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September 22, 2023

**VIA EMAIL AND U.S. MAIL**

Kathy Lynn Garner  
District Manager  
DEPARTMENT OF INDUSTRIAL  
RELATIONS  
Division of Occupational Safety and Health  
American Canyon District Office  
3419 Broadway Street Ste H8  
American Canyon, CA 94503

**Re: Southern Marin Fire District – Pending Cal/OSHA Investigation Concerning SMFD Station #4**

Dear Ms. Garner,

My firm, principally my colleague Partner Jonathan Vick, represents the Southern Marin Fire District (“SMFD” or “District”) with respect to the pending Cal/OSHA investigation being conducted by Investigator Perry Churchill. I write to alert you to concerns by the District that Mr. Churchill has conducted his investigation in an unfair, biased, and unprofessional manner. The District suspects that Mr. Churchill’s conduct may not comport with Cal/OSHA’s accepted standards and practices for conducting its investigations and, as such, believed it prudent to notify his superiors to the extent you and your colleagues may otherwise be unaware of his behavior to date. The District also requests specific relief to ensure that it is not prejudiced by Mr. Churchill’s inappropriate behavior moving forward.

**I. BACKGROUND**

**A. In August 2022, SMFD started a major renovation of Station 4**

During the period relevant to the pending Cal/OSHA complaint, SMFD was comprised of three fire stations and employed 54 firefighters, who are represented by Marin Professional Firefighters, Local 1775 (“Local 1775”). In August 2022, SMFD started a renovation project at Station 4. Station 4 was originally built in 1978 and needed many upgrades, including for ADA compliance, earthquake safety retrofit, and remodeling of the kitchen and bathroom. The original plan involved three phases and the SMFD brought in two RVs to be used as needed by

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the crew and erected plastic barriers to control the dust and which allowed the firefighters to sleep upstairs. SMFD had weekly meetings with the various stakeholders in part to solicit input from the battalion chiefs and crews regarding the scope of the reconstruction. SMFD incorporated some of the changes requested by the battalion chiefs and crews such as the kitchen remodeling and removal of countertops and cabinets in the downstairs office to make the space larger.

B. On or about February 1, 2023, after being notified regarding the presence of mold during construction, the District took appropriate action and remained in close communication with its firefighters and Local 1775

On or about February 1, 2023, the contractor discovered mold behind the downstairs office cabinets under the window. This was the first notice of mold in the building. Upon such notice, the contractor and project architect investigated and addressed the mold by application of a mold blocker.

As the project progressed, the contractor discovered other areas of mold. In early March, the crews raised concern about the mold to the District. Within days, SMFD arranged for mold testing and, on or about March 6, 2023, the District relocated the affected crews to Station 7. The inspector identified mold in certain areas and recommended remediation. SMFD hired remediation contractors to perform the mold abatement in accordance with state and federal laws.

During this time, SMFD was following the advice and recommendations from the architect, contractor, and environmental consultant. Further, SMFD was in continuous communication with the firefighters who were members of the Local 1775. SMFD sent the mold report to the membership.

C. In mid-March 2023, shortly after receiving a Public Records Act request from Local 1775 concerning the mold at Station 4, SMFD received notice of the Cal/OSHA complaint

On March 21, 2023, SMFD received a California Public Records Request from Local 1775 seeking voluminous records concerning the presence of mold at Station 4. Shortly after receiving the request, Investigator Perry Churchill from Cal/OSHA initiated an investigation based on a complaint from an unidentified source regarding the mold in Station 4.

## II. DISCUSSION

A. SMFD is committed to maintain a healthy and safe workplace and has complied with Cal/OSHA rules and regulations with respect to its response to the mold discovered at Station 4

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The District is committed to providing a healthy and safe working environment for all District employees. As a public agency tasked with safety-related code enforcement, the District appreciates and respects Cal/OSHA's responsibility to investigate allegations of non-compliance.

Prior to the renovation, the District hired environmental consultants to test, remediate, and perform clearance testing. Moreover, the District contends that it satisfied its obligations under the California Labor Code and Cal/OSHA regulations to promptly and efficiently remediate the presence of mold in Station 4, once it became aware of its presence during the recent renovation and upgrade of the firehouse. Despite disagreeing with the substance of the complaint, the District has cooperated without reservation with Cal/OSHA's investigation, including by providing voluminous records and making members of its administration, including Chief Christian Tubbs and Deputy Chief Ted Peterson, available for interviews. The District is in receipt of the recently-issued 1BY notice and will provide a response to the notice as requested by September 29, 2023.

B. SMFD's concerns regarding bias against the District by the assigned Cal/OSHA investigator

In addition to that forthcoming response to the 1BY, the District feels compelled to separately raise concerns regarding the assigned Cal/OSHA Investigator Perry Churchill's conduct during the investigation. The Cal/OSHA Policy & Procedure Manual states that compliance personnel must conduct themselves as professionals and be cognizant that they represent the State of California at all times. Certain statements and actions by Mr. Churchill suggest a material bias in favor of the anonymous complainant(s) and against the District and a notable lack of neutrality and unprofessionalism in effectuating his duties as a Cal/OSHA investigator in violation of the Policy & Procedure Manual.

Biased Selection of Potential Witnesses. The District is concerned that Mr. Churchill may not have interviewed all witnesses with relevant information, potentially resulting in a skewed record and future violation finding that may be unfairly biased against the District.

The District acknowledges and appreciates that the investigator has the discretion to determine the relevance of potential evidence. Early in the investigation, Mr. Churchill expressed an interest in interviewing only one of the three captains assigned to Station 4 during the period relevant to the complaint (Captain Sweeney). Of these three captains, Captain Sweeney had been assigned to Station 4 for the shortest amount of time, i.e., since on or about January 24, 2023, having only come on to Station 4 following a shift bid change. Unlike Captains Fox and Butler, Captain Sweeney had not participated in the regular meetings between District administration and Station 4 personnel in the months leading up to breaking ground on the Station 4 renovation project. During these pre-construction meetings, the parties discussed construction-related logistics, health and safety protocols attendant to the construction, and fielded requests from fire personnel for change orders to the renovation plans—conversations that provide important context for the complaint.

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Following Mr. Churchill's interview of Sweeney, Deputy Chief Peterson asked Mr. Churchill whether he also intended to interview Captains Fox and Butler. Mr. Churchill responded in a dismissive and irritated manner—a reaction that surprised the Deputy Chief, as it seemed obvious that both captains would provide relevant information for the investigation. Mr. Churchill eventually spoke with Captain Fox. The District is unaware of whether Mr. Churchill also spoke with Captain Butler. Mr. Churchill's reluctance and expressed frustration about the prospect of interviewing these witnesses has caused the District concern that Cal/OSHA's record may be incomplete, to the District's detriment.

Bias Demonstrated in Interactions with Non-Administration District Witnesses. Of the witnesses that Mr. Churchill decided to interview, Mr. Churchill made clear to some that he had already decided against the District. At least one witness reported to District administration that, following their interview, Mr. Churchill had (paraphrasing) already determined that the District had violated Cal/OSHA standards. The witness shared this feedback early in the investigation, and before Mr. Churchill had an opportunity to meet with District administration.

Inappropriate Conduct During Interview with Deputy Chief Peterson. Mr. Churchill also behaved in a troubling manner towards members of District administration, namely Deputy Chief Peterson and Chief Tubbs, during his interviews with both.

With respect to Deputy Chief Peterson, Mr. Churchill reached out under the premise of scheduling a "meeting" with him. Mr. Churchill provided no advanced notice that the meeting would be an adversarial interview, or that the Deputy Chief may wish to make arrangements to have legal counsel present. The Deputy Chief had been working cooperatively with Mr. Churchill and anticipated that Mr. Churchill would be providing him with an update concerning the investigation's progress. Indeed, Mr. Churchill no-showed for the meeting initially, further suggesting that the meeting was casual in nature.

Mr. Churchill and the Deputy Chief met in person in the Deputy Chief's office on May 10, 2023. Quickly into the meeting, the Deputy Chief realized Mr. Churchill's intentions, and sought clarification regarding the meeting's premise. Only then did Mr. Churchill acknowledge that the *meeting* was in fact an *interview* and inquired as to whether the Deputy Chief desired representation—an illusory offer at that point given that the interview had already commenced. The Deputy Chief, wanting to continue to interact with Cal/OSHA in a transparent and collaborative manner and, concerned that a request for legal counsel may be interpreted adversely against the District, declined the offer and proceeded with the interview.

Mr. Churchill then proceeded to aggressively question the Deputy Chief for 1.5 hours. Based on the nature, tone, and delivery of Mr. Churchill's questions and commentary, he came across as an advocate for the complainant(s), rather than as a neutral investigator trying to objectively collect evidence. He made comments that closely echoed statements that Local 1775 leadership had made to the District concerning the presence of mold in Station 4. His manner of questioning was disrespectful, accusatory, and condescending. He mocked the Deputy Chief for

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“not being a firefighter” and chided him for having never lived in a fire station. While the District appreciates that robust inquiry may be necessary as part of the investigation process, it is the District’s expectation that Cal/OSHA would have provided the Deputy Chief with adequate notice in advance of an adversarial interview where admissions against the District’s interests could be made and that the investigator would have undertaken this questioning in a professional and respectful manner, without gratuitous personal attacks.

Inappropriate Conduct During Interview with Chief Tubbs. With respect to Chief Tubbs, Mr. Churchill made comments indicating that he essentially had his mind made up by the time he met with the Chief. Mr. Churchill’s interview with Chief Tubbs occurred in person in the Chief’s office. Attorney Stephen Raab of the Marin County County Counsel’s Office was present and represented the Chief during the interview. Mr. Churchill also no-showed for the initially-scheduled time for the interview. And because Mr. Raab was present, also caused the District to incur attorney’s fees.

Mr. Churchill initiated the interview by commenting that he (paraphrasing) already knew everything he needed to know and that his interview with the Chief was merely a formality—a statement that very much surprised and concerned the Chief. (See Audio Recording at, 0:56-1:05.)<sup>1</sup> The Chief had presumed that his knowledge regarding the District’s response to being notified about the mold at Station 4 would be highly relevant to the investigator. Mr. Churchill’s representation otherwise led to a loss in confidence regarding Mr. Churchill.

As the interview progressed, Mr. Churchill repeatedly prefaced his questions with facts that he offered as established, instead of inquiring whether the underlying supposed fact was indeed true, from the Chief’s perspective. The following exchange is illustrative:

Q [Churchill]:           So that time that Cap Falk, or the Acting Captain Falk had brought it up, is that your understanding of Chief Peterson’s first knowledge of the mold there?

(Audio Recording, 12:59-13:47.) The question presumed that Captain Falk had, in fact, “brought” up the issue of the presence of mold to the Chief, instead of querying the Chief as to whether the captain had, in fact, “brought it up.”

Moreover, Mr. Churchill confirmed to the Chief that he had already formed an opinion with respect to the allegations of the investigation and merely sought the Chief’s testimony to confirm what he already believed. When the Chief attempted to explain that he did not share Mr. Churchill’s opinion, Mr. Churchill was dismissive and indicated he would not consider the Chief’s account of events:

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<sup>1</sup> We presume Mr. Churchill has his own version of this audio recording, we but can provide the District’s copy if necessary.

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Q [Churchill]: **My understanding is that Chief Tubbs was kept in the dark on a lot of the stuff that was going on. And that's what I'm just trying to establish and I'm trying to reinforce of...** But we're going to talk about some stuff where Chief Peterson actually knew about it back way before that.

A [Raab]: So what does that mean, "kept in the dark"?

Q [Churchill]: Well, he wasn't told the full story of what was going on at Station 4. Chief Peterson knew about the mold back in January.

...

A [Tubb]: **That's not my understanding.**

Q [Churchill]: So we're going to talk about that.

A [Raab]: Okay. It's just that I'm not sure that, you know, Chief Tubbs would agree with you on that.

Q [Churchill]: **Well that's okay. He doesn't have to agree with me. I got proof. So, you know.**

(Audio Recording, 14:18-15:13) (Emphasis added.)

When Mr. Raab pointed out that Mr. Churchill's opinion was based on circumstantial evidence presumably obtained entirely from the complainants and the union, Mr. Churchill refused to concede:

A [Raab]: And so **how's that proof?**

Q [Churchill]: **Oh, I can...psh medical records, statements, timelines, the public...**

Q [Churchill]: **... there's[sic] emails, there's texts. Oh yeah, there's all sorts of stuff. As all of you...you all have been aware of that through the union.**

A [Raab]: Okay. So. Alright. I'm trying to understand. You're saying you have proof of...that Chief Peterson knew that there was mold in the station prior to the architect's report?

Q [Churchill]: Oh, yeah.

A [Raab]: **And it's based on circumstantial...**

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Q [Churchill]: Well, **I've talked to over 20 firefighters and personnel about their interaction with Chief Peterson and them letting him know that there's mold here...I mean it's no, I mean, it's public knowledge with the public records requested by the union.**

(Audio Recording, 15:55-17:13) (Emphasis added.) Strangely, Mr. Churchill followed by stating he knew the Chief had been kept in the dark, despite never asking the Chief for his knowledge about purported reports of mold to Chief Peterson. Again, Mr. Churchill's statements indicated he already formed his opinions regarding the allegations prior to interviewing the Chief, a critical witness, and that he was only looking for information to confirm his pre-conceived opinions, as further evidenced by his statement below:

Q [Churchill]: ...Unfortunately [the Chief has] been kept in the dark and so that's why, **I mean, I already know he's been kept in the dark, that's why I'm here to try and re-establish that.**

(Audio Recording, 18:40-18:48) (Emphasis added.) Mr. Churchill later acknowledged he does not know what information the Chief had about the timing of the discovery of the mold (Audio Recording, 22:45-22:54), which further evinces the impropriety of Mr. Churchill's pre-conceived determination that the Chief was "kept in the dark."

Further, Mr. Churchill conducted the interview in an extremely inappropriate manner. Mr. Churchill frequently cut off the Chief and Mr. Raab, preventing them from providing complete statements. Not only was this inappropriate and unprofessional, but it further demonstrates Mr. Churchill had no interest in gathering all available information and instead solely sought out information that confirmed his pre-conceived opinions. Mr. Churchill also, without prompting from the Chief or Mr. Raab and *after* the Chief told Mr. Churchill he had no knowledge of the investigation or issue, disclosed to them the facts of the investigation OSHA conducted into the District's Station 6, and told the Chief and Mr. Raab that Station 6 "actually did it right" and that if Station 4 "had supplied this crew...with the trailers [Station 6 provided to its crew], I wouldn't be here." (Audio Recording, 26:03-27:05.) When the Chief explained that Station 6 was an entirely different organization, Mr. Churchill sarcastically responded, "Okay." (Audio Recording, 29:39-29:43.)

Mr. Churchill's questions were also inappropriately argumentative—an approach inherently inconsistent with making factual findings:

Q [Churchill]: And my understanding is [Chief Peterson] came from another department and he was...and I'm just asking if this is accurate. So he was brought here for two things. One is to help change the culture of the department and **two is to save you a crap load of money, right?**

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(Audio Recording, 9:33-9:40) (Emphasis added.)

A [Raab]: So, I mean, Chief Tubbs was at [the March and April Board meetings too.

Q [Churchill]: ...Well, **he only goes by what Chief Peterson told him.**

(Audio Recording, 15:48-15:55.) (Emphasis added.)

Similarly, when asked how Chief Peterson was expected to know that workers' compensation claims were related to mold as far back as March 2023, Mr. Churchill that's replied that Chief Peterson is "supposed to be a chief and look after his guys and know what's going on with his crew. That's what he's supposed to do, That's what a chief does." (Audio Recording, 25:25-25:30.) Mr. Churchill went on to explain his opinion that Chief Peterson should have known the workers' compensation claims were related to mold because Chief Peterson was "in charge of personnel" and "handles paperwork." (Audio Recording, 35:36-35:59.)

Mr. Churchill also taunted the Chief and Mr. Raab with information he withheld from them during the interview:

Q [Churchill]: [Chief Peterson] initially said, he said...initially he told Chief Vollmer he had a written report. And it was...he had a summary, but he didn't have handy when he was asked for it,

A [Raab]: Okay. So that's your basis for saying that Chief...

Q [Churchill]: Well, not just that, but **I have other things which you'll find out later.**

A [Raab]: Okay.

Q [Churchill]: **We'll have fun.**

A [Raab]: Well I'm not so sure it's fun,

Q [Churchill]: Oh well, **I mean, you know, I have all the facts and you guys, ya'll are just finding out about stuff...**

(Audio Recording, 44:31-44:57) (Emphasis added.)

Most egregiously, Mr. Churchill further diminished his credibility by insinuating, inaccurately, that Chief Peterson lied during his interview. Twice during Chief Tubbs' interview, Mr. Churchill represented to the Chief and Mr. Raab that there were "eight workman comp complaints filed by [the March Board meeting] for the mold exposure." (Audio Recording, 15:30-



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15:47, 30:15-30:56.) Mr. Churchill represented that mold exposure was determined to be the cause of all eight workers' compensation claims. (Audio Recording, 30:54-30:56.) Mr. Churchill, however, also admitted that he did not know the cause of four of those workers' compensation claims, let alone have any information indicating the cause was mold exposure:

A [Raab]: Those were the eight workers' comps had those symptoms? With the cause? They were able to figure out what the cause was?

Q [Churchill]: Yeah. **Four of them were at least mold. I'm still waiting for the other four.**

A [Raab]; ...So you're making a connection that the workers' comp claims were from mold.

Q [Churchill]: Yeah.

A [Raab]: Okay. But you've only made that connection so far retroactively for four of them, but **four of them you don't know yet, correct?**

Q [Churchill]: Well, **I'm still waiting for the medical records.**

A [Raab]: Right. So, but when you're looking at...what Chief Peterson knew... **Why are you making the assumption that he knew those eight workers' comp claims were connected to mold when you're not even ready to say that they're connected to mold?**

Q [Churchill]: **I'm ready for four of them.**

(Audio Recording, 30:15-31:54)(Emphasis added.) When Mr. Raab pointed out the logical inconsistency, Mr. Churchill refused to take accountability for exaggerating, and offered the following justification:

A [Raab]: ...You're not ready for eight. And yet you're saying...

Q [Churchill]: I only needed one.

...

Q [Churchill]: All I need is one. I don't need eight. I just need one exposure.

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(Audio Recording, 31:55-32:04.)

Immediately after arguing his exaggeration had no impact on his pre-conceived findings, Mr. Churchill denied that he had made a false statement by exaggerating and became argumentative, challenging the Chief and Mr. Raab to review the audio recording and threatening to see them in court:

A [Raab]: ...what you're telling us when you're asking Chief Tubbs the questions, you're saying, Chief Peterson knew about eight workers' comp claims during a board meeting. And now you're saying that you don't even know four of them are connected...You're giving information that's not accurate to us when you're asking the question saying Chief Peterson knew about eight workers' comp claims at the board meeting that you're saying is connected to mold. And you're not even able to say that right now. So you're not being straightforward with us. You're exaggerating your questions.

Q [Churchill]: No, I'm not.

A [Raab]: And you're, yes, you are. You're making Chief Peterson know something that he didn't know at the time. And you're attributing knowledge that he had eight workers' comp claims attributable to the mold back in the board meeting in March.

Q [Churchill]: Yeah.

A [Raab]: Which you are not even prepared to say there's eight connected to mold. You have decided that four are...how does Chief Peterson know at a board meeting that eight workers' comp claims are connected to mold when you're not even prepared to say that right now?

Q [Churchill]: Okay. I'll just say four then. How's that?

A [Raab]: Well, you're telling us eight. How is he supposed to know that he has eight workers' comp claims connected to mold back when he's finding out about this stuff?

Q [Churchill]: Oh, he knew before. He knew before the March meeting...Well we'll talk about it when we go to court.

A [Raab]: So now we're going to court?

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Q [Churchill]: ...I mean, you guys, every time we issue citations, ya'll go to court anyways, so that's what I expect. We're going to issue citations.

...

A [Raab]: ...we just caught you in lies saying that there were eight workers' comp...

Q [Churchill]: No, I'm not lying...I'm not lying to you. I got statements from 20 firefighters and eight of those had illnesses.

A [Raab]: You said that Chief Peterson...

Q [Churchill]: Are we going to argue all day long or are we going to have a discussion?

A [Raab]: Well, it's really...if you're lying to us in the questions, it's very...

Q [Churchill]: Define lie.

A [Raab]: Well you just...

Q [Churchill]: Define lie.

(Audio Recording, 33:16-35:00.) (Emphasis added.)

Q [Churchill]: I didn't say that he connected eight. I said connected four because I had four reports. I'm still waiting for reports.

A [Raab]: You said to us and **it's on the recorder...**

Q [Churchill]: **You want to play it back?**

A [Raab]: **We will definitely play it back.**

Q [Shurchill]: **You do that.**

A [Raab]: **And you definitely said to us that he knew in a board meeting that there were eight workers' comp claims connected to mold. So that's the lie that you told us.**

Q [Churchill]: **No.**

(Audio Recording, 36:10-36:24.) (Emphasis added.)

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The Chief concluded his interview with Mr. Churchill dismayed by the lack of professionalism exhibited by Mr. Churchill and concerned about the impact that Mr. Churchill's demonstrated pre-determinations and bias against the District could have in influencing any citation determinations by Cal/OSHA.

Potential Bias as a Result of Undisclosed Personal Relationships with Local 1775 Members. In advance of the Chief's interview, District administration began to hear from District personnel that Mr. Churchill had personal friendships with individual Local 1775 members. One such report included that Mr. Churchill had recently gone camping with an SMFD member. Other reports included that Mr. Churchill had close relationships with members of the Local 1775 E-Board.

During the Chief's interview, County Counsel Stephen Raab explicitly asked Mr. Churchill whether he had personal relationships with any Local 1775 members. Mr. Churchill said no, at least not prior to the incident/complaint. (Audio Recording, 36:24-36:53.)

### III. CONCLUSION

Mr. Churchill's course of conduct has not engendered confidence in the Cal/OSHA investigation process, and rather has resulted in cause of concern regarding the basis for Cal/OSHA's anticipated findings.

The District requests that Cal/OSHA assign an alternative investigator for the remainder of the investigation as soon as possible, that such investigator review Mr. Churchill's work product objectively and, if necessary, conduct further interviews (or re-interviews) to ensure that Cal/OSHA has a comprehensive and objective record of evidence, and, to the extent Cal/OSHA makes findings against the District, that such findings are made based upon this reviewed and potentially supplemented record. The District also requests that Mr. Churchill be prohibited from participating in any aspect of the investigation moving forward.

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The District appreciates your consideration of these requests. I am available to discuss these issues at greater length on the District's behalf, should you wish to do so.

Sincerely,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

A handwritten signature in cursive script that reads "Jenica Maldonado". The signature is written in black ink and is positioned above the printed name.

Jenica D. Maldonado