



THENELL LAW GROUP, P.C.
Oregon ♦ Washington ♦ Idaho ♦ Alaska ♦ Nevada ♦ Utah

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October 10, 2019

2019-130

VIA CERTIFIED AND US MAIL

Oregon Bureau of Labor and Industries
Civil Rights Division
800 NE Oregon Street, Ste. 1045
Portland, OR 97232

Re: BOLI Complaint
Our client: Brittney Jeffries

Dear Sir/Madam:

Please let this letter serve as the complaint or charge required by BOLI pursuant to ORS 659A.820. As required under ORS 659A.820(2) the following information is being provided:

- 1: Name and address of the complainant:
Brittney Jeffries
c/o Thenell Law Group PC
12909 SW 68th Parkway, Suite 290
Portland, OR 97223
- 2: Name and address of the complained of parties:
Kaaren Hoffman;
Truman Stone;
Jay Harris;
Joe Hannan;
Anna Lee; and
City of Newberg
PO Box 970
414 E. First Street
Newberg, OR 97132

- 3: Particulars of the complaint:
In November of 2014 Complainant, a longtime employee of the City of Newberg (City), transferred to a new position which split her time between Engineering and IT. Beginning in December of 2014 Complainant was introduced to her new supervisor in Engineering, Kaaren Hoffman (Hoffman). Shortly after starting in her role as head of Engineering, Hoffman began subjecting Complainant to unwelcome behaviors including Hoffman's love of romantic books, some of which bordered into pornographic-like materials such as *Fifty Shaded of Grey*. Hoffman told

Please send all correspondence to Portland office

PORTLAND OFFICE
12909 SW 68th Parkway, Suite 290
Portland, OR 97223

SEATTLE OFFICE
2200 6th Avenue, Suite 1250
Seattle, WA 98121

Complainant at one point that Hoffman had “much worse” material in her library than *Fifty Shades*. Complainant consistently rebuffed Hoffman’s efforts to draw her into conversations about these books. Nevertheless, Hoffman would leave copies of such books on Complainant’s desk.

Hoffman made it clear to Complainant and the other engineering staff that no one should cross Hoffman or make her mad, or else they would regret it. Complainant repeatedly told Jay Harris (Harris), who was the head of Public Works and Hoffman’s direct supervisor that Hoffman was “not a good fit” for engineering. Complainant informed Harris of inappropriate behavior by Hoffman such as the aforementioned literary harassment. Harris responded that Complainant should set boundaries for Hoffman and suggested Complainant simply go home, have a couple drinks, and forget about it.

During 2015 Hoffman continued to badger Complainant regarding Hoffman’s particular taste in literature.¹ Hoffman would invite Complainant to book readings, events, a book lover convention in Las Vegas, and even to a book reading campout in Washington where she was invited to share Hoffman’s RV. Hoffman would also subject Complainant to pictures of naked men, covered strategically, on Facebook and other internet sites. Complainant became nervous that she would suffer repercussions at work if she did not show interest in the books Hoffman was pushing on her.

Over time other Engineering staff would mention to Complainant that they witnessed Hoffman’s behavior, including times where Hoffman would stand unnecessarily close to Complainant’s desk, Hoffman would stare at Complainant for lengthy periods of time, or Hoffman would stand in her office doorway and watch Complainant work. When Complainant would arrive at the office in the morning Hoffman would eye her up and down and occasionally make comments about Complainant’s appearance. Like the behavior above these eyings were witnessed by multiple coworkers.²

Hoffman developed a hostility to Complainant’s work with the IT Department. Throughout this period Complainant had continued to split her time 50/50 between the two departments. Hoffman would comment to Complainant that Hoffman didn’t have access to IT. Complainant explained the secure nature of IT, they support the police and have access to the CJIS, and Hoffman would roll her eyes and walk away in a huff.

¹ Additionally, around this time period Hoffman instructed Complainant, a breast-feeding mother, to either pump in the bathroom or return to her residence.

² Complainant is prepared to provide lists and contact information for witnesses should the Bureau request them.

On August 27, 2015 Complainant had a meeting with Harris to address her concerns. Complainant informed Harris of the staring, the continued invitations to non-work events, pushing unwelcome and sexually explicit books onto Complainant, showing Complainant pictures online,³ and Hoffman eying Complainant up and down. Around this time Complainant's supervisor in IT, David Brooks (Brooks), who had been told of these issues by Complainant, sent an email to Harris suggesting Complainant be moved full time to IT. Harris did nothing to address these behaviors which continued to occur and escalate.

Complainant felt isolated. She could not approach Human Resources, because the interim director was a close personal friend with Hoffman. Consequently, Complainant did not bring her concerns to HR. Around the end of 2015 the City hired a new HR Director, Anna Lee (Lee). Complainant informed Lee that she did not feel that the City had a strong HR department prior to Lee's arrival. Lee responded that she had a "tool box" with information Lee would be sending to all staff. However, Complainant's situation in Engineer remained the same.

On October 26, 2017 Complainant was pulled into a closed-door one-on-one meeting with Hoffman. Hoffman asked Complainant if she would be interested in a full-time position at Engineering. Complainant deflected by commenting Brooks had previously suggested a full-time position in IT. Complainant said she was not aware that either department had received approval yet for an additional .5 FTE. Hoffman concluded the meeting abruptly by saying "If I remember correctly your evaluation is due soon. I should probably get on that." Complainant became concerned Hoffman would hinge the evaluation on Complainant choice between IT and Engineering.

In May of 2018 Complainant applied for a Project Specialist position which would put her under Harris full time. Harris's current assistant who was retiring had encouraged Complainant to apply saying she was perfect, and the position had been created for her.

On May 31, 2018 Lee ran a mandatory harassment training for Engineering and IT. Complainant participated twice due to her dual role. After hearing the information in the Engineering training, Complainant decided to speak up in the IT session. She asked Lee what she should do if she was subjected to the types of behavior Lee outlined. Lee said she should report it. Complainant asked what to do if nothing had resulted from her report. Lee

³ During one of these occurrences Hoffman commented to Complainant that if a specific coworker looked like the man in the photo that Hoffman would allow him to wear his kilt to work.

replied she should run it up the chain of command. Complainant suggested she had done so with no results. Lee replied that she was unaware of these complaints. Complainant was surprised because it was previously reported to Harris as well as Joe Hannan (Hannan) the City Manager.⁴ Lee suggested they speak after the training.

Despite concerns over the way Lee had handled things previously, Complainant decided to make a comprehensive report to Lee of the past and still ongoing behavior by Hoffman. Over a two hour period Complainant informed Lee of the behaviors detailed above as well as the escalated behavior such as: constant adjustment of Hoffman's undergarments in front of Complainant; Hoffman would wear low v-neck shirts and cross her arms to push her breast up and accentuate her cleavage then suggestively eye Complainant and then her own chest; on at least one occasion Hoffman intentionally stepped over a camera used to scope pipes for cracks while wearing a dress and then feigned surprise and giggled; Hoffman would stare at a male coworker crotch for extended periods of time; Hoffman would approach Complainant's work area and rest her breasts on Complainant's transaction table causing her cleavage to lift upwards; sharing inappropriate Facebook posts and messages; Hoffman would enter Complainant's cubicle and look over her shoulder at Complainant's monitors while leaning forward to touch her breasts to Complainant's back and neck; Hoffman would slowly look Complainant up and down. Lee stated that she would take care of this. Complainant stated to Lee that she wanted the complaint to remain confidential due to concerns that Hoffman would retaliate.

Lee emailed Complainant to inform her that Harris was going to address the complaint's with Hoffman. In a response, Complainant again expressed concern regarding confidentiality. Several days later Lee responded stating "Your concerns have been addressed directly. If you feel these concerns are continuing, please contact Jay Harris or myself."

On June 21, 2018 Complainant had an interview for the Project Specialist position. She sent follow up emails to the hiring committee and received positive feedback. After one week she called Lee to inquire about the position. Lee told her she would be informed when a decision was reached. A week later Lee told Complainant the hiring committee was considering a second round of interviews. No further information was sent to Complainant. On July 10, 2018 she became aware that another person had been hired for the position. Subsequently Harris pulled Complainant into a closed-door meeting in his office. Harris informed Complainant that if she

⁴ Joe Hannan is no longer the City Manager; he was City Manager until David Clyne took over as interim City Manager in 2019.

wanted to grow her career at the City she should leave and get outside experience before coming back. Harris told Complainant what she needed to focus on right now is being a good mother and good wife. Harris told her that was what was important and at the end of the day that was what counted.

In November of 2018 Complainant completed her annual evaluation. There is a section soliciting feedback on employee's understanding of the rules and regulations at the City. Complainant marked "yes" she had questions regarding the policies and detailed the ongoing complaints she had regarding Hoffman, Lee and others. Complainant outlined what she perceived to be differential and retaliatory treatment from Lee following her complaints: Lee will not introduce new employees to Complainant after introducing them to everyone else; Lee will refuse to talk to or make eye contact with Complainant while visiting Engineering; Lee offered candy to everyone except Complainant; Lee physically collided with Complainant in the City Attorney's office after Lee perceived Complainant as interrupting; Lee failed to respond to a report that Complainant felt unsafe following an interaction with a transient;⁵ Lee habitually fails to respond or follow up with Complainant regarding matter brought to Lee's attention.

By December of 2018 Complainant was still working part time in Engineering reporting to Hoffman. No corrective action had ever been taken. On December 10, 2018 Hoffman said Lee wanted to talk to Complainant about the content of the annual evaluation. Hoffman further stated Lee requested Hoffman to participate in the meeting as a mediator. Complainant had just learned of a family member's suicide and requested any such meeting be deferred until after the holidays. Hoffman went to discuss the meeting with Lee, the two of them scheduled to meeting for the 18th of December without further consultation with Complainant.

On December 17, 2018 Complainant emailed Lee to inform her Complainant was not comfortable having Hoffman in any meeting to discuss the issues Complainant had been having with HR, Lee, Hoffman, and the City. Shortly thereafter Complainant received a notice from

⁵ Complainant sent an email out regarding an incident that happened on 10/25/2018 to the Safety Committee President (Daro) and cc'd the City Manager Joe Hannan, Police Chief Brian Casey and Human Resources Anna Lee. The Police responded in minutes after the email was sent. Capitan Kosmicki forwarded the email on to the Newberg Police Staff. Minutes after the message was forwarded, Complainant was contacted by Detective Stearns to get more information. Daro responded on 10/26/18 that "unfortunately it's not a Safety Committee concern". On 11/1/18 the Safety Committee had a meeting. Mike Grimes who represents Engineering/IT on the Safety Committee informed Complainant that Daro's email content was directed from Russ Thomas the Public Works Maintenance Superintendent and Anna Lee the HR Director. Mike voiced his opinion at the meeting telling Daro he did not agree with his response to Complainant and that the Safety Committee should be doing something about it. On 11/6/18 Complainant received an email with recommendations to management on preventative measures that can be taken. The response to Complainant unsafe run-in is further retaliation on the part of Lee, Hannan, and the City.

Hoffman that the meeting was canceled. Shortly thereafter Complainant received an email from Lee which cc'd Truman Stone (Stone), the city attorney, and Hannan. Lee stated that if Complainant felt uncomfortable bringing issues to HR or Lee, she could address them with Stone or Hannan. Lee went on to quote provisions of the City Manual related to reporting harassment and other issues. These provisions detailed that the HR Manager bore ultimate responsibility for addressing complaints.

Subsequent to reporting these complaints to Lee, Hoffman began exhibiting paranoid behaviors with respect to Complainant. Hoffman would ask excessive questions regarding details of routine time off requests for doctor visits or sick days. Hoffman began following Complainant around and intruding into conversations with coworkers. If other employees were talking to Complainant at her desk, Hoffman would appear and join into the conversation. On December 27, 2018 Complainant was in the printer room talking with a coworker when Hoffman came into the room and began aimless looking through drawers. When asked if she need help finding anything Hoffman replied, "I'm not sure what I am looking for exactly." Complainant returned to her cubicle and Hoffman followed her and stood next to Complainant, staring at her. Complainant asked Hoffman if she needed anything and Hoffman merely shook her head and kept staring.

On January 24, 2019 Complainant emailed Harris to inquire if he had any information regarding the canceled December 18th meeting. Complainant stated she was not informed why the meeting was cancelled or if it was to be rescheduled. Harris called Complainant in response. Harris reported that Hannan had asked him to follow up on the status of Complainants reports. Complainant explained Hoffman had scheduled a meeting for Lee, Hoffman and Complainant. Complainant asked for Hoffman to not be present and the response was the cancellation of the meeting. Harris stated there needed to be some follow up. Hannan had asked Harris to deal with it. Harris felt that he was not in a position to resolve anything between Lee and Complainant because he was not Lee's boss. Complainant agreed that Hannan was the person with the authority to deal with the matter.

Because there had been a multi-year long pattern of behavior which the City officials seemed incapable of remedying, Complainant requested a meeting with the Mayor. On April 11, 2019 Complainant met the Mayor, who advised her to draft a letter to the City Council bringing the matter to their attention. Complainant did so, detailing the harassment and retaliation which had been happening since 2015.⁶

⁶ This letter is attached herewith as Exhibit A.

On April 16, 2019 Complainant received a call from Hannan's assistant. Hannan and Lee had met for 90 minutes and Lee had been very agitated and was slamming things around. Hannan's assistant also informed Complainant a meeting had been scheduled for Lee, Harris and Hannan. The subject of the meeting was titled "Personnel Issue Engineering."

On April 17, 2019, Complainant's prior counsel sent a tort claim notice on her behalf to Stone alleging the City had failed to take appropriate remedial actions to protect Complainant from unwanted sexual advances and subsequently retaliated against her when she complained of a hostile work environment.⁷ That same day Stone sent a letter to all department heads, the entire Engineering division, Hannan and the City Council. The subject of the letter was the tort claim notice.

On April 18, 2019 Harris emailed Complainant requesting a meeting with her and Lee to discuss a temporary change to her work duties in Engineering and IT. Complainant called Brooks to request his presence at the meeting and he agreed to attend.⁸ At the meeting Complainant was notified she would be temporarily reassigned to IT on a full-time basis.

The City retained an outside investigator, the law firm of Beery Elsner & Hammond, to investigate the items described in the tort claim notice. Heather Martin and Ashley Driscoll (Martin & Driscoll, or the investigators) concluded their investigation and produced an executive summary of the investigation on July 10, 2019.⁹ Using a preponderance of the evidence standard Martin & Driscoll concluded Hoffman "displays social behaviors that are unusual and can generally cause those around her to feel uncomfortable." This conclusion displays a shocking amount of understatement. The general tenor of the summary can most easily be explained by the fact that the City had an interest in as soft a conclusion as possible.

The investigators did not find the books Hoffman brought to the office were "sexually erotic." This conclusion seems hard to defend given that the one

⁷ With the tort claim notice was a preservation letter. These letters are attached herewith as Exhibit B. The Complainant believes Lee, Stone, and the City have destroyed or conspired to cover up the destruction of evidence in the past in matters unrelated to this complaint. See the recent verdict in *Patton v. City of Newberg*, Yamhill County Circuit Court Case 17CV43534. Complainant has no confidence that evidence of her complaints or the City's response has been preserved.

⁸ Throughout this process David Brooks has been the only department head, or person of authority at the City who has consistently acted in an effort to protect Complainant. Complainant has made multiple requests to be transferred to a full-time position in IT.

⁹ We have not been provided with the full investigation file and cannot confirm many of the conclusions in the summary, nor explain why and how those conclusions were reached. The Executive Summary is attached herewith as Exhibit C.

book identified by title was Fifty Shades of Grey, which is unequivocally sexual in nature. The investigators found Hoffman showed Complainant inappropriate and sexually explicit photos and videos at work. The investigators found Hoffman pressured Complainant to attend outside-of-work events. The investigators found Hoffman engaged in inappropriate touching. The investigators found Hoffman inappropriately eyed Complainant up and down. The investigators found Hoffman intentionally exposed and accentuated her cleavage in front of Complainant.

With respect to Complainant's reports to Harris, Hannan, or Lee, the investigators found Complainant's allegations that reporting did not stop the behavior did not occur as reported. Specifically, the investigators found the City did take steps to address the complaints. The investigators found Harris took action by: (1) speaking to the Interim City Manager and City Attorney about how to approach the issue; (2) increased his observation hours in Engineering; (3) search Hoffman's office to find inappropriate books; (4) talked to Complainant about ways she could handle events as they occur; (5) followed up with Complainant. These actions are facially insufficient, did not actually curb any behaviors by Hoffman,¹⁰ and generally seemed designed to protect the City as opposed to protecting the Complainant.

The investigators found Hannan did not violate any city policies because Complainant did not directly report complaints to him. Similarly, the investigators did not find Lee violated any policies because Complainant did not share "the full extent of Hoffman's behaviors to Lee." Complainant spent two hours meeting with Lee in 2018 and there was no meaningful action taken to address the problem. There was no investigation until Complainant sent the City a tort claim notice in April 2019. Around this same time the Engineering and IT departments had opted to explore unionizing. Complainant signed an AFSCME Union card on April 17, 2019.

Despite the finding of the investigators that Hoffman violated policies prohibiting sexual harassment and prohibitions on a hostile work environment there has been little to no repercussions for Hoffman. Complainant on the other hand has been exposed to sustained retaliation.

David Clyne (Clyne), the new interim City Manager, met with Complainant on July 29, 2019 and informed her that her claims had been sustained through the investigation and that she would remain in the 50/50 arrangement between Engineering and IT. Complainant had previously received assurances she would be moved permanently to a full-time IT

¹⁰ In fact, the record shows a steady escalation of Hoffman's behaviors over roughly 5 years. After 2018 Harris alleges that he did directly engage with Hoffman, however there is no evidence that Harris's actions helped to alleviate the problems.

position, however Hannan had refused to follow through on this assurance. Clyne instructed Complainant to meet with Harris to discuss her future employment. Complainant stated she did not want to meet with Harris after he had failed to take action on her complaints over a five-year period.

Complainant's attorney sent an email to Stone on July 29, 2019. The email took issue with the treatment of Complainant, stating she should not have to meet with Harris, "the person who she first reported the harassment to and did nothing" to stop it. Complainant's attorney continued "I understand the City intends to move my client back to city engineering, under the person who harassed her." Stone responded the next day demanding Complainant's legal counsel stop interfering "with the operations of the City" and threatening Complainant's attorney, stating "you might find you're a subject of a legal dispute."¹¹

On July 31, 2019 Complainant was ordered to report back to Engineering part-time as of August 26, 2019.¹² She was given a different direct supervisor; however the memo was silent as to whether Hoffman would still be working in the same office as Complainant.

As part of the unionizing process, on July 22, 2019, the City proposed a memorandum of understanding with the union which contained a provision specifically targeted at Complainant which would have had the effect of demoting her from Administrative Assistant to Administrative Support Coordinator (ASC). The new job title carried a lower pay grade on the salary schedule. The MOU would not have resulted in lower pay but would have frozen her salary until the ASC position caught up with her salary in the schedule. This would have resulted in an overall loss of wages for the remainder of her career.

On July 31, 2019 Complainant was subjected to additional retaliation from Stone. Complainant, in her role in IT, was tasked with getting a new vendor contract finalized. This required approval from the City Attorney, Stone. Complainant had been asking Stone for updates for several weeks. At the end of July, Stone told Complainant that he could not provide her an ETA for the contract. It was clear to Complainant that Stone was attempting to punish her for raising allegations that made the City and several of its officers look bad. This not only had the effect of delaying an important task in Complainant's portfolio, but it put the vendor contract itself at risk potentially impacting the entire City.¹³

¹¹ This email is attached herewith as Exhibit D.

¹² This memo is attached herewith as Exhibit E.

¹³ Emails are attached herewith as Exhibit F.

Neither Complainant's in-person meeting with Clyne, nor the July 31, 2019 memo provided Complainant any clarity on how the city intended to protect her from continued abuse by Hoffman. Instead it was clear the City intended to send Complainant back to Hoffman's department starting August 26, 2019. Complainant asked Clyne repeatedly for clarification. Clyne emailed Complainant on August 8, 2019 and stated in part "[w]ith respect to [Hoffman], Engineering is making physical changes in the department layout to accommodate your concerns."

The City's July 31 memo also informed Complainant the services of Mary Rowe had been retained to act as a mediator who is "available to meet with you in private one-on-one sessions to support you so that you can have a successful and positive transition back to Engineering." Contrary to this statement, in an August 13, 2019 voicemail, Ms. Rowe suggested that Complainant and Hoffman meet with her together to attempt to mediate their differences. Ms. Rowe further suggested it would not be appropriate for Complainant to have legal counsel present during any such sessions. Ms. Rowe followed up with an email to Complainant in which she reiterated her role was "As coach/trainer and if both you and [Hoffman] choose to also work with you both as a mediator."¹⁴

In September of 2019 the City indicated it was open to providing Complainant with a full-time position in IT. However, Lee insisted Complainant sign a resignation letter from Engineering. The City nor Lee had required other employees who transferred within the City to sign such a letter.¹⁵ Complainant verified with another employee who recently transferred who confirmed she had not been asked to sign a resignation letter. Complainant was concerned this request was specifically targeted at her to head-off any complaint she might make through BOLI or a court suit. Clyne also instructed Complainant she would have to undergo a 12-month probationary period. Complainant asserts she should not have any probationary period in this case because she was not in fact transferring to a new position, instead her half-time in IT was being converted to a full-time position. Complainant accepted the IT position but declined to sign a resignation letter.

As detailed above Complainant was subjected to unlawful workplace harassment, sexual discrimination, and retaliation in violation of state and federal law. She attempted over and over to address the harassment and discrimination through the appropriate channels. She reported the

¹⁴ This email is attached herewith as Exhibit G.

¹⁵ The practice of requesting transferring employees to sign a resignation letter was a new practice instated by Lee. Complainant was told by Clyne she was the first person subject to this new practice. Complainant was told by Clyne he would follow up with Lee to explore her rationale for this new practice. Complainant did not receive clarification from Clyne, and she followed up with an email. That email is attached herewith as Exhibit H.

October 10, 2019

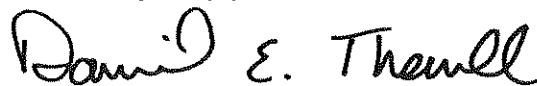
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behavior to the perpetrator's direct supervisor who initially dismissed the complaints and told Complainant to "have a few drinks and forget about it." She reported it to her other half-time supervisor who himself reported it to the then City Manager, Hannan. Hannan did nothing to remediate the problem. Complainant was left in this nightmarish scenario for nearly four years before even a single action was taken. The head of HR, the City Manager, the City Attorney and the Head of Public Works were all aware of the complaints for anywhere from 4 years to 1 year and no meaningful action was taken until Complainant sent a tort claim notice to the City.

Even once the City did initiate an investigation it became clear the real goal was not to address the harassment and discrimination, or to impose consequences for the behavior on the perpetrator. The real motivation was clearly to cover up Harris, Lee, Hannan and Stone's failures and to attempt, clumsily to insulate the City from potential liability. The Complainant was repeatedly subjected to retaliatory treatment by all the responsible parties. It was only with the intervention of legal counsel and the threat of legal action that the City eventually removed Complainant from Hoffman's sphere of influence. The actions of Hoffman, Lee Hannan, Harris, Stone and the City have cause very real and lasting damage to Complainant. She deserves better.

Please do not hesitate to reach out to my office for any additional information and assistance that we may be able to provide. I remain at your disposal. Thank you kindly for your attention to this important matter.

Very truly yours,



Daniel E. Thenell

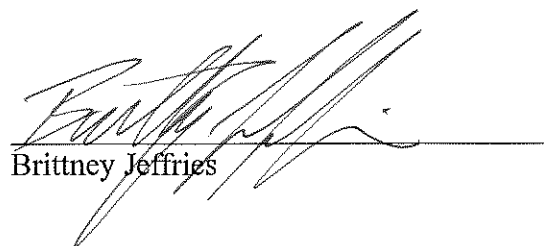
EL/

cc: B. Jeffries

BOLI.02 Complaint

I, Brittney Jeffries, having read the foregoing, hereby sign that it is a true and accurate description of the facts and circumstances of my complaints.

Dated this 10th day of October, 2019,



Brittney Jeffries