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August 22, 2023

Via Email Only

Ms. Karen Tynan

President

California Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun

Email: [REDACTED]

RE: Confidential Investigation of Complaints Concerning the 2022 Pilot Trainee Selection Examination

Dear Ms. Tynan:

This letter provides a brief summary of the findings of the confidential investigation I conducted on behalf of the California Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (the Board). This letter is in no way intended to take the place of the confidential, attorney-client privileged investigation report, nor is it intended to constitute a waiver of the attorney-client privilege or attorney work product protections with regard to that report.

OVERVIEW

On or about January 31, 2023, the Board requested that the Investigations Group within the Employment and Administrative Mandate Section of the Attorney General's Office conduct an impartial investigation concerning four complaints alleging potential improprieties in the 2022 Pilot Trainee Selection Examination (the 2022 Selection Examination). The four complaints were from three unsuccessful applicants of the 2022 Selection Examination, and one anonymous complainant. The complaints stemmed from statements made during a closed session meeting of the San Francisco Bar Pilots (SFPB) Policy Committee on July 27, 2022, where the Policy Committee discussed the 2022 Selection Examination. That meeting was surreptitiously audio-recorded and disbursed to the four complainants. I conducted a thorough

and independent investigation concerning the complainants' allegations, and issued my confidential report on or about July 21, 2023.

INVESTIGATIVE PROCESS

I reviewed the relevant regulations governing the Board and selection examination process, evaluated the 2022 Selection Examination testing materials and relevant email communications, determined who the relevant witnesses were, and conducted 25 interviews. Each witness was encouraged to provide all relevant information, and offered additional opportunities to meet with me should the witness have further information to share.

I assessed all information based on a preponderance of the evidence standard. "Preponderance of the evidence" for purposes of this investigation meant that the evidence on one side outweighed, or was more than, the evidence on the other side. This is a qualitative, not quantitative, standard. The factual conclusions were drawn from the totality of the evidence and a thorough analysis of all the facts, and where necessary, credibility determinations were made.

BRIEF BACKGROUND CONCERNING THE BOARD, SFBP AND PILOT TRAINEE SELECTION EXAMINATION

The Board is the oversight body that licenses, trains and regulates up to 60 pilots who are organized as the San Francisco Bar Pilots (SFBP). The Board consists of seven voting members and one non-voting *ex-officio* member. By regulation, the voting members consist of two SFBP pilots, two shipping industry members, and three public members who are neither pilots nor work for companies that use pilots. The non-voting *ex-officio* member is the Secretary of California State Transportation Agency. The Board also employs four employees, which include an Executive Director, Assistant Director and two administrative staff.

In order to become a SFBP pilot, applicants must qualify for and pass a selection examination to be "reachable" on an eligibility list of pilot trainee candidates. The Board administers the selection examination every two or three years, or when there is a need for licensed pilots. The California Department of Human Resources (CalHR) oversees the selection examination process.

The selection examination is comprised of four components: experience points, written examination, simulator exercise and interview. All applicants who satisfy the minimum qualifications are assessed experience points based on applicable tug, deep draft and piloting experience. These applicants, regardless of whether they received experience points, are eligible to participate in the written examination. Applicants who pass the written examination proceed to the simulator exercise. Applicants who pass the simulator exercise are automatically eligible pilot trainee candidates, and are invited to participate in an interview. Final rankings on the eligibility list are determined by combining the trainee candidates' experience points, written

examination, simulator exercise and interview scores, with each component given equal weight. Selection for entry into the Pilot Trainee Training Program is based on the candidate's ranking on the eligibility list and openings in the Pilot Trainee Training Program.

The Board does much of its work through a variety of committees that may include Board and non-Board members. For each selection examination, the Board appoints a Selection Appeal Committee, which is comprised of one SFBP pilot, one industry member and one public Board member. The Selection Appeal Committee is responsible for determining the appeals of applicants who raise any issue in the selection process. In addition, the Board's Pilot Evaluation Committee, which consists of five SFBP pilots, plays an integral role as subject matter experts in the development and administration of the selection examination.

BRIEF SUMMARY OF FACT-FINDING DETERMINATIONS

The following is a brief statement of the 8 allegations investigated based on the complaints, and the findings thereof. Allegations that were too or overly broad were not investigated.¹

Allegation 1: Two Selection Appeal Committee members improperly discussed the appeals of the simulator exercise with members of the SFBP prior to the appeals hearing.

Finding: Two Selection Appeal Committee members discussed the simulator appeals to an extent prior to the appeals hearing. But, it was not found that they did so improperly.

One Selection Appeal Committee member had a social lunch prior to the appeals hearing with a long-time friend who also happened to be a SFBP Policy Committee member. During the lunch, they briefly spoke about the selection examination and upcoming simulator appeals, but did not discuss the appeals in any detail. No confidential information was discussed, nor the specifics of any appeal. The topic involved the Selection Appeal Committee member expressing concern about the responsibility the member felt of having to decide the appeals.

The other Selection Appeal Committee member who also discussed the appeals before the hearing is also a SFBP Policy Committee member. During a Policy Committee meeting that occurred before the appeals hearing, this member spoke generally about the simulator appeals. Prior to the Policy Committee meeting, however, the Executive Director had notified that Selection Appeal Committee member that the simulator appeals were not confidential. Based on the Executive Director stating that the appeals were not confidential, and a lack of guidance in the regulations, the conduct was not found to be improper.

¹ See Attachment A, "Additional Matters Not Investigated."

Moreover, there was no evidence indicating that either member was influenced by the discussions that were had prior to the appeals hearing. And, their determinations were consistent with the Selection Appeal Committee member who did not talk with anyone about the appeals.

Allegation 2: Members of the Board and SFBP colluded to deny the simulator appeals.

Finding: Members of the Board and SFBP did not collude to determine the outcome of the simulator appeals.

The evidence found no collusion. The investigation substantiated that the Selection Appeal Committee was the only decision-making body. It fully considered the written appeals and staff report, which resulted in one of the six appeals granted. There was no evidence to substantiate that the Selection Appeal Committee was influenced by external factors, including outside conversations with others.

During my investigation, I also thoroughly reviewed the underlying examination process in its entirety. The selection examination was a multifaceted process with various components, each of which was supervised by CalHR. The simulator exercise was a particularly involved process that enlisted the expertise of multiple non-local pilots and shipping industry members, not only as evaluators in the simulator exercise, but also as subject matter experts to determine the final passing score. Given how complex the selection examination process was, including oversight by CalHR, it would have been difficult to manipulate the examination results.

Allegation 3: Glitches that occurred during the simulator exercises disadvantaged some applicants.

Finding: Glitches that occurred during the simulator exercises did not disadvantage applicants.

The alleged glitches more likely than not resulted from an applicant's own action in the simulator, such as causing their vessel to collide or run aground. When that occurred, the simulator paused, and was reset so that the applicant could continue the exam. It is more likely than not that the applicant was placed in a more favorable position following the reset, and therefore applicants were not disadvantaged because they were able to continue the exam.

Allegation 4: Two successful pilot trainee candidates of the 2022 Selection Examination had an unfair advantage because they were prepped for the written examination and simulator exercise by their fathers, both of whom are retired SFBP pilots, and one of whom is a former Board member and Pilot Evaluation Committee Chair.

Findings: The investigation did not substantiate that the fathers prepped their sons for the written examination. And, although the investigation substantiated that the fathers of two pilot

trainee candidates did assist in preparing the candidates for the simulator exercise by helping during practice runs, this was not an unfair advantage because the fathers neither had nor provided specific information about the 2022 simulator exercise to the sons.

There was no external evidence that the fathers prepped the sons for the written exam, other than speculative statements made during the Policy Committee Meeting. The Policy Committee members interviewed did not recall any statement being made about either of the fathers preparing their son for the written exam. Further, the fathers and the trainee candidates denied that the fathers assisted in the written examination preparation, and there was no external evidence that the fathers knew what the written examination would entail.

As for the simulator practice, it was found to be common for applicants to train in a training simulator prior to taking the selection examination. In fact, each applicant I interviewed stated that they trained in one or more training simulators prior to their examination. Because the two fathers did not have any knowledge about the specific scenarios that would make up the 2022 simulator exercise, the assistance the sons received from their fathers was no different from the assistance that other applicants received who paid companies providing simulator training. Therefore, the fathers' involvement did not provide an unfair advantage.

Allegation 5: One father, a former Board member and Pilot Evaluation Committee Chair, contacted SFBP pilots to inquire what the 2022 Selection Examination entailed.

Finding: The father attempted to obtain information from current pilots about the 2022 Selection Examination; however, there is no evidence that the pilots shared information with the father.

Allegation 6: One father, a former Board member and Pilot Evaluation Committee Chair, contacted the Executive Director to make rulemaking changes concerning the minimum qualifications for entry to the selection examination for the purpose of an unfair advantage for the father's son.

Finding: The father contacted the Executive Director about a mistake that would have caused the entry to the examination to be less inclusive, which would have gone against the Board's adopted recommended changes. The purpose of the notification was not to obtain an unfair advantage for his son.

The Board intended to update the regulations to have more applicants qualify for the selection examination. An Ad Hoc Committee on Pilot Diversity made recommended changes to the minimum qualifications, which the Board adopted. The Executive Director was then charged with submitting those recommendations to the Office of Administrative Law in the form of a rulemaking packet. The Executive Director admitted that he made transcription mistakes while preparing the rulemaking packet. Those mistakes resulted in the packet not accurately reflecting

the Board's intended proposed changes, and in effect, would have resulted in less applicants qualifying for the selection examination. The father subsequently notified the Executive Director of the mistakes, and the Executive Director rectified them.

The father's intervention did not result in the son receiving an unfair advantage because the rule was changed for all participants and reflected the will of the Board. Curing the transcription mistakes allowed this to happen; in contrast, failing to do so would have been counter to the intentions of the Ad Hoc Committee on Pilot Diversity and the Board. The evidence established that it was more likely than not that the son was qualified for the selection examination under the prior regulations. The son also qualified for selection examination once the rule change mistakes were corrected. The son – along with others in his similar circumstances – would not have qualified had the initial, incorrect proposed changes went through.

Allegation 7: One of the complainants, an unsuccessful applicant of the 2022 Selection Examination, was intimidated by a SFBP pilot concerning the complainant's association with another SFBP pilot, and was subject to biased grading in the simulator exercise because of that association.

Finding: The complainant was neither intimidated by the SFBP pilot nor subject to biased grading in the simulator exercise.

The complainant and SFBP pilot were friends. At some point, the SFBP pilot expressed his opinions concerning the complainant's relationship with others. This caused the complainant to believe that his association with another SFBP pilot hindered his chances of becoming a pilot trainee. The evidence did not show that the SFBP pilot's opinions were considered in the complainant's simulator evaluation. The SFBP pilot was neither a simulator exercise evaluator nor involved in determining the simulator exercise passing score. Additionally, there was no evidence that the evaluators who graded the complainant's simulator exercise or the subject matter experts who determined the passing score were biased in their assessments.

Allegation 8: The Executive Director unfairly denied two complainants access to review their simulator test materials, but allowed others to do so.

Finding: Although the two complainants were not allowed access to their simulator test materials, it was not unfair.

The applicants who filed timely appeals were permitted access to review their simulator test materials. The complainants were in a different situation than those who were allowed to review. The first complainant did not have a valid, timely appeal when he requested to see his simulator test materials. The second complainant never requested to view his simulator test materials at all beyond his assertion during the investigation.

Sincerely,



TILA NGUYEN
Deputy Attorney General

For ROB BONTA
 Attorney General

Enc.: Attachment A

Attachment A

ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE



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July 19, 2023

Via Email Only

Ms. Roma Cristia-Plant
Deputy Secretary, Administration and Audits – California State Transportation Agency
Former Acting Assistant Director – Board of Pilot Commissioners
Email: [REDACTED]

RE: Additional Matters Not Investigated

Dear Ms. Cristia-Plant:

On January 31, 2023, the California Board of Pilot Commissioners (BOPC) requested that the Investigations Group within the Employment and Administrative Mandate Section of the Attorney General's Office conduct an impartial investigation concerning multiple complaints alleging improprieties in the 2022 Pilot Trainee Selection Examination. I was assigned to conduct the investigation.

On February 28, 2023, the BOPC requested to expand the scope of the investigation to include additional matters alleged in one of the complaints that was submitted anonymously in or about November 2022. That complaint included vague assertions of "corruption and collusion" between the BOPC and the San Francisco Bar Pilots (SFBP) to: (1) use the Incident Review Committee to effect the licensing of former and current SFBP pilots; (2) manipulate minimum rest period violations; (3) use closed sessions to control desired outcomes; and, (4) intimidate pilot members. I considered these allegations when reviewing the evidence collected in the current investigation.

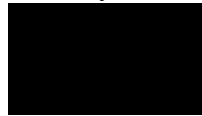
This letters serves to notify the BOPC that there is not enough information to proceed with investigating these additional allegations. Specifically, this expansion would simply be a fishing expedition as I am unable to contact the anonymous complainant for clarification. To proceed with an investigation, we would need to know, at a minimum: (1) the time period at issue; (2) who the alleged bad actors are; (3) who the alleged victims are; (4) how the Incident Review Committee is allegedly influencing the BOPC, including which current or former

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committee members; (5) whose rest periods are at issue and how are they being allegedly manipulated, and over what period of time; (6) how and for what purpose are the closed sessions allegedly being manipulated; and, (7) which pilot members feel intimidated and for what purpose. Without answers to these basic, prefatory questions, the investigation would be an unduly time-consuming, and invasive endeavor.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



TILA NGUYEN
Deputy Attorney General

For ROB BONTA
Attorney General