



**Special Investigation Report
California Department of Industrial Relations**

State Personnel Board
April 9, 2019

TABLE OF CONTENTS

INTRODUCTION.....	1
PRINCIPLES OF LAW	1
SUMMARY OF FINDINGS	4
I. Transactions and Related Misconduct Involving JB.....	4
a. JB was Illegally Appointed to a Staff Services Analyst Position.....	4
Corrective Action Regarding the Appointment	7
Discipline of Employees	7
b. JB was Illegally Promoted-in-Place to Deputy Labor Commissioner I	8
Corrective Action Regarding the Appointment	9
Discipline of Employees	9
c. JB’s Placement in a Training and Development Assignment as an Associate Information Systems Analyst was Intended to Circumvent the Competitive Promotional Process	10
Corrective Action Regarding the T & D Assignment	11
Discipline of Employees	11
d. JB’s Appointment to the Associate Information Systems Analyst Position was Illegal.....	12
Corrective Action Regarding the AISA Appointment	13
Discipline of Employees	14
II. Transactions and Related Misconduct Involving AC	14
a. AC’s Appointment to the Associate Governmental Program Analyst Position was Illegal	14
Corrective Action Regarding the AGPA Appointment	15
Discipline of Employees	16
b. AC was Illegally Promoted-in-Place to a Staff Services Manager I Position..	16
Corrective Action Regarding the SSMI Appointment	17
Discipline of Employees	17
c. AC’s Appointment to a Career Executive Assignment Position was Illegal....	18
Corrective Action Regarding the CEA II Appointment	18
Discipline of Employees	18

d. AC's Reinstatement to the CEA II Position was Illegal	19
Corrective Action Regarding the CEA II Appointment	20
Discipline of Employees	21
CONCLUSION	21

INTRODUCTION

In May 2018, the California State Auditor (CSA) provided a confidential Investigative Report to the California State Personnel Board (SPB). The CSA's report detailed its findings of improper governmental activities by CB, the former Director of the Department of Industrial Relations (DIR). The CSA's report concluded that CB engaged in misconduct by circumventing the civil service rules to appoint her daughter, JB, and another DIR employee, AC. The CSA also found that JB acted in bad faith in securing her appointments.

Operating under a memorandum of understanding with the CSA, the SPB reviewed statements and documents gathered by the CSA during the course of its investigation. The SPB reviewed this information to determine whether the actions of DIR officials and employees violated the California Constitution's requirement that "appointment and promotion shall be made under a general system based on merit ascertained by competitive examination." (Cal. Const., art. VII, § 1.) Specifically, the scope of SPB's review includes JB's civil service appointments between 2011 and 2017 and AC's civil service appointments between 2012 and 2014 to determine whether civil service rules were violated and, if so, by whom.

PRINCIPLES OF LAW

As noted above, the California Constitution requires that appointments be made based upon a system of merit. Appointments which do not satisfy this requirement are subject to being voided. The standards and process for voiding appointments is laid out in the California Code of Regulations.

Title 2 of the California Code of Regulations directs that corrective action up to and including voiding an appointment shall be taken when it is determined that an appointment is unlawful. (Former Cal. Code Regs., tit. 2, §§ 266, 548.124.)¹ When an unlawful appointment is discovered, the good faith of both the appointing department and the appointed employee must be determined. (Former Cal. Code Regs., tit. 2, § 266.) If both the appointing department and the employee acted in good faith, then no corrective action will be taken for appointments that have been in effect for one year or longer. (Former Cal. Code Regs., tit. 2, § 266, subd. (a).) If a department acted in bad faith, but the appointed employee acted in good faith, then no corrective action will be taken for appointments that have been in effect for five years or longer unless it is determined that the rights of another employee are significantly endangered by retention of the appointment. (Former Cal. Code Regs., tit. 2, § 266, subd. (b).) If the appointed

¹ Regulations 266 and 548.124 were repealed as of July 1, 2018. This report analyzes personnel actions under the regulations that existed at the time of the personnel action.

employee acted in bad faith, then corrective action shall be taken without regard to when the appointment was made. (Former Cal. Code Regs., tit. 2, § 266, subd. (b).) Additionally, an “employee who acted in other than good faith shall reimburse all the compensation resulting from the appointment.” (Former Cal. Code Regs., tit. 2, § 266.)² However, an administrative action to recover payment from an employee must be initiated within three years from the date of the payment. (Gov. Code, § 19838, subd. (d).)

When an unlawful appointment is terminated or corrected, an employee who acted in good faith is entitled to retain the salary and benefits earned up until the date of the termination or correction. However, the employee is not entitled to retain tenure in the position, seniority credits, permissive reinstatement eligibility, mandatory reinstatement rights, eligibility to take promotional exams, career credits, permanent or probationary status and service toward completion of the probationary period, or continuity of service in determining the employee’s right to or eligibility for any of the foregoing. (Cal. Code Regs., tit. 2, § 9.)

Good faith appointments on behalf of an appointing department require, *inter alia*, that the department: (1) intend to observe the spirit and intent of the law; (2) make a reasonable attempt to determine how the law should be applied; (3) assure that positions are properly classified; (4) assure that appointees have appropriate civil service appointment eligibility; (5) intend to employ the appointee in the class, tenure, and location to which the employee was appointed under the conditions reflected by the appointment document; and (6) act in a manner that does not improperly diminish the rights of other eligible persons. (Former Cal. Code Regs., tit. 2, §§ 8, subd. (a), 249, subd. (a), 548.123.)

Good faith acceptance of an appointment requires the employee to: (1) intend to serve in the class to which the employee is being appointed under the tenure, location and other elements of the appointment as reflected by the appointment document; (2) provide the appointing power with complete, factual, and truthful information necessary for a proper appointment; and (3) make a reasonable attempt to seek correction of any aspects of the appointment that the employee knows are illegal. (Former Cal. Code Regs., tit. 2, §§ 8, subd. (b), 249, subd. (b).)

The State Restriction of Appointments Program (SROA) is an alternative to layoff that gives state employees who are in jeopardy of being laid off an opportunity to be appointed to another position in state service prior to the effective date of the layoff. The purpose of the SROA program is to “assist in the job placement of employees who may be facing layoff or demotion-in-lieu of layoff” and “prevent the layoff and separation of skilled and experienced employees from state service.” (Cal. Code Regs., tit. 2, § 599.854, subds. (a) & (b); The California State Restriction of Appointments Policy and Procedure Manual (SROA Manual).) Employees in classifications identified for lay off are placed on an SROA list for 120 to 240 days, during which they receive priority over list and transfer

² Effective July 1, 2018, California Code of Regulations, title 2, section 243.3 became operative and provides that “[a]n employee who acts in ways other than in good faith when accepting an appointment that is subsequently voided or corrected shall reimburse all compensation resulting from the appointment . . .”

appointments to vacant positions. (SROA Manual.) Thus, unless exempted, departments are required to ensure that no eligible employees appear on an SROA list prior to hiring a candidate from an employment list or as a transfer. Valid promotions-in-place are exempted from the SROA process, allowing a department to promote a current employee “in place,” without first offering the position to an SROA eligible employee. In order for a promotion-in-place to be valid, all of the following criteria must be met: (1) there is no true vacant position; (2) there is no change of position; (3) there is no change in the supervisory/subordinate relationship; and (4) the promotion is clearly identified as typical in cases where the employee has reached the next higher level within a class series. (Cal. Code Regs., tit. 2, 599.854.4, subd. (a)(6); SROA Manual.) If one or more of the criteria are missing, then the appointment is subject to the competitive selection process, and SROA applies. The purpose of the exemption for promotions-in-place is to allow the natural career progression of employees who are continuing to successfully perform their job at a higher level.

Any violation of the “good faith” requirement contained in former California Code of Regulations, title 2, sections 8 or 249 is cause for adverse action. (Former Cal. Code Regs., tit. 2, §§ 8, 249.) This cause for adverse action applies to employees who violate the requirement and employees in positions of authority who direct the violation of the “good faith” requirement. Additionally, discipline is appropriate for: (a) fraud in securing appointment; (b) inexcusable neglect of duty; (c) dishonesty; (d) violation of the Government Code or board rule; (e) violation of the prohibitions set forth in accordance with Government Code section 19990; and (f) other failure of good behavior. (Gov. Code, §§ 19572, subds. (a), (d), (f), (q), (r) and (t), 19590.) It is unlawful to “defeat, deceive or obstruct any person with respect to his or her right of examination, application, or employment” and “furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person examined, certified, or to be examined or certified.” (Gov. Code, § 19680.)

Adverse action based upon fraud or falsification of records must be served within three years after the discovery of the fraud or falsification. (Gov. Code, § 19635.) “Fraud is defined as a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. (Black’s Law Dictionary, (9th Ed. 2009).) It usually involves a breach of duty, trust, or confidence, and which is injurious to another, or by which an undue advantage is taken of another.” (*Randall Curtis* (2011) SPB Dec. No. 10-03 at pp. 9 – 10 (citing *People v. Sisuphan* (2010) 181 Cal.App.4th 800).)

Adverse action may be taken against any employee, or person whose name appears on any employment list, for any cause for discipline specified in the Civil Service Act. (Gov. Code, § 19571.)

SUMMARY OF FINDINGS

I. Transactions and Related Misconduct Involving JB

a. JB was Illegally Appointed to a Staff Services Analyst Position

On November 14, 2011, JB was appointed to a Staff Services Analyst (SSA) position within DIR. The following facts demonstrate that civil service rules were violated in preselecting JB for this appointment.

Between September 15, 2011, and November 14, 2011, the Director engaged in a continuous pattern of misconduct in securing a civil service appointment for her daughter. On September 15, 2011, the Director emailed DIR hiring manager JY (Staff Services Manager II) to inform her that her daughter was ranked one on the Associate Governmental Program Analyst (AGPA) eligibility list. The Director also forwarded her daughter's application to JY and stated: "You are terrific. Thank you! She really is eager to get her life on track" JY responded: "Like old times CB. I will do my VERY best to get her on board. Don't worry." The Director responded: "Like old times. AMAZING. THANK YOU! You need to be her angel on her shoulder helping her. She had a rough year. I know you know, because I remember when you went through the very same thing and now look at you."

On September 20, 2011, JY notified the Director that an AGPA vacancy had been posted to California's job posting website. The Director instructed her daughter to email her AGPA application to JY and DIR's personnel department. The daughter subsequently emailed an application to JY.³ The Director also emailed Labor Commissioner JS and HH, DIR's Administrative Chief who reported directly to the Director, indicating that her daughter had applied for an AGPA position, which would be "the easiest way to move her in and she could also convert to [a Deputy Labor Commissioner I position] because she is on [the] AGPA list." After reviewing the daughter's AGPA application, JY emailed the Director and told her that she did not believe her daughter would be eligible to permissively reinstate⁴ to an AGPA position, but that an AGPA list appointment could be possible once the current AGPA vacancy posting had expired.

On October 20, 2011, the Director emailed JY to ask whether AGPA vacancies had been re-posted. JY provided links to the positions to the Director who, in turn, forwarded the

³ There was an email exchange between the Director and her daughter in which they strategized over how to explain her prior separation from state service, with the Director suggesting that JB state that she merely resigned, while JB preferred to indicate that she resigned due to temporary disability. The application pertaining to this time period obtained from JB's official personnel file indicates her reason for leaving was "in order to complete Masters' Thesis." Subsequent applications submitted by JB for later appointments within DIR indicated that she left state service "due to temporary disability."

⁴ JB had previously held a civil service appointment as an Employment Program Representative with the Employment Development Department, but had separated from state service in September 2010. Pursuant to Government Code section 19140, prior state employees have permissive reinstatement rights to civil service positions under certain circumstances.

links to her daughter. On October 26, 2011, the daughter emailed an AGPA application and resume to the Director who forwarded the email to HH, who, in turn, forwarded the email to RA. DIR subsequently determined that JB did not qualify for an AGPA appointment because her prior experience was not sufficiently analytical to meet the minimum qualifications. At that point, it was decided that JB would be appointed at the lower Staff Services Analyst (SSA) level. However, since JB did not rank high enough on the open SSA exam for appointment, they decided to give her the SSA transfer exam and appoint her as a transfer.

JB was well aware of the extreme lengths DIR was taking to effectuate her appointment. On October 28, 2011, JB emailed JY stating: "I know you have really gone out of your way for me. I know it has been a challenge-even [sic] without my mom interfering. I hope there aren't too many more hurdles." JY responded: "As I said to your mom, I'll take care of you as she did with me over the years. I'll call you next week to let you know exactly when you need to take the transfer exam. Don't worry about this exam as I know you will Ace [sic] it. I'll see you soon."

On October 28, 2011, the Director recapped in an email to JS the extent to which she exerted her influence to accomplish her ultimate goal of securing a Deputy Labor Commissioner I position for her daughter:

JB was on the AGPA list as top. Our personnel unit called [the Department of Personnel Administration] and wanted to make sure her work at EDD could count as analytical. It was so analytical! And so interpersonal. They decided it was not. So, [JY] told JB to take SSA exam [sic] but not to indicate that her work was so analytical. [JB] did, and she did not rank high, because of the way they ask the questions! OMG. She has degrees and certificates, but this place is very narrow. They are going to do a transfer exam internally so that she can transfer. [JY] has been very helpful. I think she should qualify for the DLC I test, with all of her schooling. She had one year of law at New College, before it closed. Thank you for everything.

On November 3, 2011, RA emailed HH to inform her that she would work to get JB's appointment expedited. Also on November 3, JY informed the Director that she offered a position to her daughter. JB was scheduled for the SSA transfer examination on November 8, 2011. JB's appointment to the SSA position was effective November 14, 2011.

The emails discussed above clearly establish that JB was preselected for the SSA appointment. It is apparent from the emails that verbal conversations regarding JB's appointment were also occurring in the months leading up to her appointment. Six weeks prior to the appointment, the Director emailed JB's application to the hiring manager, JY, who immediately promised to do her "VERY best to get [JB] on board." After unsuccessfully attempting to appoint JB as an AGPA, DIR pursued an SSA appointment. When JB performed poorly on the open SSA examination for non-state employees, DIR administered the *internal* SSA transfer examination for *current* state employees, despite

JB's ineligibility as a non-state employee.⁵ Moreover, even if JB were eligible to take the SSA transfer exam, she was required to pass the exam prior to being offered the job. JY offered her the job five days before JB took the exam.

JB's preselection for the SSA position establishes that DIR acted in bad faith in appointing her. DIR did not intend to observe the spirit and intent of the law in appointing JB. Specifically, DIR intended to violate the California Constitution, which requires appointments to be made under a general system based on merit, ascertained by competitive examination. When DIR discovered that JB's performance on the open SSA exam did not qualify her for an SSA appointment, DIR unlawfully administered an SSA transfer examination to JB. The Director ensured that her daughter's appointment would not be based on merit and a competitive selection process by inserting herself in the hiring process at every turn. Rather than hold an open competition for the position, DIR repeatedly manipulated the system in JB's favor.

Because the appointment occurred more than five years ago, the appointment can be voided only if there is evidence that either the *employee* secured her appointment in bad faith or the rights of another employee are significantly endangered by the retention of the appointment. An employee acts in bad faith when she does not intend to serve in the class to which she is appointed, she provides the appointing power with false information, or she fails to attempt to correct any aspects of the appointment that she knows are illegal. Examples of an employee's bad faith typically involve a material misrepresentation on the state application or cheating on a civil service examination.

In this case, while the available information indicates that, at least the mother's goal was for her daughter to ultimately secure a DLC I position, such a goal, even if shared by JB, does not establish that the employee did not intend to serve in the SSA classification until she could promote. Career goals and upward mobility are expected and encouraged in state service. With respect to the employee's obligation to "provide the appointing power with complete, factual, and truthful information necessary for a proper appointment," however, there is some evidence that JB was not completely forthcoming as to her reason for leaving her prior state job, and strategized with her mother over how to characterize her departure. The reason stated on the application obtained from her official personnel file, "in order to complete Masters' Thesis," did not match the reason she discussed with her mother in the email exchange or the reason she listed on subsequent applications, "due to temporary disability." At the very least, the strategy session and the discrepancies between the different applications evidence JB's complicity in manipulating the civil service process. Additionally, there is sufficient evidence to show that JB knew that aspects of the appointment were illegal and failed to make a reasonable attempt to seek correction. She clearly knew that her mother, as the head of the department, had significant influence over department staff and that her mother was directing staff to manipulate the appointment process on JB's behalf. She had previously been a state employee and was aware of the competitive examination requirement, as she had taken civil service exams. At a minimum, she was aware that an offer can only be made to

⁵ Only current state employees are eligible to take the SSA "transfer" exam. Qualified non-state employees can take the "open" SSA exam.

eligible candidates, and that she had been offered the job prior to even taking the transfer exam. Under the totality of the circumstances, JB did not secure her appointment to the SSA classification in good faith.

Corrective Action Regarding the Appointment

In light of the finding that “the employee acted in other than good faith,” this matter is being referred back to DIR to take corrective action to void the appointment pursuant to former rule 266. As part of the review, DIR should determine the impact, if any, of the corrected appointment on all of the employee’s subsequent civil service appointments. Because a voided appointment impacts a wide range of employee rights and benefits, DIR shall provide the employee notice of the rights to respond and appeal pursuant to Board rules 243.5 and 243.6. Within 60 days of the date of this report, DIR must submit to the Executive Officer written confirmation of the action taken, along with supporting documentation. If, upon further review, DIR finds evidence that indicates that JB did not act in bad faith, as defined above, with regard to this appointment, then DIR must notify the SPB in writing regarding the information discovered.

Since JB vacated the SSA appointment in June 2012, the three-year statute of limitations for initiating an administrative action to recover her salary has long expired.

Discipline of Employees

DIR is also directed to review this matter for appropriate discipline as to JB, HH, JY, and RA based upon the facts and circumstances of this appointment (as described herein and as supplemented by facts and evidence gathered through DIR’s review of this issue).

JY promised to find a position for JB and went to great lengths before finally succeeding. JY was aware of and directly participated in the preselection of JB in violation of the California Constitution’s merit principle and California Code of Regulations, title 2, section 249. She did not intend to observe the spirit and intent of the law. In doing so, JY misrepresented the lawfulness of JB’s appointment with the intention of inducing the State to employ JB under false pretenses. JY violated her duty as a hiring manager to follow applicable employment regulations and uphold the California Constitution. Should DIR determine that discipline as to JY is not appropriate related to this transaction, DIR shall set out the reasons therefore in written correspondence addressed to the SPB Executive Officer.

HH and RA were directly responsible for ensuring DIR’s compliance with merit rules. The evidence reflects that HH and RA were both aware of JB’s preselection for this position. Both individuals worked to facilitate JB’s bad faith appointment and violated their duty to follow applicable employment regulations and uphold the California Constitution. They did not intend to observe the spirit and intent of applicable laws, nor did they make a reasonable attempt to determine how applicable laws and regulations should be applied. HH and RA knowingly aided in the unlawful appointment of JB, with the intent of inducing the State to employ JB under false pretenses. Should DIR determine that discipline as

to HH or RA is not appropriate related to this transaction, DIR shall set out the reasons therefore in written correspondence addressed to the SPB Executive Officer.

If DIR's review determines that disciplinary action is appropriate for any employees who are no longer employed with the State, DIR should search all pertinent HR databases to determine whether their names appear on any employment lists and take appropriate disciplinary action pursuant to Government Code section 19571.

Any disciplinary action taken against these employees must be served with notice of their rights to appeal to the State Personnel Board pursuant to Board rules.

b. JB was Illegally Promoted-in-Place to Deputy Labor Commissioner I

Within seven months after JB's appointment as an SSA, the Director accomplished her ultimate goal of appointing her daughter to a Deputy Labor Commissioner I (DLC I) position. On June 11, 2012, JB was promoted-in-place from SSA to DLC I. JB's promotion-in-place did not comply with civil service requirements.

A promotion-in-place must meet the following requirements to be valid: (1) there is no true vacancy; (2) there is no change of position, assignment, or supervisory relationship; and (3) the promotion is to the next highest level in the class series. (SROA Manual; Cal. Code Regs, tit.2, § 599.854.4, subd. (a)(6).) If one or more of the criteria above are not met, then the promotion is subject to the SROA program and can only be made after a competitive selection process. The SROA program is designed to ensure that state employees in layoff situations receive priority placement into vacant positions. Exemptions to the SROA requirements apply only in limited circumstances, such as a valid promotion-in-place, where an employee remains in the same job, performing the same type of work, but at a higher level.

In JB's case, the SSA and DLC I classifications are in different class series. The next highest level in the SSA series is the AGPA classification. The DLC I class is in the Labor Standards Enforcement series. Civil service classifications that can promote into the DLC I are Industrial Relations Representative and Special Investigator I. Because the DLC I is not the next highest level in the SSA class series, JB's promotion-in-place was illegal. Additionally, by promoting from an SSA to a DLC I, JB's assignment and supervisor changed. The SSA class was responsible for state contracts and budgets; whereas, the DLC I class conducted field investigations.

The evidence demonstrates that the Director's plan from the beginning was to secure a DLC I appointment for her daughter and that she exerted her influence on lower level staff to accomplish her goal. At no time was there any intention to require JB to compete for the position, and as a result, DIR acted in bad faith. JB's appointment to the DLC I classification was facilitated by HH. In March 2012, HH informed the Director that JB should apply for the advertised DLC I position, but that she would look into whether JB could be promoted-in-place. On June 8, 2012, HH emailed JB informing her that her supervisor would be promoting her in place. Because this appointment is more than five

years old, under former rule 266, the appointment can only be voided if it is determined that the employee acted in bad faith or that the rights of another employee are significantly endangered by the retention of the appointment. The available information does not establish that JB acted in bad faith or that the rights of another employee are significantly endangered by retaining the appointment at this point.

However, in this case, there is another basis for voiding this appointment. By voiding the SSA appointment, all subsequent appointments that stemmed from the SSA appointment will be impacted. Because JB's SSA appointment provided the basis for the promotion to the DLC I appointment, voiding the SSA appointment removes JB's ability to have promoted to the DLC I.

Corrective Action Regarding the Appointment

DIR is directed to review this matter and take appropriate corrective action on the DLC I appointment in light of the disposition of the SSA appointment. Furthermore, if DIR has discovered evidence that JB acted in bad faith or that the rights of another employee are significantly endangered with respect to this appointment, then those facts should be contained in the notice to the employee setting forth all the reasons for the corrective action taken on the appointment. (Cal. Code Regs., tit. 2, §§ 243.5, 243.6.)

Since JB vacated the DLC I appointment in April 2014, the three-year statute of limitations for initiating an administrative action to recover her salary has expired.

Discipline of Employees

DIR is directed to review this matter for appropriate discipline as to HH based upon the facts and circumstances of this appointment (as described herein and as supplemented by facts and evidence gathered during DIR's review of this issue). HH facilitated JB's unlawful promotion-in-place in violation of the civil service process. She should have been aware that processing the promotion-in-place could have the effect of excluding competition from qualified candidates and possibly deny an employee facing layoff the opportunity to remain in the workforce. HH did not intend to observe the spirit and intent of the law in facilitating this appointment and, thereby, caused DIR to appoint JB in bad faith. HH did so with the intent to cause the State to process JB's unlawful appointment. Should DIR determine that discipline as to HH is not appropriate related to this appointment, DIR shall set out the reasons therefore in written correspondence addressed to the SPB Executive Officer.

If DIR's review determines that disciplinary action is appropriate for any employees who are no longer employed with the State, DIR should search all pertinent HR databases to determine whether their names appear on any employment lists and take appropriate disciplinary action pursuant to Government Code section 19571.

Any disciplinary action taken against this employee must be served with notice of her right to appeal to the State Personnel Board pursuant to Board rules.

c. JB's Placement in a Training and Development Assignment as an Associate Information Systems Analyst was Intended to Circumvent the Competitive Promotional Process

In November 2014, the Director temporarily transferred her daughter to the Information Technology office where the Director's brother, JC, served as the department's Chief Information Officer. The temporary transfer was in reaction to an anonymous letter sent to the daughter alleging misconduct by the Director. Within a few months, the Director decided to permanently reassign her daughter to the IT office and directed the HR office to identify a job for her. The Associate Information Systems Analyst classification was identified, and JB was placed in a Training and Development (T & D) Assignment on May 1, 2015.

A T & D Assignment is a temporary assignment designed, in part, to prepare employees to meet the minimum qualifications for promotional and open civil service examinations. (Gov. Code, § 19050.8.) A T & D is not a civil service appointment. During a T & D, the employee remains in his or her civil service classification, receiving the salary, benefits, seniority and tenure of that classification. "Although T & D Assignments are used to prepare employees for advancement, they cannot legally replace the competitive promotion process." (Personnel Management Policy and Procedures Manual (PMPPM), § 340.) Departments must use T & D discretion in a manner that gives fair consideration to the interests of all concerned employees, since T & D Assignments usually confer career advancement advantages. (PMPPM, §340.) Furthermore, permanent movement to higher levels must always involve competition in a promotional examination at some point. (PMPPM, § 340.)

DIR inappropriately used the T & D Assignment to circumvent the competitive promotional process without fair consideration of other eligible employees. By hand picking JB for the T & D Assignment without considering other employees, the Director positioned her daughter for an eventual promotion free from competition. The HR staff facilitated this circumvention.

The Director, her brother, and her daughter drafted the T & D agreement outlining the nature of her work, without any input from her assigned supervisor. The agreement was submitted to HR Chief RA in April 2015 and subsequently signed by JB, RA, and the supervisor. The period of the T & D Assignment was May 1, 2015 to April 30, 2017.

On June 12, 2015, however, HR staff realized that internal procedures required that the T & D Assignment be advertised because a vacant position was being reclassified for the assignment. The HR Analyst notified RA and LC (Staff Services Manager II) of the need to advertise the opening. On June 23, 2015, the vacancy was advertised with a final filing date of July 7, 2015. On July 13, 2015, the Director emailed RA: "[JB] is being asked to fill out an employment application for the training and development assignment. Is this a new requirement? This has not been done historically. Please do not forward." When the HR analyst noticed that JB's application was dated July 23, 2015, 16 days after the

final filing date, she asked that the date be corrected. It was resubmitted with a July 7, 2015 date. The HR analyst forwarded the backdated application to LC who was Acting HR Chief at the time, and informed her that the updated application had been received. On August 12, 2015, DIR processed JB's T & D Assignment backdated to May 1, 2015.

While T & D Assignments do not fall under the rules applicable to good faith appointments and corrections of bad faith appointments, civil service policy prohibits using the T & D process to circumvent the competitive promotional process. The Director's clear purpose was to confer a career advancement advantage onto her daughter to the exclusion of all other DIR employees who could have equally benefitted from the opportunity. Once the HR office recognized the negative optics, they attempted to legitimize the pre-selection by orchestrating a bogus recruitment. Their efforts were clearly not appreciated by either the Director, who challenged the need for an open recruitment, or her daughter, who did not bother to timely submit her application for the sham recruitment. However, since JB is no longer serving in the T & D Assignment, no further action with respect to the assignment can be taken.

Corrective Action Regarding the T & D Assignment

Since a T & D is an *assignment*, rather than an *appointment*, former Board rules 249 and 266 pertaining to good faith appointments and correction of bad faith appointments do not apply. Since there is no appointment involved, we make no determination as to the good faith of the appointing power and the employee under former rule 266. Consequently, there is no appointment to correct and no basis upon which to require repayment of the salary earned during the T & D Assignment *under Board rules*. Our inability to take action here, however, does not in any way diminish or negate the CSA's findings that JB filed fraudulent claims of time worked or the associated recommendation that the oversight agency collect \$129,329 from her for those fraudulent claims. Whether JB committed fraud in claiming a salary during that time is not within the scope of SPB's review.

Discipline of Employees

DIR is directed to review this matter for appropriate discipline as to RA and LC based upon the facts and circumstances of this assignment (as described herein and as supplemented by DIR's review of this issue). RA and LC were aware of JB's preselection for the assignment. With full knowledge of JB's preselection, they then orchestrated a sham recruitment in an attempt to legitimize the Director's actions. LC was aware that JB's application was submitted late and that DIR had a policy of not accepting late applications. LC was also aware that a back-dated application was submitted in order to hide JB's failure to submit a timely application. Should DIR determine that discipline as to LC or RA is not appropriate related to this matter, DIR shall set out the reasons therefore in written correspondence addressed to the SPB Executive Officer.

If DIR's review determines that disciplinary action is appropriate for any employees who are no longer employed with the State, DIR should search all pertinent HR databases to

determine whether their names appear on any employment lists and take appropriate disciplinary action pursuant to Government Code section 19571.

Any disciplinary action taken against these employees must be served with notice of their rights to appeal to the State Personnel Board pursuant to Board rules.

- d. JB's Appointment to the Associate Information Systems Analyst Position was Illegal

On May 1, 2017, the Director executed her plan to circumvent the competitive promotional process by appointing her daughter to a permanent AISA (Specialist) position. The following facts demonstrate that DIR did not intend to observe the spirit and intent of the law when it appointed JB to this position.

First, there was no competitive selection process prior to JB's appointment. DIR did not post a vacancy for an AISA position, review applications, nor perform interviews prior to selecting JB for the appointment. A T & D Assignment does not obviate the requirement that the permanent appointment be made from a competitive selection process. T & D assignments are not meant to circumvent the competitive hiring process, and as such, it was not permissible for JB to simply be given a list appointment to the AISA classification without posting a job vacancy and ensuring a competitive selection process. (PMPPM, § 340 [stating that T & D assignments cannot legally replace the competitive promotional process and plans for promotion must always involve competition in a promotional examination at some point].)

Second, the evidence strongly suggests that JB was not qualified for appointment to the AISA position and, therefore, DIR failed to assure that JB had appropriate civil service appointment eligibility. Although JB was on the AISA T & D assignment for two years leading up to the May 2017 AISA appointment, she performed very few duties that would credibly be categorized as analytical information technology work. DIR determined that JB met the minimum qualifications for the AISA classification due to: "[m]ore than 18 months of progressively responsible analytical experience in performing a variety of information systems analysis, design, development, installation, implementation, procurement, or technical support duties in connection with information technology systems" The evidence, however, does not support a finding that JB gained progressively responsible analytical experience during the course of the T & D Assignment.

Third, DIR did not ensure that JB's position was properly classified because DIR had no intention of having JB serve as an AISA in its Information Technology Procurement & Contracts section. Rather, it is clear from the following emails that the plan was to have JB work in the Call Center.

As early as January 2017, JB's uncle, JC, was emailing regarding promoting JB to a Staff Information Systems Analyst position, in which JB would be "working on [Division of Apprenticeship Standards] [sic], the Call Center and as a general ombudsperson." Also,

in January 2017, JB's supervisor responded to an email from JB asking whether she was still working on the phones. On March 30, 2017, JB's uncle informed her supervisor that JB was "going to go 'on loan' to [Return to Work Services] reporting to TG." Starting in April 2017, after JB's loan to Return to Work Services, JB began to email her new supervisor, TG, each working day in the morning, at lunch, and at the end of the day. From April 2017 through August 2017⁶, on a near-daily basis, JB reported working on DIR's Call Center to TG. Thus, despite JB's appointment to the AISA position, DIR's intention was to employ JB as a full time operator for DIR's Call Center, which is not an appropriate job duty for an employee in the AISA classification.⁷

The foregoing facts establish that DIR appointed JB to the AISA position in bad faith. In appointing JB without first posting a job vacancy and conducting a competitive selection process, DIR did not intend to observe the spirit and intent of the law. DIR also failed to ensure that JB had appropriate civil service appointment eligibility by failing to properly review whether JB met the minimum qualifications for the AISA classification. DIR failed to make a reasonable attempt to determine how the applicable laws and regulations should be applied. In short, DIR failed to ensure that JB's appointment complied with the California Constitution's requirement that appointments be made under a system based upon merit ascertained by competitive examination.

DIR also appointed JB in bad faith because, although DIR intended to have JB perform the job duties of a telephone operator for its Call Center, DIR appointed JB to an AISA position in its Information Technology Procurement & Contracts section. Prior to her May 2017 appointment and continuing up to her leave of absence in August 2017, JB's sole reported function was as a telephone operator. Therefore, JB's appointment also constituted a violation of Government Code section 19051, which requires that civil service appointments be made "to a class that is appropriate for the duties, functions, and responsibilities that will be performed." (Gov. Code, §19051; Cal Code Regs, tit. 2, § 249.)

JB also acted in bad faith in securing the AISA permanent appointment by misrepresenting her qualifications. JB used her T & D AISA experience to meet the minimum qualifications for the AISA appointment. Based on the CSA's investigation and findings, JB did not actually perform the duties listed in her T & D agreement.

Corrective Action Regarding the AISA Appointment

In light of the finding that both DIR and the employee acted in other than good faith, this matter is being referred back to DIR to take corrective action to void the appointment pursuant to former rule 266. Because SPB finds that the employee acted in bad faith, DIR must require the employee to reimburse all compensation resulting from the appointment. (Cal Code Regs, tit. 2, §266.) DIR shall provide the employee notice of the rights to respond and appeal to the State Personnel Board pursuant to Board rules 243.5

⁶ JB went on a leave of absence in August 2017.

⁷ The CSA uncovered credible evidence that, despite claiming to work on the call center on 65 occasions between April and August 2017, JB did not actually log in and take phone calls. SPB defers to CSA's findings on this point.

and 243.6. Within 60 days of the date of this report, DIR must submit to the Executive Officer written confirmation of the action taken, along with supporting documentation. If, upon further review, DIR finds evidence that indicates that JB did not act in bad faith, as defined above, with regard to this appointment, then DIR must notify the SPB Executive Officer in writing regarding the information that DIR discovered.

Discipline of Employees

DIR is directed to review this matter for appropriate discipline as to JB, JC and any HR managers who facilitated this illegal appointment, based upon the facts and circumstances of this appointment (as described herein and as supplemented by facts and evidence gathered during DIR's review of this issue). On March 20, 2017, JC signed the Position Control form used to process JB's appointment to the AISA position. At the time, he was DIR's Chief Information Technology Officer. He was aware that JB was "on loan" to DIR's Return to Work Services and that JB was not going to be working for IT Procurement and Contracts. Nonetheless, he facilitated JB's appointment to a position in which he knew she would not be working. His conduct violated Government Code section 19051 and facilitated a violation of former California Code of Regulations section 249. He did so with the intention of inducing the State to appoint JB to a position to which he knew she would not ultimately be assigned. Should DIR determine that discipline as to JC or any HR managers is not appropriate related to this appointment, DIR shall set out the reasons therefore in written correspondence addressed to the SPB.

If DIR's review determines that disciplinary action is appropriate for any employees who are no longer employed with the State, DIR should search all pertinent HR databases to determine whether their names appear on any employment lists and take appropriate disciplinary action pursuant to Government Code section 19571.

Any disciplinary action taken against these employees must be served with notice of their rights to appeal to the State Personnel Board pursuant to Board rules.

II. Transactions and Related Misconduct involving AC

- a. AC's Appointment to the Associate Governmental Program Analyst Position (AGPA) was Illegal

AC was appointed to an AGPA position on January 11, 2012. The following facts demonstrate that AC was preselected for this position by the Director.

On October 29, 2011, AC contacted the Director about an AGPA position and informed her that AC did not pass the AGPA examination.⁸ The Director responded "can you take the staff services analyst [examination] and I will promote you as soon as possible?" From the context of the emails, it appears that they had previously discussed the potential for

⁸ Our review indicates that she did not actually fail the AGPA exam. She was disqualified because she did not meet the minimum qualifications and, therefore, was not admitted to the exam.

AC to work for DIR. AC and the Director had a prior relationship because the Director served on a board for a non-profit company that employed AC.

AC immediately took the SSA examination and forwarded the results to the Director. The Director responded "Great. I want to start a policy unit in January. Does that work for you?" On November 9, 2011, AC followed up with the Director about the position to inquire whether AC needed to do anything further. The Director forwarded AC's email to HH and stated "this person has taken ssa [sic] and I would like to hire her in director's office [sic]." HH later included RA (who at the time was Special Assistant to the Director) in an email string which included the Director's direction to hire AC for a position in the Director's office.

It appears that, at the end of November 2011, DIR HR determined that AC may not have obtained a high enough score on the SSA exam to be eligible for appointment. AC thereafter took examinations for Accounting I and Auditor I classifications. During this time period, AC was in frequent contact with HH and RA.

On December 12, 2011, DIR posted an Auditor I position specifically for AC. On January 4, 2012, AC was scheduled for a January 6 interview. HH and RA interviewed AC, knowing the Director's intent to hire her. The day following the Auditor I interview, AC retook the AGPA examination and achieved a passing score. AC forwarded her examination score and an AGPA application to HH and RA. On January 10, 2012, AC was offered an AGPA position (despite having interviewed for an Auditor I position). AC's first day was January 11, 2012.

DIR did not appoint AC in good faith. In processing AC's appointment, DIR did not intend to observe the spirit or intent of the law. The evidence establishes that AC was preselected for the AGPA appointment. Prior to AC submitting any applications to DIR, the Director informed HH that the Director wanted AC hired into the Director's office. HH gave AC special treatment throughout the application process. Due to AC's problematic eligibility, HH and RA caused multiple vacancies to be posted to jobs.ca.gov in an orchestrated effort to get her into state service in any way possible. AC was appointed as an AGPA despite interviewing for an Auditor I position. Both HH and RA were aware of AC's preselection and provided AC with substantial assistance in obtaining her AGPA appointment. In violation of the California Constitution and applicable laws, HH and RA facilitated an appointment that did not result from a competitive selection process. Thus, DIR violated the merit principle when it appointed AC to a position for which she was preselected and did not compete.

Corrective Action Regarding the AGPA Appointment

Because this appointment occurred more than five years ago, corrective action is only permissible if AC acted in bad faith or there is a determination that the rights of another employee are significantly endangered by the retention of this appointment. The available evidence does not establish that AC acted in bad faith or that the rights of another employee are significantly endangered by retaining the appointment at this point. Unlike

hiring managers and human resources staff, applicants are not expected to know the intricacies of the civil service appointment rules and procedures.

Discipline of Employees

DIR is directed to review this appointment to determine the scope of appropriate discipline as to HH and RA based upon the facts and circumstances of this appointment (as described herein and as supplemented by DIR's review of this issue). HH and RA were both directly responsible for DIR's compliance with merit rules and had a duty not to facilitate bad faith appointments. Both HH and RA were well aware that the Director wanted AC hired without regard to the requirement that appointments be made based upon a competitive selection process. HH and RA did not intend to observe the spirit and intent of the law in facilitating this appointment. In allowing the appointment to go forward, HH and RA intended to induce the State to appoint AC, despite known violations of hiring regulations and the California Constitution. Should DIR determine that discipline as to HH or RA is not appropriate related to this transaction, DIR shall set out the reasons therefore in written correspondence addressed to the SPB Executive Officer.

If DIR's review determines that disciplinary action is appropriate for any employees who are no longer employed with the State, DIR should search all pertinent HR databases to determine whether their names appear on any employment lists and take appropriate disciplinary action pursuant to Government Code section 19571.

Any disciplinary action taken against these employees must be served with notice of their right to appeal to the State Personnel Board pursuant to Board rules.

b. AC was Illegally Promoted-in-Place to a Staff Services Manager I Position

Within seven months after AC's appointment as an AGPA, the Director promoted her in place to a Staff Services Manager I position. The following facts demonstrate that AC's promotion-in-place did not comply with the civil service rules.

AC was preselected for the SSMI position. Prior to the promotion-in-place, the Director emailed HH and instructed her to advertise an SSMI position specifically for AC. Rather than conduct an open and competitive selection process, HH processed AC's appointment as a promotion-in-place. The promotion-in-place shielded AC from competing against other potential candidates for the position.⁹

As a result of the promotion-in-place, AC transitioned from a rank-and-file AGPA position to a supervisory SSMI position. As previously stated, a promotion-in-place is only permissible if: (1) there is no true vacant position; (2) there is no change of position; (3) there is no change in the supervisory/subordinate relationship; and (4) the promotion is clearly identified as typical in cases where the employee has reached the next higher level within a class series. (SROA Manual; Cal. Code Regs., tit. 2, § 599.854.4, subd.

⁹ It is also possible that processing AC's appointment as a promotion-in-place prevented DIR from having to appoint an SROA eligible candidate to an SSMI position.

(a)(6.) Promotions-in-place are not allowed from rank-and-file classifications to supervisory or managerial classifications. Because of the difference in the nature of rank-and-file and supervisory duties, such a transition would constitute a change of assignment and supervisory/subordinate relationship. In AC's case, she went from no supervisory responsibilities as an AGPA to supervising four lower level staff as an SSM I. AC's supervisor also changed from RA to the Director. The evidence establishes that this promotion-in-place was not typical and resulted in a change of position and supervisory/subordinate relationships. Thus, AC's promotion-in-place violated the civil service process and constituted a bad faith appointment by DIR. DIR did not intend to follow applicable laws and regulations in the manner in which this appointment was accomplished. DIR circumvented the merit principle by appointing AC to a new position, with new job duties, and a new supervisor without a competitive selection process.

Corrective Action Regarding the SSM I Appointment

Because this appointment occurred more than five years ago, corrective action is only permissible based upon evidence of bad faith by AC or upon the determination that the rights of another employee are significantly endangered by the retention of this appointment. The available information does not establish that AC acted in bad faith or that the rights of another employee are significantly endangered by the retention of this appointment at this point. If DIR discovers evidence that AC acted in bad faith with regard to this appointment or that the rights of another employee are significantly endangered by the retention of this appointment, then DIR shall consider appropriate corrective action and notify the SPB regarding the information that DIR discovered.

Discipline of Employees

DIR is directed to review this matter for appropriate discipline as to HH based upon the facts and circumstances of this appointment (as described herein and as supplemented by DIR's review of this issue). HH knowingly processed a promotion-in-place that violated applicable regulations. She was aware, or certainly should have been aware, that this appointment was not an appropriate promotion-in-place. She was also aware that processing the promotion-in-place could have the effect of excluding competition from qualified candidates and possibly deny an employee facing layoff an opportunity to remain in the workforce. HH did not intend to observe the spirit and intent of the law in facilitating this promotion-in-place and, thereby, caused DIR to appoint AC in bad faith. Should DIR determine that discipline as to HH is not appropriate related to this transaction, DIR shall set out the reasons therefore in written correspondence addressed to the SPB Executive Officer.

If DIR's review determines that disciplinary action is appropriate for any employees who are no longer employed with the State, DIR should search all pertinent HR databases to determine whether their names appear on any employment lists and take appropriate disciplinary action pursuant to Government Code section 19571.

Any disciplinary action taken against this employee must be served with notice of her right to appeal to the State Personnel Board pursuant to Board rules.

c. AC's Appointment to a Career Executive Assignment Position was Illegal

On February 21, 2013, AC was appointed to a Career Executive Assignment II (CEA II) in the Legislation and Policy unit within the Director's office. The following facts demonstrate that AC was preselected for this position.

On January 3, 2013, SC, Acting Chief of Human Resources, confirmed for a DIR personnel analyst that a CEA II should be advertised for AC. SC also emailed HH and stated "[a]dvertising immediately for CEA II for Legislation and Policy and promoting [AC]." On January 4, 2013, the same analyst notified LC that she was working on a job description for AC's CEA II position and that the position would be posted as soon as possible. On January 9, 2013, RA emailed LC and JC2, the Exam & Certification Manager, an "approved Duty Statement from [HH] for CEA II (Leg and Policy) for [AC]." On January 17, 2013, the Director emailed her boss, Secretary of Labor & Workforce Development Agency MM, seeking permission to appoint AC to a CEA II position to lead a newly created Office of Policy, Legislation, and Research. The job vacancy announcement for AC's position was posted five days later on January 22, 2013. HH and JC2, both of whom were aware of AC's preselection, participated in scoring the CEA II exam. AC's score of 85 placed her in the first rank.

DIR appointed AC to this position in bad faith. AC was clearly preselected for the CEA II appointment prior to the posting of the position. Although DIR conducted a selection process, the evidence demonstrates that it was not truly a competitive recruitment. As such, DIR did not intend to observe the spirit and intent of the law when it appointed AC as a CEA II.

Corrective Action Regarding the CEA II Appointment

Because this appointment occurred more than five years ago, corrective action is only permissible based upon evidence of bad faith by AC or upon the determination that the rights of another employee are significantly endangered by the retention of this appointment. The available information does not establish that AC acted in bad faith or that the rights of another employee are significantly endangered by the retention of this appointment at this point. If DIR discovers evidence that AC acted in bad faith with regard to this appointment or that the rights of another employee are significantly endangered by the retention of this appointment, then DIR shall consider appropriate corrective action and notify the SPB regarding the information that DIR discovered.

Discipline of Employees

DIR is directed to review this matter for appropriate discipline as to HH, SC, LC, JC2, and RA based upon the facts and circumstances of this appointment (as described herein and as supplemented by DIR's review of this issue). HH, SC, LC, JC2 and RA were aware of

the Director's preselection of AC for this position. Nonetheless, HH and JC2 participated in scoring candidates' exams. In doing so, HH and JC2 facilitated the Director's decision to appoint AC without a competitive selection process. Despite their duty to ensure DIR's compliance with merit laws and regulations, HH, SC, LC, JC2, and RA took no action to ensure the lawfulness of this appointment. They acted with the intention of inducing the State to process an appointment that they knew violated the merit principle. Should DIR determine that discipline as to HH, SC, LC, JC2, or RA is not appropriate related to this transaction, DIR shall set out the reasons therefore in written correspondence addressed to the SPB Executive Officer.

If DIR's review determines that disciplinary action is appropriate for any employees who are no longer employed with the State, DIR should search all pertinent HR databases to determine whether their names appear on any employment lists and take appropriate disciplinary action pursuant to Government Code section 19571.

Any disciplinary action taken against these employees must be served with notice of their rights to appeal to the State Personnel Board pursuant to Board rules.

d. AC's Reinstatement to the CEA II Position was Illegal

On July 22, 2014, DIR voided AC's September 2013 voluntary resignation from State service and retroactively changed it to a leave of absence in order to avoid the required competitive selection process. The following facts demonstrate that DIR's actions, in reinstating AC without a competitive selection process, violated civil service rules.

AC voluntarily resigned from State service in September 2013 to complete her Ph.D. Prior to resigning, DIR HR employees HH and RA informed AC that she should consider requesting a leave of absence rather than resigning. On multiple occasions, AC confirmed that she intended to resign from State service. Under the law, resignations that are in effect for longer than 30 days are permanent. (Gov. Code, § 19996.1, subd (a).)

After AC completed her Ph.D., the Director set out to reinstate AC in her prior CEA II position. However, the civil service rules at the time did not allow a former state employee to reinstate into a CEA position. (Former Gov. Code, § 19889.3 [requiring CEA candidates to be current state employees with permanent status in the civil service].) The rules in effect at the time only allowed a former CEA to reinstate to the highest level civil service classification held prior to their CEA appointment. Once reinstated into State service at the lower level classification, the employee could compete for a CEA appointment. Thus, re-appointing AC would require her to reinstate to her prior SSMI position and then participate in a new CEA competitive selection process.

Initially, AC and the Director planned to follow the lawful reinstatement path. AC applied for a Research Manager II position. She was interviewed and accepted a formal offer of appointment. Prior to the appointment, however, the Director instructed RA to reinstate

AC to her CEA II position because AC purportedly did not understand that she could take a leave of absence instead of separating from State service back in September 2013.

On Saturday, July 12, 2014, RA emailed herself a to-do list: (1) [AC] void and do leave; (2) write memo for [Director]; and (3) write exception email for [Director].” On or about July 16, 2014, RA directed HR staff to prepare a draft leave of absence memorandum for RA’s approval. On July 17, 2014, RA requested that the Director ask AC “to interact directly with me on this and [no] one else in HR.” In order to accomplish the direct reinstatement to a CEA II position, on July 22, 2014, DIR voided AC’s September 2013 resignation and re-keyed it as a leave of absence. In support of the re-keyed leave of absence, DIR created and the Director signed a memorandum back dated to September 2013 approving AC’s purported request for leave of absence. This had the effect of reinstating AC to the CEA II position, despite the fact that her prior resignation made her ineligible for the position.

The foregoing facts establish that DIR appointed AC to the CEA II position in bad faith. In appointing AC without first posting a job vacancy and conducting a competitive selection process, DIR did not intend to observe the spirit and intent of the law. Both HH and RA knew that AC did not have appropriate civil service appointment eligibility because she was not a current State employee. They falsified documents and manipulated transaction codes in order to circumvent the competitive selection requirements. DIR failed to make a reasonable attempt to determine how the applicable laws and regulations should be applied. In short, DIR failed to ensure that AC’s appointment complied with the California Constitution’s requirement that appointments be made under a system based upon merit ascertained by competitive examination.

While the available evidence demonstrates that AC was made aware of her leave of absence options prior to her resignation, the evidence does not establish that she was aware of the improprieties involved in her reinstatement to the CEA position. Unlike hiring managers and HR staff, employees are not expected to know the intricacies of the civil service rules. Employees should be able to rely on their managers and HR staff to process their personnel transactions in a manner that does not jeopardize the employee’s employment rights and status. The available evidence does not establish that AC acted in bad faith with respect to her CEA II reinstatement.

Corrective Action Regarding the CEA II Appointment

Because this appointment occurred within the last five years, and DIR acted in bad faith, DIR is directed to review this appointment for corrective action to void. DIR did not intend to observe the spirit and intent of the law when it voided AC’s resignation and falsified documents and transaction codes in order to unlawfully reinstate her. DIR failed to ensure that AC had appropriate civil service appointment eligibility for the CEA II position. DIR shall process the corrective action timely so as to avoid a statute of limitations time bar. DIR shall immediately notify AC regarding the corrective action pursuant to California Code of Regulations, title 2, section 243.5. DIR shall supplement this notification with facts or information developed by DIR while reviewing this appointment for appropriate

discipline. Should DIR determine that corrective action regarding this appointment is not appropriate, DIR shall provide a written statement of reasons therefore to the SPB Executive Officer.

Discipline of Employees

DIR is directed to review this matter for appropriate discipline as to RA based upon the facts and circumstances of this appointment (as described herein and as supplemented by DIR's review of this issue). RA knowingly caused the falsification of the leave of absence approval memorandum signed by the Director. RA did so with the intention of converting AC's resignation into a leave of absence, despite the law that resignations in effect for longer than 30 days are permanent. (Gov. Code, § 19996.1, subd (a).) The effect of this transaction was to re-appoint AC as a CEA II, despite AC's ineligibility for such an appointment. Had AC been appointed (rather than the sham voided transaction), the appointment would have been made in bad faith by DIR. RA acted in a manner which was likely to diminish the rights and privileges of other persons that would have been eligible to compete for appointment to the CEA II position. Should DIR determine that discipline as to RA is not appropriate, DIR shall set out the reasons therefore in written correspondence addressed to the SPB.

CONCLUSION

The Director, with the assistance of high-level DIR employees, accomplished numerous appointments and transactions of highly questionable legitimacy. She received material assistance from HH, RA, JY, LC, SC, JC and JC2 in accomplishing these transactions. DIR is directed to review whether their actions warrant discipline under former California Code of Regulations, title 2, sections 8 and 249 and Government Code sections 19680 and 19682. Additionally, DIR must review whether discipline is appropriate for: (a) fraud in securing appointment; (b) inexcusable neglect of duty; (c) dishonesty; (d) violation of the Government Code or board rule; (e) violation of the prohibitions set forth in accordance with Government Code section 19990; and (f) other failure of good behavior. (Gov. Code, §§ 19572, subds. (a), (d), (f), (q), (r) and (t), 19590.) Their actions were fraudulent and involved falsification of records. The actions discredit the State civil service system and breach the trust that the public places in all State employees.

As DIR reviews these transactions and investigates the underlying misconduct, DIR is directed to supplement the evidence cited herein as appropriate. If, upon review of the transactions addressed in this report, DIR believes that discipline cannot be pursued due to the time period that has passed since the misconduct, DIR is directed to identify all individuals who were aware of the underlying misconduct, what specifically they were aware of, when they became aware of the misconduct, and what, if any, actions were taken due to their knowledge of the misconduct.

DIR shall preserve all evidence relevant to the transactions covered by this report, including, but not limited to, emails sent or received by the Director, JB, AC, HH, RA, JY, LC, SC, JC and JC2. DIR shall take all actions directed within this report within 60 days

of the SPB Executive Officer's approval of these findings. Additionally, within 60 days, DIR shall provide SPB with a written update regarding its evaluation of the issues raised in this report. In addition to information that DIR deems important, the evaluation shall detail all actions taken by DIR in response to the misconduct and transactions addressed herein.

Additionally, effective immediately, DIR's delegated authority to conduct CEA examinations and process civil service appointments is revoked. DIR shall work under the supervision of the California Department of Human Resources in processing appointments and conducting CEA examinations. At the end of a one-year period, DIR may seek to have its delegated authority reinstated by petitioning the SPB Executive Officer and providing a summary of all remedial measures taken by DIR to ensure that its hiring practices are lawful.

DIR shall fully implement the CSA's training recommendations and make the CSA's recommended changes to DIR's anti-nepotism policy. Additionally, all of DIR's hiring managers and HR staff shall undergo training on the good faith appointments process.

The unlawful and unethical actions addressed in this report, as well as the additional concerns raised in the report by the CSA, are significant. It is not sufficient for DIR to commit to working with CalHR and the SPB to address the issues that have been discovered by external agencies. DIR must fully investigate unlawful hiring practices by DIR during the last five years. It is DIR and its employees that are most knowledgeable regarding the scope of misconduct under the former Director. DIR must not wait to be directed to take appropriate corrective action, as there remains a significant risk that other unlawful actions will fail to be remedied.



STATE OF CALIFORNIA
Labor & Workforce Development Agency

GOVERNOR Gavin Newsom • SECRETARY Julie A. Su

Agricultural Labor Relations Board • California Unemployment Insurance Appeals Board
California Workforce Development Board • Department of Industrial Relations
Employment Development Department • Employment Training Panel • Public Employment Relations Board

April 18, 2019

Suzanne M. Ambrose
Executive Officer
State Personnel Board
801 Capitol Mall, 5th Floor
Sacramento, CA 95814

Dear Ms. Ambrose:

Thank you for the opportunity to provide an initial response to the State Personnel Board (SPB)'s report on the Special Investigation of the Department of Industrial Relations (DIR) referred by the California State Auditor (CSA) concerning allegations of merit-related violations in the hiring and promotions of two employees.

Please be assured that I take the findings and conclusions in the SPB's special investigation report seriously and am committed to ensuring that SPB's directives are carried out in a timely and thorough manner. In addition, the adoption of and adherence to clear and clearly communicated personnel practices based on the merit principle are top priorities that I am working to achieve.

In the last month, I have met with DIR chiefs and upper management as a group and in smaller settings to better assess the DIR HR issues from the "customer" perspective. Before that, I removed HH from the Career Executive Assignment (CEA) leadership position HH held. Consequently, DIR does not have a Chief of HR, and HH is currently working for DIR in a nonsupervisory, non-HR position. I have also hired a team of special consultants in the field of civil service, merit-based hiring to thoroughly review and evaluate each personnel transaction identified in SPB's report as requiring action and who will help me rebuild an appropriate and effective workplace culture agency-wide. The team consists of six retirees who collectively bring over 250 years of human resources, personnel, and administrative expertise in state government. Four of these experts were either a personnel chief, an HR Branch chief, or a personnel officer in various departments. One of the team members trained state HR staff on CEA hiring and terminations.

In addition, DIR, along with the team of special consultants, will fully investigate these personnel transactions to determine whether and what disciplinary action against employees identified in the SPB report is warranted. A thorough investigation will also be conducted to determine if there are any additional unlawful hiring practices by DIR during the last five years.



Pursuant to your request, below please find a summary of the corrective actions ordered in the SPB special investigation report and DIR's initial responses.

**I.
Transactions and Related Misconduct Involving JB**

A. JB was Illegally Appointed to a Staff Services Analyst Position

Corrective Action Regarding Appointment: In light of the finding that "the employee acted in other than good faith," this matter is being referred back to DIR to take corrective action to void the appointment pursuant to former rule 266. As part of the review, DIR should determine the impact, if any, of the corrected appointment on all the employee's subsequent civil service appointments. DIR shall comply with SPB appeal notice rules and, within 60 days, provide the Executive Officer with written confirmation of the action taken, along with supporting documentation. If DIR finds evidence indicating JB did not act in bad faith, DIR must provide SPB written notice of the information discovered.

Response: DIR will void this appointment while ensuring the affected employee receives the 15-day calendar notice, as required by Board rules 243.5 and 243.6. The special consultants will review and evaluate the impact, if any, of the corrected appointment on all the employee's subsequent civil service appointments. Based upon that review, appropriate action will be taken.

Discipline of Employees: DIR is also directed to review this matter for appropriate discipline as to JB, HH, JY, and RA based upon the facts and circumstances of this appointment. Should DIR determine that discipline as to JY, HH, or RA is not appropriate, DIR shall set forth the reasons for this determination in written correspondence addressed to the Executive Officer. If DIR finds that disciplinary action is appropriate for any employee no longer employed with the State, DIR should search all pertinent HR databases to determine whether their names appear on any employment lists, and if so, take appropriate disciplinary action pursuant to Government Code section 19571. Any disciplinary action must be served with notice of SPB appeal rights.

Response: DIR will comply fully with the afore-stated review and actions by assigning the special consultants discussed above to conduct thorough investigations of the facts and circumstances of the appointment and determine the proper discipline. As discussed above, HH has already been removed from the CEA position HH previously held. HH is currently in a nonsupervisory classification in DIR.

B. JB was Illegally Promoted-In-Place to Deputy Labor Commissioner I

Corrective Action Regarding Appointment: DIR is directed to review this matter and take appropriate corrective action on the DLC I appointment in light of the disposition of the SSA appointment. If DIR discovers evidence that JB acted in bad faith or that the rights of another employee are significantly endangered with respect to this appointment, those facts should be contained in the corrective-active notice to the employee.

Response: DIR will comply fully with the afore-stated review and actions by assigning the special consultants discussed above to conduct a thorough review of the appointment. Appropriate corrective action will be taken based upon that review. If DIR discovers evidence that JB acted in bad faith or that the rights of another employee are significantly endangered with respect to this appointment, those facts will be contained in the corrective-active notice to the employee.

Discipline of Employees: DIR is directed to review this matter for appropriate discipline as to HH based upon the facts and circumstances of this appointment, as described in the report and any supplemental evidence gathered by DIR's review. Should DIR determine that discipline as to HH is not appropriate, DIR shall set forth the reasons for this determination in written correspondence addressed to the Executive Officer. If DIR finds that disciplinary action is appropriate for any employee no longer employed with the State, DIR should search all pertinent HR databases to determine whether their names appear on any employment lists, and if so, take appropriate disciplinary action pursuant to Government Code section 19571. Any disciplinary action must be served with notice of SPB appeal rights.

Response: DIR will comply fully with the afore-stated review and actions by assigning the special consultants discussed above to conduct a thorough investigation of the facts and circumstances of the appointment and determine the proper discipline. If DIR finds that disciplinary action is not appropriate, DIR will provide the Executive Officer with the reasons for this determination in writing. If DIR determines that discipline is appropriate for any employee no longer employed with the State, DIR will search all pertinent HR databases to determine whether their names appear on any employment lists, and if so, take appropriate disciplinary action pursuant to Government Code section 19571. Any disciplinary action will be served with notice of SPB appeal rights.

C. Placement of JB in a Training and Development Assignment as an Associate Information System Analyst was Intended to Circumvent the Competitive Promotional Process

Corrective Action Regarding Appointment: Since this personnel action was a T&D assignment, rather than an appointment, rules related to good faith appointments do not apply; therefore, SPB makes no determination as to the good faith of this assignment. SPB's inability to take action does not in any way diminish or negate the State Auditor's findings that JB filed fraudulent claims of time worked or the associated recommendation that the Labor and Workforce Development Agency (LWDA) collect \$129,329.00 from those fraudulent claims.

Response: DIR has been in the process of reviewing and implementing the State Auditor's recommendations, where appropriate.

Discipline of Employees: DIR is directed to review this matter for appropriate discipline as to RA and LC based upon the facts and circumstances of this assignment, as described in the report and the supplemental review of DIR. Should DIR determine that discipline as to RA or LC is not appropriate, DIR shall set forth the reasons for this

determination in written correspondence addressed to the Executive Officer. If DIR finds that disciplinary action is appropriate for any employee no longer employed with the State, DIR should search all pertinent HR databases to determine whether their names appear on any employment lists, and if so, take appropriate disciplinary action pursuant to Government Code section 19571. Any disciplinary action must be served with notice of SPB appeal rights.

Response: DIR will comply fully with the afore-stated review and actions by assigning the special consultants discussed above to conduct thorough investigations of the facts and circumstances of the assignment and determine the proper discipline. If DIR finds that disciplinary action is not appropriate, DIR will provide the Executive Officer with the reasons for this determination in writing. If DIR determines that discipline is appropriate for any employee no longer employed with the State, DIR will search all pertinent HR databases to determine whether their names appear on any employment lists, and if so, take appropriate disciplinary action pursuant to Government Code section 19571. Any disciplinary action will be served with notice of SPB appeal rights.

D. JB's Appointment to the Associate Information systems Analyst Position was Illegal

Corrective Action Regarding Appointment: In light of the finding that both DIR and the employee acted in other than good faith, this matter is being referred back to DIR to take corrective action to void the appointment pursuant to former rule 266. DIR shall comply with SPB appeal notice rules and, within 60 days, provide the Executive Officer with written confirmation of the action taken, along with supporting documentation. If DIR finds evidence indicating JB did not act in bad faith, DIR must provide SPB written notice of the information discovered.

Response: DIR will comply fully with the afore-stated corrective action and void this appointment while ensuring the affected employee receives the 15-day calendar notice, as required by Board rules 243.5 and 243.6.

Discipline of Employees: DIR is directed to review this matter for appropriate discipline as to JB, JC, and any HR managers who facilitated this illegal appointment, based upon the facts and circumstances of this assignment, as described in the report and the supplemental review of DIR. Should DIR determine that discipline as to JC or any HR managers is not appropriate, DIR shall set forth the reasons for this determination in written correspondence addressed to the Executive Officer. If DIR finds that disciplinary action is appropriate for any employee no longer employed with the State, DIR should search all pertinent HR databases to determine whether their names appear on any employment lists, and if so, take appropriate disciplinary action pursuant to Government Code section 19571. Any disciplinary action must be served with notice of SPB appeal rights.

Response: DIR will comply fully with the afore-stated review and actions by assigning the special consultants discussed above to conduct thorough investigations of the facts and circumstances of the appointment and determine the proper discipline. If DIR finds that disciplinary action is not appropriate, DIR will provide the Executive Officer with the reasons for this determination in writing. If DIR determines that discipline is appropriate

for any employee no longer employed with the State, DIR will search all pertinent HR databases to determine whether their names appear on any employment lists, and if so, take appropriate disciplinary action pursuant to Government Code section 19571. Any disciplinary action will be served with notice of SPB appeal rights.

II. Transactions and Related Misconduct Involving AC

D. AC's Appointment to the Associate Governmental Program Analyst Position (AGPA) was Illegal

Corrective Action Regarding Appointment: Given that the appointment was more than five years ago and the available evidence does not establish that AC acted in bad faith or that the rights of another employee are significantly endangered by retaining the appointment at this point, no corrective action is directed.

Response: While no corrective action is directed, the special consultants discussed above, who have substantial expertise in merit-based hiring, will provide recommendations to establish hiring practices for DIR that conform to civil service laws and rules, and the merit principle.

Discipline of Employees: DIR is directed to review this appointment to determine the scope of appropriate discipline as to HH and RA based upon the facts and circumstances of this appointment, as described in the report and the supplemental review of DIR. Should DIR determine that discipline as to HH or RA is not appropriate, DIR shall provide the Executive Officer the reasons for that finding in writing. If DIR finds that disciplinary action is appropriate for any employee no longer employed with the State, DIR should search all pertinent HR databases to determine whether their names appear on any employment lists, and if so, take appropriate disciplinary action pursuant to Government Code section 19571. Any disciplinary action must be served with notice of SPB appeal rights.

Response: DIR will comply fully with the afore-stated review and actions by assigning the special consultants discussed above to conduct thorough investigations of the facts and circumstances of the appointment and determine the proper discipline. If DIR finds that disciplinary action is not appropriate, DIR will provide the Executive Officer with the reasons for this determination in writing. If DIR determines that discipline is appropriate for any employee no longer employed with the State, DIR will search all pertinent HR databases to determine whether their names appear on any employment lists, and if so, take appropriate disciplinary action pursuant to Government Code section 19571. Any disciplinary action will be served with notice of SPB appeal rights.

B. AC was Illegally Promoted-In-Place to a Staff Services Manager I Position

Corrective Action Regarding Appointment: Given that the appointment was more than five years ago and the available evidence does not establish that AC acted in bad faith or that the rights of another employee are significantly endangered by retaining the appointment at this point, no corrective action is directed. If DIR discovers evidence

that AC acted in bad faith or that the rights of another employee are significantly endangered by the retention of this appointment, DIR shall consider appropriate corrective action and notify the SPB regarding the discovered information.

Response: If DIR discovers such evidence, the department will consider and take appropriate corrective action and notify SPB accordingly.

Discipline of Employees: DIR is directed to review this matter for appropriate discipline as to HH based upon the facts and circumstances of this appointment, as described in the report and the supplemental review of DIR. Should DIR determine that discipline as to HH is not appropriate, DIR shall provide the Executive Officer the reasons for that finding in writing. If DIR finds that disciplinary action is appropriate for any employee no longer employed with the State, DIR should search all pertinent HR databases to determine whether their names appear on any employment lists, and if so, take appropriate disciplinary action pursuant to Government Code section 19571. Any disciplinary action must be served with notice of SPB appeal rights.

Response: DIR will comply fully with the afore-stated review and actions by assigning the special consultants discussed above to conduct a thorough investigation of the facts and circumstances of the appointment and determine the proper discipline. If DIR finds that disciplinary action is not appropriate, DIR will provide the Executive Officer with the reasons for this determination in writing. If DIR determines that discipline is appropriate for any employee no longer employed with the State, DIR will search all pertinent HR databases to determine whether their names appear on any employment lists, and if so, take appropriate disciplinary action pursuant to Government Code section 19571. Any disciplinary action will be served with notice of SPB appeal rights.

C. AC's Appointment to a Career Executive Assignment Position was Illegal

Corrective Action Regarding Appointment: Given that the appointment was more than five years ago and the available evidence does not establish that AC acted in bad faith or that the rights of another employee are significantly endangered by retaining the appointment at this point, no corrective action is directed. If DIR discovers evidence that AC acted in bad faith or that the rights of another employee are significantly endangered by the retention of this appointment, DIR shall consider appropriate corrective action and notify the SPB regarding the discovered information.

Response: If DIR discovers such evidence, the department will consider and take appropriate corrective action and notify SPB accordingly.

Discipline of Employees: DIR is directed to review this matter for appropriate discipline as to HH, SC, LC, JC2, and RA based upon the facts and circumstances of this appointment, as described in the report and the supplemental review of DIR. Should DIR determine that discipline as to HH, SC, LC, JC2, or RA is not appropriate, DIR shall provide a written statement of reasons to the Executive Officer. If DIR finds that disciplinary action is appropriate for any employee no longer employed with the State, DIR should search all pertinent HR databases to determine whether their names appear on any employment lists, and if so, take appropriate disciplinary action pursuant to

Government Code section 19571. Any disciplinary action must be served with notice of SPB appeal rights.

Response: DIR will comply fully with the afore-stated review and actions by assigning the special consultants discussed above to conduct thorough investigations of the facts and circumstances of the appointment and determine the proper discipline. If DIR finds that disciplinary action is not appropriate, DIR will provide the Executive Officer with the reasons for this determination in writing. If DIR determines that discipline is appropriate for any employee no longer employed with the State, DIR will search all pertinent HR databases to determine whether their names appear on any employment lists, and if so, take appropriate disciplinary action pursuant to Government Code section 19571. Any disciplinary action will be served with notice of SPB appeal rights.

D. AC's Reinstatement to the CEA II Position was Illegal

Corrective Action Regarding Appointment: Because this appointment occurred within the last five years and DIR acted in bad faith, DIR is directed to review this appointment for corrective action to void. DIR shall process the corrective action timely so as to avoid a statute of limitations time bar. DIR shall immediately notify AC regarding the corrective action pursuant to SPB rule 243.5. DIR shall supplement this notification with facts or information developed by DIR while reviewing this appointment for appropriate discipline. Should DIR determine that corrective action regarding this appointment is not appropriate, DIR shall provide a written statement of reasons to the Executive Officer.

Response: DIR will comply fully with the afore-stated review and actions so as to avoid a statute of limitations time bar. DIR will assign the special consultants discussed above to review the appointment for voiding. DIR will comply with the notice requirements of SPB rule 243.5 and supplement the notification with any relevant facts or information developed by DIR during the review of the appointment. Should DIR determine that corrective action regarding this appointment is not appropriate, DIR will provide a written statement of reasons to the Executive Officer.

Discipline of Employees: DIR is directed to review this matter for appropriate discipline as to RA based upon the facts and circumstances of this appointment, as described in the report and the supplemental review of DIR. Should DIR determine that discipline is not appropriate, DIR shall provide a written statement of reasons to the Executive Officer.

Response: DIR will comply fully with the afore-stated review and actions by assigning the special consultants discussed above to conduct a thorough investigation of the facts and circumstances of the appointment and determine the proper discipline. If DIR finds that disciplinary action is not appropriate, DIR will provide the Executive Officer with the reasons for this determination in writing. In addition, if DIR determines that discipline is appropriate for any employee no longer employed with the State, DIR will search all pertinent HR databases to determine whether their names appear on any employment lists, and if so, take appropriate disciplinary action pursuant to

Government Code section 19571. Any disciplinary action will be served with notice of SPB appeal rights.

III. Conclusion

A. DIR Review of Transactions

Corrective Action: As DIR reviews the transactions discussed above, DIR is directed to supplement the evidence cited herein as appropriate. If, DIR believes that discipline cannot be pursued due to the time period that has passed since the misconduct, DIR is directed to identify all individuals who were aware of the underlying misconduct, what specifically they were aware of, when they became aware of the misconduct, and what, if any, actions were taken due to their knowledge of the misconduct.

Response: DIR will comply fully with the afore-stated review and actions.

B. Evidence

Corrective Action: DIR shall preserve all evidence relevant to the transactions covered by this report, including, but not limited to, emails sent or received by the former Director, JB, AC, HH, RA, JY, LC, SC, JC, and JC2.

Response: To the extent such evidence may still exist, DIR will comply with the afore-stated review and actions. An email has been sent instructing staff to preserve all documents, including emails, relevant to the transactions covered by this report.

C. Reporting Requirement

Corrective Action: DIR shall take all actions directed within this report within 60 days of the SPB Executive Officer's approval of these findings. Additionally, within 60 days, DIR shall provide SPB with a written update regarding its evaluation of the issues raised in this report. In addition to information that DIR deems important, the evaluation shall detail all actions taken by DIR in response to the misconduct and transactions addressed in this report.

Response: DIR will comply fully with this corrective action.

D. Training

Corrective Action: DIR shall implement fully the CSA's training recommendations and make the CSA's recommended changes to the DIR's anti-nepotism policy. Additionally, all of DIR's hiring managers and HR staff shall undergo training on the good faith appointments process.

Response: DIR has implemented training recommendations for staff. Any outstanding training recommendations relate to vacant positions; as soon as those positions are

filled, the trainings will be completed. The anti-nepotism policy has been drafted, and DIR will be going through the notice process with the unions once approved by CalHR.

E. Delegation Authority

Corrective Action: Effective immediately, DIR's delegated authority to conduct CEA examinations and process civil service appointments is revoked. DIR shall work under the supervision of CalHR in processing appointments and conducting CEA examinations. At the end of a one-year period, DIR may seek to have its delegated authority reinstated by petitioning the SPB Executive Officer and providing a summary of all remedial measures taken by DIR to ensure that its hiring practices are lawful.

Response: DIR will comply with this corrective action and work under CalHR's supervision in processing appointments and conducting CEA examinations.

F. Further Investigation

Corrective Action: DIR must fully investigate unlawful hiring practices by DIR during the last five years. It is DIR and its employees that are most knowledgeable regarding the scope of misconduct under the former Director. DIR must not wait to be directed to take appropriate corrective action, as there remains a significant risk that other unlawful actions will fail to be remedied.

Response: DIR agrees that it should not wait to be directed to take appropriate corrective action. DIR will make good faith efforts to determine if there were other unlawful hiring practices under the former Director during the last five years. These efforts will include interviewing relevant employees in the HR unit and reviewing personnel-related documentation.

The SPB's special investigation report provides a valuable roadmap for DIR to correct previous unlawful appointments and determine whether discipline is warranted relative to those transactions. The report also provides guidance for ensuring there are no other potential unlawful personnel actions. I would thus like to thank you and your team for the time and effort spent in conducting this investigation.

Sincerely,



Julie A. Su
Labor Secretary
Labor and Workforce Development Agency

cc: Ana Matosantos, Cabinet Secretary, Governor's Office