

MEMORANDUM

TO: Silicon Valley Community Foundation Board of Directors

FROM: Ann O’Leary, Kathleen Hartnett, and Robyn Crowther

DATE: June 27, 2018

RE: Public Report on Workplace Investigation

Introduction

Over the past several months, current and former employees of the Silicon Valley Community Foundation (“SVCF”) have come forward both publicly and privately with accounts of workplace harassment and bullying by SVCF’s former business development executive, Mari Ellen Loijens, and raised concerns about an unhealthy workplace environment at SVCF. On April 23, 2018, SVCF’s Board of Directors (“Board”) retained Boies Schiller Flexner LLP (“BSF”) as independent counsel. The Board directed BSF to investigate specific allegations from current and former employees about workplace misconduct at SVCF, as well as SVCF’s broader workplace culture, including reports of a toxic work environment.

BSF has presented the detailed findings and recommendations stemming from its investigation to the Board. As the Board announced today, SVCF’s long-term President and CEO, Dr. Emmett Carson, has ended his employment with SVCF. This follows the departure from SVCF, in the wake of the public allegations noted above, of SVCF’s former senior business development executive. SVCF’s former head of human resources (“HR”) has also recently departed.

The Board asked BSF to publicly share a summary of its findings about SVCF’s work environment and its recommendations for improving workplace policies and procedures. This Report represents the culmination of BSF’s investigation based on the totality of information collected and reviewed. BSF’s investigation is complete, and it has not recommended further investigation regarding other personnel.

Nor has BSF recommended conducting an expanded investigation into areas of SVCF beyond the workplace culture. In the course of the investigation, no financial improprieties at SVCF were discovered and the [2017 Independent Auditors Report](#) of SVCF, published on December 31, 2017, was clean.



Investigation Scope and Findings

I. Overview and Methodology

The Board retained BSF to conduct an investigation into specific allegations from current and former employees about workplace misconduct at SVCF, as well as SVCF's broader workplace culture, including reports of a toxic work environment. Previously, SVCF's former CEO had retained the law firm of Thompson Hine LLP to investigate allegations of workplace misconduct by SVCF's former senior business development executive. When the broader workplace concerns came to the Board's attention, the Board hired BSF and directed BSF to assume responsibility for and expand the investigation, in an effort to preserve both the actual and apparent independence of the investigation.

BSF's tasks were to develop a broad understanding of the work environment at SVCF, including the effectiveness of systems established to report, address, and remediate allegations of workplace misconduct, and to make specific recommendations to address existing problems and to improve the workplace environment.

BSF conducted its investigation through an extensive review of documents and both in-person and telephonic interviews.

A. Documents Reviewed

BSF conducted a comprehensive review of SVCF documents, including internal communications, personnel files, Board meeting minutes, performance reviews, Non-Profit Times employee survey results, Glassdoor reviews, employee policies and procedures, employee exit surveys, news articles, and organizational charts.

B. Interviews

BSF conducted 82 interviews, primarily of current and former employees and Board members. BSF also reviewed 45 memoranda from interviews conducted by Thompson Hine.

BSF interviewed people in a range of positions in every SVCF division, with differing tenures of employment and levels of leadership. BSF proactively contacted certain individuals whom it identified as likely to have relevant information. BSF also encouraged SVCF employees and others to reach out to us if they had information to provide, including at an "open door" day held both on- and off-site, and many individuals reached out affirmatively to provide further information.



Interim President and CEO Greg Avis has retained Lee Caraher, a recognized expert in creating high-performing, positive, intergenerational workplaces, to serve as a special consultant on improving SVCF's workplace culture. Concurrently with BSF's investigation, Ms. Caraher conducted interviews involving all or nearly all current employees, with the goal of evaluating SVCF's workplace culture. She shared with BSF a summary of her findings, which informed this Report. In accordance with her assurances to employees, she did not provide BSF with any identifiable or confidential information that had been shared with her by SVCF staff.

While BSF worked to ensure its investigators received feedback from a broad cross-section of SVCF employees, including speaking to any current or former employee who reached out for an interview, BSF did not have the opportunity to interview all SVCF employees. Certain divisions that were alleged to have been most affected by a toxic work environment predictably received more attention. Although not all employees' experiences are fully captured in this Report, BSF expects that the Report's recommendations will significantly improve the workplace culture at SVCF for all employees, as will other efforts like those initiated in consultation with Ms. Caraher.

II. Observations and Themes

BSF's investigation was prompted in part by specific allegations of workplace misconduct at SVCF, including racial and sexual comments, some of which were published in the media. BSF's investigation substantiated multiple allegations made in the public news reports. In the course of our investigation, BSF was also alerted to other specific allegations of misconduct engaged in by certain former SVCF executives, including racial and sexual comments, and other inappropriate comments and workplace behavior (such as berating and bullying), which have not been reported publicly but which are credible and have been substantiated through interviews and/or documents. Out of respect for the privacy of the individuals affected by this misconduct, this Report does not specifically describe the incidents of misconduct that were reported or substantiated. The stories of those affected were heard, described to the Board in a manner that protected confidentiality, and were key to the recommendations of this Report.

BSF's investigation was also prompted in part by broader allegations of a toxic work environment at SVCF. BSF's investigation found that there were certain widespread workplace culture issues at SVCF, including a fear of speaking out or reporting workplace issues out of concern for retaliation, as well as a distrust of HR leadership. The top-down, "command-and-control" management style of SVCF's former CEO and former senior development executive contributed to this environment.

There were other workplace culture issues at SVCF that were not as widespread, but that were serious and affected many employees. These included sexual, racial, crude, and otherwise inappropriate remarks and conduct that became “normalized” within certain divisions, as well as public shaming and bullying behavior exhibited at times by certain former SVCF executives. Unacceptable behavior by certain former SVCF executives was often inadequately addressed or overlooked. Many employees (including other SVCF executives) reported feeling that certain former SVCF executives were “untouchable” regardless of their actions. When complaints were raised to HR or SVCF leaders, the systems put in place frequently failed to sufficiently address inappropriate conduct and ensure that appropriate remedial action was taken. Instead, employees were left with the impression that if they did not like the workplace culture, they were free to “get off the bus.” This evidently led some current and former employees to feel that they had no other option but to address workplace concerns in the press or write a letter directly to the Board.

SVCF leaders also missed an opportunity to identify and address broader cultural problems early on by not consistently acting upon informal complaints that were raised with supervisors, HR, or through exit surveys or employee feedback surveys. The lack of process for how and when such informal complaints should be documented, elevated, and addressed hindered the effective response to informal complaints, even when multiple complaints were raised about the same issue or the same employee.

Former SVCF executives frequently referred to a “culture of candor” as a pillar of the SVCF workplace environment, purportedly intended to promote the honest and direct sharing of feedback among SVCF employees. However, in practice, this concept was often severely distorted and undermined, as some former SVCF executives criticized or belittled employees when they chose to speak up candidly. Many current and former employees reported a fear of retaliation if they raised complaints about workplace misconduct. Some former SVCF executives encouraged employees to raise any concerns directly with the employees whose behavior made them uncomfortable, indicating that the “culture of candor” should be used to resolve certain disputes rather than typical HR methods. In practice, this “culture of candor” made reporting problematic behavior less likely.

A general distrust of former HR leadership also discouraged employees from raising workplace concerns. Employees legitimately feared that information shared with HR would not be kept confidential by former HR leadership and instead would be shared with other SVCF executives. As a result, many allegations of workplace misconduct reported to us had never been raised with HR.

Many people interviewed—even those with very negative workplace experiences—were largely proud of the work done by SVCF and their accomplishments

there. However, many described a “results at all costs” attitude that impaired the work environment. In the case of at least one former SVCF executive, this meant that unacceptable workplace behavior was overlooked when that employee was achieving good results. Other times, it meant that the growth of the organization took precedence over the well-being of staff members who often worked long hours to maintain SVCF’s commitment to excellence and keep up with the organization’s growth. Regardless of how it manifested itself, this attitude—without proper checks—harmed workplace morale and helped contribute to an unhealthy work environment.

Our investigation also revealed that the full nature, gravity, and extent of workplace concerns were concealed from the Board. With respect to the specific allegations of misconduct engaged in by certain former SVCF executives, our investigation concludes that the Board did not have knowledge about such behavior. With respect to the broader topic of an unhealthy workplace culture, our investigation reveals that the information presented to the Board by former SVCF executives in response to the Board’s requests for information was often incomplete and in some cases was presented in a manner that was misleading.

Generally, with respect to issues about workplace environment, the Board accepted the information presented to it by SVCF management. Systems were not in place to ensure the Board received full and accurate information, including having direct access to non-leadership staff. Instead, Board communications typically were filtered through SVCF leaders, including the former CEO, who tightly controlled the information provided to the Board. As a result, the Board did not know the full nature and extent of the workplace misconduct at SVCF.

Recommendations

Based on its investigation, BSF makes the following recommendations to address SVCF's past failures regarding workplace misconduct and to improve the workplace culture. The Board has unanimously accepted these recommendations in full.

I. Reporting and Addressing Workplace Misconduct

A. Implement Clear Reporting Practices and Apply Standardized Protocols.

To ensure staff have an effective outlet to raise workplace concerns, SVCF should ensure multiple public and anonymous reporting mechanisms for staff to report concerns about workplace behavior and should set out clear guidelines about how reports submitted through each of these processes will be handled. At a minimum, employees should know how to raise a formal or informal complaint with (1) their supervisor; (2) HR; (3) a Board representative; and (4) anonymously through an appropriate workplace tool. Employees should have a choice among different reporting mechanisms. Serious reports should be brought to the attention of both the CEO and the Board, as discussed further below, to ensure appropriate remedial action is taken.

SVCF should also evaluate whether its systems to allow employees to raise anonymous workplace concerns (Lighthouse) and to receive anonymous employee feedback (Non-Profit Times survey) are the most effective tools for these purposes.

The success of any reporting system depends on the trust of the employees that submitting reports about workplace misconduct will lead to meaningful change. SVCF will have to continue to work to build that trust over time. Consistency in the process for receiving and addressing complaints will help. SVCF should also institute policies for how complainants are informed of the status and, to the extent permissible, results of any investigation into a complaint.

B. Enforce a Zero Tolerance Policy on Retaliation.

SVCF's employee handbook contains a policy prohibiting retaliation for raising workplace complaints. SVCF management should clearly articulate and enforce a policy of zero tolerance for any SVCF manager who is found to have retaliated against an employee as a result of raising workplace complaints.

C. Focus on Confidentiality.

SVCF should review and strengthen policies for maintaining the confidences of employees who raise complaints based on what the employee feels comfortable sharing and with whom. SVCF should implement policies applicable to all SVCF management

concerning when HR information should be shared and with whom. It is important that complaints about workplace misconduct get addressed but to do so in a way that, to the extent possible, protects information that an employee does not want disclosed. Where such information is legally required to be disclosed, SVCF should ensure the employee is fully informed as to what must be shared and why before the information is disclosed.

D. Institute a Process of Addressing Informal Reports and “Open Secrets.”

SVCF should institute a formal policy on receiving, documenting, and responding to informal reports of workplace misconduct or cultural concerns made to SVCF management. “Open secrets” in which “everyone knows” about certain misconduct can serve as important indicators of deeper concerns, notwithstanding the absence of formal reports. Informal reports also provide an important insight into workplace issues, particularly where an organization is suffering from a more pervasive cultural problem as opposed to an isolated incident of misconduct. Patterns in informal reports and open secrets should be analyzed on an ongoing and proactive basis, identifying workplace concerns before they fully manifest.

Given the nature of informal reports, there is often a lack of clarity regarding whether an employee is simply “venting” or raising a specific concern that needs to be addressed or elevated. The absence of clear policies informing management how to handle informal reports can lead to missing important indicators of a larger problem and the opportunity to address such issues before they worsen.

Although every report is different and discretionary decisions are unavoidable, SVCF should set forth basic guidelines on how managers and HR employees should approach informal reports. Confidentiality should be addressed in this policy, including how and when the substance of a report can be elevated without identifying the reporting employee. SVCF should ensure that the policy adopted encourages raising truthful information.

The policy should also provide guidance on when complaints are elevated within HR, SVCF management, and to the Board. As discussed below, the Board should also have access to the repository of informal reports to effectively perform its oversight function. Proper training for managers and HR staff is essential to the success of this policy.

Finally, the policy should be shared with staff so that all employees are aware of the follow-up actions that they can expect after making an informal report.

E. Revise and Enforce Standardized Record-Keeping Procedures.

SVCF should revise its record-keeping procedures to ensure there are specific standards for how workplace reports of all varieties are documented and maintained, and these standards should be followed by all HR employees, including its leader. At a minimum, this revised record-keeping policy should require some documentation of the nature of an informal or anonymous report in a location accessible to HR staff. HR should proactively look for patterns of reports in specific divisions, around specific policies, or about specific employees and propose follow-up fact-finding investigations, where appropriate. When completing performance reviews, supervisors should be made aware, to the extent appropriate, of HR reports submitted about their direct reports.

F. Systematize the Evaluation of Exit Surveys and Interviews to Identify Potential Workplace Concerns.

The reasons underlying an employee's departure can provide critical insight into possible problems across an organization or for a given cross-section within the organization. SVCF should create a process to review exit surveys as they are received, including for workplace trends. The analysis should consider the reasons for specific departures, the number of departures, their timing, and their location within SVCF. The results should then be shared regularly with appropriate leadership, including the Board and the People Task Force (discussed below), to ensure that workplace issues are known and addressed both to prevent unnecessary turnover and to retain valued employees.

II. Policies and Practices Impacting Workplace Culture

A. Provide Employees an Opportunity to Give Input on the Search for the Next CEO.

As the nationwide search for the new CEO proceeds, both the Board's Search Committee and the national search firm, Spencer Stuart, should ensure that a representative cross-section of employees have a voice in providing input on the search for the new CEO. Furthermore, as described in more detail below, the new CEO should prioritize collecting, considering, and honoring employee input in the major decisions ahead.

B. Work with the New CEO to Reset or Reaffirm SVCF’s Core Values, and Ensure that Systems Align with Those Values.

Once selected, the Board should work with the new CEO to take the following steps, among others:

- Work with employees across SVCF to assess whether SVCF’s previously defined long-term goals for the organization (“Vision 2025”) and the corresponding values remain a good fit;
- Ensure that the shared set of values and goals are aligned with the lived reality of the workplace;
- Evaluate options for re-organization to address an overly hierarchical structure, including eliminating the “Chiefs” title;
- Evaluate whether SVCF’s prioritization of “growth,” specifically as it relates to assets under management, is appropriate;
- Ensure that high-performing employees do not receive a “free pass” on failing to live out SVCF’s values;
- Implement training and resources for supervisors to develop healthy leadership skills, including providing constructive feedback, resolving disputes, and team building; and
- Align systems of accountability (*e.g.*, performance reviews) with SVCF’s values (*e.g.*, no “superior” rating for supervisors that display unhealthy management practices).

C. Empower the “People Task Force” to Recommend Interim Changes to Be Implemented Prior to the New CEO’s Appointment.

Durable change requires the buy-in and leadership of the new CEO, but also need not await the new CEO’s arrival. SVCF’s workplace culture consultant, Ms. Caraher, is coordinating a People Task Force—a group of employees who will help identify workplace improvements that can be implemented before the new CEO is appointed.

The Board should empower the People Task Force to advise the Board on interim changes that are time-sensitive and do not significantly encroach on the new CEO’s prerogatives. The Task Force should work with the workplace culture consultant and the interim President and CEO to develop recommendations for appropriate interim changes.

D. Evaluate Changes to the Internal Management Structure that, in Addition to Reforms Led by the New CEO, Will Cultivate a Better Workplace Culture.

The Board should consider the following structural changes:

- Establish a clear reporting line between Human Resources and the new CEO (*i.e.*, no “dotted” reporting lines);
- Assess the pros and cons of re-separating the functions of the CFO and COO; and
- Hire a General Counsel to advise and manage the range of routine, but complex legal issues faced by the organization, in addition to ensuring impartiality and compliance regarding Human Resources issues.

In conjunction with efforts driven by the new CEO, these structural changes could ensure sufficient capacity and accountability to promote lasting improvements to the workplace environment.

E. Implement an Anti-Bullying Policy that Goes Above and Beyond Mere Compliance with the Law.

HR policies should be revised to unambiguously prohibit bullying and verbal abuse, even if such abuse does not rise to the level of unlawfulness. The policies should expressly prohibit yelling, public shaming, insults, and other misconduct that runs counter to SVCF’s values and a workplace defined by dignity with full value for all employees. Furthermore, immediate steps should be taken for the workplace culture consultant to provide staff with the training and tools necessary for effective conflict resolution, feedback to direct reports, and communication.

III. Board Involvement

A. Establish a Board Working Group to Oversee Implementation of the Recommendations of this Report.

To rebuild trust and ensure accountability for implementing meaningful change, the Board should establish a clear process and identify a subset of the Board (“Working Group”) who will focus their attention on implementing the recommendations made in this Report. The mandate of this Working Group would be to strengthen workplace policies and procedures to improve the workplace culture. The People Task Force could serve as a resource to the Working Group, and should have the opportunity to present information at their meetings. The Working Group’s first task should be to develop a

plan for following through on this Report’s recommendations with specific timelines and metrics for implementing the recommendations.

B. Institute Procedures to Ensure the Full Board Has Complete Information on HR Reports, Workplace Complaints, and Statistics.

The Board should institute procedures to ensure that it has sufficient access to underlying information to scrutinize, if necessary, the analyses and representations of SVCF management. At a minimum, this information should include: (1) a summary of both informal and formal HR reports since the last Board meeting, including information regarding whether the subject of complaints displayed a pattern of similar misconduct; (2) exit surveys (with personal information redacted) of any employees who departed since the last Board meeting; (3) open positions and recent hires; (4) statistics on diversity, equity, and inclusion; (5) the full results of any employee satisfaction surveys (including the Non-Profit Times survey, if applicable); and (6) annual turnover statistics overall, in addition to statistics disaggregated by division, supervisor, and reasons for turnover.

C. Establish Procedures to Ensure Regular Reporting to the Full Board on the Status of Workplace Improvements.

The whole Board—not only the committees charged with overseeing workplace issues—should reaffirm their responsibility to promote a healthy work environment. Specifically, the Board should institute procedures to ensure that all members hold themselves accountable for implementing workplace improvements. The Working Group should update the full Board at each Board meeting during the time in which the recommendations of this report are being implemented. Members of HR and/or the General Counsel (if applicable) should have an opportunity to confer privately with the full Board, outside the presence of leadership. Furthermore, staff advisers to the Working Group should have an opportunity to confer privately with the full Board, outside the presence of leadership, HR, and the General Counsel (again, if applicable).

D. Build Stronger Lines of Communication Between the Board and Staff.

To build stronger lines of communication between SVCF employees and the Board, the Board should invite employees to reach out to any Board member, especially members of the Working Group, with workplace concerns that they do not feel comfortable sharing with management or when they believe management is not adequately addressing their concerns. If possible, members of the Working Group should have diverse biographical, professional, and demographic backgrounds so that, ideally, employees feel comfortable reaching out to at least one member. The Board should make

clear that the Working Group is empowered to independently recommend investigations into any allegations, without the approval of the CEO.

Furthermore, the Board should actively cultivate relationships with employees. Across all committees, the Board should create opportunities for collaboration between staff and the Board. In addition to being productive, such collaboration builds relationships of trust that may serve as an “early warning system” for concerns within SVCF.

E. Conduct a Broader Review of Board Governance.

The Board should conduct a broad review of its governance, adopting principles to guide the volume and type of information that should be included in meeting books and to ensure that adequate time is left for robust debate and discussion. The Board should foster an environment and working relationship with the new CEO that allows for explanation and inquiry, and where concerns raised by Board members regarding workplace behavior do not go unaddressed.

IV. Broader Workplace Culture Assessments

Although BSF’s investigation was precipitated by concerns about workplace misconduct, individuals we interviewed raised several other factors driving their overall satisfaction and desire to remain at SVCF. The following recommendations are intended to identify and address these common concerns to enhance workplace culture, promote efficiency, and reduce turnover.

A. Evaluate Staffing Deficiencies and Implement Short-Term and Long-Term Solutions to Address Understaffing Concerns.

To address the heavy workloads currently managed by some SVCF employees, SVCF should consider, in coordination with the new CEO, undertaking an assessment of current workload and staffing needs within each division to determine which divisions and positions require additional assistance. Among other options, understaffing needs may be addressed by: (1) reallocating or reprioritizing assignments across positions or divisions; (2) hiring additional talent either permanently or temporarily; and (3) where staffing needs cannot be immediately met, evaluating whether to increase allowances for non-exempt overtime for a limited period of time to fulfill current demands.

B. Assess State of Technological Tools and Whether Additional or Alternate Tools Are Available to Make Work More Efficient.

SVCF should assess its core technology across divisions, the training and utilization of existing technology, as well as available alternatives on the market. The



Board in conjunction with the new CEO should then assess improvements that can be made, and the suggested priority for making such improvements to ensure that staff are provided with efficient tools to complete their work.

V. Conclusion

A near-universal theme throughout our interviews with current and former SVCF employees and Board members was the commitment to the goals of the Community Foundation, a respect for their colleagues, and a passion for their work. These shared ideals and common values provide a strong basis for SVCF to implement these recommendations and make positive changes for the future.