

(1) This is the July 21, 2021, complaint filed by Terry against Shawn and Ms. Noe. There are no detailed findings of fact. You state that someone witnessed Shawn and Ms. Noe “angrily confront” Terry. Although omitted from this section, at page 18 of your Report you note that “Noe and Walker both admitted to behavior that would constitute violations of their duties to conduct themselves reasonably and without hostility during their confrontations.” You admit that the participants differed in their description of “the intensity of the argument,” but make no finding of your own as to what the intensity was. Despite that fact-finding failure, you then say there was a question “whether Terry could have reasonably feared for her safety.” Although

you knows that Terry has made similar claims in a number of prior Town employments, you said nothing about that. Nor do you even find that Terry's alleged fear was reasonably held. All she says is that it was "informed" by Terry's knowledge of an alleged assault by Shawn. That event was well-publicized. The alleged victim denied the assault, and the police determined that no assault took place. And Terry knew all that. In any case, you find nothing indicating that Terry had reason to fear an assault by Ms. Noe.

Despite the absence of any findings of fact, you then conclude that "the conduct of each of the employees . . . may be considered violative of several sections of the Town's Employee Manual . . . ." Those conclusions are not explained and no sections of the manual are cited. Of course, both Terry and Ms. Noe told you that they believe the argument was too hostile and thus not proper under the manual. Ms. Noe has not changed her mind about that, and Ms. Noe most certainly assures the Select Board that she will not exhibit inappropriate hostility when relating to Town employees.

(2) This complaint of Jon Sylbert dated August 18, 2021, concerns an email Ms. Noe sent to the Select Board informing it about a Finance Committee dispute between Jon and Michele. You rather begrudgingly admits that Ms. Noe sending the email was "not necessarily inappropriate." Actually, keeping the Select Board aware of problems in Town is one of Ms. Noe's duties. In any case, you then conclude that in this case Ms. Noe informed the Select Board to put Jon "under suspicion," and that this was "part of a pattern whereby Noe, when any of her actions has been called into question . . . engages in potentially retaliatory behavior or takes action that may be perceived as efforts to shame or discredit her accuser." So Ms. Noe did something she was supposed to do (and was directed to do by the Chair) but somehow Ms. Noe is criticized because Jon might perceive Ms. Noe providing the information as embarrassing to him. For proof of the supposed pattern, you asked the Select Board to look at her analysis of other specified complaints. You also assert in paragraph 2 that Ms. Noe was responsible, at least in part for financial reporting of the fire company. That is 100% false and Shawn Tryon, if he had been interviewed, could have confirmed this (as Ms. Noe also could have had she been asked during her interview). As you will see, none of those complaints support your proposed solution. This section ends with the statement that Ms. Noe's actions here "probably" did not expose the Town to liability. Ms. Noe is confident that if you check with Town counsel you will be informed that even suggesting Town liability here is untenable.

(3) This is described as the August 18, 2021, complaint concerning the Council on Aging. You says a member reported that Ms. Noe was "rudely dismissive" of the member's concerns. Ms. Noe absolutely denies that. Your Report does not find any facts regarding that claim. You then describe an allegation by the same member that Ms. Noe had failed to intervene when another member "berated" her. No finding is made as to that. You go on to criticize an email Ms. Noe sent to the Select Board responding to one sent by the complaining member. Without any explanation, you conclude the "tone of the email belittling." The email is neither quoted nor included in the report. You then add that the email was "intended to intimidate." No explanation appears for that conclusion. Your Report in the third sentence says that the outreach

workers were not employees, which is false, they most certainly were and they were **supposed** to be working from Town hall. The decision for Ms. Noe to co-supervise was made by members of the council on aging and Ms. Noe provided documents to this effect to you but apparently you have chosen to ignore them. In the last paragraph, you also blame Ms. Noe solely for failing to intervene (which is false) and being rudely dismissive of her HIPAA concerns, this is also false; this matter was discussed between Ms. Noe and the COA and that was where the decision was made. This section ends with your determination that Ms. Noe delayed payments on the project. Apparently, you are unaware that Ms. Noe had nothing to do with control of when payments are made since that is the job of the accountant and this particular request was denied by the accountant due to Ms. Banducci's failure to properly fill out the reimbursement form (this could have been easily verified). This seems to be yet another example of the Report's lack of objectivity.

(5) This section criticizes the "manner of" Ms. Noe's response to a public records request by a member of the Conservation Commission. According to the Report, Ms. Noe contacting Steve as chair instead of contacting the entire Select Board about it was "problematic." She does not say why that is so, and she certainly fails to identify how the contact violated any Town policy. Ms. Noe is also not familiar with this complaint and may not have been provided a copy to be able to properly defend herself.

(6) This concerns Terry's error on an important state form required for reporting on the Town meeting budget actions. The accountant informed Ms. Noe of the error and of the further error made by the accountant in failing to notice Terry's error. Of course, Ms. Noe was duty bound to inform the Select Board, which Ms. Noe did first through an email and later at a public meeting. Terry's claim is that Ms. Noe falsely said she erred. But all Ms. Noe did was report what the accountant said. You find no error on Ms. Noe's part in bringing this matter to the attention of the Select Board. The Report says Ms. Noe has control over the Select Board's agenda, but as the decision of what goes in the agenda belongs to the Select Board. You suggest that this complaint is only relevant if it "shed[s] light on the underlying issue of retaliation by Noe." But the Report does not say it does.

(7) This section purports to address the question of whether Ms. Noe attempted to intimidate or threaten Terry. You note that Ms. Noe contacted Justin, asking him to meet with her to discuss Terry and information in Ms. Noe's possession that would put her in a poor light if the investigation continued. Ms. Noe is at a loss to understand why she was not entitled to defend herself against Terry's charges. There is no suggestion that the information Ms. Noe had was untrue, when in fact if Justin had met with Ms. Noe, she intended to inform him of the possible liability to the Town if Terry's complaints fell under any of the protected classes. The Select Board had publicly discussed trying to have Terry and Ms. Noe mediate their differences, and at one public meeting Terry specifically agreed to do just that, as did Ms. Noe. Terry later changed her mind. But you fail to explain how any of what Terry refers to amounts to retaliation, intimidation, or coercion. Of course, Ms. Noe agrees that such behavior is inappropriate, but she

firmly deny that she engaged in it. And here again, the Report completely fails to explain or support its conclusions.

(8) This is Terry's complaint about the hallway argument of September 22, 2021. You find that Ms. Noe yelled at Terry based on Ms. Noe's "admission" that she did so. But in fact, Ms. Noe specifically denied yelling on this occasion and pointed out that only Terry yelled. What Ms. Noe admitted was that she made a "snarky" comment as Terry left. Then you say the only remaining questions were whether "events . . . escalated such that" Ms. Noe's conduct could be considered "threats of violence and whether her behavior caused Terry to reasonably fear for her safety . . . ." You make no finding with respect to anything Ms. Noe said or her demeanor when she said it. Then, without finding the presence of any such threat, you turn to the question of whether Terry's alleged fear was reasonable. The only evidence the Report cites is that two people felt "compelled to intervene." But the Report does not say they did so because they thought Ms. Noe was going to act violently toward Terry; nor that if they did have that belief, that their belief was reasonable. Given the serious defects in the Report's purported fact finding on this issue, your suggestion of discipline is unfounded.

(12) This section concerns complaints regarding the accuracy of minutes and one or two instances of Ms. Noe forgetting to remove the initials of the Select Board member next to an agenda item he had added. No details are provided, and there is no finding that Ms. Noe intentionally violated any Town policy.

(13) This section concerns the public records request Ms. Noe made of Terry after she filed complaints against Ms. Noe. You conclude that Ms. Noe made the request to "discourage, intimidate or otherwise dissuade Terry from pursuing her claims." Your only proof of Ms. Noe's supposed intent was that she made the request after the complaints were filed. Ms. Noe believed the records would provide evidence to support her position that Terry's claims were baseless and coerced. You completely fail to explain why or how Ms. Noe's use of the public records statute was wrong or how it could possibly have violated Town policy. Nor does the Report mention that both Jon Levin, as RAO, and the state supervisor determined that Ms. Noe's records request was proper. You also take Ms. Noe to task for obtaining a copy of Terry's formal complaint against another town with the MCAD. The criticism is that Ms. Noe and others used that document to discredit Terry's Monterey claim. What that document showed was that Terry had made almost identical claims in the other town and then dismissed them four years later. Other documents submitted to you showed the same behavior in a number of other towns. They were all relevant to whether Terry's present claims were truthful. Apart from the complaint, the other documents were letters signed by Terry that were discovered by others and submitted by them to you. But you ignored them. In any case, Ms. Noe cannot agree that defending herself violated some Town policy.

(15) This section refers to a complaint of October 27, 2021, which appears to Ms. Noe to have been submitted by Mr. Weingold. He alleged that Ms. Noe "misused" her power, leaked confidential information to the press, and misled the Select Board. You make no finding of misuse of power or of leaking confidential information to the press. The reference to misleading

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the Select Board concerns an email from Terry to the Select Board about the recall vote petitions. You speculate that if Terry certified the petitions on October 25, Ms. Noe erred in saying they had been certified on October 20th. However, you never found that the certification was done on October 25th. Consequently, your earlier statement that the documentation shows misleading is obviously incorrect.

(16) This section contains no finding against her at all.

(17) This section concerns the Conservation Commission. It reflects the Report's failure to understand the relationship between the Con Comm, the conservation agent and Ms. Noe. While there is a fair amount of rank speculation, the bottom line is that it does not identify any respect in which Ms. Noe's conduct violated any Town policy. The Con Comm Agent **IS** a Town employee, this is very easily verified through payroll.

(18) This section deals with leaks of information, but is limited to a statement that no facts can be found.

Based on the above, it is clear that the Report is flawed and unreliable. We request that you carefully review these concerns and revise your Report accordingly. In the meantime, the Select Board should reverse its decision to accept the Report as written as fact and take no action until these serious errors are addressed.

Absent your immediate rectification of these issues, we are prepared to zealously defend Ms. Noe's rights.

Sincerely,

COHEN KINNE VALICENTI & COOK LLP



Christopher M. Hennessey

CMH/mm

Copy:

Members of the Town of Monterey Select Board

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