



**DATE:** May 27, 2019

**MEMORANDUM TO:** Tom Tierney, Shona Brown and Doug Petno

**MEMORANDUM FROM:** Rachel Cowen and Ellen Bronchetti

**SUBJECT:** Report of Independent Investigation

### **Executive Summary**

A subcommittee of the Board of Directors of The Nature Conservancy (“TNC”) retained McDermott Will & Emery (“McDermott”) to conduct an independent investigation as a result of March 21, 2019 Twitter messages posted by an anonymous source. Originally, the scope of the investigation consisted of three questions: (1) whether Executive 1 engaged in consensual relationships with TNC employees who then received undeserved promotions; (2) whether Executive 1 violated any TNC policies; (3) whether TNC maintains appropriate procedures for reporting, investigating and responding to complaints of sexual harassment. As a result of credible evidence obtained during McDermott’s investigation, the subcommittee also requested McDermott review whether Executive 2 and Executive 3’s relationship was timely disclosed pursuant to its policies and whether Executive 2 and Executive 3 interfered with McDermott’s investigation.

McDermott conducted a two-month investigation as requested by the subcommittee. In summary, McDermott concludes: (1) there is no credible evidence Executive 1 has or has had improper consensual relationships with TNC employees; (2) there is credible evidence that Executive 1 kissed a TNC employee in 2010 and it was not welcome; (3) there is no credible evidence that Executive 1 violated any TNC policies; (4) TNC has opportunities to improve its procedures to respond to complaints of sexual harassment and to improve perceptions of inequality; (5) Executive 2 and Executive 3 did not timely disclose their relationship pursuant to TNC policies; and (6) Executive 2 and Executive 3 exercised poor judgment in discussing the investigation with TNC employees but did not intentionally interfere with the investigation even though their remarks may have caused many to fear retaliation if they cooperated in the investigation.

This report summarizes the independent findings of McDermott and sets forth our observations based on the totality of information collected and reviewed. TNC did not impose any constraints on the investigation. No representative of TNC edited this report.

## **I. Scope of the Investigation**

Our investigation commenced on or about March 25, 2019 and continued over the course of nine weeks. Shortly after being engaged by the subcommittee, TNC announced to employees that outside counsel had been engaged to conduct this investigation and encouraged anyone with relevant information to report to Renee Kurth, Deputy Chief Ethics & Compliance Officer, or through the hotline, and those who reported would be contacted by the investigator.

A total of thirty-four people were interviewed. Thirty-two were current and former employees. Twenty-nine of the interviewees were women and five were men. Two witnesses were contacted but declined to be interviewed. Many interviewees independently reached out to McDermott investigators requesting to be interviewed. We met with each witness individually, either in person or by phone, and the interviews lasted anywhere from thirty minutes to six hours. Some witnesses were interviewed on more than one occasion. Two witnesses requested counsel be present. Every witness who requested to speak to McDermott counsel was interviewed, and every lead of evidence suggesting impropriety was thoroughly vetted.

We reviewed thousands of documents, including personnel files, emails, text messages, expense reports, performance reviews, compensation reviews, human resources policies (including TNC's code of conduct, workplace harassment policy, consensual relationship policy, promotion and job posting policies), job transfer documents, notes of interviews, job postings, application materials, previous sexual harassment complaints from the last five years and the documents associated with investigations, cell phone records, social media postings, and notes of previous interviews. Our review of documents was exhaustive.

## **II. Conclusions with Respect to Executive 1**

### **A. History of Complaints against Executive 1**

Between May 2014 and March 2018, four anonymous complaints were made to the TNC hotline alleging Executive 1 was favoring attractive women or advancing the careers of women with whom he was having consensual relationships.

- On May 2, 2014, an anonymous reporter complained to the hotline that Executive 1 and another employee might be engaged in an inappropriate relationship. The reporter provided only a first name (Coworker 1) and admitted having no personal knowledge of the relationship and acknowledged it was based upon *rumor*. TNC's Director of Compliance and Ethics, Charlotte Young, interviewed Executive 1, who denied having any inappropriate relationships with female coworkers. Because the caller provided no last name for Coworker 1 and because the caller acknowledged it was based exclusively on rumor, TNC's Director of Compliance and Ethics, Charlotte Young, did not attempt to ascertain who Coworker 1 was or to interview her.

- On November 2, 2014, an anonymous reporter complained to the hotline: “I can only hope one day to be able to sleep with [Executive 1] so I too can advance my career at TNC. People inside and outside the organization chatter about [Executive 1’s] behavior, yet he continues to be in charge of a large group at TNC.” Young investigated this complaint by speaking with Executive 1 and other witnesses who might have knowledge that Executive 1 was having relationships with others. Young determined that there was no information to substantiate this complaint.
- On March 3, 2016, an anonymous reporter complained to TNC’s hotline that Executive 1 evaluated female candidates and hired them based on physical appearance. Specifically, the caller *heard* from a colleague that Executive 1 was unwilling to work with female employees who were not “thin and pretty.” The caller also *heard* at a meeting that *other* employees told a female colleague she would likely be selected for a position in the Denver office because she was thin and pretty. Young interviewed Executive 1 about whether he made these remarks, and he denied them. Since the complaint was anonymous and Executive 1 denied ever making these remarks or hiring people based on physical appearance, Young determined that there was no additional information available to substantiate the complaint.
- On March 8, 2018, an anonymous reporter submitted a hotline complaint stating women who had consensual relationships with Executive 1 were promoted. The reporter also stated that Executive 1 had been seen getting physical with a female subordinate woman in front of others at a San Diego meeting and then subsequently joking on stage about bad decisions he made the night before. It was not clear whether the reporter had actually witnessed the conduct; rather, the reporter appeared to be conveying hearsay. Because this complaint anonymously repeated rumors from the prior complaints, and did not identify the woman with whom Executive 1 had physical contact, Young determined that no substantive investigation was required.

Thus, while there had been multiple anonymous calls to the hotline complaining that Executive 1 was advancing the careers of attractive women with whom he was romantically involved, these complaints were based entirely on speculation and rumor and lacked any specifics.

#### **B. The Commencement of This Investigation Due to Resurfacing of Allegations**

On March 21, 2019, a series of tweets were posted to #nonprofitmetoo alleging that Executive 1 had sexually harassed or discriminated against women and that others in TNC management had ignored this behavior. The Twitter user further urged donors to cease donating money to the organization. Thereafter, a Special Committee of TNC’s Board of Directors engaged McDermott to, among other things, reinvestigate the allegations that Executive 1 inappropriately promoted women with whom he was having romantic relationships.

After that engagement, additional reporters contacted the TNC hotline or directly contacted McDermott to address complaints about Executive 1. First, on April 2, 2019, a current employee who identified herself in the complaint reported Coworker 1 was promoted to a high-level position as a result of her relationship with Executive 1 and that the hiring process was not equitable. Coworker 1 is believed

to be the same employee identified in the May 2, 2014 complaint. Second, on April 5, 2019, an anonymous reporter contacted the hotline to state that she had heard numerous rumors for the last eight years that Executive 1 had been romantically involved with at least three different women. The reporter identified one of those women as Coworker 2. The reporter acknowledged she had no personal knowledge of the facts. Third, on April 24, 2019, a former employee contacted TNC management to say that during a conference in 2010, Executive 1 kissed her and the kiss was unwelcome.

### **C. Whether Executive 1 Engaged in Improper Consensual Relationships**

#### **1. Coworker 1**

In connection with the allegations pertaining to Coworker 1, we interviewed Executive 1, Coworker 1, Coworker 1's immediate supervisor, team members who work with Executive 1 and Coworker 1 on a regular basis, and several witnesses who reported that Executive 1 was either involved with Coworker 1 specifically, or with female subordinates in general. Executive 1 was very cooperative during the investigation and credibly denied having any romantic relationship with Coworker 1. Coworker 1 adamantly denied that she has ever had any romantic relationship with Executive 1. She also expressed sincere concerns about how these unfounded rumors were impacting her career. Those who worked most closely with Executive 1 and Coworker 1 also denied witnessing any contact or interaction between Executive 1 and Coworker 1, and each stated they did not believe that Executive 1 and Coworker 1 were romantically involved.

We also reviewed in detail Coworker 1's performance appraisals and several objective performance metrics kept by TNC, which demonstrated that Coworker 1 has been an exceptional performer for some time. Her immediate supervisor also provided credible legitimate explanations for her most recent promotions. Finally, Executive 1 did not initiate or approve any of Coworker 1's promotions. Each was recommended initially by someone other than Executive 1, and the process by which Coworker 1 was promoted conformed to TNC's process.

By contrast, no person who came forward to report that Executive 1 and Coworker 1 were romantically involved had any direct or circumstantial evidence to support these claims. No one actually witnessed Executive 1 engaging in any physical contact with Coworker 1 or any other women. No one reported that either Executive 1 or Coworker 1 admitted to being in a relationship. Rather, the witnesses simply *believed* that Coworker 1 received her promotions because of some improper romantic relationship with Executive 1. Each admitted his/her belief is based on speculation and rumor.

#### **2. Coworker 2**

In connection with Coworker 2, we interviewed Executive 1, Coworker 2, Coworker 2's immediate supervisor, team members who work with Executive 1 and Coworker 2 on a regular basis, and several witnesses who reported that Executive 1 was either involved with Coworker 2 specifically, or with female subordinates in general. Here too, Executive 1 credibly denied having any romantic relationship with Coworker 2. Coworker 2 also credibly denied any romantic involvement with Executive 1, and expressed great frustration that TNC staffers were spreading rumors that she had not earned her promotions. Those who worked most closely with Executive 1 and Coworker 2 also denied witnessing

any contact or interaction between Executive 1 and Coworker 2, and each stated he/she did not believe that Executive 1 and Coworker 2 were romantically involved.

We also reviewed in detail Coworker 2's performance appraisals and several objective performance metrics kept by TNC, which demonstrated that Coworker 2 has been an exceptional performer for some time. Her promotions also were not unusually fast and seemed to follow a normal track. Further, Executive 1 did not initiate or approve any of Coworker 2's promotions. Each was recommended initially by someone other than Executive 1, and the process by which she was promoted conformed to TNC's process.

By contrast, no person who came forward to report that Executive 1 and Coworker 2 were romantically involved had any direct or circumstantial evidence to support these claims. No one actually witnessed Executive 1 engaging in any physical contact with Coworker 2. No one reported that either Executive 1 or Coworker 2 admitted to being in a relationship.

During the last week of the investigation, one former employee contacted the investigator and reported that she had heard second-hand that in August 2018 Executive 1 and Coworker 2 shared a hotel room while on a trip with a donor. The reporter provided a photo that had been posted to social media by one of the donor's employees, showing Executive 1 and Coworker 2 together on the trip. The reporter also stated that she heard directly from one of the donor's employees that the two had shared a room at the resort. We attempted to contact the donor's employee to provide his/her first-hand account of what transpired on the trip. As of the date of this report, the donor's employee has not responded.

Further, there was no evidence to substantiate the reporter's statements. The photo that was posted to social media was a group photo of numerous individuals, and Executive 1 and Coworker 2 were on opposite sides of the table. Coworker 2 explained that Executive 1 and Coworker 2 had legitimately traveled to visit the donor. Originally, Executive 1 had planned to extend the trip and have his long-term partner join him, but Executive 1's partner cancelled at the last minute due to an emergency. Executive 1 had already paid for the trip and it was non-refundable, so he asked Coworker 2 if she wanted to come along. She was already going to the meetings, and it was a good opportunity for her to spend more time with the donor for whom she was responsible. Coworker 2 agreed, and the two went on the trip with others from the donor's family. The two stayed in separate hotel rooms. As a side note, Executive 1 goes on vacations regularly with the donor and members of the family (twice a year). He does not expense these trips to TNC and did not expense this particular trip. We also spoke with Executive 1's long term partner about whether she knew that Coworker 2 was going to be on the trip. Executive 1's partner credibly explained the circumstances leading up to her having to cancel the trip at the last moment and volunteered that she encouraged Executive 1 to invite Coworker 2 in her place on the trip. Executive 1's partner had known about the rumors about Executive 1's alleged relationship with Coworker 2 and had no concern about Executive 1's invitation to Coworker 2.

Thus, here too, we found no evidence to substantiate the claim that Executive 1 had an inappropriate relationship with Coworker 2. Witnesses simply *believed* that Coworker 2 received her promotions because of some improper romantic relationship with Executive 1. Each admitted his/her belief was based on speculation, hearsay or rumor.

### **3. Coworker 3**

During our investigation, we were able to identify Coworker 3 as the woman with whom Executive 1 allegedly had inappropriate physical contact in San Diego. During interviews with witnesses, we were also able to clarify that the “physical contact” at issue was that someone saw the two dancing closely at a TNC event at a nightclub. The person who witnessed the alleged dancing did not come forward – rather the only person who had information about this event heard it second-hand. Both Executive 1 and Coworker 3 were interviewed about this event which took place in 2015. Both credibly denied having any inappropriate contact.

#### **D. Whether Executive 1 Engaged in Other Forms of Sexual Harassment**

After McDermott’s investigation commenced, on or about April 24, 2019 a former employee who worked with TNC for several years reported that in February 2010, Executive 1 and she were at a work conference. They went out with a group for drinks, left the bar together and went to another bar together. On the walk back to the hotel, she reports Executive 1 kissed her, and she pushed him away and told him that was not appropriate. She states that Executive 1 immediately backed away. He further apologized the next day. At the time, she did not report to him. She did not report this incident during her employment. She acknowledges that Executive 1 never retaliated against her for rebuffing this advance, and, in fact, for several years thereafter he supported her career and was a mentor to her. Subsequent to her leaving TNC, she reached out to Executive 1 on a few occasions to send congratulations or condolences in response to certain life events. She came forward recently only because she objects to the manner in which she believes TNC has responded to the various Twitter messages and is concerned about how TNC continues to ignore a male dominant culture which is deep-rooted and prolific.

During our interview with Executive 1, he denied this incident. After weighing all evidence, we conclude the report of the woman was credible. However, the conduct does not violate any specific TNC rules or policies. TNC policy does not prohibit dating in the workplace, but simply requires that employees who pursue a personal relationship must report the same if one reports to the other. Here, the employee did not report to Executive 1. Further, the reporter acknowledged that Executive 1 did not persist after she rebuffed him, and she acknowledges that he continued to support her career. Nevertheless, given the imbalance of power between them at the time (he was higher in the organization), we believe this was a lapse in judgment on Executive 1’s part. Specifically, he failed to appreciate that someone lower in the organization might not feel comfortable rejecting the advances of a more senior coworker. Given the passage of time, the fact that it was not reported, and the absence of any other women coming forward to report unwanted attention by Executive 1 despite widespread publicity about McDermott’s investigation, we do not believe this lapse in judgment is something that would ordinarily result in formal discipline.

### **III. Whether Executive 2 and Executive 3 Timely and Accurately Disclosed Their Relationship to TNC**

#### **A. Background Facts Gathered From Interviews of Tetreault, Executive 1, and Young, and Review of Emails and Business Records**

Executive 2 and 3 are high level executives at TNC. From December 2013 – October 2017, Executive 3 directly reported to Executive 2. Executive 3's reporting line changed in October 2017 as a result of the relationship reported between Executive 2 and Executive 3.

On July 15, 2017, Executive 2 disclosed to his manager and TNC's Chief People Officer, Mike Tetreault, that he and Executive 3 were "exploring the possibility" of a romantic relationship. That disclosure was made pursuant to TNC's policy, which provides:

Any supervisor involved in a consensual romantic relationship with another employee who is in his/her chain must discuss the matter with a Human Resource Business Partner or the Chief People Officer to assess the implications for the workplace and make arrangements to ensure that employment-related decisions are appropriately made.

At the Manager and Tetreault's direction, on July 25, 2017, Young met with Executive 3 to confirm the relationship was consensual. (Executive 3 was on vacation from July 15 until approximately July 24). Young also discussed with Executive 3 the impact it would have on Executive 3's career if Executive 3 went forward with the relationship. Executive 3 confirmed to Young that: (1) she and Executive 2 had not yet commenced their relationship; (2) if they ultimately decided to do so, any relationship would be consensual; and (3) in light of the impact the relationship might have on her career, she and Executive 2 needed to further discuss whether to pursue such relationship. Young took contemporaneous notes of the meeting which memorialized this discussion.

Executive 2 and Executive 3 were given until the beginning of September to determine if they were interested in pursuing a relationship. On September 5, 2017, Executive 2 and Executive 3 sent an email to Executive 2's Manager, Tetreault and Young asking to have until mid-October 2017 to "let you know if/how we would like to proceed." An extension was provided and ultimately, Executive 2 and Executive 3 confirmed they wanted to move forward with their relationship. Once that decision was made in October 2017, Executive 3's reporting line changed and she was placed into a different position at the beginning of 2018.

After McDermott was engaged by the subcommittee, four reporters complained to the TNC hotline about the Executive 2 and Executive 3 relationship. Specifically, the reporters complained that Executive 2 and Executive 3 were involved long before they formally disclosed their relationship; senior executives were aware of the relationship and helped Executive 2 and Executive 3 conceal the relationship; even after it was disclosed and Executive 3 was moved to another position, others under Executive 2's supervision were placed into situations that made them feel uncomfortable, such as serving on a selection committee for Executive 3's promotions. Thereafter, McDermott was asked to expand its investigation to determine whether Executive 2 and Executive 3 violated TNC's policies in the disclosure of their relationship.

## **B. The Initial Interviews of Executive 2 and Executive 3**

Executive 3 was first interviewed by McDermott on May 2, 2019. She confirmed that Executive 2 called his Manager in July, and stated that she and Executive 2 were interested in "exploring" whether they wanted to pursue a relationship. To her knowledge, this was the first time that either of them told anyone in TNC leadership about their potential romance. However, she refused to answer further

questions about (1) when their relationship began; (2) how long it had been going on when they finally reported it to TNC; and (3) whether their relationship started while traveling on TNC business. Further, by the time McDermott conducted this interview, at least one other witness had indicated that several TNC employees believed Executive 2 and Executive 3 had vacationed together as early as June 2016. Executive 3 also refused to answer any questions about whether she and Executive 2 did, in fact, go on vacation together. Executive 3 explained that she would not be answering these questions because that opens up a “slippery slope.”

Executive 2 was interviewed about his involvement in the disclosure of their relationship on May 4, 2019. During his interview, he was evasive and refused to answer any questions about his relationship with Executive 3, including when it began, when it was disclosed, or what was disclosed. Further, given his poor behavior during the interview, we ended the interview very quickly as it was unproductive.

### **C. Executive 2 and Executive 3 Are Placed on Leave Pending Investigation**

On or about April 23, 2019, McDermott was contacted by a member of Executive 2’s team to discuss information that she wanted to provide in connection with McDermott’s investigation. At the outset of that interview, the witness told the investigator that Executive 2 and Executive 3 jointly called her and told her to be careful if she chose to cooperate with the investigation. She also stated that Executive 3 and Executive 2 reminded her that she was on the “hit list” of one of the members of the executive team, and should be careful. The witness was very shaken by the encounter. In order to ensure the integrity of the investigation, McDermott recommended that Executive 2 and Executive 3 be placed on paid leave while we continued to investigate when their relationship began, and whether it was properly disclosed. It would also afford McDermott the opportunity to now fully investigate whether they intended to impede the investigation or intimidate witnesses. TNC subsequently placed both on leave effective May 7, 2019.

### **D. The Second Interviews of Executive 2 and Executive 3**

McDermott interviewed both Executive 2 and Executive 3 on May 15, 2019, a week after McDermott requested to speak with them. During that delay, Executive 3 and Executive 2 each retained counsel, who in turn notified McDermott they would only produce their clients if certain conditions were met (*e.g.*, that the investigator disclose in advance all topics and or documents that would be covered; their clients be afforded an opportunity to pre-review McDermott’s report to the subcommittee before it was sent so they could comment, *etc.*). Initially, Executive 2 and Executive 3 also asked that the interviews be delayed until they returned from a pre-planned vacation scheduled from May 16 – 21. Ultimately, Executive 2 and Executive 3 and their counsel relented on these requests. Both appeared with their counsel for an in-person interview on May 15.

During her interview, Executive 3 admitted that she and Executive 2 began their relationship in June 2016 and that over the next 11 months they had varying levels of physical intimacy as the relationship became more serious. By May 2017, both were certain they wanted to pursue a long-term relationship and decided they planned to disclose to TNC leadership. Executive 3 stated that Executive 2 made the initial disclosure in mid-July, and to her knowledge this was the first disclosure to anyone at TNC. In her

second interview, she stated that she was not sure precisely what Executive 2 disclosed regarding the status of their relationship, *i.e.*, whether they were considering a relationship or were already in a relationship. Executive 3 explained the delay between May and July was attributable to Executive 2 dealing with family and personal illnesses.

Executive 2 initially stated that he believed his and Executive 3's relationship commenced in September 2016, but acknowledged that his memory on this was not clear, and that Executive 3's chronology might be correct. We believe Executive 3's recollection on this subject is the more reliable account, and find the relationship began in June 2016. Executive 2 otherwise confirmed Executive 3's timeline of how the relationship developed and when it was finally disclosed. As to precisely what was disclosed in July 2017, Executive 2 stated that he "does not remember" if he disclosed:

- that Executive 3 and Executive 2 were "in a relationship"
- that Executive 3 and Executive 2 were "exploring the possibility of a relationship"
- that Executive 3 and Executive 2 were "considering a relationship"
- that Executive 3 and Executive 2 were "beginning a relationship"
- that Executive 3 and Executive 2 were "dating"

Business records show that from the date of their first interaction in June 2016 and July 15, 2017 (when any suggestion of a relationship was disclosed), Executive 2 and Executive 3 traveled together for work on twenty separate occasions and spent eighty-four days in the same geographic location while traveling on TNC business. Of those, both admit to being physically intimate with each other on roughly half of the twenty trips.

**E. Executive 2 and Executive 3 Failed To Timely and Accurately Disclose the Nature of the Relationship in Violation of TNC Policy**

It is clear that, contrary to TNC policy, Executive 2 and Executive 3 were involved in a romantic relationship for thirteen months before disclosing this relationship to TNC. This was a significant delay, during which time Executive 2 weighed in on two employment decisions affecting Executive 3.

First, Executive 2 completed Executive 3's September 2016 performance review, and he gave Executive 3 the highest overall rating of "outstanding." Executive 2 provided five of twenty-two direct or indirect reports the rank of "outstanding" in 2016, and in 2015 Executive 2 had rated Executive 3 as Exceeds, which is a good rating, but not the highest.<sup>1</sup> As a result of this rating/performance, Executive 2 also recommended, and Executive 3 received, a **15%** wage increase (10% equity and 5% merit).<sup>2</sup> In 2016, one other direct report received a 5% merit increase and one received a 6% merit increase. On merit

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<sup>1</sup> Records show in the summer of 2016, Executive 2 had 12 direct reports and 10 indirect reports.

<sup>2</sup> Executive 2 asserted that he was technically not Executive 3's supervisor in 2016-2017 because she was working on a special project for Executive 1. While Executive 3 was working on a special project under the direction of Executive 1 during this time, TNC's records demonstrate that Executive 2 was still Executive 3's supervisor of record, that Executive 3 considered Executive 2 to be her supervisor and that he conducted her performance review in the summer of 2016. Executive 2's assertions to the contrary are not credible.

increases, eight direct reports received 4% wage increases and one direct report received a 3% wage increase. In 2016, one additional direct report received a 10% equity increase and one direct report received an 18% equity increase. The other nine received no equity increases.

Second, Executive 3 was placed on the Executive Committee in February 2017. This is a significant professional advancement within the organization. Although this decision was made by Mark Tercek, Executive 2 was asked for input and provided his support for Executive 3 to be on the committee.

In both circumstances, it was a conflict of interest for Executive 2 to make or influence these decisions, and that now leaves a cloud of doubt over whether Executive 3's rating, increase or appointment were merited. This is precisely why TNC policy requires disclosure, and Executive 2 and Executive 3's failure to disclose had real consequences. Further, both are equally complicit in this violation. TNC policy requires "[a]ny supervisor involved in a consensual romantic relationship with another employee who is in his/her chain," to disclose the relationship. Executive 3 has always maintained that the relationship between her and Executive 2 was consensual. At all relevant times, she has served as a very senior supervisor within the organization. She also understood that she was the beneficiary of these decisions. Therefore, she is equally culpable for the failure to disclose.

Executive 2 and Executive 3's thirteen-month delay is compounded by the fact that when they did finally disclose, they were dishonest about the status of their relationship. When Executive 2 first spoke to Executive 1 and Tetreault in July 2017, he stated that he and Executive 3 were "exploring the possibility" of a relationship. While Executive 2 claimed in his second interview that he might have disclosed the relationship was ongoing, that claim is not credible.

First, Executive 2's Manager and Tetreault clearly recall that Executive 2 disclosed only that he and Executive 3 were considering a relationship. That is precisely why they gave Executive 2 and Executive 3 time to think about the consequences of following through – an option that would not have been offered if they were already involved.<sup>3</sup> Second, Executive 2 admitted he does not recall precisely what was disclosed, and he refused to answer any questions about this topic during his first interview. Third, in Executive 3's first interview on May 2, she also stated that she and Executive 2 disclosed only that they were "exploring" the possibility of a relationship. Fourth, Young was also clear that when she met with Executive 3 on July 25, 2017, Executive 3 stated they were not yet involved but were considering starting a relationship. Young's recollection is also corroborated by her contemporaneous notes. Finally, Executive 2 and Executive 3's September email seeking more time to consider their options also is more consistent with a disclosure that they were considering a relationship: "[we will] let you know if/how we would like to proceed." (Emphasis added).

Here too, both Executive 2 and Executive 3 were complicit in the dishonest disclosure. Although Executive 2 made the initial disclosure to his Manager and Tetreault, Executive 3 repeated that lie in her

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<sup>3</sup> Even though Executive 2 and Executive 3 were given time to consider whether they intended to pursue the relationship, Executive 2's Manager personally prepared Executive 3's performance appraisal for 2017 because he understood the importance of avoiding any appearance of a conflict of interest in the review process.

meeting with Young ten days later. The September email seeking more time to decide “if” they intend to proceed with a relationship also came from both Executive 2 and Executive 3.

In light of the foregoing, we conclude that Executive 2 and Executive 3 knowingly<sup>4</sup> violated TNC’s policy by failing to disclose their relationship for thirteen months, during which time Executive 2 weighed in on Executive 3’s review, raise, and elevation to the Executive Committee. Each was also dishonest with TNC management about the status of the relationship when they did finally disclose. We believe this policy violation and dishonesty provide a strong basis to terminate both Executive 2 and Executive 3’s employment.

#### **IV. Whether Executive 2 and Executive 3 Interfered with McDermott’s Investigation**

On or about April 23, 2019, a current TNC employee who reports to Executive 2 contacted McDermott to provide information that she believed might be relevant to the investigation. During the call, the employee was distraught and reported that she had recently had a call “out of the blue” with Executive 2 and Executive 3. They had told her to be careful about cooperating with McDermott’s investigation because she was already on General Counsel and Chief Operating Officer’s “list.” This employee stated that she had severe reservations about speaking with us and was now in fear of retaliation from TNC.

On May 8, after Executive 2 and Executive 3 were placed on leave pending investigation, we contacted the witness again to ask further questions about the phone call she claims she received from Executive 3 and Executive 2. This time, the witness said she must have been mistaken that both Executive 2 and Executive 3 called at the same time and said that only Executive 3 called her and that Executive 2 was not on the phone. She also said that there was a mix-up and she did not feel intimidated by Executive 3’s remarks. This witness continues to be unwilling to provide a full interview in the scope of McDermott’s investigation citing concerns of retaliation.

We also interviewed Executive 2 and Executive 3 about this call. In her May 2 interview, Executive 3 admitted that she spoke with the witness on April 22 for 56 minutes, and during the conversation advised the witness to be careful because she was “on [General Counsel and Chief Operating Officer’s] list.” She also admits that the investigation came up during the call, but denies that the comments were connected. Rather, Executive 3 stated that she had previously heard General Counsel and Chief Operating Officer did not like the witness and simply wanted to help the witness improve her relationship with her. Executive 3 denies saying anything that was intended to intimidate the witness.

On May 15, Executive 3 again presented a consistent portrayal of the discussion. On May 15, Executive 3 also stated that on May 3 (the day after the May 2 call with the McDermott investigator), she called the witness again to apologize for any misunderstanding and to clarify that she did not in any way intend to intimidate the witness. This was in spite of a request made on May 2 that she refrain from discussing the content of questions asked on the May 2 call with anyone from TNC. During both interviews, Executive 3 was shocked that the witness would take her comments as intimidation or that

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<sup>4</sup> Both Executive 2 and Executive 3 acknowledged during interviews they were familiar with the policy and understood its requirements.

they could be deemed to interfere with the investigation. She was sincere in her apology for any misunderstanding.

On May 15, Executive 2 was also interviewed about this phone call. He admitted that on April 22, he was at home with Executive 3 when the call was made but denies he was part of the call. Executive 2 also produced cell phone records showing that he was on another call for 50 of the 56 minutes that Executive 3 and the witness spoke. He also does not believe that he ever told the witness she was on the General Counsel/COO's list. However, he does admit that a few months ago, he told the witness that the General Counsel/COO was not happy with her performance and that she should be careful.

**A. Conclusions as to Whether Executive 2 and Executive 3 Intimidated Witnesses**

After weighing the evidence and credibility of Executive 2, Executive 3 and the witness who came forward pertaining to comments allegedly made by the

General Counsel and Chief Operating Officer, we conclude that, more likely than not, Executive 3's comments to the witness that "she is on [General Counsel and Chief Operating Officer's] list" and that "she should be careful," while not intended to intimidate, were in poor judgment. The investigation at TNC has been widely discussed and publicized. For Executive 3 to tell a witness that she was on General Counsel and Chief Operating Officer's "list" is in and of itself troubling given the position of power Executive 3 and the General Counsel/COO have at the organization. Coupled with the heightened sensitivity surrounding the investigation, the timing of it was poor. We conclude that Executive 3 did not intend to interfere with or intimidate a witness, but her words may have achieved that result, whether intended or not.

**V. Overall Observations Pertaining to Whether TNC Has a Pattern or Practice of Improper Workplace Conduct**

During the five years preceding our engagement, forty-five complaints have been filed with the hotline or through compliance that have related to sexual harassment. About half of the incidents involve allegations against donors, partners, or volunteers, rather than employees. Almost all of these reported non-employee incidents occurred after hours, or off-site. Further, about one-third of the total incidents expressly reported the involvement of alcohol. That percentage may be higher when one considers how many occurred offsite. Overall, these claims were adequately investigated, but there a few things of note.

First, the manner in which TNC approaches investigating these claims needs to be updated to reflect changes in best practices in the post #MeToo era. Specifically, in several instances where there were serious allegations of misconduct, TNC opted for no or minor discipline because TNC perceived the event as "he said/she said" with no corroborating evidence. In these instances, the accused was given the benefit of the doubt. While it's important to ensure due process for those accused of misconduct, there is no criminal burden of proof applicable to employment disputes. Going forward, those who investigate will need to make credibility determinations even when there is no corroborating evidence. Central to this determination, and what was missing in many of these investigations, is real evaluation of why/whether the person coming forward has an incentive to lie.

Similarly, there has been reluctance to investigate anonymous reports that come through the hotline that fail to make very specific and concrete claims. We understand that there may be some claims that are so vague they cannot be investigated, but, generally speaking, TNC needs to do a more robust and comprehensive investigation into such anonymous claims.

Second, TNC needs to revamp its training materials and methods to ensure that all employees understand their rights and responsibilities in connection with a workplace free from harassment and discrimination. That training needs to incorporate more robust education about how employees should behave when traveling away from the office and attending functions where alcohol is served. The training needs to be modernized and interactive, and must empower people to report incidents to TNC. Further, strategic partners who regularly interact with TNC's team will have to participate in the same type of training if they want to partner with TNC. TNC will also have to find a way to appropriately communicate to donors who attend events the importance of treating TNC members with respect.

Finally, there needs to be more reporting to the Board pertaining to workplace harassment and discrimination. Specifically: (1) all claims against senior officials must be immediately reported to the Board; (2) settlements over a certain amount or involving senior individuals should be approved by the Board; and (3) there should be semi-annual or quarterly reports that generally summarize the number and types of complaints, and the results of the investigations, and that show any systemic issues.

## **VI. Additional Recommendations**

Although it was not our role to investigate general cultural issues, throughout our investigation certain themes emerged that we feel are important to address.

First, numerous employees who contacted the hotline or McDermott's investigator reported that TNC is a male-dominated culture where it is difficult for women to flourish. We believe the organization ought to consider utilizing anonymous culture surveys, focus groups and other means to better understand whether this view is more pervasive than just those who contacted the hotline or investigator and further why these employees perceive the organization this way. The organization also should consider unconscious bias training and other diversity and inclusion initiatives to more generally address gender equity in the workplace.

Second, it appears to us that the some of the rumors surrounding women promoted in Executive 1's organization may be the result of lack of transparency in the promotion process. Specifically, TNC posts most openings, but does from time to time employ less formal measures to identify and promote candidates. We recommend a more formalized process that ensures all candidates are required to go through the same rigorous process in applying for a position. Every applicant should be required to submit the same application materials; there should be formalized guidelines as to who is chosen to interview applicants; interviewees should complete standardized forms summarizing the applicant; and there must be a clearly defined and transparent process in applicant selection. TNC may wish to consider ensuring that every opening that is posted includes diverse candidates on the slate.